

**Public Consultation**

**Review of Canadian Forces Reservist  
Employment and Education Protection in Nova  
Scotia**

**Discussion Document**

**June 2010**

## **1.0 Introduction**

Nova Scotia was the first jurisdiction to provide employment and educational protection to members of the Reserves who are deployed to serve. The Canadian Forces Reservists Protection Act was passed in 2006 and took effect in April 2007.

Since Nova Scotia enacted this legislation, all other provinces and the federal jurisdiction have followed suit.

Nova Scotia is now revisiting its reservist legislation to provide further clarity and to incorporate additional best practices that have been implemented by other jurisdictions across Canada.

We are seeking input from stakeholders and Nova Scotians generally about whether the Reservists' Leave provisions should be changed. Although there have not been complaints about Reservists being denied leave, the Canadian Forces Liaison Council, which promotes the value of Reservists to the military and the community, believes that the provisions should be enhanced.

The purpose of this discussion paper is to help inform the consultation process. This will lead to the identification of effective improvements to the legislation to help better protect Nova Scotia Reservists working in civilian jobs and studying at educational institutions.

## **2.0 Canadian Reserve Forces: Background**

Supporting Canada's Reserve Force and individual Reservists has taken on a new importance in recent years. The number of Reservists on full-time service has grown significantly, and the length of periods of service for Reserve training and deployments has also increased over the years.

All provinces and the Yukon have enacted job protection legislation for Reservists. This legislation amends federal, provincial or territorial labour codes and employment standards, and sets the minimum standards for employers to follow in terms of defining length of absences, frequency of absences, benefits to be granted, etc.

The legislation, in most cases, indicates how much notice a Reservist must give his or her employer prior to departure on military leave, whether official notification is required from the Canadian Forces and the start and end dates of the requested leave.

There are currently 2,716 Reservists serving out of Nova Scotia. When broken down by class, there are: 1,685 Class A Reservists who are employed on a part-time basis within their unit, 830 Class B Reservists who are employed full-time in a non operational capacity, and 201 Class C Reservists who are part of the operational level of employment (see Appendix A for further details).

Reservists play a major role in military operations around the world (ex. 25% of Canadian military personnel serving in Afghanistan are Reservists). Students make up roughly 1/3 of the Reserve Force in Canada, and the average career length for Reservists' is three to five years. While some people spend their working lifetime in the reserves; student participation lowers the average.

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.

Student Reservists may also volunteer to go on an international or domestic deployment. Doing so might mean that they could miss one or more terms or semesters. Federal legislation relating to the *Canada Student Loans Act* permits abatement of loans and grants for the period of the deployment, but that is only part of the support that may be needed.

### **Who are Canadian Forces Reservists?**

The Canadian Forces is made up of two components, the Regular Force and the Reserve Force. Members of the Regular Force serve full-time in the Army, Navy or Air Force. Members of the Reserve Force usually serve on a part-time basis, while at the same time pursuing civilian careers or academic studies. They are members of the Naval Reserve, the Army Reserve, the Air Reserve, the Health Services Reserve, the Special Operations Forces Command Reserve or the Legal Services Reserve.

Roughly one-third of the Reserve Force is comprised of students attending post-secondary institutions. 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.

All Reservists, no matter which Reserve they belong to, 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 easily transferred to the civilian workplace.

### **Why is Military Leave Required?**

Members of the Reserve Force who are employed in the civilian workforce may need time off from their full-time employment in order to undertake military training or to go on operational deployments, either in Canada or overseas. The length of time required will vary from individual to individual, and may differ from year to year, depending on the position the Reservist holds in a Reserve unit, and the stage of his or her career.

The most frequently encountered request for leave is to permit a Reservist to take the training courses that are essential for advancement in his or her military career. A Reservist employee may therefore on occasion ask for leave for an extended military training period, depending on the career pattern. This period of absence may be between two and twelve weeks.

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 a response to a natural or man-made disaster.

