



## LEGISLATIVE SUMMARY



### **Bill C-7:**

# **An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures**

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*Legislative Summary of Bill C-7*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-7: AN ACT TO AMEND THE PUBLIC SERVICE LABOUR RELATIONS ACT, THE PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD ACT AND OTHER ACTS AND TO PROVIDE FOR CERTAIN OTHER MEASURES

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## 1 BACKGROUND

Bill C-7, An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures, was introduced in the House of Commons by the President of the Treasury Board on 9 March 2016. It passed second reading and was referred to the House of Commons Standing Committee on Public Safety and National Security on 24 March 2016.

The bill was amended in committee to continue the exclusion of RCMP members from the workers' compensation scheme under the *Government Employees Compensation Act*.<sup>1</sup> The amended version of the bill was then sent to the Senate, where it was adopted at second reading and referred to the Standing Senate Committee on National Security and Defence on 2 June 2016. On 14 June 2016, the Senate Committee adopted its Fourth Report, setting out a number of substantial amendments to Bill C-7. The bill, as amended, was adopted by the Senate at third reading on 21 June 2016.

The bill is, in part, a response to the ruling of the Supreme Court of Canada in the case of *Mounted Police Association of Ontario v. Canada (Attorney General)*.<sup>2</sup> In that case, the Supreme Court held that the exclusion of members of the Royal Canadian Mounted Police (RCMP) from collective bargaining and the imposition by management of a non-unionized labour relations regime were unconstitutional infringements of the freedom of association guaranteed by section 2(d) of the *Canadian Charter of Rights and Freedoms*. The court struck down the provision of the *Public Service Labour Relations Act* (PSLRA)<sup>3</sup> that excluded RCMP members, but suspended this declaration of invalidity for 12 months. The suspension was later extended by four months to 17 May 2016.<sup>4</sup>

Bill C-7 amends the PSLRA to set out a labour relations regime for members of the RCMP and reservists. The bill provides for the following:

- the ability of RCMP members and reservists to choose whether to be represented by a bargaining agent;
- independent, binding arbitration as the dispute resolution process for bargaining impasses, with no right to strike;
- a single, national bargaining unit for RCMP members appointed to a rank and for reservists;

- the requirement that the RCMP bargaining agent have as its primary mandate the representation of RCMP members;
- the exclusion of officers from representation; and
- the use of the Public Service Labour Relations and Employment Board as the administrative tribunal for matters related to collective bargaining for the RCMP bargaining unit, as well as for grievances related to a collective agreement.<sup>5</sup>

### 1.1 RCMP STRUCTURE, GRIEVANCE AND DISCIPLINE PROCEDURES

The RCMP is organized under the authority of the *Royal Canadian Mounted Police Act* (RCMP Act),<sup>6</sup> which states that it is headed by a commissioner who, under the direction of the Minister of Public Safety and Emergency Preparedness, has the control and management of the force. The RCMP provides police services under the terms of policing agreements to all provinces (except Ontario and Quebec), Yukon, the Northwest Territories and Nunavut, and under separate municipal policing agreements to 180 municipalities.

As of 1 September 2015, there are 28,461 RCMP employees.<sup>7</sup> Of these, 6,331 are public servants employed under the terms of the *Public Service Employment Act*<sup>8</sup> while 22,130 are employed under the terms of the RCMP Act. The RCMP Act employees are, in turn, divided into 18,292 regular members and 3,838 civilian members. There are, therefore, said to be three categories of RCMP employees: regular members, civilian members, and public servants appointed under the *Public Service Employment Act*.

A “member” of the RCMP is defined in section 2(1) of the RCMP Act as any person appointed under sections 5 (the commissioner), 6(3) (deputy commissioner), 6(4) (other officers) or 7(1) (others) and who is employed with the force. A “regular member” is defined in section 1 of the *Royal Canadian Mounted Police Regulations, 2014*<sup>9</sup> (RCMP Regulations) as a person appointed to a rank in the force; this category includes special constables.

