

IN THE MATTER OF ARBITRATION

BETWEEN:

Association of Law Officers of the Crown

(ALOC)

Association of Management, Administrative and

Professional Crown Employees of Ontario

(AMAPCEO)

Ontario Crown Attorney's Association

(OCAA)

Ontario Public Service Employees' Union

(OPSEU)

Professional Engineers Government of Ontario

(PEGO)

AND

His Majesty the King as represented by the Treasury Board Secretariat

(TBS)

**Grievances by ALOC, AMAPCEO, OCAA, OPSEU and PEGO concerning
the National Day for Truth and Reconciliation**

Grievance Settlement Board File No. 2022-8790

(OPSEU Grievances 2022-0999-0013, -0014, -0018, -0019)

Christopher Albertyn - Sole Arbitrator

APPEARANCES

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TREASURY BOARD SECRETARIAT

Legal Services Branch

Hearing held by videoconference on February 27, April 12, 28 and 30, May 8 and 19, June 7 and 29, 2023.

Award issued on July 13, 2023.

AWARD

The Issue

1. The trade union parties, described more fully below, represent public sector employees of the Crown in Right of Ontario. They have filed grievances that raise a common question: “whether the National Day for Truth and Reconciliation on September 30 falls within the holiday entitlements set out in their respective collective agreements” [para. 9 of the Agreed Statement of Facts].

2. The grievances were filed in response to the Employer’s decision not to recognize the National Day for Truth and Reconciliation (NDTR) as a holiday for the purpose of the holiday provisions under the unions’ respective collective agreements in 2022 and likely ongoing [para. 42 of the Agreed Statement of Facts].

3. The parties agree that the issue to be determined first – “the common issue” – is “the interpretive issue of whether the National Day for Truth and Reconciliation is a holiday for purposes of the holiday provisions of the collective agreements in issue” [para. 44 of the Agreed Statement of Facts].

4. A previous decision was issued in this matter on May 2, 2023, rejecting the Employer’s motion to present evidence of its reasons for treating the National Day for Truth and Reconciliation as a day of learning, reflection, and reconciliation, rather than as a paid holiday under the unions’ collective agreements.

Agreed Statement of Facts

5. The parties have an Agreed Statement of Facts, as follows.

Agreed Statement of Facts

The Parties

1. The Ontario Public Service Employees Union/ Syndicat des employés de la fonction publique de l'Ontario ("OPSEU/SEFPO") is the exclusive bargaining agent for Crown Employees who work in various provincial ministries and agencies for the government of Ontario, and who are employed within two OPSEU/SEFPO bargaining units (Unified and Correctional) as set out in Article 1-Recognition of the Unified Bargaining Unit Collective Agreement and Correctional Bargaining Unit Collective Agreement.
2. AMAPCEO is the exclusive bargaining agent of, *inter alia*, professional employees who work directly for the government of Ontario.
3. The Professional Engineers Government of Ontario ("PEGO") is the exclusive bargaining agent of professional engineers and Ontario Land Surveyors, engineers in training, and surveyors in training, who work directly for the government of Ontario.
4. The Association of Law Officers of the Crown ("ALOC") is the exclusive bargaining agent of "lawyers and articling students employed by the government of Ontario to provide civil legal services" (ALOC/OCAA Collective Agreement Article 1.4, see Documents, **Tab A**).
5. The Ontario Crown Attorney's Association ("OCAA") is the exclusive bargaining agent of "lawyers and articling students employed in their professional capacity in the Criminal Law Division including fee-for-service lawyers who are either employees or dependent contractors as defined by the *Labour Relations Act*" (ALOC/OCAA Collective Agreement Article 1.3, **Tab A**).

6. The labour relations of OPSEU, AMAPCEO and PEGO are governed by the *Crown Employees Collective Bargaining Act* and through that Act, the *Labour Relations Act*.
7. The labour relations of ALOC and OCAA are governed by collectively bargained Framework Agreements and the *Arbitrations Act*.
8. The Crown in Right of Ontario (the “Employer”) is the employer of all of the employees covered by the collective agreements referred to above. The Employer is party to separate collective agreements with each of AMAPCEO, OPSEU, and PEGO. The collective agreement of ALOC and OCAA is a separate agreement that is jointly bargained.

The Grievances

9. Each of the bargaining agents has filed a grievance which raises a common question, namely, whether the National Day for Truth and Reconciliation on September 30 falls within the holiday entitlements set out in their respective collective agreements. The parties’ grievances are found at **Tab B**.

Bargaining History

OPSEU/SEFPO

10. OPSEU/SEFPO was formed as the successor to the Civil Service Association of Ontario.
11. The first Collective Agreement between the Employer and OPSEU/SEFPO was ratified in 1978. The employee benefits applied from October 1, 1977 to September 30, 1978.
12. The collective agreement language at that time stated:

Article 9 – Holidays:

9.1 An employee shall be entitled to the following holidays each year:

New Year's Day	Labour Day
Good Friday	Thanksgiving Day
Easter Monday	Remembrance Day
Victoria Day	Christmas Day
Dominion Day	Boxing Day
Civic Holiday	

Any special holiday as proclaimed by the Governor-General or Lieutenant Governor.

13. The holiday entitlement under the relevant Unified and Corrections collective agreements currently read as follows:

An employee shall be entitled to the following paid holidays each year:

New Year's Day	Remembrance Day	Civic Holiday
Easter Monday	Boxing Day	Thanksgiving Day
Canada Day	Good Friday	Christmas Day
Labour Day	Victoria Day	Family Day

Any special holiday as proclaimed by the Governor General or Lieutenant Governor.

14. The holiday language has remained largely unchanged since 1977.

AMAPCEO

15. The first full Collective Agreement between the Employer and AMAPCEO was ratified in 1998.

16. The holiday language under the relevant AMAPCEO collective agreement reads as follows:

29.1 An employee shall be entitled to the following paid holidays each year:

New Year's Day	Victoria Day	Thanksgiving Day
Family Day	Canada Day	Remembrance Day
Good Friday	Civic Holiday	Christmas Day
Easter Monday	Labour Day	Boxing Day

An employee shall also be entitled to any special holiday as proclaimed by the Governor General or Lieutenant Governor.

17. The relevant special holiday “as proclaimed by the Governor General or Lieutenant Governor” language has remained unchanged since the parties’ first collective agreement, and the enumerated holiday entitlements have remained unchanged with the exception of the addition of Family Day.

PEGO

18. The first Collective Agreement between the Employer and PEGO was ratified in 1996 with respect to professional engineers. Since 2001, the bargaining unit expanded to include land surveyors.

19. The holiday language under the relevant PEGO collective agreement reads as follows:

40.1 a) Each full-time employee is entitled to the following paid holidays:

New Year's Day	Family Day	Good Friday
Easter Monday	Victoria Day	Canada Day
Civic Holiday	Labour Day	Thanksgiving Day
Remembrance Day	Christmas Day	Boxing Day

Any special holiday proclaimed by the Governor General or the Lieutenant Governor.