### **3.0 Nova Scotia Military Leave Protection for Employed Reservists**

Details on Nova Scotia Military Leave Protection for Employed Reservists are highlighted below (see Appendix B for complete legislation):

- The *Canadian Forces Reservists Protection Act* created a protected leave in the *Labour Standards Code* for employees who accept “active duty or training” in the Reserves. In effect this means that the leave is available to Reservists who accept an active deployment either inside Canada, to assist with an emergency, or in a Canadian Forces operation outside Canada, for example the Afghanistan mission.
- The leave protects these Reservists while they are on, or preparing for, an active deployment. These Reservists can take an unpaid leave from their civilian work to fulfill this military commitment. In order to qualify for the leave, an employee must be employed with the employer for at least one year.
- Reservist employees can take leave for up to 18 months within a three year period and must return to work within four weeks of the end of the service period. The start date for a period of military service must be at least one year after the employee returned from a leave for a previous period of service.
- An employee must give the employer 90 days notice of his/her intention to take the leave and 90 days notice of his/her intention to return to work from the leave. In an emergency situation, where the full 90 days cannot be provided, an employee needs to give as much notice as is reasonably practical.
- When an employee returns from the leave, they must be accepted back to the same or a comparable position with no loss of seniority or benefits. If a reservist employee is not given their job back, Labour Standards can order them reinstated.
- The reservist employee has the option to prepay and continue benefit plans.

#### **Current issues and potential changes to the legislation:**

Issues with the current legislation and proposed improvements have been identified by the following topic areas: training and length of leave. Please use this information to guide your response to this review. This is only meant to be a guide; please feel free to respond to any aspect of the Canadian Forces Reservist Legislation you feel requires updating.

#### **Training**

- **Issue:** Reservists are required to participate in training to maintain their status as a Reservist. Nova Scotia law does not require employers to provide time off for this training. Often these Reservists use vacation time for their training.
- **Proposed Changes:** Provide Reservists with up to 20 days of unpaid annual leave for training – Legislation in Alberta provides Reservists with up to 20 days of unpaid leave annually for this purpose. The Quebec legislation provides 15 days.

Cover longer training periods - A Reservist employee may on occasion ask for leave for an extended military training period, depending on the career pattern. This period of absence may be between two and twelve weeks.

- **Discussion questions:**

- Do you think that Reservists should be provided with annual unpaid leave for training?
- How would this annual unpaid leave affect you? (as a reservist, employer, labour group, etc. please explain)
- If training is covered, should there be an annual maximum length of time?
- If yes, what should that length be?
- Would you support a maximum of 20 days unpaid leave for that purpose?
- 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 be covered for longer training periods?
- Please explain how this might affect you positively or negatively?
- If longer training periods were to be covered, how long should the period be?
- How much notice should a Reservist be required to provide for training days?
- Do you have any additional comments you would like to make regarding reservist training?

#### **Length of leave**

- **Issue:** Currently, 18 months is the maximum length of leave for a deployment, and has to be used during a three year period. Most provinces only state that the length of the leave of absence be for the “prescribed period” of the leave of absence, which could be longer than 18 months.
- **Proposed changes:** Change the maximum length of the leave for a deployment from 18 months to the length of the “prescribed period” of the leave of absence.
- **Discussion questions:**
  - Currently, the maximum length of leave for a deployment is 18 months; do you feel 18 months is too long or too short? (please explain)
  - Should the restriction that the leave can be used for a maximum of 18 months in a three year period be changed to generally cover the “prescribed period” of deployment?
  - How would this change affect you? (as a reservist, employer, labour group, etc. please explain)
  - Do you have any additional comments you would like to make regarding length of leave for a deployment?

#### **4.0 Nova Scotia Military Leave Protection for Student Reservists**

Details on Nova Scotia Military Leave Protection for Student Reservists are highlighted below (see Appendix B for complete legislation):

- In Nova Scotia, *An Act to Protect the Civilian Employment of Members and Students in the Canadian Forces Reserves* received Royal Assent in November, 2006. This legislation includes protection for public and private school, university and community college students who are members of the Canadian Forces Reserves and are called for a period of military service or training.
- Student Reservists must provide reasonable notice, at least 30 days, of the intention to take a leave of absence and return to study upon completion of the absence.
- Student Reservists must reapply to return to the program of studies no later than four weeks after the leave expires.
- A student may defer return until the next semester. Right to return to the original program of study is subject to that programs availability.
- Fees paid during leave are credited to the next semester. With respect to the *Student Aid Act*, a Student Reservist is deemed to be continuing studies while on a leave of absence and not obliged to pay student loans.

