Agenda – Council – February 23, 2023

Report – Executive Policy Committee – February 14, 2023

Item No. 9 Legislated Statutory Holidays and Days of Observance

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 14, 2023, the Executive Policy Committee concurred in the recommendation of the Human Rights Committee of Council and submitted the following to Council:

1. That the Province of Manitoba be requested to:

    A. Make an amendment to the Manitoba Employment Standards Code to permit individual employees to substitute statutory holidays for days that are more meaningful to them (similar to BC and ON provincial governments, and the Canada Labour Code).

    B. Work with local community stakeholders and Indigenous rightsholders to further consider how the language in the Manitoba Employment Standard Code legislation could be modernized to be more inclusive.

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – February 14, 2023

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 14, 2023, the Executive Policy Committee concurred in the recommendation of the Human Rights Committee of Council and submitted the matter to Council.

COMMITTEE RECOMMENDATION:

On January 27, 2023, the Human Rights Committee of Council concurred in the recommendation of the Winnipeg Public Service and recommended to the Executive Policy Committee and Council:

1. That the Province of Manitoba be requested to:

    A. Make an amendment to the Manitoba Employment Standards Code to permit individual employees to substitute statutory holidays for days that are more meaningful to them (similar to BC and ON provincial governments, and the Canada Labour Code).

    B. Work with local community stakeholders and Indigenous rightsholders to further consider how the language in the Manitoba Employment Standard Code legislation could be modernized to be more inclusive.

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

On September 20, 2022, the Human Rights Committee of Council granted an extension of time to its next meeting for the Winnipeg Public Service to:

1. Engage with members of the Human Rights Committee of Council and community stakeholders to collect feedback on legislated statutory holidays and days of observance in Manitoba in the context of Human Rights.

Report – Executive Policy Committee – February 14, 2023

DECISION MAKING HISTORY (continued):

COMMITTEE RECOMMENDATION (continued):

2. Report back to the Human Rights Committee of Council at their September 19, 2022 meeting on current statutory holidays and days of observance required by the Government of Canada and the Province of Manitoba and provide recommendations on how this legislation could better align with the principles of equity, diversity and inclusion.

COUNCIL DECISION:

On May 18, 2022 Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Winnipeg Public Service be directed to:

    A. Engage with members of the Human Rights Committee of Council and community stakeholders to collect feedback on legislated statutory holidays and days of observance in Manitoba in the context of Human Rights.

    B. Report back to the Human Rights Committee of Council at their September 19, 2022 meeting on current statutory holidays and days of observance required by the Government of Canada and the Province of Manitoba and provide recommendations on how this legislation could better align with the principles of equity, diversity and inclusion.

ADMINISTRATIVE REPORT

Title: Statutory Holidays & Days of Observance Through an Equity Lens

Critical Path: Human Rights Committee of Council – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Burelle	A. Cusson	N/A	M. Jack

EXECUTIVE SUMMARY

The Equity Office, with the support of the Office of Public Engagement and Indigenous Relations Division, engaged with a number of stakeholders and Indigenous rightsholders on the current statutory holidays and days of observance established by the Province of Manitoba and the Government of Canada (Appendix A). The engagement goals were to gather input on (1) important holidays, days of observance and celebrations; (2) limitations of the current statutory holidays and days of observance; and (3) current barriers to participating in cultural or religious events or celebrations as explored with the Indigenous rightsholders and stakeholders that participated.

The Public Engagement Summary Report (Appendix B) highlights that 81% of respondents support or strongly support more inclusive statutory holidays and days of observance. Holidays, days of observance, and celebrations that are important to respondents reflect the diverse interests and traditions of various nations, cultures, and religions. A few prominent examples are Sundance Ceremonies, Eid al-Adha, Emancipation Day and Hanukkah.

Key findings on the barriers to participating in cultural or religious events and ceremonies include workplace policies, lack of awareness or visibility, and cultural discrimination. Respondents provided creative, insightful, and inclusive options that consider and offer ideas intended to meet the diverse needs and interests of many Winnipeggers, Manitobans, and Canadians.

Some related legislation in Canada has built in flexibility. Our review of legislation found that the Canadian Federal Government and some Provincial Governments had built flexibility into the Employment Standards Act/Code. These include clauses that allow for substitution of statutory holidays or days of observance by individual employees. However, of note to the City of Winnipeg, the *Manitoba Employment Standard Code* currently does not include such flexibility.