20. The relevant special holiday “as proclaimed by the Governor General or Lieutenant Governor” language has remained unchanged since the parties’ first collective agreement, and the enumerated holiday entitlements have remained unchanged.

ALOC/OCAA

21. The Employer, ALOC and the OCAA agreed on their first Framework Agreement in July 1989. The first collective agreement between the Employer, ALOC and the OCAA was ratified in January 1990.
22. Prior to the 2009-2013 ALOC/OCAA collective agreement, there was no provision dealing with holidays. Since that agreement, the relevant special holiday language has remained unchanged, and the enumerated holiday entitlements have remained unchanged. It reads as follows:

27.1 A full-time regular or fixed-term lawyer is entitled to a holiday in each year on each of the following days:

New Year's Day	Victoria Day	Thanksgiving Day
Family Day	Canada Day	Remembrance Day

Good Friday	Civic Holiday	Christmas Day
Easter Monday	Labour Day	Boxing Day

Any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Existing Holiday Entitlements in the Collective Agreements

23. With slight variations in introductory wording, the collective agreements at issue all identify a prospective entitlement to “any special holiday as proclaimed by the Governor General or Lieutenant Governor” and all refer to the same holidays.
24. Since the first *Public Service Act* in 1878, various regulations have set out the terms and conditions of all public servants in the province of Ontario.¹ The phrase “special holiday proclaimed by the Governor General or the Lieutenant Governor” entered the Ontario public service workplace in 1970 via regulation.² Most recently, Ontario Regulation 977, established under the *Public Service Act of Ontario*, S.O. 2006, prescribed holiday entitlements for public servants in Ontario until its revocation in December 2007.³
25. Some of the holidays are found in federal statutes: The *Canada Labour Code* refers to New Year’s Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day as “general holidays”. The federal *Holidays Act* also establishes Victoria Day, Canada Day, and

¹ *An Act Respecting the Public Service of Ontario*, 41 Vict., c. 2, 1878, assented to 7 March 1878, s. 1.

² O. Reg. 215/70.

³ R.R.O. 1990, Reg. 977.

Remembrance Day as legal holidays to be observed throughout Canada.

26. Some of the holidays are also identified as such in provincial statutes. The province of Ontario's *Employment Standards Act* enumerates New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day as public holidays.
27. These holidays originate from different varieties of legislative and executive acts and instruments.

Victoria Day

28. In 1845, the Legislature of the Province of Canada declared May 24 to be a holiday for Queen Victoria's birthday. After Queen Victoria's death in 1901, Parliament passed an Act that established Victoria Day as a legal holiday on May 24. In 1952, the Statutes of Canada were amended to establish Victoria Day as the Monday preceding May 25.⁴

Canada Day

29. On June 20, 1868, Dominion Day was established by Royal Proclamation, signed by Governor General Lord Monck. In 1879, Parliament passed a federal law that established July 1 as a statutory

⁴ Canada, "Victoria Day", online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/important-commemorative-days/victoria-day.html>>; *An Act respecting Victoria Day*, 23 May 1901, (1901) C Gaz, vol 34, ch 12.

holiday to celebrate the “anniversary of Confederation.”⁵ On October 27, 1982, the name “Dominion Day” was changed to “Canada Day.”⁶

Labour Day

30. On July 23, 1894, a bill sponsored by Prime Minister John Thompson to establish Labour Day received Royal Assent.⁷

Remembrance Day

31. Remembrance Day, which was previously known as Armistice Day, was first proclaimed as a holiday in 1918.⁸ In 1921, Remembrance Day was recognized as a holiday observed on the first Monday of the week of November 11.⁹ In 1931, the date of the holiday was amended to be November 11.¹⁰

Thanksgiving Day

32. On January 31, 1957, Thanksgiving Day was proclaimed by the Governor General of Canada Vincent Massey as an annual holiday

⁵ Canada, “Dominion Day – Origin and special observance”, online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/canada-day-history/dominion-day/newspaper-extracts.html>>; Monck, Proclamation, 20 June 1868, C Gaz; *An Act to make the first day of July a Public Holiday by the name of Dominion Day*, House of Commons Debates, vol II (assented to 15 May 1879) at 2047.

⁶ Canada, “History of Canada Day”, online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/canada-day-history.html>>.

⁷ *An Act further to amend the law relating to Holidays*, 4th Sess, 7th Parl, 1894 (assented to 23 July 1894).

⁸ Mulvey T, Proclamation, 23 November 1918, (1918) C Gaz, vol 52, no 21, 1739.

⁹ *An Act respecting Armistice Day*, 4 June 1921, (1921) C Gaz, vol 54, no 50, 5395.

¹⁰ *An Act to amend the Armistice Day Act*, 11 June 1931, (1931) C Gaz, vol 64.

to be celebrated on the second Monday of October.¹¹ Prior to 1957, Thanksgiving had been celebrated most years since proclaimed by Sir John A. MacDonald in 1859 and was recognized as a holiday in legislation as early as 1845.¹²

Family Day

33. On October 12, 2007, the Family Day Proclamation was declared by the Lieutenant Governor.¹³ The Proclamation established Family Day as a holiday pursuant to the *Retail Business Holidays Act*, R.S.O. 1990, Chapter R. 30 and of the *Legislation Act*, 2006, S.O. 2006 c. 21 Sched. F. The government issued O. Reg 547/07, also on October 12, 2007, which amended O. Reg 285/01 of the *Employment Standards Act* to prescribe Family Day as a public holiday.¹⁴ O. Reg 547/07 was later revoked when the *Employment Standards Act* was amended. AMAPCEO and the employer signed agreements on December 12, 2007, and on January 31, 2008, confirming that Family Day is a holiday under the collective agreement (**Tab C**). OPSEU similarly signed an agreement with the employer on December 23, 2008 adding Family Day as a holiday under the collective agreement (**Tab D**).

New Year's Day, Good Friday, Christmas Day and Boxing Day

34. The origins of New Year's Day, Good Friday and Christmas Day pre-date Confederation, and are found in early legal definitions of holiday

¹¹ Massey V, Proclamation, 31 January 1957, (1957) C Gaz, vol 91, no 4, 1.

¹² Macdonald J, Proclamation, 1 October 1859, C Gaz, vol 18, no 39, 1; *An Act to provide for the Management of the Customs and of matters relative to the Collection of the Provincial Revenue*, 1st Sess, 2nd Parl, 1845 (assented to 17 March 1845).

¹³ Onley D, Proclamation, 27 October 2007, (2007) O Gaz, vol. 140-43.