### **Current issues and potential changes to the legislation:**

Issues with the current legislation and proposed improvements have been identified by the following topic areas: tuition and fee refunds and fines for violation. Please use this information to guide your response to this review. This is only meant to be a guide; please feel free to respond to any aspect of the Canadian Forces Reservist Legislation you feel requires updating.

### **Tuition and fee refunds**

- **Issue:** The intention of the Act was to allow students who choose to serve in the Reserves to be free from any financial penalty. The issue of tuition and fee refunds for Student Reservists has been raised in the past. It is not the intent of the Act to provide Student Reservists with refunds. Instead, Student Reservists will receive a credit to return for the next semester.
- **Proposed change:** Clarify that fees paid are credited to the next semester.
- **Discussion questions:**
  - Do you have any comments you would like to make regarding tuition and fee refunds for Student Reservists?

### **Fines for violation**

- **Issue:** Every person who violates any provision of this Act is subject to a \$2,000 (maximum) fine. This fine may not be considered a useful mechanism to enforce compliance as much of the relations between educational institutions and Student Reservists rely on goodwill.
- **Proposed change:** Remove the \$2,000 (maximum) fine for violation.
- **Discussion question:**
  - Do you have any comments you would like to make regarding fines for violation of the Act?

## **5.0 How to Participate**

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Labour Standards Division of the Department of Labour and Workforce Development by:

- Faxing a letter to Labour Standards at **(902) 424-0648**
- Sending us an e-mail to Labour Standards at [labrstd@gov.ns.ca](mailto:labrstd@gov.ns.ca)
- Telephoning us at **1-888-315-0110**
- Writing to us at:

Nova Scotia Department of Labour and Workforce Development  
Labour Standards Division  
5151 Terminal Road, 7<sup>th</sup> Floor  
PO Box 697  
Halifax, NS  
B3J 2T8

This discussion paper is also available on our website at <http://www.gov.ns.ca/lwd/>.  
**In order for us to fully consider your comments, please contact us by July 19, 2010.**

*Please note that our report may list the names of individuals and groups who make comments or submissions. Unless comments are marked confidential, we will assume respondents agree to the Department quoting from or referring to comments made.*

Respondents should be aware that the Nova Scotia *Freedom of Information and Protection of Privacy Act* may require us to release information contained in submissions. Therefore, you should not include the names of other parties (such as the names of employers or of 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 your name or other information, such as an address, by which you could be identified in the main body of the submission.

Thank you for taking the time to participate. Should you have any questions regarding Nova Scotia military leave protection for employed reservists please contact:

Bill Grant, Director, Labour Services Branch  
Nova Scotia Department of Labour and Workforce Development  
(902) 424-3549, [grantwa@gov.ns.ca](mailto:grantwa@gov.ns.ca)

Should you have any questions regarding Nova Scotia military leave protection for student reservists please contact:

David Mercer, Policy Analyst, Higher Education Branch  
Nova Scotia Department of Education  
(902) 424-5693, [mercercdf@gov.ns.ca](mailto:mercercdf@gov.ns.ca)

## **APPENDIX A: CLASSES OF MILITARY RESERVE SERVICE**

### 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. In Nova Scotia there are 1,685 Class A Reservists.

### 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. In Nova Scotia there are 830 Class B Reservists.

### 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. In Nova Scotia there are 201 Class C Reservists.



**APPENDIX B: CURRENT NOVA SCOTIA RESERVIST  
LEGISLATION**

**Section 1**

**BILL NO. 80 (as passed, with amendments)**

*1st Session, 60th General Assembly*

*Nova Scotia*

*55 Elizabeth II, 2006*

Private Member's Bill

**Canadian Forces Reservists Protection Act**

CHAPTER 13 OF THE ACTS OF 2006

Darrell Dexter

Cole Harbour

**An Act to Protect the Civilian Employment of Members of and Students in  
the Canadian Forces Reserves**

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Canadian Forces Reservists Protection Act.

2 The purpose of this Act is to protect the civilian employment of members of and  
students in the

Canadian Forces Reserves.

