



What Lawyers Should Know About the Demise of the Crown

Jared Dunlop and Tom Richards || MLT Aikins LLP

Queen Elizabeth II has reigned as Canada's Sovereign for roughly one third of its post-Confederation history. The majority of living Canadians have known no Sovereign other than Queen Elizabeth II. Given the length of Her Majesty's reign, there is a tendency in Canada to ascribe an immortal element to her. She is not just Queen Elizabeth II, she is "the Queen". However, the reality is that Her Majesty will not reign forever. Legally, the end of the reign of a Sovereign, whether by death or abdication, is referred to as the "demise of the Crown" (a "**Demise**").

Undoubtedly, the Demise of our present Sovereign will be a historic event in both Canada and the broader Commonwealth. In response to the death of King George VI in 1952, Canada entered a period of bereavement. Parliament Hill was covered in black bunting, flags were lowered to half-mast, a national day of mourning was declared, and CBC was instructed to only air "appropriate" radio programs. In Saskatchewan, Premier Tommy Douglas gave a tribute in the Legislative Assembly stating that the "loss was more than the death of a Monarch. It was more than the passing of a great public figure. It was, to many people, a sense of personal loss".

A Demise is not just a historic or public event. It is also a legal event. As such, lawyers stand to be particularly impacted by this change. The purpose of this article is to address some of the pertinent issues concerning the Demise that affect lawyers.

Continuity of Actions

The Demise will not affect any current legal action. Demise provisions exist in both *The Interpretations Act, 1995* (Saskatchewan) and the *Interpretations Act* (Canada). Both Acts provide for continuity in court and government. An action or other court proceeding will not be discontinued or stayed by the Demise and shall proceed as if the Demise did not occur.

Queen's Bench to King's Bench

Lawyers may find themselves in the awkward situation of filing documents with the Court of Queen's Bench immediately before or after the Demise. Fortunately, in such circumstances, section 3 of *The Queen's Bench Act, 1998* provides guidance. Upon the Demise, Her Majesty's

Court of Queen's Bench for Saskatchewan will be immediately renamed His Majesty's Court of King's Bench for Saskatchewan.

Despite the immediate change in name of the Court, documents that were filed prior or soon after the Demise do not need to be amended. Section 3(3) of *The Queen's Bench Act, 1998* states that in all documents filed with the Court, the Court is sufficiently designated by the words "In the Queen's Bench" or "In the King's Bench". It appears that using either terminology is sufficient for the filing of documents. However, the authors recommend that, if documents are filed shortly after the Demise, a respectful effort should be made to address them to the Court of King's Bench.

Queen's Counsel to King's Counsel

Upon the Demise, many of our learned friends will want to update their online profiles or business cards from QC to KC. Although probable, it is not entirely clear that the appointment of Queen's Counsel automatically transforms into one of King's Counsel.

There is a surprising dearth of guidance concerning this issue. For example, *The Queen's Counsel Act* only permits the Lieutenant Governor to appoint "Her Majesty's Counsel". The Act does not contain successorship provisions to deal with the eventuality of members becoming "His Majesty's Counsel" or "King's Counsel". Conceivably, a legislative amendment may be required before lawyers will officially become King's Counsel.

However, the above is likely an overly narrow interpretation that ignores the traditional purpose of the designation. Historically in the United Kingdom, a King's/Queen's Counsel designation was awarded to barristers who were appointed to conduct court work on behalf of the Crown. They were not, however, appointed to advise the Sovereign in their personal capacity. These designations were not tied to a specific Sovereign, but rather to the Crown generally.

The Crown has been characterized as a corporation sole. A corporation sole creates a corporation out of an office. The corporation sole does not create a distinction between the office-holder (the Sovereign) and the office itself (the Crown). Although the office and office-holder retain corporate and individual capacities respectively, the two are essentially fused together. As such, references to "His/Her Majesty", "the Queen/King", etc. invoke the Crown, which is the Sovereign's corporate personality. A change in gendered language concerning different Sovereigns is inconsequential. Differently-gendered language is synonymous because that language references the same corporate personality.¹

Given this, it follows that the existence of a QC or KC designation is not contingent on the reign of the specific Sovereign who grants the title. The designation is linked to the Crown itself.

¹ For more on this see Paul Lordon, *Crown Law* (Toronto: Butterworths, 1991). Also see Phillippe Lagasse and James W.J. Bowden, "The Crown as Corporation Sole and the Royal Succession: A Critique of Canada's *Succession to the Throne Act, 2013*" (April 2014) 23 Constitutional Forum 17.

Thus, the gender of the Sovereign who granted the designation is irrelevant, and the gendered language of the designation should change automatically as required.

Support for the suggestion that the change between QC and KC is automatic can also be found in *The Demise of the Crown Act 1901* (UK) (the "UK Act"). The UK Act established that the persons in the civil service and Crown offices were employed by the Crown, not the Sovereign in their personal capacity. As such, a Demise did not automatically terminate the holders of these offices. The spirit of the UK Act has been explicitly adopted by Canadian jurisdictions. For example, in Saskatchewan, *The Demise of the Crown Act* adopted this principle. When this Act was repealed, its provisions were rolled into *The Interpretation Act, 1995*, discussed above. The contention that upon a Demise the change from QC to KC is not automatic runs contrary to the spirit of over a century of statutory law that has aimed to minimize the disruptive effect of this event.

National Holiday

On the assumption that the Demise will occur upon the death of the Sovereign, dates for trials, mediations, and closing dates may have to be changed as a result of a national holiday being declared. The *Manual of Official Procedure of the Government of Canada* states that, on the death of the current Sovereign, the Prime Minister is to pass a resolution expressing "loyalty and sympathy" to the new Sovereign and issue an Order in Council declaring the day of the funeral to be a national holiday for mourning. Based on earlier precedents, Canada can expect the funeral to occur nine days after the Demise.

In the End...

The authors wish Her Majesty a continued long and happy reign. However, lawyers should be aware of some of the practical questions that will result from the Demise. Hopefully this article has helped to address some of those questions.

Jared Dunlop and Tom Richards are currently articling students at MLT Aikins LLP.

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Jared Dunlop is the Director of Policy & Research, Executive Council and Office of the Premier, Regina

Tom Richards is an Associate with Norton Rose Fulbright Canada LLP, Calgary