¹⁴ O Reg 547/07, s 1.

from at least 1800 (for Christmas Day)¹⁵, 1801 (for Good Friday),¹⁶ and 1845 (for New Year's Day)¹⁷. Similarly, Boxing Day has been a holiday in Canada since at least 1872.¹⁸

Easter Monday

35. Easter Monday is a municipal enactment and has not been designated as a provincial or federal statutory holiday.

Civic Holiday

36. The Civic Holiday is a municipal enactment and has not been designated as a provincial or federal statutory holiday.

The National Day of Truth and Reconciliation

37. A new holiday, known as the National Day of Truth and Reconciliation, was created by the federal government in 2021 through *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)* ("Bill C-5"). Bill C-5 took effect on June 3, 2021, when

¹⁵ *An Act to amend part of Act passed in the thirty-fourth year of the Reign of His Majesty, intituled, "An Act to establish a SUPERIOR COURT of CIVIL and CRIMINAL JURISDICTION, and to regulate the COURT OF APPEALS," and also to amend and repeal part of an Act passed in the thirty-seventh year of the Reign of His Majesty, intituled, "An Act for Regulating the Practice of the COURT of KING'S BENCH," and to make further Provision respecting the same", 3rd Sess, 2nd Parl, 1798 (assented to 1 January 1800).*

¹⁶ *An Act for granting to his Majesty, his heirs and successors, to and for the uses of this Province the like Duties on goods and merchandize brought into this Province from the United States of America as are now paid on goods and merchandize imported from Great Britain and other places, 1st Sess, 3rd Parl, 1801 (assented to 9 July 1801).*

¹⁷ *An Act to provide for the Management of the Customs and of matters relative to the Collection of the Provincial Revenue, 1st Sess, 2nd Parl, 1845 (assented to 17 March 1845).*

¹⁸ *An Act to amend the Act relating to Banks and Banking, 34 Vict, c 5 (assented to 14 June 1872).*

it received Royal Assent. It amended three federal statutes, namely the *Bills of Exchange Act*, the *Interpretation Act* and the *Canada Labour Code*, to add a new holiday – the National Day for Truth and Reconciliation – to be observed on September 30 every year thereafter.

38. The purpose of Bill C-5 is to respond to the Truth and Reconciliation Commission of Canada's call to action number 80 by creating a holiday called the National Day for Truth and Reconciliation to honour First Nations, Inuit and Métis Survivors and their families and communities and to ensure that public commemoration of their history and the legacy of residential schools remains a vital component of the reconciliation process.
39. On September 3, 2021, Deputy Minister of the Treasury Board Secretariat, Deborah Richardson, issued a memorandum to all OPS staff informing them of how the National Day for Truth and Reconciliation would be treated on September 30, 2021 (**Tab E**). Further, on September 20, 2021, she sent a reminder memo to all OPS Staff regarding September 30, 2021 (**Tab F**). On September 20, 2021, the Bargaining Agents were informed, on a without precedent and prejudice basis, that the National Day for Truth and Reconciliation was treated as a holiday under the various collective agreements discussed above. (**Tab G**). The Bargaining Agents were provided notice of the employer's intentions on or about August 31, 2022 through a letter from Kevin Wilson on behalf of Jennifer Price, Director Employee Relations Branch (**Tab H**). A memorandum to all OPS staff from Deborah Richardson was also sent out on August 31, 2022 (**Tab I**).
40. The employer sent out a memo and Q&A entitled "September 30 – National day for Truth & Reconciliation & Orange Shirt Day" to all OPS Staff on August 31, 2022 (**Tab J**).

41. A Ministry Guide for Learning and reflection was developed and distributed to management within the OPS for use on September 31, 2021 (**Tab K**).

The Grievances

42. AMAPCEO PEGO, ALOC, OCAA and OPSEU all filed grievances in response to the Employer's decision not to recognize the National Day for Truth and Reconciliation as a holiday under their respective collective agreements.
43. AMAPCEO, ALOC, PEGO, OCAA and OPSEU have since joined their grievances together, to be heard and determined by Arbitrator Chris Albertyn.
44. The common issue between the parties, and the issue to be determined first ("the common issue"), is the interpretive issue of whether the National Day for Truth and Reconciliation is a holiday for purposes of the holiday provisions of the collective agreements in issue.
6. Counsel to the parties provided most helpful written summaries of their principal arguments, which I will summarize further below, with their books of authorities. The written briefs of the argument were: the unions' submissions on the merits of the grievances, the Employer's submissions in response, the unions' reply submissions, and the Employer's surreply submissions. These submissions were amplified in argument at the hearing.
7. The key issue is the proper interpretation of the words in the holidays' language of the different collective agreements, which reads: **an employee shall**

also be entitled to any special holiday as proclaimed by the Governor General or Lieutenant Governor.

8. The unions contend that the National Day for Truth and Reconciliation is a special holiday that was proclaimed by the Governor General. The Employer asserts that there never was such a proclamation by the Governor General. As will be seen in the elaboration of the arguments below, the Employer’s submission is that the Governor General giving royal assent to a statute is not a “proclamation” or “proclaiming”. For the Governor General to proclaim a holiday, the Employer submits, the Governor General must exercise an executive (rather than a legislative) function, acting on the authority of the Cabinet of the Government of Canada.

Union Submissions

9. The unions rely on several recent arbitral decisions, on similar language, affirming the National Day for Truth and Reconciliation as a holiday under the collective agreements concerned (*Caps Canada Corporation v United Food and Commercial Workers, Local 175*, 2023 CanLII 440 (Randazzo); *Vaughan Public Library Board v Canadian Union of Public Employees, Locals 90517 (Part-time and Casual) and 90518 (Full-time)*, 2022 CanLII 79947 (Knopf); *Olympic Motors (WC1) Corp and IAMAW, Local 1857 (National Day for Truth and Reconciliation), Re* (2021), 334 LAC (4th) 434 (Saunders); *PIPSC and New Brunswick (Department of Finance and Treasury Board) (2021-110-152), Re* (2022), 342 LAC (4th) 240 (Filliter); *LIUNA, Local 1059 and London & District Concrete Formwork Contractors’ Assn (Statutory Holiday), Re* (2021), 333 LAC (4th) 318 (Beatty); *Alberta Union of Provincial Employees v Alberta Health Services*, 2022 CanLII 22226 (Bartel); *Sodexo Canada Ltd v Labourers’ International Union of North America, Local 1059*, 2021 CanLII 145655 (White); *Windsor (Corporation of the*

City) v Canadian Union of Public Employees, Local 543, 2022 CanLII 4641 (Steinberg); *Corporation of the City of Belleville v Canadian Union of Public Employees, Local 907*, 2022 CanLII 62779 (Hayes); *Kenora (City) and CUPE, Local 19101 (National Day), Re*, 2023 CLAS 33 (Sheehan); *CUPE, Local 1750 and Ontario (Workplace Safety and Insurance Board) (Policy), Re*, 2023 CLAS 36 (Sheehan); *UFCW, Local 1006A and National Grocers Co. (GR0148), Re*, 2021 CarswellOnt 14694, 150 C.L.A.S. 42, 334 L.A.C. (4th) 216 (Jesin); *Pacific Honda and IAMAW, Local 1857 (National Day for Truth and Reconciliation), Re*, 2022 CarswellBC 1343, [2022] B.C.C.A.A.A. No. 47, 2022 C.L.A.S. 1 (Saunders); *Davis Wire Industries Ltd. v United Steelworkers Union, Local 2009, Re*, 2022 CarswellBC 2060 at para 1 (Devine); *CUPE, Local 1750.01 and Infrastructure Health and Safety Assn., Re*, 2022 CarswellOnt 15477, 2022 C.L.A.S. 457, 345 L.A.C. (4th) 225 (Mitchnick); *BC General Employees' Union v PRT Growing Services Ltd. (National Truth and Reconciliation Day Policy), Re*, 2022 CarswellBC 3351, 2022 C.L.A.S. 586, 345 L.A.C. (4th) 255 (Rusen); *Wuis Brothers Concrete Pumping and LIUNA Local 183*, 2021 CanLII 135982 (Mitchell); *George Vale Golf Club v CUPE Local 50, Re*, 2022 CarswellBC 3385, 2022 C.L.A.S. 62 (Love); *Johnson Controls and IBEW, Local 213 (National Day of Truth and Reconciliation), Re*, 2022 CarswellBC 1649, [2022] B.C.C.A.A.A. No. 54, 2022 C.L.A.S. 423 (Kandola).