The Human Rights Committee of Council & Equity Office Awareness and Action Series recently included a keynote by Dr. Abdulrehman, Clinical Psychologist, who underscored the psychology of inclusion. He has initiated a Celebrate Everything campaign where he challenges all levels of government and the community to celebrate multiculturalism in Winnipeg with the recognition and celebration of various cultural and religious traditions and holidays.

RECOMMENDATION

1. That the Province of Manitoba be requested to:

    A. Make an amendment to the Manitoba Employment Standards Code to permit individual employees to substitute statutory holidays for days that are more meaningful to them (similar to BC and ON provincial governments, and the Canada Labour Code).

    B. Work with local community stakeholders and Indigenous rightsholders to further consider how the language in the Manitoba Employment Standard Code legislation could be modernized to be more inclusive.

2. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On May 26, 2022, Council concurred with the Executive Policy Committee and directed the Public Service to engage with members of the Human Rights Committee of Council, community stakeholders, and Indigenous rightsholders to collect feedback on legislated statutory holidays and days of observance in Manitoba in the context of Human Rights and report back to the Human Rights Committee of Council on current statutory holidays and days of observance required by the Government of Canada and the Province of Manitoba and provide recommendations on how this legislation could better align with the principles of equity, diversity and inclusion.

IMPLICATIONS OF THE RECOMMENDATION

There are no financial or administrative implications to the recommendations of this report.

HISTORY/DISCUSSION

The City of Winnipeg (City) is committed to reconciliation, human rights, accessibility, equity, diversity, inclusion, anti-racism and anti-oppression. The Human Rights Committee of Council (HRCC), established in 2018, acts as an advisory body to Council on these important human rights topics, adherence to legislation, and emerging trends as they affect Winnipeg communities. On September 29, 2021, Council adopted the Equity, Diversity and Inclusion (EDI) Policy and Strategy which further anchors these commitments into concrete action and strengthens alignment with all human rights-related strategies at the City.

The City of Winnipeg is also a member of the Coalition of Inclusive Municipalities and is committed to respecting, protecting and promoting human rights and social inclusion, and eradicating all forms of racism and discrimination. The City is also committed to fully respecting the fundamental principles enshrined in human rights legislation, declarations, accord, charter and by-laws in its operations including:

i. The Manitoba Human Rights Code
ii. The Canadian Charter of Rights and Freedoms
iii. The Truth and Reconciliation Commission of Canada's Calls to Action
iv. The Accessibility for Manitobans Act
v. The City of Winnipeg Charter Act, Part 9 Official Languages of Municipal Services and By-Law NO. 8154/2002
vi. Winnipeg's Indigenous Accord
vii. The National Inquiry into Missing and Murdered Indigenous Women and Girls and Two-Spirited Peoples' Calls for Justice
viii. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
ix. The Universal Declaration of Human Rights

Human Rights Legislation

A significant consideration in this review of statutory holidays and days of observance is the fact that human rights legislation in Canada and Manitoba is quasi-constitutional and has primacy (Appendix C). It is supreme and supersedes all other laws. It is remedial and considers impact, not intent. As demonstrated in the stakeholder and Indigenous rightsholder engagement report, the impact of exclusionary statutory holidays and days of observance has fundamentally resulted in discrimination in that many did not experience equitable access to paid time off to observe days of importance to them.
It is also important to note that accessibility and the duty to accommodate on the basis of protected characteristics is a legal requirement for employers right now. Under Human Rights legislation, an employer should consider any request and determine what can reasonably be accommodated. It is also important to note that granting such accessibility and accommodations for interested employees does not take anything away from other employees who wish to observe the legislated statutory holidays as they are written.

City of Winnipeg Strategic Direction

OurWinnipeg 2045 outlines the City's goals and aspirations at the highest level, informing all other City strategies. Specific to Social Equity, the objectives are to:

1. Uphold human rights so that no one is left behind.
2. Build bridges spanning ideas, cultures, identities and generations on a foundation of truth, understanding and rights-based reconciliation.
3. Build social cohesion through community development solutions, coordinated, effective partnerships, and responsive service delivery.