The ranks for regular members, in order of precedence, are as follows:

- commissioner;
- deputy commissioner;
- assistant commissioner;
- chief superintendent;
- superintendent;
- inspector;
- corps sergeant-major;
- sergeant-major;
- staff sergeant-major;
- staff sergeant;
- sergeant;

- corporal;
- and constable.<sup>10</sup>

Section 1 of the RCMP Regulations defines a “civilian member” as a person appointed to a level in the force under section 7(1) of the RCMP Act. Civilian members occupy many different positions, including criminal analysts and forensic scientists.

The “reserve” is the Royal Canadian Mounted Police Reserve established under section 11(1) of the RCMP Act. A “reservist” is a person appointed to the reserve under section 7(2) of the RCMP Regulations. The commissioner may appoint reservists for a period of no more than three years and may revoke their appointment at any time. A reservist may be called up for training or duty when the commissioner considers it to be necessary. A reservist who has been designated as a peace officer when called up for duty has the duties set out under section 18 of the Act.<sup>11</sup>

Unlike other public servants, members of the RCMP appointed under the RCMP Act have not been entitled to grieve matters under the PSLRA, nor are they disciplined under the *Financial Administration Act*<sup>12</sup> as are other employees of the Treasury Board. Instead, grievances and disciplinary matters have been dealt with under the RCMP Act.

### 1.1.1 GRIEVANCES

Under Part III of the RCMP Act (“Grievances”), a member initiates the grievance process and a Level I review is conducted by an RCMP officer designated as a Level I adjudicator. However, a member is not entitled to present a grievance in respect of which an administrative procedure for redress is provided under any other Act of Parliament. The Level I adjudicator makes a decision on the basis of a review of written submissions. If the member is dissatisfied with that decision, he or she can ask that the grievance be referred to Level II. For some matters, Level II adjudication rests solely with the commissioner. Other matters, such as the application of government-wide policies that apply to members of the RCMP, are referred to the RCMP External Review Committee.<sup>13</sup>

The final decision on grievances rests with the commissioner,<sup>14</sup> who is not bound by the recommendations of the External Review Committee. However, if the commissioner rejects the committee’s recommendations, he or she must provide reasons as required by section 32(2) of the RCMP Act. The Commissioner of the RCMP is an agent created by a federally enacted statute and, as such, falls under the jurisdiction of the Federal Court pursuant to the *Federal Courts Act*.<sup>15</sup> If a member of the RCMP is dissatisfied with a final ruling of the commissioner, that member may apply to the Federal Court (Trial Division) for a review of the decision.

### 1.1.2 DISCIPLINE

In addition to the general laws of Canada, RCMP members are subject to a code of conduct set out in the Schedule to the RCMP Regulations.<sup>16</sup> Disciplinary matters for alleged breaches of this code are dealt with under Part IV of the RCMP Act, entitled “Conduct.”

Initial decisions regarding any allegation of a breach of the code of conduct are made by conduct authorities, who are designated by the commissioner either directly or by virtue of the *Commissioner's Standing Orders (Conduct)*.<sup>17</sup> Conduct authorities are typically the commander of the member in question, or another person in the chain of command. They are responsible for initiating an investigation, determining whether a member's conduct amounts to a contravention of the code of conduct and, if a contravention is established, imposing measures that may be:

- remedial (e.g., an admonishment, direction to attend special training, or a reprimand);
- corrective (e.g., deferral of promotion for a specified period, forfeiture of pay to a maximum of 80 hours); and/or
- serious (e.g., demotion, ineligibility for promotion, forfeiture of pay of more than 80 hours).<sup>18</sup>

If dismissal might be an appropriate outcome, the conduct authority initiates a conduct hearing. The conduct hearing is directed by a board of one or more individuals. The subject member will have the opportunity to present his or her case to the board and may obtain representation from a "member representative" (a legally trained employee). A conduct board's decision may be appealed to the commissioner under section 45.11 of the RCMP Act. Discharge and demotion cases are reviewed by the RCMP External Review Committee, which can issue non-binding findings. As with grievances, if a member of the RCMP is dissatisfied with a final ruling of the commissioner, that member may apply to the Federal Court (Trial Division) for a review of the decision.