10. Referring to *Alberta Health Services, Sodexo, and Olympic Motors*, above, and to *Manalta Coal Co and Alberta Strip Miners Union, Local 1595, Re* (1990), 17 CLAS 37 (Elliott), Ms. Pollock, counsel for ALOC, AMAPCEO and PEGO, submits that arbitrators have taken a broad and liberal approach to the meaning of “proclaim” and “proclamation” within the collective agreement holiday provisions. Those cases suggest that “proclamation” refers to a government officially declaring, announcing, or publishing an action of the government. In *Malton*

Village of the Peel (Regional Municipality) and CUPE, Local 966 (Arya), 2023 CLAS 101 (McNamee), the arbitrator suggested, at paragraph 41, that “proclaim” requires “a considerable degree of formality” and provides “a clear statement of government policy and intent”.

11. The Unions give law dictionary definitions of the meaning of “proclaim” and “proclamation”.

- “Proclamation” – Promulgation, the official announcement or formal declaration. The act of causing some state matters to be published or made generally known. It is a publication by authority. A notice to the public of anything or a public declaration of the sovereign’s will made to his subjects. A written or printed document in which are contained such matters issued by proper authority. No particular form is necessary to qualify a document as a proclamation (*Attorney General of Canada v Ryan*, (1888) 5 Man. R. 81).¹⁹
- Proclamation. n. 1. Authorized publication. 2. A proclamation under the Great Seal.²⁰
- Proclamation. A formal public announcement made by the government.²¹

12. The unions claim that the National Day for Truth and Reconciliation (September 30th) was proclaimed as a holiday when, on June 3, 2021, the federal

¹⁹ The Canadian Law Dictionary, by R S Vasan (Don Mills, ON: Law and Business Publications (Canada) Inc, 1980) at p 297.

²⁰ “Proclamation” in The Dictionary of Canadian Law by Daphne Dukelow and Betsy Nuse (Scarborough, ON: Carswell, 1991) at p 822.

²¹ “Proclamation” in Black’s Law Dictionary, 3rd ed by Bryan A Garner (St Paul, MN: Thomson Reuters, 2009) at p 1326.

Bill C-5 received Royal Assent because it was “declared” or “announced” or “published” as a legal holiday on that date. The unions submit that the words, “Governor General”, simply refer to the federal government, as distinct from the provincial government. So, “promulgated by the Governor General”, is a reference to a legislative act by the federal government.

13. Bill C-5 amended three federal statutes, namely the *Bills of Exchange Act*, the *Interpretation Act*, and the *Canada Labour Code*, to add a new holiday – the National Day for Truth and Reconciliation – to be observed on September 30 every year thereafter (subject to observance on alternate days as permitted by law).

14. The unions made submissions on the meaning of the words, “special holiday”, in the language of the holidays’ provision in the collective agreements. The issue was addressed in *Ontario (WSIB)*, above, at paragraph 26 in response to the WSIB’s argument that “special holiday” meant a one-time event. Arbitrator Sheehan dismissed this argument, finding that “special” included the meaning, “designed for a particular purpose or occasion”, which he found applied particularly to the National Day for Truth and Reconciliation.

15. As counsel for the OCAA submit, the National Day for Truth and Reconciliation is a “special holiday” because it is “readily distinguishable from others of the same category” or “designed for a particular purpose or occasion”²². The clear purpose of the enactment was stated in Bill C-5, at para. 38 of the Agreed Statement of Facts:

The purpose of this Act is to respond to the Truth and Reconciliation Commission of Canada’s call to action number 80 by creating a holiday

²² “Special.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/special> cited in *CUPE, Local 1750 and Ontario (WSIB)*, above, at para 26.

called the National Day for Truth and Reconciliation, which seeks to honour First Nations, Inuit and Métis Survivors and their families and communities and to ensure that public commemoration of their history and the legacy of residential schools remains a vital component of the reconciliation process.

16. In the arbitral jurisprudence cited by the unions, arbitrators have looked at how already recognized holidays came to be included as paid holidays. The origins of the holidays differ, as is clear from paragraphs 25 and 26 of the Agreed Statement of Facts, above. Some are from federal or provincial enactments, some are from provincial proclamation (Family Day), and some (Easter Monday and the Civic Holiday) are from municipal enactments. The variety of sources of the holidays has persuaded arbitrators to accept holidays from different levels of government and from different forms of enactment.

17. The unions submit that a common-sense, non-technical, approach is needed, as the parties to the collective agreements would themselves have done. The unions stress that the main consideration is “to discern the intention of the parties from the language in the collective agreement”²³. Counsel for the OCAA submit that this is to be done by applying the fundamental rules of collective agreement interpretation²⁴. Counsel for OPSEU stress the importance of giving the language

²³ *LIUNA, Local 1059 and London & District Concrete Formwork Contractors' Assn. (Statutory Holiday)*, above, at para 23.

²⁴ The “fundamental rule of collective agreement interpretation” is that the “words used must be given their plain and ordinary meaning unless it is apparent from structure of the provision or the collective agreement read as a whole that a different or special meaning is intended”. “All words must be given meaning, and different words are presumed to have different meaning, unless this would lead to a result that is absurd or inconsistent with the overall scheme and structure of the agreement”. (*Ontario Power Generation Inc. v Society of Energy Professionals*, 2011 CanLII 8963 (Surdykowski) para. 27).

An interpretation which leads to an absurdity should be avoided. An “interpretation that renders a provision redundant is inherently absurd” as it is “unlikely the parties settled upon language

its plain and ordinary meaning.²⁵ They submit that any new statutory holiday, whether from the federal or provincial government, is what the parties intended to be covered by the relevant language, “any special holiday as proclaimed by the Governor General or Lieutenant Governor”.

18. Counsel for the OCAA submit that the unions’ interpretation of the key phrase, “any special holiday as proclaimed by the Governor General or Lieutenant Governor” is consistent with the climate of collective bargaining and with the prevailing principles of collective agreement contract interpretation. In particular, the decision in *Johnson Controls and IBEW, Local 213 (National Day of Truth and Reconciliation)*, above, is instructive because the language in that collective agreement, “so declared a holiday by order in council by the Federal or Provincial Governments”, was found to include the National Day for Truth and Reconciliation. Arbitrator Kandola effectively found that “order in council” was equivalent to “declared” or “proclaimed” involving “the exercise of a law-making power” by the government (paras. 9 and 19).

