

Discussion Paper

**Review of Canadian Forces
Reservist Employment
and Education Leave Protection in
New Brunswick**

New Brunswick Department of Post-Secondary
Education, Training and Labour
April, 2011

1. Introduction

In 2007, the New Brunswick legislature amended the *Employment Standards Act* in order to provide employment leave protection to members of the Canadian Forces Reserves who are called to military service. In addition, under the authority of the *Post-Secondary Student Financial Assistance Act*, full-time student Reservists in New Brunswick are provided with an interest-free, no payment benefit on student loans while participating in designated military operations. The details of New Brunswick's current military leave protection for Reservists are presented under Appendix "A" at the end of this document.

The New Brunswick Government is now revisiting the provisions for employment and student leave protection for Reservists in order to provide further clarity to existing rules, to support Reserve Command's ability to plan deployments, and to incorporate best practices implemented in other Canadian jurisdictions.

The New Brunswick Department of Post-Secondary Education, Training and Labour seeks input from stakeholders and New Brunswickers generally on possible enhancements to the rules. In addition to the elements identified in this discussion paper, we welcome other ideas to offer better leave protection to New Brunswick Reservists working in civilian jobs or pursuing post-secondary studies.

2. To Participate

If you are interested in responding to this discussion paper with your comments, ideas and suggestions, please contact the Department of Post-Secondary Education, Training and Labour:

E-mail: labour-travail@gnb.ca

Fax: (506) 453-3618

Mail: Department of Post-Secondary Education, Training and Labour
Review of Reservists Employment and Education Leave Protections
P.O. Box 6000
Fredericton, NB
E3B 5H1

THE DEADLINE FOR SUBMISSIONS IS JUNE 17, 2011

Tell us about yourself

RESPONDENT INFORMATION

My views reflect the perspective of (choose one):

- Employer or Employer Association
- Employee or Employee Association
- Other

I am responding on behalf of (choose one):

- Myself
- My organization
- Other

Title (Optional): _____ Organization: _____

Name (Optional): _____

Mailing Address (Optional): _____

Sector (Check one):

- | | |
|---|--|
| <input type="checkbox"/> Agriculture, Forestry, Fishing and Hunting | <input type="checkbox"/> Professional, Scientific and Technical Services |
| <input type="checkbox"/> Mining and Oil and Gas Extraction | <input type="checkbox"/> Management of Companies and Enterprises |
| <input type="checkbox"/> Utilities | <input type="checkbox"/> Administrative and Support |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Educational Services |
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Health Care and Social Assistance |
| <input type="checkbox"/> Wholesale Trade | <input type="checkbox"/> Entertainment and Recreation |
| <input type="checkbox"/> Retail Trade | <input type="checkbox"/> Accommodation and Food Services |
| <input type="checkbox"/> Transportation and Warehousing | <input type="checkbox"/> Waste Management and Remediation Services |
| <input type="checkbox"/> Information and Cultural Industries | <input type="checkbox"/> Public Administration |
| <input type="checkbox"/> Finance and Insurance | <input type="checkbox"/> Student |
| <input type="checkbox"/> Real Estate and Rental and Leasing | <input type="checkbox"/> Other |

INFORMATION COLLECTED FROM CONSULTATIONS

The information you provide will be administered in accordance with New Brunswick's *Right to Information and Protection of Privacy Act*. Therefore, you should not include information on other parties (such as employers or other employees) or any other information from which other parties could be identified, unless their permission has first been obtained. Further, if you, as an individual, want to make a submission or provide comments and you do not want your name and personal information to be made public, you should not include this information in the main body of the submission.

Thank you for taking the time to participate.

3. Background: Canadian Reserve Forces

The Canadian Forces is made up of the Regular Force and the Reserve Force, as well as a civilian workforce. Members of the Regular Force serve full-time in the Army, Navy or Air Force. All military service in Canada, both Regular and Reserve, is voluntary. Members of the Reserve Force may volunteer to go on deployment in either Canada or abroad. Reservists usually serve on a part-time basis, while at the same time pursuing civilian careers or academic studies.

The number of Reservists on full-time service has grown significantly in recent years, and the length of periods of service for Reserve training and deployments have also increased.

Reservists are valuable members of the civilian work force. They bring leadership and management skills to their civilian jobs, and many of the technical skills they learn through military training and experience are transferable to the civilian workplace.

Roughly one-third of the Reserve Force is comprised of students attending post-secondary institutions. Student Reservists normally train with a Reserve unit one evening a week and go on a weekend exercise once or twice a month. Their extended training courses are generally scheduled for the summer months, matched to their academic timetable.