3 In this Act,

(a) "Reserves" means that component of the Canadian Forces referred to in the National  
Defence

Act (Canada) as the reserve force;

(b) "service" means a period of active duty or training in the Reserves;

(c) "student" means a public or private school, community college or university student;

4 (1) Every student has a right to return to that student's program of studies at the  
beginning of the next semester or sooner if practicable if the student

(a) provides the student's school, community college or university, as the case may be,  
with reasonable notice of the student's intention to

(i) take a leave of absence for a period of service, and

(ii) return to the school, community college or university upon completion of the service;  
and

(b) returns to or applies to return to the school, community college or university within a

reasonable time upon completion of the student's service.

(2) Every school, community college or university shall allow a student to return to the student's studies after service without any financial penalty.

(3) For greater certainty, a student is not required to pay any tuition or fees in addition to those that the student would have been required to pay if the student had not taken the leave of absence.

5 The Minister of Education may investigate any violations of this Act and attempt to resolve them.

6 Every person who violates any provision of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars.

7 (1) The Governor in Council may make regulations

(a) prescribing the time within which a student must return to a school, community college or university or apply to return following service;

(b) limiting periods or classes of training as service for the purpose of this Act;

(c) defining any word or expression used but not defined in this Act;

(d) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

8 Section 7 of Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, as amended by Chapter 14 of the Acts of 1991, Chapter 4 of the Acts of 2003 (Second Session) and Chapter 10 of the Acts of 2006, is further amended by adding immediately after clause (be) the following clauses:

(bf) prescribing the time within which an employee must return to work or apply to return to work;

(bg) limiting periods or classes of training as service for the purpose of Section 60H;

9 Chapter 246 is further amended by adding immediately after Section 60G the following heading and Section:

#### RESERVISTS

60H (1) In this Section,

(a) "Reserves" means that component of the Canadian Forces referred to in the National Defence Act (Canada) as the reserve force;

(b) "service" means a period of active duty or training in the Reserves

(2) An employee, who has been employed by an employer for at least one year and is required to be absent from the employer's civilian employment for purpose of service, is entitled to an unpaid leave of absence upon

(a) giving the employer the required notice of the date that the leave will begin and the

anticipated date of return to work; and

(b) providing to the employer, where the employer so requests, a certificate from an official with the Reserves stating that the employee is a member, is required for service and, where possible, specifying the expected dates for the period of service.

(3) Every employee taking a leave of absence pursuant to subsection (2) shall

(a) provide the employer with reasonable notice prior to the date when the employee intends to take a leave of absence for a period of service; and

(b) provide the employer with reasonable notice prior to the date when the employee intends to return to work upon completion of service.

(4) Notice given pursuant to this Section must be put in writing if the employer so requests.

(5) Sections 59F to 60 apply mutatis mutandis to an employee who takes a leave of absence pursuant to this Section.

10 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

## **Section 2**

### **Student Reservists' Leave of Absence Regulations made under Section 7 of the *Canadian Forces Reservists Protection Act***

**S.N.S. 2006, c. 13**

**O.I.C. 2007-373 (June 29, 2007, effective July 1, 2007), N.S. Reg. 327/2007**

#### **Citation**

**1** These regulations may be cited as the *Student Reservists' Leave of Absence Regulations*.

#### **Definitions**

**2 (1)** In the Act and these regulations,

- (a) “active duty” means active service as defined in the *National Defence Act* (Canada);
- (b) “fees” means charges or payments that may be required by a student’s attendance at an education institutional, including all of the following:
  - (i) administrative fees,
  - (ii) on-campus housing fees,
  - (iii) health insurance fees,
  - (iv) student association membership fees,
  - (v) charges for payments for books required for courses in which the student is registered;

- (c) “program of studies” means a set of courses or other work required to obtain a degree, diploma or certificate from an educational institution;
  - (d) “semester” means a period of study that constitutes part of the regular academic year of an educational institution and that is at least 13 weeks long;
  - (e) “training” means training that is required for active duty.
- (2) In these regulations,
- (a) “Class “C” Reserve Service” means “Class “C” Reserve Service” as defined in the *Queen’s Regulations and Orders for the Canadian Forces* under the *National Defence Act* (Canada);
  - (b) “educational institution” means any of the following:
    - (i) a public school or a private school as defined in the *Education Act*,
    - (ii) a community college established under the *Community Colleges Act*,
    - (iii) a university authorized under the *Degree Granting Act*.