## 1.2 STRUCTURE OF THE *PUBLIC SERVICE LABOUR RELATIONS ACT*

The PSLRA is the principal statute governing the public service labour-management regime. Among many other things, the PSLRA sets out the framework for collective bargaining. The "public service" includes the departments named in Schedule I of the *Financial Administration Act*, portions of the core public administration (including the RCMP) named in Schedule IV of that Act, and the separate agencies (such as the Canada Revenue Agency) named in Schedule V. Although members of the RCMP are excluded from the PSLRA by virtue of the definition of "employee" set out in section 2(1) of the PSLRA, RCMP employees appointed under the *Public Service Employment Act* (i.e., public service employees within the RCMP work force) are subject to the provisions of the PSLRA. Public service employees perform non-policing duties, such as administrative functions or support for policing operations.

Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts, received Royal Assent on 19 June 2013.<sup>19</sup> Section 86 of this Act gives the Treasury Board authority, at a time it determines, to deem civilian members of the RCMP to be public service employees appointed under the *Public Service Employment Act*.<sup>20</sup>

The PSLRA is divided into four parts, as follows:

- Part 1 – Labour Relations;
- Part 2 – Grievances;
- Part 3 – Occupational Health and Safety; and
- Part 4 – General.

Part 3 states that Part II of the *Canada Labour Code*<sup>21</sup> applies to the public service as if the public service were a federal work, undertaking or business. In this instance, the term “public service” is defined in section 11(1) of the *Financial Administration Act* to include the RCMP. Part II of the *Canada Labour Code* obliges both employers and employees to ensure that the health and safety at work of every person is protected. Employees have the right to refuse to work in what they consider to be unsafe conditions and to not be punished for doing so. It is an offence to contravene a provision of Part II; violations have a potential punishment of imprisonment, a substantial fine, or both.

### 1.3 HISTORY OF THE RCMP AND UNIONIZATION

A debate has surrounded the nature of the RCMP almost since its founding in 1873 as the North-West Mounted Police. This debate concerns whether the RCMP plays a distinct role as the national police force and needs a special (non-unionized) labour relations regime, or whether it is a police service like the others in Canada, which have collective agreements in place.

From 1918 to 1974, an order in council forbade any union-related activity by RCMP members.<sup>22</sup> This was thought necessary to ensure that members of the RCMP would not have a “divided loyalty” or conflict of interest between their allegiance to their fellow workers and their obedience to orders from superiors.

In 1965, a committee studying potential collective bargaining in the federal public service recommended that the Canadian Armed Forces and the RCMP be excluded from such bargaining. This recommendation was made “because of the nature of their duties and the fact that their conduct is subject to military or similar codes of law and discipline.”<sup>23</sup>

In 1967, Parliament established a statutory labour-relations regime applicable to members of the federal public service; this regime is currently enacted as the PSLRA. Members of the RCMP were excluded from the application of the PSLRA and remain excluded by virtue of the definition of “employee” in section 2(1) of the Act, which reads, in part:

*employee* ... means a person employed in the public service, other than a person who is a member or special constable of the Royal Canadian Mounted Police or who is employed by that force under terms and conditions substantially the same as those of one of its members.

#### 1.4 FORMER RCMP LABOUR RELATIONS REGIME

Rather than having a union, RCMP members were subject to a non-unionized labour relations regime, the core component of which was the Staff Relations Representative Program (SRRP). In place since 1974, the SRRP was the primary mechanism that allowed RCMP members to raise labour relations issues (excluding those concerning wages) and was the only form of employee representation recognized by management.

The SRRP's goal was to ensure that, at each level of the hierarchy (divisional, regional and national), members' representatives and management consulted one another on human resources initiatives and policies. Management, however, had the final word in human resources matters.<sup>24</sup> Section 56 of the RCMP Regulations sets out the SRRP.<sup>25</sup> As a result of the decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*, the SRRP was dissolved as of 17 May 2016. As an interim measure, the Member Workplace Services Program has been put in its place.