19. The parties have delegated to the federal and provincial governments to determine a holiday that is to become part of their collective agreement. The OCAA

incapable of conveying value, tangible or otherwise”. (*LIUNA, Local 1059 and London & District Concrete Formwork Contractors’ Assn. (Statutory Holiday)*, above, at para 26; *Pacific Honda and IAMAW, Local 1857 (National Day for Truth and Reconciliation)*, *Re*, 2022 CarswellBC 1343 at para 41).

Prior arbitration awards dealing “with the same words or phrases are a significant source of meaning and are often resorted to as corroborative aids or as aids where the meaning of the words in the agreement admit of more than one interpretation”. (Brown and Beatty, Canadian Labour Arbitration, 5th Edition, LAXBROWNB § 4:34. Prior Arbitration Awards and Judicial Decisions).

Parties to a collective agreement are presumed to know the relevant context, including jurisprudence. (*AUPE and Alberta Health Services (848846)*, *Re*, 2022 CarswellAlta 68 at para 29).

²⁵ *Maple Leaf Consumer Foods v. United Food and Commercial Workers Canada, Local 175*, 2011 CanLII 6860 (ON LA) (Surdykowski), at paras. 18-19.

submits that the collective agreement language is clear and unambiguous on its face, and that, on the plain and ordinary meaning of the words used, when the National Day for Truth and Reconciliation was proclaimed a holiday by the federal government on June 3, 2021, it became a holiday under the collective agreement.

20. The unions rely particularly on the *Ontario (WSIB)* decision of Arbitrator Sheehan (sitting as an arbitrator of the Grievance Settlement Board (GSB)), above, because he interpreted the same language and found (at para. 26) that the National Day for Truth and Reconciliation was captured by that language because it was “proclaimed” by the federal government.

21. Counsel for OPSEU refer to *Ontario (WSIB)* in the context of the *Blake* principle at the GSB²⁶ (this case is being heard, in part, under the aegis of the GSB). Counsel argue that the GSB jurisprudence should be followed on the same issue. In *Blake*, GSB Chair Shime established the principle that prior GSB decisions should be followed unless exceptional circumstances warranted an earlier decision of this board being reviewed.

22. OPSEU counsel argue that there are no “exceptional circumstances” to distinguish this case from that heard by Arbitrator Sheehan in *Ontario (WSIB)*, and therefore that decision should be followed.

23. The relief sought by the unions is for the grievances to be upheld; for the National Day for Truth and Reconciliation to be declared a paid holiday under the Holidays language of each of the collective agreements; for the affected employees to be made whole for the losses incurred as a result of the failure by the Employer to

²⁶ *ATU Blake et al v. Ontario (Toronto Area Transit Operating Authority)*, GSB No. 1276/87 (Shime).

recognize the National Day for Truth and Reconciliation as a paid holiday on September 30, 2022; and that the arbitrator remain seized for the implementation of these orders.

Employer Submissions

24. The Employer does not take issue with the unions' argument that the National Day for Truth and Reconciliation is a "special holiday". The Employer's focus is on the meaning of the words, "proclaimed by the Governor General". Employer counsel say there was no proclamation by the Governor General, and therefore, on the plain meaning of the language agreed by the parties, no holiday for the purpose of the collective agreements has come into effect.

25. The Employer submits that the source of the language in the collective agreements – first appearing (among these parties) in the OPSEU agreement in 1978 – is a regulation (Ontario Regulation 977) under the *Public Service Act*, which described the holiday entitlements that were later incorporated into the parties' collective agreements. From this, the Employer suggests that "the parties were negotiating in the shadow of legislation and regulation that set out terms and conditions of employment in this context, the parties intended the words in the collective agreement to mean the same as what those words meant under the law".

26. On this basis, the Employer submits that the phrase, "proclaimed by the Governor General or Lieutenant Governor" has a specific meaning that is distinct from assenting to legislation. What is meant, the Employer suggests, is a proclamation issued under an Order of the Governor General.

27. The National Day for Truth and Reconciliation became law after royal

assent was given by the Governor General²⁷ to Bill C-5 once it was passed in the House of Commons and the Senate. The role of the Governor General was the final step in the enactment of the legislation. The Employer argues that what is required by the language, “proclaimed by the Governor General or Lieutenant Governor”, is an executive act by the Governor General, not the legislative act of royal assent. In other words, royal assent is legally distinct from proclamation, and therefore, on the language of the collective agreement, the Governor General never proclaimed the holiday.

28. The Employer refers to para. 33 of the Agreed Statement of Facts, which describes how Family Day came to be included in the collective agreements, to explain how proclamations are issued. The Lieutenant Governor was empowered by statute to issue a proclamation and then did so. That was an executive act authorized by statute.

29. The Employer refers to two cases, *Durham (Regional Municipality) and Ontario Nurses’ Association* 2008 CanLII 14936 (ON LA) (Bendel) and *Aqua-Pak Styro Containers Ltd. and I.W.A. Canada, Loc. 1-3567, Re*, 1996 CanLII 20377 (BC LA) (Kelleher), to suggest there is a presumption that parties intend, in their collective agreements, to give words the same meaning as the definition of those words in a statute.

30. The Employer relies on the SCC decision in *Sattva Capital Corp. v. Creston Moly Corp.* 2014 SCC 53 (CanLII), particularly the comments, at para. 47, that the mutual intention of the parties is ascertained by reading “the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the

²⁷ In fact, royal assent was given by the Chief Justice acting as Governor General because the office of the Governor General was vacant at the time.

surrounding circumstances known to the parties at the time of formation of the contract.” Employer counsel suggest that the “surrounding circumstances” at the conclusion of the collective agreements was the statutory framework in existence, particularly Ontario Regulation 977.

31. The Employer points out that the interpretation of statutes and regulations is governed by the applicable provincial and federal legislation. Provincially, in Ontario, successive versions of the *Interpretation Act*²⁸ applied until July 25, 2007, and thereafter the *Legislation Act, 2006*²⁹ applied. Federally, the interpretation of statutes and regulations is governed by the *Interpretation Act*³⁰.

32. Under both the provincial and the federal statute, a “proclamation” of the Governor General or of the Lieutenant Governor is understood to mean that it is issued as the Governor or Lieutenant Governor in Council. In other words, a proclamation is understood to be issued on the direction of the Cabinet.

33. The Employer says that Family Day was proclaimed a holiday by the power given to the Lieutenant Governor of Ontario to do so under the *Retail Business Holidays Act*³¹. Similarly, the Governor General is empowered by create holidays by proclamation under the *Interpretation Act*³² and under the *Bills of Exchange Act*³³.

34. Since the National Day for Truth and Reconciliation was created by statute

²⁸ *Interpretation Act*, RSO 1970, c 225, *Interpretation Act*, RSO 1980, c 219, and *Interpretation Act*, R.S.O. 1990, c I.11.