The importance of the Reserve Forces has grown in recent years and it is an essential component of the Canadian military force. For example, 25% of Canadian military personnel serving in Afghanistan are Reservists. The Reserves provide surge capacity in times of need, respond to domestic emergencies and provide strategic reserve for operations involving vital national interests.

3.1 Why Military Leave is Required

Reservists may need time off from civilian employment or academic studies in order to undertake military training or go on operational deployments, either in Canada or overseas. The length of time required vary from one individual to another, and may differ from year to year, depending on the position the Reservist holds in their unit, and the stage of their career.

The most frequently encountered request for leave is to permit a Reservist to take the training courses that are essential for advancement in their military career. Absences may last between two and twelve weeks. Requirements vary among the three classes of Reservists.

International deployments may be as long as eighteen to twenty-four months, including pre-deployment training, the deployment itself, and a post-deployment period which includes reintegration into civilian society. Domestic deployments may be shorter, but might also be on very short notice in the case of disaster response.

In all too many cases today, student Reservists must abandon their student status or tuition investments at academic institutions to pursue conflicting military duties. Similarly, Reservists with full time civilian employment must choose between their job and the military professional development opportunities that will lead to their career advancement as a Reservist. In both of these cases there are opportunities to harmonize these conflicting demands through enhanced military leave provisions.

3.2 Classes of Reservists

The three classes of Reservist service described in the *Queen's Regulations and Orders for the Canadian Forces* are:

Class A - This is the most common form of employment for members of the Primary Reserve. The Primary Reserve comprises soldiers, sailors, and airmen who train to the level of and interchangeable with their Regular Force counterparts and are posted to Canadian Forces operations or duties on an on-going basis. Members are employed on a part-time basis within their unit. This form of employment is entirely voluntary and provides no job security. Class A Reserve service is used for short periods of service to a maximum of 12 consecutive days. Class A Reserve service includes proceeding to and returning from the place where the training or duty is performed, but not when that training or duty, including attendance at local parades, local demonstrations or local exercises, is performed at local headquarters.

Class B - This form of employment is for Reservists employed full-time in a non operational capacity (i.e. Administrative Officer, File Manager). The length of the employment is dependant on the Reservist's availability and the needs of the Canadian Forces. Reservists on Class B employment receive many of the same benefits as members of the Regular Force. Class B Reserve service is authorized unless the period of service is 13 or more consecutive days. Class "B" Reserve service includes proceeding to and returning from the place of duty.

Class C - This is the operational level of employment. Reservists on Class C employment receive an increase in pay to the level that a Regular Force member in the same position would be expected to receive. Additionally all benefits are awarded to the Reservist without any time constraint on the contract length. Examples of Class C positions include, but are not limited to, deployments to operational areas and core crew positions on Canadian warships. A Reservist is on Class C Reserve service when the member is on full-time service and is serving with approval by, or on behalf of, the Chief of the Defence Staff in a Regular Force establishment position or is supernumerary to Regular Force establishment; or on either an operation or an operation of a type approved by or on behalf of the Chief of the Defence Staff, where "operation" includes training and other duties necessary for the operation, and leave related to the operation. Class C Reserve Service includes proceeding to and returning from the place of duty.

As of August, 2010, there was a total of 1667 Reservists in New Brunswick: 794 Class A Reservists employed at units and headquarters; 869 Class B Reservists employed at units, headquarters and schools or undergoing extended military training; and, 4 Class C Reservists employed on domestic and international operations.

4. Current Issues and Potential Changes to Legislation

Issues with current legislation and proposed improvements have been identified in the following topic areas: definitions of Reservists and service, leave for annual training, notice requirements, extensions and return to work, postponement of annual vacation, and, leave protection for student reservists.

This information is meant only as a guide: please feel free to respond to any aspect of Canadian Forces Reservist employment and education leave protection that you feel requires enhancement.

4.1 Definition of “Reservist”

Issue: A “Reservist” under the *Employment Standards Act* is defined as a Class C Reservist only and does not include Class A and Class B Reservists.

Proposed changes: Amend the definition of “Reservist” to extend the current applicability of leave protection provisions to all Reservists.

Discussion questions:

- How does the limitation of the current legislation to Class C Reservists affect you?
- Should the definition of “Reservist” be extended to all Classes of Reservist?
- How would the proposed amendment to provide leave protection to all classes of reservists affect you?

4.2 Definition of “Service”

Issue: “Service” is defined under the *Employment Standards Act* as “active service or training in the Reserves”, but does not differentiate between the two or describe the kinds of activities that service may involve, such as training, travel time, or pre- and post-deployment activities.

Proposed changes: Amend the definition of “service” and add other definitions to the *Employment Standards Act* as required to define the specific nature of the activities that may be required of a Reservist. An amended definition of “service” that includes the range of activities required for Reservist military service would provide clarity for Reservists and their employers on eligibility for leave protection.

