

**What We Heard:  
Responses to the Review of  
Canadian Forces Reservist  
Employment and Education Leave  
Protection in New Brunswick**

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

In April, 2011, New Brunswickers were invited to participate in a consultation process by providing their views on how to offer better leave protection to New Brunswick Reservists working in civilian jobs or pursuing post-secondary studies. Taking place from April 17 to June 15, the province-wide consultation included a total of 10 regional stakeholders meetings (5 for Reservists only and 5 open public meetings) and a website with a discussion paper and a place to submit a brief.

The discussion paper provided background information and specific proposals for change. New Brunswickers were invited to respond to any aspect of Canadian Forces Reservist employment and education leave protection that they felt may need to be addressed.

Minister of Post-Secondary Education, Training and Labour, Martine Coulombe hosted two meetings in Fredericton with MLA Brian MacDonald, Legislative Secretary responsible to the Premier for Intergovernmental and Military Affairs. Mr. Macdonald hosted meetings in Bathurst, Moncton, Saint John and Woodstock.

All meetings began with a presentation by Mr. Macdonald summarizing current provisions for employment and education leave and proposals for enhancement and clarification. Following this, the MLA led open dialogues so that participants could provide their thoughts and opinions. Post-Secondary Education, Training and Labour staff were on hand to provide information as needed.

This report summarizes the feedback received from the participants and respondents who were generally consistent in their analysis of the issues and their responses to the proposed amendments.

If you are interested in providing further feedback, please contact the Department of Post-Secondary Education, Training and Labour:

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# **WHAT WE HEARD**

## **1. GENERAL RESPONSES TO THE REVIEW**

### **Raise the profile of Reservists as valuable members of the civilian work force**

Reservists bring leadership, management and teamwork skills to their civilian jobs, and many of the technical skills they learn through military training and experience are transferable to the civilian workplace. Thus, employers get “great employees” in exchange for supporting the Canadian Forces by granting leaves of absence.

### **Reservists must build relationships with their civilian employers**

While many employers and unions are very supportive of the Reserves, some Reservists fear that disclosure of their military service could result in not being hired or jeopardize their job security. Employers may view Reservists as liabilities in their labour force, particularly when the urgent circumstances of a request for leave of absence do not allow for advance notice.

### **Ongoing training is a critical requirement of Reservist service**

Because there is only one “standard” of service member, Reservists must develop the same trade skills, proficiencies and standard of performance as their counterparts in the Regular Forces. In addition to maintaining professional currency, ongoing training is essential for advancement in one’s military career.

### **Accommodating Reservists’ requests for leave of absence has the highest impact on small and medium sized businesses**

Consideration should be given to making provision for an employer’s hardship clause in the *Employment Standards Act* that addresses the unique circumstances and ability of SMEs to accommodate Reservists’ leave of absence requests.

### **Student Reservists should be encouraged to complete their post-secondary studies**

It is sometimes the case that student Reservists do not return to complete their programs after deployment and/or training. Post-secondary studies are sometimes viewed as a lesser priority than military training, which can have detrimental consequences for a Reservists’ military and civilian careers. Student Reservists should be encouraged to prioritize and complete formal post-secondary education.

## **2. RESPONSES TO PROPOSED CHANGES IN THE *EMPLOYMENT STANDARDS ACT***

### **2.1 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 change:** Amend the definition of “Reservist” to extend the current applicability of leave protection provisions to all Reservists.

**Response:** Leave protection should be extended to include Class A and B Reservists. Despite the invaluable public service they provide, such as assisting with natural disasters, they may sometimes lose pay, seniority, benefits, and even their positions.

## **2.2 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 change:** 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.

**Response:** Amending the definition of service to define the activities that may be required would assist employers to understand the nature of Reservist service and the critical nature of training requirements.

## **2.3 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 change:** Amend the *Employment Standards Act* to specify that Reservists can take up to twenty (20) days of unpaid leave for annual training, including related travel time.

**Response:** Provision should be made for leave for annual training. Currently, many Reservists must use annual vacation to complete annual training, which can lead to burn out. Leave for annual training would enable Reservists to better balance family life with their Reservist and civilian work.

As annual training courses run continuously over a full week, the amendment could make reference to “continuous calendar days”. As career advancement courses require four (4) full weeks, the amendment should provide for twenty-eight (28) calendar days of annual training.

## 2.4 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 change:** 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.

**Response:** The notice period should be defined as proposed. A minimum four (4) weeks notice provides the best balance between the needs of employers and Reserve Command’s advance planning capabilities. Provision should be made for urgent circumstances and the exigencies of the service, which is an issue in a minority of situations.

## 2.5 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 change:** 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.

**Response:** Provision should be made for extension of leave of absence as proposed. This is an issue in a minority of situations.

## 2.6 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 change:** 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.

**Response:** The notice period should be defined as proposed.

## **2.7 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 change:** Amend the *Employment Standards Act* to enable the employee to postpone his or her annual vacation.

**Response:** Postponement of annual vacation poses a potential liability for employers and could impact on collective agreements and labour relations. Therefore this provision should not be made in the legislation.

## **2.8 Stakeholder recommendations for mitigating the impact on employers**

Legislation should strike a balance between accommodating the needs of Reservists and the Canadian Forces, on the one hand, and ensuring that employers do not experience undue hardship. For example, small and medium sized enterprises may not have the capacity to accommodate a Reservist’s request. Additionally, most training takes place in summer which can be a problem for businesses that peak in those months.

Stakeholders provided two recommendations for addressing the impact on employers:

### **a) Hardship clause**

Most stakeholders identified the necessity of making provision in the *Employment Standards Act* for an employer’s hardship clause addressing the unique circumstances of Reservists leave of absence requests. Stakeholders feel that this is not currently being addressed adequately under Section 8(1) of the *Employment Standards Act*.

### **b) Proposed parameters for an employee’s eligibility for a leave of absence**

- Continuous employment for a minimum of one year;
- Notice of a minimum of 45 days notice in advance of the commencement of the requested leave;
- Notice of a minimum of 45 days notice in advance of the return to work;
- Provision to the employer of a certificate from an official with the Reserves stating that the employee is a member of the Reserves and has volunteered to provide service in the Reserves; and
- Provision to the employer of document from an official with the Reserves stating that the beginning and end dates of the leave correspond within two weeks to the dates of service.

### **3. 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.

**Response:** Education leave protection for Reservists should be formalized in a systematic manner across New Brunswick post-secondary institutions. Because of the complexity of the body of legislation governing institutions, this may best be accomplished on a case by case basis through Memoranda of Understanding with individual institutions.

In addition, stakeholders provided several specific recommendations:

- Financial credits should be avoided. Instead student Reservists could be provided with prorated refunds for tuition, residence costs and compulsory academic fees.
- Institutions collect fees for third parties, such as student unions and health providers. Third parties should not be committed to providing accommodations to student Reservists.
- Graduate programs that normally require continuous enrollment through the summer should relax this requirement to enable student Reservists to attend annual training in the summer months.
- As programs are not always offered every year, student Reservists may have to wait to reenter their programs.
- Student Reservists may have to purchase new text books.
- When student Reservists have to leave their courses past the formal deadlines, a “W” appears on their transcripts.
- Leave of absence from courses should be granted only during declared emergencies.
- Require Student Reservists to inform their institutions of anticipated leave of absence requirements before the start of a term.