²⁹ SO 2006, c 21, Sched. F, s 134.

³⁰ *Interpretation Act*, R.S.C. 1970, c I-23; *Interpretation Act*, R.S 1993, c I-21.

³¹ RSO 1990, c 30, s. 1(1)(i).

³² s. 35(1).

³³ R.S.C. 1985, c B-4, s. 42(b).

(with royal assent by the Governor General), rather than by proclamation by the Governor General in Council under the *Interpretation Act* or the *Bills of Exchange Act*, the Employer submits that this holiday was not “proclaimed”, as the language of the collective agreement requires.

35. The Employer points out that there are other cases that use the words, “proclaim” or “proclamation” or “declared” “by the federal or provincial government”. The Employer concedes that, had that been the language, then the holiday was proclaimed by the federal government.

36. It is only in the present case, in the *GSB Ontario (WSIB)* case, and in the *Province of New Brunswick* matter³⁴ that the language involves proclamation by either the Governor General or the Lieutenant Governor. The Employer’s argument (of a distinction between Royal Assent and Proclamation) was not made in the *Ontario (WSIB)* case. It was made, though, in the *Province of New Brunswick* matter. That is the only case among all the others cited by the parties that directly addressed the Employer’s argument. The language in that case was, “all other days proclaimed as holidays by the Governor-General of Canada or the Lieutenant-Governor of the Province of New Brunswick.”

37. In *Province of New Brunswick*, the employer argued, like the Employer does in this case, that the Governor General declares holidays by making a proclamation under the federal *Holidays Act*, and not by giving royal assent to a parliamentary Bill. That argument was unsuccessful. Arbitrator Breen found that royal assent was a form of the Governor General proclaiming a holiday into law, and so he declared the National Day for Truth and Reconciliation to be holiday.

³⁴ 2022 CanLII 95985 (NB LA) (Breen).

38. The Employer here argues that *Province of New Brunswick* was wrongly decided because it blurred the distinction between royal assent and Proclamation. The Employer suggests that Arbitrator Breen’s decision should not be followed because it relied on dictionary definitions of “proclaim” and “proclamation” when those terms are defined in the interpretive statute, the *Interpretation Act*. The Employer submits that the only valid definitions of “proclaim” and “proclamation”, for the purpose of determining what the parties intended, are those contained in the *Interpretation Act*.

39. As regards the *Blake* principle, argued by OPSEU, the Employer makes two arguments. First, if a new legal argument is made and the GSB has not had occasion to address that argument previously, then the prior decision need not be followed.³⁵ Second, if the prior decision has a manifest error, or the GSB is “attracted by a new argument that could have been, but was not made, in the previous case”, the GSB is not obligated to follow the earlier GSB decision.³⁶

40. The Employer refers to the prior GSB decision of Arbitrator Sheehan in *Ontario (WSIB)* and points out that the employer in that case did not contest that the Governor General had proclaimed the National Day for Truth and Reconciliation as a holiday.

41. Consequently, the key argument presented by the Employer in this case – that the Governor General did not proclaim the National Day for Truth and Reconciliation as a holiday – was not considered in the prior GSB decision. That issue is therefore open for consideration in this case.

³⁵ *Lariviere and Ministry of Community Safety and Correctional Services*, GSB No. 2002-2124 (Dissanayake).

³⁶ *Monk et al and Ministry of Community Safety and Correctional Services et al*, GSB No. 1995-1694 (Gray).

42. The Employer asks, if the unions are successful, that the remedies be referred to the parties, specifically as they related to September 30, 2022, and that the arbitrator remain seized if implementation issues arise. The Employer further suggests that individual relief should not be granted on the strength of the unions' policy grievances.

The Unions' Reply

43. All the unions adopt each other's positions in their original arguments and in their replies.

44. Counsel for ALOC, AMAPCEO and PEGO challenge the assumptions that inform the Employer's main argument that there is a clear legal distinction between royal assent and Governor General Proclamation. The Employer suggested that words defined in statute, used in the collective agreement, should be accorded the meaning they have in the statute when interpreting the collective agreement. The Employer relied on two cases for this proposition: *Aqua-Pak* and *Durham*, above.

45. Counsel point out that the arbitrators concluded in both of these cases that the words in the collective agreements meant something different from the statute (despite any presumption of following the definition of a term in a statute in collective agreement interpretation), and that the parties' intentions were different from what was contained in the statute. From this, the unions submit that any presumption in favour of a statutory definition is rebuttable and yields to the primary principle of collective agreement interpretation, viz., to discern the intention of the parties, having regard to the context in which the words appear.

46. Moreover, while in *Aqua-Pak* and *Durham*, the term referred to in the collective agreement was actually defined in the statute, there is no definition in the statutes referred to by the Employer of any of the words used in the collective agreement. That, the unions suggest, eliminates any presumption, and shows that a necessarily building block of the Employer's argument is missing.

47. The unions submit that the better approach is to apply the usual canons for collective agreement interpretation and to apply them to the provision as the parties themselves have done, by recognizing their intention to capture new holidays established by the federal or provincial government.

48. In response to the Employer's argument that the disputed language was imported from Ontario Regulation 977, the unions reply that there is no evidence that the parties imported the disputed language from anywhere. There is also no evidence that the language used, "proclaimed by the Governor General or the Lieutenant Governor" has any specific meaning under law. It is not defined in statute, and there is no evidence that it had the meaning contended for by the Employer when the collective agreements were concluded.

49. Consequently, counsel for ALOC et al. submit that the Employer has conjured the notion that "proclaiming" does not include royal assent because that is not done "under law" or done "in accordance with that established by law". Ultimately, counsel suggest that the whole Employer argument is a construct that lacks a foundation in any definition or principle of law.

50. Union counsel contend that the interpretive statute of how the Governor General exercises their power has nothing to do with the collective agreement and would never have entered the parties' thinking when they concluded the collective agreements. They were not thinking about how the Governor General signifies

approval; only that if such approval were granted and a holiday were declared, it would then become part of the collective agreement.

51. In summary, because there is no corresponding definition in statute of the words used in the relevant provision of the collective agreement, the unions say that there is no basis for the presumption that the parties intended to distinguish between the Governor General acting by royal assent or by proclamation.

52. Union counsel point to the provisions in their collective agreements where the parties made direct mention of a statute and where the meaning of a statutory provision is effectively incorporated into their collective agreements. They contrast this with the absence of any reference to the interpretive federal and provincial statutes that define the powers of the Governor General and of the Lieutenant Governor. Counsel submit that when the parties want to make reference to statutes and statutory definitions, they do so deliberately.

53. The unions point out that the holidays included in the collective agreements have come from both proclamation and royal assent, as well as other means.

54. Counsel for OPSEU point out that Bill C-5, which the Governor General assented to, makes clear that the National Day for Truth and Reconciliation is being proclaimed. There is a declaration by parliament, of which the Governor General is part, of this holiday being incorporated in the three federal statutes that were amended (*Bills of Exchange Act*, *Interpretation Act* and *Canada Labour Code*). In OPSEU's submission, this process amounts to the Governor General proclaiming the new holiday.