Another component of the RCMP labour relations regime is the RCMP Pay Council process, which provides assistance in resolving issues of pay and benefits, as well as furnishing recommendations on member pay and working conditions in a consultative and consensual manner.

The third and last component is the Mounted Police Members Legal Fund, a not-for-profit corporation funded through membership dues that provides legal assistance on employment-related matters.<sup>26</sup>

#### 1.5 *MOUNTED POLICE ASSOCIATION OF ONTARIO V. CANADA (ATTORNEY GENERAL)*

In May 2006, two private RCMP member associations initiated a constitutional challenge seeking a declaration that the exclusion of RCMP members from the application of the PSLRA in combination with the imposition of the SRRP as a labour relations regime unjustifiably infringed members' freedom of association guaranteed under section 2(d) of the Charter. The Ontario Superior Court of Justice held that the RCMP Regulations substantially interfered with freedom of association, but that the exclusion of RCMP members from the PSLRA did not infringe section 2(d) of the Charter. This decision was overturned by the Ontario Court of Appeal, which held that it was not "effectively impossible" for RCMP members to exercise their freedom of association rights.<sup>27</sup>

The appeal before the Supreme Court of Canada dealt with the constitutionality of the scheme comprising both the PSLRA exclusion and the SRRP process. In its ruling, released on 16 January 2015, the court concluded that section 2(d) of the Charter "protects a meaningful process of collective bargaining" whereby employees are provided with "a degree of choice and independence sufficient to enable them to determine and pursue their collective interests."<sup>28</sup>

The court explained that the degree of choice required by the Charter for the purposes of collective bargaining “is one that enables employees to have effective input into the selection of the collective goals to be advanced by their association.” Similarly, the degree of independence required in this context “is one that ensures that the activities of the association are aligned with the interests of its members.” The court cautioned, however, that choice and independence are not absolute, given that what is required to permit meaningful collective bargaining varies with the industry culture and workplace in question.<sup>29</sup>

Applying its analysis to the RCMP’s labour relations regime, the court held that the current RCMP labour relations regime denied RCMP members that degree of choice and imposed on them a scheme that did not permit them to identify and advance their workplace concerns free from the influence of management. Accordingly, the court found that the exclusion of RCMP members from collective bargaining under the PSLRA, along with management’s imposition of a non-unionized labour relations regime, were unconstitutional infringements of the freedom of association guaranteed by section 2(d) of the Charter.<sup>30</sup> The infringements were not saved by section 1 of the Charter, as they were not rationally connected to their objective.

The court did not accept that permitting meaningful collective bargaining for RCMP members would disrupt the stability of the police force or affect the public’s perception of its neutrality. In addition, it held that denying RCMP members any meaningful process of collective bargaining was also more restrictive than necessary to maintain the force’s neutrality, stability and reliability.<sup>31</sup>

The court determined that the appropriate remedy in this case was to declare paragraph (d) of the definition of “employee” in section 2(1) of the PSLRA to have no force or effect, subject to a 12-month suspension of invalidity. Had it not already been repealed by the time this decision was released, the court indicated that it would have also struck down section 96 of the RCMP Regulations.<sup>32</sup>

The court indicated that this remedy did not require Parliament to include the RCMP in the PSLRA scheme, given that section 2(d) of the Charter does not mandate a particular model of labour relations. The court added that Parliament remained

free to enact any labour relations model it considers appropriate to address the specific context in which members of the RCMP discharge their duties, within the constitutional limits imposed by the guarantee enshrined in s. 2(d) and s. 1 of the Charter.<sup>33</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill C-7 is intended to respond to the Supreme Court’s decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*. In addition to amending the PSLRA, it adds a new Part 2.1, entitled “Provisions Unique to the Royal Canadian Mounted Police.” The bill then sets out amendments to the *Public Service Labour Relations and Employment Board Act*<sup>34</sup> and the RCMP Act. The bill also makes some consequential amendments, including terminology changes necessitated by changes in the names of statutes, as well as some transitional provisions. The final part of the bill contains coordinating amendments.