As part of the City of Winnipeg's long-term commitment to equity, diversity, inclusion, anti-racism and anti-oppression, Council adopted the EDI Policy and Strategy on September 29, 2021. The EDI Policy and Strategy commits to fully align with the organizational strategic direction, including the following human rights related policies and strategies:

- The City of Winnipeg Corporate Strategic Plan
- Indigenous Relations Strategy, including our Journey of Reconciliation
- The Newcomer Welcome and Inclusion Policy & Strategy
- The Poverty Reduction Strategy
- French Language Services
- The Universal Design Policy
- The Respectful Workplace Administrative Standard
- Job Accommodation, Accessibility and Return to Work
- Sustainable Procurement

On April 22, 2022, the HRCC noted that the majority of legislative statutory holidays and days of observance imposed by federal and provincial legislation represent only a few cultures and one religion. The HRCC made a motion that the Public Service engage with the HRCC members, stakeholders and Indigenous rightsholders to gather key insights and to provide recommendations on how this legislation could better align with the principles of equity, diversity and inclusion.

The City gathered feedback from stakeholders and Indigenous rightsholders in July and August, 2022. The feedback confirmed that there are barriers and inequitable access to observing days of importance to the groups that participated. The people participating in the focus groups identified the following opportunities as possibilities for more equitable access to days of importance to diverse peoples:

- Float days/ switch days
    - A set number of paid statutory holidays and days of observance that can be switched out for days of importance to employees.
- Education
    - Improve awareness around other days of importance that were collected
    - Educate employees about the current days of observance/statutory holidays including the history (where available) of how they are selected
    - Encourage workplace policy changes that meet the legislation.

- Banked overtime
    - Some employers allow for banked time to be used for alternative days off
    - Employees can work statutory holidays to bank overtime for other days off
- Hybrid approach
    - A mix of mandatory days off and float days
- Recognize more days off
    - Governments add more statutory holidays and days of observance
- List of potential days off
    - Days off are selected from a list of holidays and days of observance
- Vacation days
    - Employees use vacation days (this is possible now at the City of Winnipeg)
- Days off without pay
    - Employees can request unpaid time to observe days of importance to them
- Specific accommodations
    - Provide Indigenous people with Indigenous holidays

"Governments can be a leader in developing a more accessible and flexible approach." (Stakeholder, July 27, 2022)

Best Practice Examples

Several provinces' Employment Standards legislation allows for an employee to request the substitution of a statutory holiday for a day that is more meaningful to them. The employee must request this in writing, and take the alternate day within three months of the statutory holiday they have substituted. Unfortunately, this flexibility is not yet reflected in *Manitoba's Employment Standards Code* as outlined in Appendix A. This has been included as a recommendation for the Province of Manitoba to consider. In British Columbia, Animikii Indigenous Innovations (Animikii) has implemented a policy "Substituting Statutory Holidays" (Appendix D). Animikii views this as an opportunity for an act of decolonization, facilitating options for employees to select a different day that is more meaningful to them.

In an article on May 20, 2021, featuring Animikii, Jouta quoted lawyer Jeremy Hessing-Lewis as stating "One of the enduring legacies of colonization is the forced periodic reverence/celebration of colonizers." Jouta adds, "For example, many Canadians celebrate Canada Day as the "birth" of Canada[…]. In fact, Indigenous People have lived on the land we call Canada for up to 12,000 years and celebrating a 150+ year milestone doesn't recognize this significant history, nor the impact of colonialism."

In Manitoba, Southern Chiefs' Organization Inc. has two inclusive policies granting paid time off in addition to statutory holidays as follows:

9.13 Cultural Leave

a) Permanent employees may be granted up to five (5) days per year with pay to attend cultural activities, Traditional Ceremonies or other activities for personal healing. Application for leave must be submitted and approved by the Immediate Supervisor and Chief Executive Officer in advance.
b) Any additional time required for Cultural leave shall be deducted from an employee's annual leave entitlement.

9.14 Treaty Day

a) Permanent employees are allowed one (1) day a year with pay to attend their First Nation community during the community's Treaty Day events and payments. Employees shall provide the Immediate Supervisor with sufficient written notice of leave for Treaty Day.
b) The employee will be allowed one (1) day per year to participate in the celebration of Treaty Days in their communities. If Treaty Days should fall on a weekend or a holiday an alternative day will not be given in lieu of that day.
c) Permanent employees who attend Treaty Days in their communities will be responsible for their own expenses/travel costs.

Highlighting the inequities of current statutory holidays and days of observance as expressed by Winnipeggers demonstrates the City's action in respecting, protecting and promoting human rights. The City will implement meaningful and inclusive improvements within its purview.

FINANCIAL IMPACT

Financial Impact Statement Date: November 21, 2022

Project Name:
Statutory Holidays & Days of Observance Through an Equity Lens

COMMENTS:
There are no incremental financial impact to the City of Winnipeg resulting from the recommendations of this report.