Discussion questions:

- Should the definition of “service” be amended to reflect the range of activities that may be required of a Reservist?
- How does the current definition of “service” affect you?

4.3 Leave for Annual Training

Issue: Reservists are required to participate in annual training to maintain their status as a Reservist. The *Employment Standards Act* does not require employers to provide time off to specifically cover these training periods. In certain circumstances, Reservists may have to use vacation time for their annual training.

Proposed changes: Amend the *Employment Standards Act* to specify that Reservists can take up to 20 days of unpaid leave for annual training, including related travel time.

Discussion questions:

- Do you think that Reservists should be able to access annual unpaid leave for training?
- How would this annual unpaid leave affect you? (as a reservist or employer, please explain)
- Would you support a maximum of 20 days of unpaid leave for annual training purposes?
- Reservists may on occasion ask for leave for an extended military training period. This period of absence may be between two and twelve weeks. Do you think that Reservists should also be able to access unpaid leave for these longer training periods?

4.4 Notice Period for Granting Leave of Absence

Issue: Currently, the *Employment Standards Act* requires the employee to provide “reasonable” notice of an unpaid leave of absence to the employer, including the start and end dates of the leave of absence. A definition of “reasonable” notice would provide Reservists and their employers clarity and certainty about their rights and responsibilities with respect to the notice required for an unpaid leave of absence.

Proposed changes: Amend the *Employment Standards Act* to require the employee to give the employer four (4) weeks notice of the employee’s intention to take the leave of absence, including the anticipated commencement date of the leave of absence and the expected date of return to work. A Reservist would not be required to comply with this four weeks notice requirement if unable to do so due to deployment in urgent

circumstances. However, if such circumstances arise, the reservist would have to provide the employer with written notice as soon as is reasonable and practical under the circumstances.

Discussion questions:

- Should the *Employment Standards Act* be amended to replace “reasonable” notice of a leave of absence with a defined notice period?
- Is four (4) weeks notice too long or too short? Why?

4.5 Extension of Leave of Absence

Issue: There is no provision in the *Employment Standards Act* to provide for an extension of leave of absence. Domestic and overseas military operations may require longer deployments of Reservists than originally anticipated. The ability to extend military leaves in progress would allow Reservists to complete their work, thereby facilitating critical military operations in the national interest.

Proposed changes: Amend the *Employment Standards Act* in order to require an employee to advise the employer in writing that an extension of a military leave in progress is necessary. The total length of the leave will continue to be a maximum of eighteen months. Unless there is a valid reason for not doing so, a Reservists will be required to provide a written notice of a change in the length of the leave as soon as is reasonable and practical in the circumstances.

Discussion questions:

- Should the *Employment Standards Act* be amended to permit an employee to extend a military leave in progress?
- Do you agree that the total length of a military leave, including any extensions, should be limited to eighteen months?
- How does the absence of a provision to extend a military leave in progress affect you?
- How would a provision permitting an extension of a military leave in progress affect you?

4.6 Date of Return to Work

Issue: Currently, the *Employment Standards Act* requires the employee to give the employer “reasonable” notice of the expected date of return to work. A definition of “reasonable” notice of the expected date of return to work would provide Reservists and their employers with clarity and certainty about their rights and responsibilities.

Proposed changes: Amend the *Employment Standards Act* to require the employee to provide the employer with a notice of no less than four (4) weeks of the expected date of return to work.

Discussion questions:

- Should the *Employment Standards Act* be amended to require the employee to provide the employer with a minimum of four (4) weeks notice of the expected date of return to work?
- Is four (4) weeks notice too long or too short? Why?
- How would a defined notice period affect you?

4.7 Postponement of Annual Vacation

Issue: Under the *Employment Standards Act*, employment is considered to be continuous during an unpaid leave of absence. When the employee returns, he or she can resume work in the position held prior to an unpaid leave of absence for military duty, or an equivalent position, with no decrease in pay and no loss of benefits accrued up to the commencement of the leave. Seniority continues to accrue during the leave at the same rate. However, the employee is not able to postpone annual vacation without the employer's consent.

Proposed changes: Amend the *Employment Standards Act* to enable the employee to postpone his or her annual vacation.

Discussion questions:

- Should the *Employment Standards Act* be amended to allow the employee to postpone his or her annual vacation?
- As an employer or as an employee, how are you affected by the lack of provisions on annual vacation?
- How would the ability to postpone annual vacation affect you?

4.8 Leave Protection for Student Reservists

Issue: The New Brunswick *Post-Secondary Student Financial Assistance Act* provides for an interest-free, no repayment benefit on student loans contracted by full-time student Reservists while participating in designated military operations. This benefit is harmonized with the student Reservist benefit established under the *Canada Student Financial Assistance Act* and associated policies.