## 2.1 TERMINOLOGY

Important definitional changes in Bill C-7 include the change in name of the PSLRA to the Federal Public Sector Labour Relations Act (FPSLRA) (clause 2) and the renaming of the Public Service Labour Relations and Employment Board to the Federal Public Sector Labour Relations and Employment Board (FPSLREB) (clause 3).

The definition of “employee” in paragraph (d) of section 2(1) of the FPSLRA, which currently excludes all RCMP members from the statute, is amended in clause 3 such that only officers of the RCMP are excluded. Section 6 of the RCMP Act defines “officer” to refer to (in addition to the commissioner) deputy commissioners, assistant commissioners, chief superintendents, superintendents, and inspectors. Officers, therefore, are not considered “employees” for the purposes of the FPSLRA.

A reservist is now defined in section 2(1) of the FPSLRA as a person appointed as a reservist under regulations made under section 11(1) of the RCMP Act.

“RCMP member” is defined in section 2(1) of the new FPSLRA as a person appointed to a rank. This definition therefore excludes civilian members of the RCMP, who will not be included in the RCMP member bargaining unit. However, a different definition applies to Division 2 of Part 2.1, which deals with grievances. “RCMP member” in those sections means a member as defined in section 2(1) of the RCMP Act, and thus includes all members, including civilian members (see also new section 238.01(2) of the FPSLRA). Civilian members and members appointed to a rank may both grieve alleged breaches of a collective agreement under the FPSLRA.

## 2.2 AMENDMENTS TO THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT

### 2.2.1 ADDITION OF PART 2.1 TO THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT

In the current PSLRA, Part 1 (dealing with labour relations) and Part 2 (dealing with grievances) applies to the broader public service. Bill C-7 adds new Part 2.1, “Provisions Unique to the Royal Canadian Mounted Police.” It is important to note that the entire FPSLRA applies to RCMP members, but in the event of any inconsistency between the provisions in Parts 1 or 2 and those in Part 2.1, the provisions in Part 2.1 prevail.<sup>35</sup>

Part 2.1 begins with some general provisions; these are followed by Division 1 (Labour Relations), which contains provisions that would otherwise be in Part 1 of the FPSLRA, and then by Division 2 (Grievances), which contains provisions that would otherwise be in Part 2 of the FPSLRA.

Part 2.1 contains an interpretative provision entitled “Unique Role as Police Organization.” New section 238.05 of the FPSLRA states that, in administering the Act and exercising any functions under the Act, the FPSLREB must “take into account the unique role of the Royal Canadian Mounted Police as a police organization in protecting public safety and national security and its need to deploy its members and reservists as it sees fit.” New section 238.33 of the FPSLRA states that the same considerations must be taken into account in determining grievances.

### 2.2.2 CERTIFICATION

The bargaining unit for any effort to form an RCMP union is the group of employees who would wish to be represented by a bargaining agent when negotiating a collective agreement with the employer. Under new sections 238.13 to 238.16 of the FPSSLRA, with respect to the bargaining unit, the FPSSLREB must determine that the appropriate unit is composed of all employees who are RCMP members (that is, those appointed to a rank but not officers) and all employees who are reservists. There must be a single, national bargaining unit.

Only a certain type of employee organization can be certified. The following requirements must be met:

- the organization must have as its primary mandate the representation of employees who are RCMP members;
- it cannot be affiliated with a bargaining agent or other association that does not have as its primary mandate the representation of police officers; and
- it cannot be certified as a bargaining agent for any other group of employees.

However, an employee organization can be affiliated with the National Joint Council, through which the government as employer works with public service bargaining agents to resolve problems and establish terms of employment that apply across the public service.

By the terms of new section 238.17 of the FPSSLRA, if an employee organization is certified as the bargaining agent for members and reservists, its certification can be revoked by the FPSSLREB if its primary mandate is no longer to represent RCMP members or if it becomes affiliated with an organization whose primary mandate is not the representation of police officers.