JasonDuke - November 21, 2022 for
Jocelyn Peters, CPA, CGA
Mgr. of Finance & Admin. (Campus)

CONSULTATION

This Report has been prepared in consultation with:

- Community Services
- Customer Service & Communications
- Indigenous Relations
- Legal Services

OURWINNIPEG 2045 POLICY ALIGNMENT

Goal alignment: Leadership and Good Governance, Health and Well-being, and Social Equity

Policy alignment:
1.7 Equitable Service Access. Identify and provide access to a base level of municipal services to everyone, directly or facilitated through partnerships. Remove systemic barriers to participation, based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, physical or mental ability, official language used, citizenship status, socio-economic status, geographic location or climate change vulnerability.

1.18 Responsive, Representative and Resilient Workforce. Provide responsive municipal service delivery, through an accountable, informed, qualified, competent, creative, healthy and productive workforce that is representative of the community it serves including the use of equitable, anti-oppression recruitment, training, and retention processes.

5.4 Reconciliation with Indigenous Peoples. Prioritize municipal implementation responsibilities within the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission of Canada's Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women, Girls and Two-Spirit Peoples' Calls for Justice.

5.5 Indigenous Lens. Develop an Indigenous lens, which recognizes, respects and advances multiple and diverse First Nations, Inuit, and Red River Métis rights, knowledge and perspectives. Apply the lens throughout municipal leadership and governance processes, policies, programs and practices to be inclusive and eliminate elements that knowingly or unknowingly enable the exclusion of Indigenous Peoples.

5.6 Equitable Service Access. Welcome and support Indigenous Peoples, newcomers, and those who migrate from rural communities, through strategic collaboration and action that expedites service access and sense of belonging for residents.

5.7 Community Cohesion. Promote opportunities for life-long learning and cross-cultural, intergenerational relationship-building, as a means of preventing social isolation, discrimination and racism.

5.8 Community Cohesion. Provide opportunities for creative, cultural, and artistic expression through municipal facility design, public place-making, and community-led initiatives to promote community relationship-building, identity and sense of belonging.

5.9 Heritage Conservation. Provide opportunities for heritage education, truth-telling, and reconciliation, through the commemoration, conservation, and stewardship of both tangible and intangible heritage resources, including Indigenous land-based practices and artifacts, public names, places, and art, museum artifacts, and archived information.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

The information presented in this report aligns with and advances the Winnipeg Poverty Reduction Strategy (2021 – 2031) as follows:

It embodies the following **Guiding Principles**:

- We will Uphold Human Rights
- We will Honour Relationships and Reconciliation with Indigenous Peoples
- We will Address Systemic Oppression, Trauma and Social Inequity
- We will Promote and Maintain the Welfare of All Residents
- We will Develop Trust and Meaningful Partnerships to find solutions and drive change.

It aligns with the following **Goal and Objective**:

GOAL 1: Equity and a Culture of Caring are Demonstrated through Strategy Implementation and Systems Change

SUBMITTED BY

Department: Human Resource Services - Equity, Diversity & Inclusion
Division: Equity Office
Prepared by: Diane Burelle, Equity, Diversity & Inclusion Coordinator
Date: November 22, 2022
File No.: N/A

Attachments:

Appendix A – Statutory Holidays & Days of Observance Legislation
Appendix B – Public Engagement Summary Report
Appendix C – Human Rights Legislation
Appendix D – An Excerpt of Animikii's Policy on Substituting Statutory Holidays
Appendix E – Jouta Article on Statutory Holidays

Appendix A – Statutory Holidays & Days of Observance Legislation

Manitoba's Employment Standards Code outlines that all employees are entitled to eight paid general or statutory holidays. Manitoba also has days of observance, Easter Sunday, Terry Fox Day, National Day for Truth and Reconciliation and Boxing Day; however, if employees do not work these days, employers do not have to pay them as these are not general or statutory holidays. In addition, while Remembrance Day is not a general or statutory holiday, there are restrictions for business operations and special requirements for paying employees who work that day (Table 1).

It also allows for statutory holiday substitution under the following conditions:

Substitution of other day for general holiday
28(1) An employer may substitute another day for a general holiday if the substitution is made

(a) in accordance with a collective agreement; or
(b) with the agreement of the bargaining agent for the employees or, where the employees do not have a bargaining agent, with the written agreement of a majority of the employees;
and the substituted day is within 12 months of the general holiday.

The Canada Labour Code outlines that federally regulated employees are entitled to 10 paid general or statutory holidays each year (Table 1).