55. OPSEU counsel make the point that those negotiating the collective agreements are not constitutional scholars, but labour relations representatives. He

argues that, when concluding the holidays' provision, the parties were not incorporating any statute or any statutory interpretation; they were simply wanting to incorporate holidays that had become law, either federally or provincially.

56. Counsel for OCAA point out that the Employer's case is built on the word, "proclamation", when the actual word used in the collective agreement is "proclaimed", a word that means, simply, "declared". There is also no definition on "proclaim" or "proclaimed" in the federal *Interpretation Act*. "Proclamation" is defined as "a proclamation under the Great Seal" but "proclaim" is not defined. In any event, counsel argue that issuing a proclamation under the Great Seal includes the action of the Governor General in giving finality to the legislative process, by making a written declaration. A proclamation under the Great Seal can be either the final step of the legislative process or the executive act of the Governor in Council.

57. OCAA counsel submit that the distinction drawn by the Employer – the difference between the Governor General's legislative role in giving royal assent and their executive role in issuing proclamations as those of the Governor in Council – is far from clear. The Preamble to the *Royal Assent Act*, S.C. 2002, C.15, describes how the Governor General gives royal assent. The form and manner of royal assent is described in s.2:

Form and manner of royal assent

2 Royal assent to a bill passed by the Houses of Parliament may be signified, during the session in which both Houses pass the bill,

- (a) in Parliament assembled; or
- (b) by written declaration.

58. The Hansard record states that on June 3, 2021, "I have the honour to inform you that the Right Honourable Richard Wagner, Administrator of the Government

of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 3rd day of June, 2021, at 6:34 p.m.”

59. So, OCAA counsel submit, there was a “written declaration” by Chief Justice Wagner – acting as the Governor General – which was the Governor General “proclaiming” the holiday. The law is effective upon both houses of parliament being informed that the Governor General has signified assent, in this case by “written declaration”. The unions submit that is proclaiming the holiday.

60. OCAA counsel refer to the Library of Parliament Publication³⁷ “Designation of National Days and Observances in Canada”. The publication explains the difference between observances and legal holidays. Parliament can pass legislation “proclaiming specific days as holidays or officially recognized days”³⁸.

61. The publication explains that the federal government may establish “a national day or observance by way of a proclamation or order in council, with or without Parliament’s approval. An order in council is made by the Governor General on the advice of the Privy Council. It is usually formulated by Cabinet or a committee of Cabinet and takes legal effect when signed by the Governor General”³⁹. This, OCAA counsel submit, is what the Employer refers to as a Proclamation by the Governor General in Council and claims the parties agreed to in their collective agreements.

62. Table 1 of the publication lists the national days and observances in Canada. Those proclaimed by the Governor General in Council include National Mining Week, Clean Air Day Canada, National Aboriginal Day, National Day of

³⁷ Publication No. 2015-06-E, 6 February 2015, Revised 5 April 2017.

³⁸ Para. 2.1.1.

³⁹ Para. 2.2.

Remembrance for Victims of Terrorism, A Day of Commemoration of the Great Upheaval, Police and Peace Officers' National Memorial Day and National UNICEF Day. These are the observances that are declared by proclamation by the Governor General in Council. OCAA counsel explain that these are not holidays, they are notational days and observances.

63. OCAA counsel refer also to a statement by the Prime Minister of Canada declaring September 19, 2022 as a National Day of Mourning in Canada to mark the passing of Her Majesty Queen Elizabeth II. In that statement an explanation is given regarding statutory holidays: "Statutory holidays in Canada can only be granted through legislation, which must pass through the House of Commons and the Senate and receive Royal Assent".

64. Counsel further explain that there are different sources for days of mourning, for observances, and for notational days (the Prime Minister's office, Proclamations by the Governor General, resolutions by the Senate or the House of Commons). However, federal holidays are created only by statute, i.e., by parliament passing a law ordering the existence of a new holiday, which has royal assent by the Governor General as its final stage.

65. Consequently, OCAA counsel argue that, if the language in the collective agreement is interpreted in the manner advanced by the Employer, there can never be a federal holiday added to the list of holidays. That is because the Governor General in Council, issuing a proclamation, can declare an observance, but not a holiday. The only way a holiday can be declared is by royal assent of a bill approved by the House of Commons and the Senate. Counsel submit that the parties could not have intended that there would never be a federal holiday added pursuant to the provision. Were that so, the unions would have negotiated something of no value; enforcing what the Employer contends for would amount to enforcing a nullity.

Employer Surreply

66. The Employer reiterates that there never was a proclamation of the National Day for Truth and Reconciliation by the Governor General. If the statute creating the holiday had had a provision that the effective start date of the holiday was to be declared by the Governor General, then the Governor General could have proclaimed it. As it was, the date was set in the statute and royal assent did not amount to proclaiming or a proclamation, which Employer counsel submit are one and the same.

67. The Employer says that the National Day for Truth and Reconciliation was created by the government of Canada, but not by proclamation of the Governor General. The parties chose the language of the Governor General proclaiming, not the government of Canada proclaiming, therefore the parties never agreed that legislated holidays, without a proclamation by the Governor General, would become part of the collective agreements.

68. Employer counsel point out that the source documents introduced by the OCAA in reply do not form part of the Agreed Statement of Facts and they constitute secondary sources of the powers of the Governor General, removed from the factual matrix of the bargaining that concluded the collective agreements, and from the facts surrounding Bill C-5, which came into force two months after royal assent.

69. Employer counsel reiterate that the factual context for the negotiation of the provision was Ontario Regulation 977, which necessarily meant that the distinction between proclamation and royal assent was known to the parties, or ought to have

been known to them, and was imported into the collective agreements. Employer counsel highlight that the relevant language requires more than mere assent or approval by the Governor General (as occurs with royal assent). What was needed was a proclamation, which is absent.

Decision

70. The question to be answered is, what did the parties intend when they agreed to the language, “any special holiday as proclaimed by the Governor General or Lieutenant Governor”.

71. Part of this determination is to decide if there is any sound legal basis for suggesting, as the Employer has, that the parties understood themselves (or should have understood themselves) to have agreed that they were not including any special holiday that was the result of legislation (federally or provincially), and that only those holidays which resulted from a proclamation issued by the Governor General (or Lieutenant Governor) in Council (acting on the authority of the Cabinet) were to become part of the collective agreement.

72. For reasons explained below, I find that proposition to be wholly unlikely. The notion of a difference between royal assent and proclamation is novel and interesting, but it is hardly the stuff of common knowledge and experience among those negotiating collective agreements. Even if the parties knew they were taking the language from Ontario Regulation 977, as the Employer asserts, I doubt very much that anyone negotiating the agreement had a clear conception that there might be a nice legal difference between proclamation and royal assent. I have difficulty believing that all who concluded these agreements understood this and, more importantly, understood that the one type of declaration would create a holiday and

the other would not.