### 2.2.3 COLLECTIVE BARGAINING

Under new section 238.18 of the FPSSLRA, arbitration, not conciliation or strike action, is the process for dispute resolution if an impasse is reached in bargaining. New section 238.21 of the FPSSLRA provides for an additional factor beyond the usual considerations that an arbitrator can, if it is relevant, take into account: namely, the impact of the determination on the operational effectiveness of the RCMP.

In addition, new section 238.19 of the FPSSLRA puts restrictions on what can be included in a collective agreement and an arbitral award. These restrictions include any term or condition that relates to law enforcement techniques, transfers, appraisals, probation, discharges or demotions, conduct (including harassment), the basic requirements for carrying out RCMP duties, the uniform, order of dress, equipment and medals.

The Senate Committee amended the bill to remove the restrictions on the content of a collective agreement. This means that the terms or conditions of employment set out in the preceding paragraph can be the subject of collective bargaining. The Senate Committee amendments also allow for collective bargaining to potentially

require the enactment or amendment of any legislation by Parliament and to deal with a term or condition that has been or may be established under a number of statutes, including the *Royal Canadian Mounted Police Superannuation Act*, the *Public Service Employment Act* and the *Public Service Superannuation Act*. In addition, the Senate Committee amendments remove similar restrictions concerning terms or conditions of employment from arbitral awards.

New section 238.2 of the FPSLRA states that the essential services process does not apply to the RCMP bargaining unit. Division 8 of the FPSLRA states that the employer has the exclusive right to designate the positions in a bargaining unit that include duties that, in whole or in part, are or will be necessary for the employer to provide essential services, and the employer may exercise that right at any time. This will not apply to the members of the bargaining unit containing RCMP members because they will not have the right to strike.

#### 2.2.4 GRIEVANCES

RCMP members have a limited right to grieve under the FPSLRA. By the terms of new section 238.24 of the FPSLRA and new section 31(1.01) of the RCMP Act, the only type of grievance that may be filed by RCMP members under the FPSLRA is one related to the interpretation or application of the collective agreement or an arbitral award. Under new section 238.25 of the FPSLRA, these grievances can be referred to the FPSLREB for adjudication. For other types of grievances, RCMP members must proceed under the RCMP Act.

Reservists have no such restrictions. They are, for the purpose of grievances, treated like all other employees. Reservists are not covered by the RCMP Act,<sup>36</sup> and therefore are not restricted from presenting grievances under the FPSLRA.

The Senate Committee amended new section 238.24 of the FPSLRA to remove the restrictions on grievances. By the terms of the amendment, an RCMP member is entitled to grieve under the FPSLRA a provision of a statute or regulation, or a direction or other instrument made or issued by the employer that deals with the terms and conditions of employment. Such grievances may be referred to adjudication before the PSLREB.

#### 2.2.5 UNFAIR LABOUR PRACTICES AND PROHIBITIONS

Clause 21 of Bill C-7 amends section 186 of the FPSLRA, which deals with unfair labour practices. The amendment adds RCMP officers to the unfair labour practice provisions as persons who are prohibited from committing such acts.

The amended FPSLRA retains the prohibitions of the current Act relating to strikes and essential services workers; those who contravene these prohibitions are subject to prosecutions and fines. Clause 26 of Bill C-7 adds new section 199.1, which prohibits employee organizations and their representatives from counselling any RCMP member or reservist not to carry out his or her duties as a peace officer. Clauses 27 and 28 of the bill make contravention of this prohibition a summary conviction offence with a maximum fine of \$10,000.

### 2.2.5.1 FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD PROCEEDINGS

New section 238.06 of the FPSLRA requires that the FPSLREB adjourn any proceeding concerning an RCMP member or reservist at the request of the RCMP Commissioner or the employer, if the board is satisfied that to continue the proceeding would prejudice an ongoing criminal investigation or an ongoing criminal or civil proceeding. The adjournment cannot be for more than 90 days, but a request for more than one adjournment may be made.