It also allows for statutory holiday substitution as follows:

Substitution — employees subject to collective agreement
195 (1) An employer may, in respect of one or more employees subject to a collective agreement, substitute any other day for a general holiday if the substitution is agreed to in writing by the employer and the trade union, and the substituted day shall, for that employee or those employees, be deemed to be a general holiday for the purposes of this Part.

Substitution — employees not subject to collective agreement
(2) Subject to subsection (3), an employer may, in respect of one or more employees not subject to a collective agreement, substitute any other day for a general holiday and the substituted day shall, for that employee or those employees, be deemed to be a general holiday for the purposes of this Part, if the substitution has been approved

(a) in the case of a substitution that affects one employee, by that employee in writing; or
(b) in the case of a substitution that affects more than one employee, by at least 70% of the affected employees.

Posting of notice
(3) If any other day is to be substituted for a general holiday under subsection (2), the employer shall post a notice of the substitution in readily accessible places where it is likely to be seen by the affected employees, for at least 30 days before the substitution takes effect.

Exception
(4) Subsection (3) does not apply to a substitution in respect of one employee following a request made under subsection 177.1(1).

Statutory Holiday / Day of Observance	Date (Western Calendar)	Manitoba	Federal
New Year's Day	January 1	Y	Y
Louis Riel Day	February	Y	
Good Friday	March/April	Y	Y
Easter Monday	March/April		
Victoria Day	May	Y	Y
Canada Day	July 1	Y	Y
Terry Fox Day	August		
Labour Day	September	Y	Y
National Day for Truth and Reconciliation	September 30		Y
Thanksgiving Day	October	Y	Y
Remembrance Day	November 11		Y
Christmas Day	December 25	Y	Y
Boxing Day	December 26		Y

Table 1:

Appendix C – Human Rights Legislation

Legislation defining discrimination and protected characteristics.

The Human Rights Code of Manitoba

"Discrimination" defined

9(1) In this Code, **"discrimination"** means

(a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or

(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or

(c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or

(d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

The pertinent protected characteristics in the Code for this review are as follows:

Applicable characteristics

9(2) The applicable characteristics for the purposes of clauses (1)(b) to (d) are

(a) ancestry, including colour and perceived race;

(b) nationality or national origin;

(c) ethnic background or origin;

(d) religion or creed, or religious belief, religious association or religious activity.

The Canadian Human Rights Act

Prohibited grounds of discrimination

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion[…].

Employment

7 It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

Appendix D – Animikii's Policy on Substituting Statutory Holidays
An excerpt:

Substituting Statutory Holidays

Statutory holidays provide an opportunity for an act of decolonization – replacing western interpretations and celebrations of history with an Indigenous perspective. We can create space to support Indigenous worldviews and celebrate diversity by how we treat statutory holidays. At Animikii we want to give you the choice of how you use these paid holidays. Some team members may choose to take the holiday as scheduled because the day is meaningful to them, others may choose to observe the day but reinterpret and honour in their own way. Others may choose to select a different day that is more meaningful to them based on cultural, faith or personal significance or simply a personal preference. The choice will be yours.

As we have employees working in various provinces/territories, we are mindful of the guidelines set out in legislation within each province. Within the guidelines, there is flexibility to substitute another day for a statutory holiday. You will have the choice to observe the statutory holiday on the designated day, or to take the holiday on a different day. Here is what you need to know:

- For 2021, please submit your Statutory Holiday Substitution Form by May 24, 2021. In subsequent years, Statutory Holiday Substitution Forms must be submitted by December 31st of each year for the following year. Selecting alternate days to observe stat holidays is optional and an "opt in" process. If you don't submit the form by December 31st, you will observe the statutory holiday as outlined for your province noted below.
- New employees will have 30 days from their start date to complete the Statutory Holiday Substitution Form for the current calendar year.
- To keep the administrative process running smoothly, the holiday schedule you choose needs to be observed as planned.
- If you choose to substitute another day for a statutory holiday, you will work on the actual statutory holiday and the day will be treated as any other work day. There is no premium pay for working on a statutory holiday that you have chosen to substitute for another day.
- Substitute days are meant to be used one at a time throughout the year.
- Substitute days must be scheduled and observed within 3 months following the statutory holiday. For example, if you wanted to substitute Victoria Day on May 24th for another day, you would schedule a day after May 24th and before August 24th.

Full Policy can be found on their website.

[It's important to also note that the substituted day is treated as a statutory holiday for the employee. If the employee has to work on the substituted day, they will be paid statutory holiday pay for that day.]