73. There are several arbitration awards that have looked at the question of what is meant by “proclaimed” and “proclamation”. Among them are the *AUPE*⁴⁰ and the *Province of New Brunswick* (above) cases.

74. The *AUPE* case decided that Royal Assent to Bill C-5 meant that the National Day for Truth and Reconciliation was “proclaimed” “as that word is generally understood in legal parlance”:

53. I find that on Royal Assent, given to *An Act to Amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)*, the federal government “declared” “announced” and “published” its intention that the National Day for Truth and Reconciliation was to be considered as both a “holiday” and a “general holiday” as those terms are used in federal legislation. As of June 3, 2021, the National Day for Truth and Reconciliation was “proclaimed” as that word is generally understood in legal parlance. ...

75. The union in the *Province of New Brunswick* relied on the *AUPE* decision for the proposition that royal assent is the same as proclaiming into law. Arbitrator Breen, deciding *Province of New Brunswick*, said this:

50. To this need, I go then to what is claimed as a distinguishing point by the Employer in this case; i.e., its claim, as to my referred to second point of difference found in Article 25.01(m), that a “proclamation” by the Governor General is different than a “proclamation” by, e.g., an appropriate federal Government authority, - words in issue in the *NB Power* case. For a counter to this contention, I turn to the *Royal Assent Act*, s.c. 2002, c. 15, cited by the Union in reply, and the Hansard report of June 3, 2021, both of

⁴⁰ *AUPE and Alberta Health Services (848846)*, Re 2022 CarswellAlta 685, 337 LAC (4th) (Bartel).

which attest that Royal Assent is, to cite directly from the Act, “the constitutional culmination of the legislative process”; i.e., a confirmation that when Royal Assent of the Governor General is signified by, as here the case, “written declaration”, an Act is set to come into force – the final step taken to a “Coming into Force”⁴¹ of federal legislation – a like proclamation recognition addressed in the *NB Power*⁴² and *AUPE* decisions.

51. Further to a “written declaration”, as is spoken to in the Hansard report of for the NDTR, in the *AUPE* case reference for the word “proclaim” was made to Black’s Law Dictionary – there shown, at para 50, to include the following definitions: to promulgate; to announce; to publish; by governmental authority. I note too the award in *Olympic Motors*, where the arbitrator there, addressing the question of “any other day proclaimed” by a Federal or Provincial Government stated, at para. 20, that the word “proclaimed” was read to mean “officially declared”. Also instructive, in the *Manalta* case, too cited by the Union, the word “proclaimed” at para 20 was given the following meaning: “established”.

52. As follows from the above, and to close on this point of difference, I cite once more from *AUPE*, at para. 53, and a statement offered taken as applicable to be said here: “As of June 3, 2021, the NDTR was ‘proclaimed’, as that word is generally understood in legal parlance”.

53. In summary then, I confirm: I find support for the Union’s proclamation position offered in this case – I accept that a Bill becomes an Act by proceeding through Parliament, the Senate, and upon receiving Royal Assent – proclaimed or officially declared – set to come into force. As also follows here, with Royal Assent given and a coming into force of an “all

⁴¹ Footnote in original: See Bill C-5, s. 6, which provides, in part, for the NDTR to come “into force on the day that, in the second month after the month in which it receives royal assent, has the same calendar number as the day on which it receives royal assent...”

⁴² *BEW Local 37 v. NB Power Corporation*, date of decision January 26, 2022, referred to in para. 22 of *Province of New Brunswick*.

other days” holiday, the members of the bargaining unit here can be expected to enjoy another paid holiday. Once again, this by a choice by the parties of official language proclaiming a holiday – marking the completion of a legislative enactment process – words chosen, I find, that go to the same purpose and intent as those found in the *NB Power* and *AUPE* decisions.

76. I agree with Arbitrator Sheehan’s conclusions in the GSB decision *Ontario (WSIB)*. I adopt his reasoning.

77. As the unions have argued, the critical question is what the parties intended when they entered into their collective agreements and adopted the language, “proclaimed by the Governor General or Lieutenant Governor”. I find that they are most unlikely to have understood that they were agreeing to the interpretation the Employer suggests.

78. The distinction between assent to a statute and proclamation is not manifestly apparent from the *Interpretation Act*, from which the Employer tries to build the distinction. There is no definition of “proclaim”, and there is no description that makes clear that it cannot mean royal assent. On the contrary, the “written declaration” as a defined form of the manner of royal assent under the *Royal Assent Act* makes clear that royal assent is a form of proclamation.

79. What really matters, though, is what the parties themselves thought when they entered into the agreements. They were labour relations representatives entering into an agreement to cover what would happen if a new holiday were declared by the government. In my view, their focus was not on the mechanism of promulgation or declaration of the holiday into the law, but on the outcome. They were focused on what would be the consequence for their agreement if a new holiday became law, not on how that law was brought about.

80. I suspect the parties chose the particular language they did because of what had been in the *Public Service Act* or its regulations, as the Employer argues. But that does not entail that they themselves thought that such holidays were to become part of the agreement only if they were proclaimed other than by the passing of a statute. I find it unlikely that the method of promulgation would have entered their minds, let alone have been a common intention. The most likely thought in their minds was that, when a holiday becomes law, then that holiday will be included in the collective agreement.

81. As the unions argue, there is no reference to any statute, such as the *Public Service Act* or Ontario Regulation 977, in the holidays' provisions of the collective agreements. That is because the parties never intended to incorporate any statutory reference in that provision. When they want to refer to a statute, they tend to do so expressly.

82. In my view, the specific language used in the collective agreements by the parties to include new holidays created by government does not particularly matter (whether it be “promulgated by the federal or provincial government” or “proclaimed by the Governor General or Lieutenant Governor” or other similar wording), so long as that intention is clear. What is manifest in the phrase, “**an employee shall also be entitled to any special holiday as proclaimed by the Governor General or Lieutenant Governor**”, is that when a new holiday has become the law of the land, either by federal or provincial legislation or executive order, then it is to be included in their collective agreements. That is the plain and ordinary meaning of the provision.

83. For this reason, I adopt what Arbitrator White said in *Sodexo Canada Ltd.*, at para.16:

Turning to the term “proclaimed” as it is used in Article 8.03, it is clearly intended to be understood as a reference to an action taken by a “government”. Accordingly, should a “government”, as referenced by Article 8.03, publicly declare that it has enacted a new holiday, it may be said that the holiday has been “proclaimed”.

84. I also adopt the broad approach taken by Arbitrator Breen in *Province of New Brunswick*, including for the reasons he advanced (paras. 50-53). The culmination of the legislative process was the Governor General signifying a “written declaration”, that being the Governor General proclaiming the new holiday.

85. For these reasons, I find for the unions.

86. The grievances are upheld. The National Day for Truth and Reconciliation is a holiday within each of the Holidays’ provisions of the collective agreements. It ought to have been granted as a paid holiday in 2022. The remedy is referred to the parties for resolution.

87. I remain seized if the parties cannot agree on the remedy.

DATED at TORONTO on July 13, 2023.

“Christopher Albertyn”

Christopher J. Albertyn
Arbitrator