Proposed new section 238.07 of the FPSLRA states that, in a proceeding involving an RCMP member or reservist, the commissioner can object to the disclosure of information that would, in his or her opinion, be injurious to law enforcement, public safety or national security. This power overrides the board's powers to require that the information be disclosed.

The board or a party can request the Minister of Canadian Heritage to appoint a former judge to review the information and make a binding order. Proposed new section 238.08 of the FPSLRA indicates that the former judge can order the disclosure of all or part of the information, even if he or she concludes that such disclosure would be injurious to law enforcement, public safety or national security, if he or she also concludes that the public interest in disclosure outweighs in importance the public interest in non-disclosure.

The same provisions concerning alleged prejudice to ongoing investigations or proceedings and alleged damage to law enforcement, public safety and national security apply to the adjudication of grievances, as set out in new sections 238.26 to 238.32 of the FPSLRA.

### 2.2.5.2 MANAGEMENT RIGHTS

New section 238.03 of the FPSLRA states that nothing in the Act is to be construed as affecting the right of the Treasury Board to determine the categories of members as they are defined in section 2(1) of the RCMP Act. Thus, the ability of the Treasury Board to deem civilian members to be public servants appointed under the *Public Service Employment Act* is unaffected by the amendments in Bill C-7.

New section 238.04 states that nothing in the Act is to be construed to affect the duties of members or reservists who are peace officers.

The Senate Committee amended the bill to add a new section 7.1 to the FPSLRA to reassert the rights of RCMP management. This new section states that nothing in the Act is to be construed as affecting the human resources management powers conferred on the Commissioner of the RCMP by the RCMP Act.

### 2.3 AMENDMENTS TO THE *PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD ACT*

The *Public Service Labour Relations and Employment Board Act* is renamed the *Federal Public Sector Labour Relations and Employment Board Act* by clause 36 of the bill.

The maximum number of full-time members of the newly renamed FPSLREB is increased from 10 to 12 by clause 38.

Clause 39 holds that, in preparing a list of possible appointees to the board, the chairperson must take into account the need to have two members with knowledge of police organizations.

### 2.4 TRANSITIONAL PROVISIONS

Clause 62 specifies that grievances filed before Bill C-7 comes into force and that do not relate to the interpretation or application of the collective agreement, and have not been finally disposed of by means of a decision or a judicial review, are deemed never to have been presented. However, those grievances can be filed under the RCMP Act within 30 days of the bill coming into force, but only if the grievance would have otherwise been timely under the RCMP Act.

With respect to certification applications, if any such application is filed before Bill C-7 enters into force, clause 63 of the bill indicates that an employee organization cannot be certified unless it meets the requirements that will eventually come into force in the bill. These requirements are that there be one bargaining unit of all members appointed to a rank, except officers, and that the unit meet the three criteria noted under “2.2.2 Certification” above. Any certification decision, and any review of that decision (e.g., judicial review), is deemed never to have had effect if it does not comply with these requirements. If it does meet these requirements, it is deemed to have been an application under Part 2.1.

Section 58 of the current PSLRA states that, on application by the employer or the employee organization affected, the board must determine every question that arises as to whether any employee or class of employees is included in a bargaining unit determined by the board to constitute a unit appropriate for collective bargaining, or is included in any other unit. Under clause 64 of the bill, any application made under section 58 to place an RCMP member appointed to a rank or a reservist in an existing bargaining unit is deemed never to have been made, and any decision with respect to that application is deemed never to have had effect. This is in accordance with the bill's goal of having one exclusive bargaining unit solely for RCMP members. There is no bar to a section 58 application to place a civilian member in an existing non-member bargaining unit.

In a similar fashion, any section 58 application to place a civilian member or a public service employee in an RCMP member bargaining unit is deemed never to have been made. Again, a bargaining unit exclusive to RCMP members is to be maintained.