However, there are no legislative provisions protecting the student status or providing academic accommodations to student Reservists in full-time studies at public and private universities, community colleges, and private occupational training schools.

Proposed changes: Provisions would be added to provincial legislation governing post-secondary institutions to provide for:

- Leave protection for student Reservists in private career colleges, community colleges and universities;
- The ability for student Reservists to take a leave of absence from a program of studies for up to eighteen (18) months to allow for military service without impacting their student status and without any financial penalties;
- An obligation for student Reservists to provide a minimum of four (4) weeks notice to the educational institution of the intention to take a leave of absence for military service and a minimum of four (4) weeks notice of the date of return to study upon completion of the leave;
- The ability for student Reservists to defer their return to studies to the semester following the return from the leave of absence for military service without financial penalties. The right to return to the original program of studies would be conditional on its availability.
- Allowing for student Reservists' tuition and other fees to be credited to the semester following the leave of absence;
- The ability for student Reservists to take a leave of absence without the required four weeks notice if the student Reservist is unable to provide this notice due to deployment in urgent circumstances. However, if such circumstances arise, the reservist would have to provide the educational institution with written notice as soon as is reasonable and practical under the circumstances; and, accommodations for student Reservists during such situations such as rescheduling of exams, and postponement of assignments;

Discussion questions:

- Should provisions be added to appropriate provincial legislation to provide student Reservists with education protections?
- How are you affected by the lack of legislative provisions protecting the student status or providing academic accommodations to student Reservists in full-time studies?

Appendix A
CHAPTER E-7.2
Employment Standards Act

LEAVE FOR RESERVISTS

44.031(1) In this section

“Reserves” means the component of the Canadian Forces referred to in the *National Defence Act* (Canada) as the reserve force;

“reservist” means a reservist on Class “C” Reserve Service within the meaning of article 9.08 of the *Queen’s Regulations and Orders for the Canadian Forces* (Canada);

“service” means active service or training in the Reserves.

44.031(2) An employer shall not dismiss, suspend or lay off an employee who is a reservist, or refuse to employ a person who is a reservist, for the sole reason that the employee or the person is a reservist.

44.031(3) An employer shall, upon the request of an employee who is a reservist, grant the employee a leave of absence without pay of up to eighteen months for the purpose of service if,

(a) in the case of a first leave of absence, the employee has been in the employ of the employer for at least six months, or

(b) in the case of a second or subsequent leave of absence, at least twelve months have elapsed since the date the employee returned to work from the most recent leave of absence granted under this section.

44.031(4) An employee intending to take a leave of absence under this section shall give the employer notice that is reasonable under the circumstances of the employee’s intention to take the leave, the anticipated commencement date of the leave and the expected date of return to work.

44.031(5) An employer may require that the notice under subsection (4) be in writing.

44.031(6) An employer may require the employee to provide the employer with a certificate from an official with the Reserves stating

(a) that the employee is a reservist and is selected for service, and

(b) if possible, the expected start and end dates for the period of service.

44.031(7) If the dates mentioned in the notice under subsection (4) change owing to circumstances beyond the control of the employee, the employee shall advise the employer of the change.

44.031(8) An employee on a leave of absence under this section shall give the employer reasonable notice of the expected date of return to work.

44.031(9) An employer may defer the employee's return to work by up to two weeks after receiving the notice under subsection (8) if the notice is not reasonable.

44.031(10) Where an employee reports for work upon the expiration of the period of leave granted under this section, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

LEAVES GENERALLY

44.04(1) An employer shall not dismiss, suspend or lay off an employee who has been granted a leave of absence under this Act

(a) during the leave of absence, or

(b) for reasons arising from the leave alone.

44.04(2) An employee who has been granted a leave of absence under this Act

(a) retains seniority accrued up to the commencement of the leave,

(b) continues to accrue seniority during the leave at the same rate of accrual that would have occurred had the employee worked during the leave, and

(c) shall be deemed to have been continuously employed with the same employer during the leave of absence.

44.04(3) Notwithstanding subsection (2), if an employee would have been dismissed, suspended or laid off had the employee not been granted a leave of absence under this Act the seniority of the employee

(a) ceases to accrue as of the date the dismissal would have occurred had the employee not been granted the leave of absence, and

(b) does not accrue during the period of the suspension or lay off that would have occurred had the employee not been granted the leave of absence.

44.04(4) Subsections (1), (2) and (3) apply with the necessary modifications in relation to

(a) an employee who has been granted a leave of absence with or without pay under a collective agreement or a contract of employment similar to a leave of absence to which an employee is entitled under this Act, and

(b) an employee who is absent from work, with or without pay, on a day of vacation or a public holiday to which the employee is entitled under this Act, a collective agreement or a contract of employment.