### **Reasonable notice**

- 3 In clause 4(1)(a) of the Act respecting the notice required to be given by a student to an educational institution, “reasonable notice” is at least 30 days’ notice in advance, except in an emergency situation, in which case reasonable notice is as much notice as is reasonably practical.

### **Reservist’s leave of absence**

- 4 (1) For the purposes of a leave of absence from an educational institution for a member of the Reserves under Section 4 of the Act,
- (a) a leave of absence includes time spent on leave related to active duty;
  - (b) a leave of absence must not be longer than 18 months within any 3-year period;
  - (c) the start date for a leave of absence must be at least 1 year after the date that a student returned to the educational institution from a previous leave of absence;
  - (d) a student must apply to return the program of studies at the educational institution no later than 4 weeks after the date their leave of absence expires;
  - (e) a student may defer their actual return to the program of studies at the educational institution until the beginning of the next following semester;
  - (e) only the training of a member in Class “C” Reserve Service is included as service;
  - (f) a student’s right to return to the program of studies is subject to its availability when the student returns to or applies to return to the educational institution.

## **Financial credits**

- 5** For the purposes of the return of a student to an educational institution under subsection 4(2) of the Act,
- (a) the tuition and fees for a program of studies paid by a student for the semester during which the student takes a leave of absence must be credited toward and are deemed to be equal in amount to the tuition and fees for the semester during which the student returns to the program of studies;
  - (b) a student who holds a certificate under the *Student Aid Act* is deemed to be continuing studies at the educational institution while on leave of absence.

## **Complaint procedure**

- 6** (1) A student who is aggrieved by an alleged violation of subsection 4(2) of the Act by an educational institution may make a written complaint to the Minister of Education.
- (2) A complaint must be made no later than 30 days after the date of a decision of the educational institution to impose a financial penalty on the student.
- (3) The Minister of Education may authorize an officer of the Department of Education to act as a review officer to investigate a complaint.
- (4) In investigating a complaint, a review officer must serve notice of the complaint on the educational institution against which the complaint is made and request a response from the educational institution within any period of time that the review officer considers appropriate.
- (5) A review officer has the power to order the educational institution or the complainant to produce any documents or other information that the review officer considers necessary for a full review of the complaint.
- (6) After investigating a complaint, a review officer must determine whether there is sufficient evidence of a failure to comply with subsection 4(2) of the Act and decide
- (a) to dismiss the complaint on the grounds of insufficiency of evidence; or
  - (b) to conduct a mediation to effect a settlement, if the review officer is satisfied that there is sufficient evidence of a failure to comply with subsection 4(2) of the Act.
- (7) A decision of a review officer is final and not open to question or review

### **Section 3**

#### **General Labour Standards Code Regulations made under subsection 4(2) and Section 7 of the *Labour Standards Code***

#### **R.S.N.S. 1989, c. 246**

**O.I.C. 90-1321 (November 13, 1990, effective November 30, 1990), N.S. Reg. 298/90  
as amended up to O.I.C. 2008-40 (February 5, 2008), N.S. Reg. 65/2008**

#### **Reservists leave**

- 7B (1)** In Section 60H of the Code and this Section,
- (a) “active duty” means active service as defined in the *National Defence Act* (Canada);
  - (b) “period of service” includes any time spent training, on active duty or on leave related to active duty;
  - (c) “reasonable notice” means at least 90 days’ notice in advance except in an emergency situation, in which case reasonable notice is as much notice as is reasonably practical;
  - (d) “required” means required by the Canadian Forces in order to fulfill a commitment to active duty;
  - (e) “training” means training that is necessary for active duty.
- (2)** In this Section, “Class “C” Reserve Service” means “Class “C” Reserve Service” as defined in the *Queen’s Regulations and Orders for the Canadian Forces* under the *National Defence Act* (Canada).
- (3)** For the purposes of unpaid leaves of absence for reservists under Section 60H of the Code,
- (a) a period of service must not be longer than 18 months in a 3-year period;
  - (b) the start date for a period of service must be at least 1 year after the date that the employee returned to work from a leave for a previous period of service;
  - (c) an employee must return to work no later than 4 weeks after the date their period of service expires; and
  - (d) only the training of a member in Class “C” Reserve Service is included as service.

**Section 7B added: O.I.C. 2007-243, N.S. Reg. 242/2007.**