## 2.5 COORDINATING AMENDMENTS

Beyond Bill C-7, certain legislative provisions have amended the PSLRA but are not yet in force, such as provisions from the 2013 budget bill<sup>37</sup> that will bar employee complaints from being filed at the Canadian Human Rights Commission and will require that the bargaining agent agree to represent grievors and share the costs of the adjudication. Once those provisions are in force, Bill C-7 will amend some of them. As such, some of the provisions currently in the bill will change. The provisions will also be amended once the civilian members of the RCMP are converted into “regular” public servants appointed under the *Public Service Employment Act* on a date determined by the Treasury Board. At that point, there will only be one type of member of the RCMP.<sup>38</sup>

The entry into force of Bill C-7 is also coordinated with the entry into force of Bill C-4, An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act.<sup>39</sup>

The parts of the two bills dealt with in clause 70 of Bill C-7 both concern section 64 of the current PSLRA. This section states that the FPSLREB must be satisfied on the basis of the results of a secret ballot representation vote that a majority of the employees in a proposed bargaining unit who have cast a ballot have voted to have the applicant employee organization represent them as their bargaining agent before it can proceed with certification.

Clause 8 of Bill C-4 removes the requirement for a secret ballot. In the amended section 64, the board must simply be satisfied that a majority of employees in a bargaining unit wish the applicant employee organization to represent them as their bargaining agent. If clause 8 comes into force before clause 10 of Bill C-7 (which simply adds a reference to the new Division 1 of Part 2.1), then it will be the governing provision and the secret ballot requirement will be removed. If, however, clause 10 of Bill C-7 comes into force before clause 8 of Bill C-4, then the secret ballot requirement will continue in force until such time as clause 8 comes into force.

The Senate Committee amended the bill such that there must be a secret ballot representation vote before an applicant employee organization can be certified as a bargaining agent.

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## NOTES

1. [Government Employees Compensation Act](#), R.S.C. 1985, c. G-5.
2. [Mounted Police Association of Ontario v. Canada \(Attorney General\)](#), [2015] 1 S.C.R. 3 [Mounted Police Association].
3. [Public Service Labour Relations Act](#), S.C. 2003, c. 22, s. 2.
4. [Mounted Police Association of Ontario, et al. v. Attorney General of Canada](#), Supreme Court of Canada, Docket 34948, 15 January 2016.
5. Treasury Board of Canada Secretariat, “[Government of Canada Introduces Legislation to Create a New RCMP Labour Relations Regime](#),” News release, 9 March 2016.

6. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10 [RCMP Act].
7. Royal Canadian Mounted Police [RCMP], [Organizational structure](#), 14 January 2016.
8. [Public Service Employment Act](#), S.C. 2003, c. 22, ss. 12, 13.
9. [Royal Canadian Mounted Police Regulations, 2014](#), SOR/2014-281 [RCMP Regulations].
10. *Ibid.*, s. 12.
11. Section 18 of the RCMP Act states:
 

It is the duty of members who are peace officers, subject to the orders of the Commissioner,

  - (a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;
  - (b) to execute all warrants, and perform all duties and services in relation thereto, that may, under this Act or the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;
  - (c) to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and
  - (d) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner.
12. [Financial Administration Act](#), R.S.C. 1985, c. F-11.
13. The mandate of the Royal Canadian Mounted Police External Review Committee is one of civilian oversight of labour relations within the RCMP. The Committee reviews certain types of grievances as well as appeals regarding formal disciplinary measures, and discharge and demotion cases.
14. Royal Canadian Mounted Police External Review Committee, [Grievance Process](#), 23 March 2015. See also RCMP Act, s. 32(1).
15. [Federal Courts Act](#), R.S.C. 1985, c. F-7.
16. RCMP Regulations.
17. [Commissioner's Standing Orders \(Conduct\)](#), SOR/2014-291.
18. RCMP, [Conduct process overview](#), 11 March 2015.
19. [An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts](#), S.C. 2013, c. 18.
20. Public Safety Canada, [Improving Accountability in Human Resources](#), 20 November 2015.
21. [Canada Labour Code](#), R.S.C. 1985, c. L-2.
22. Orders in Council P.C. 1918-2213 and P.C. 174/1981 (1945).
23. *Report of the Preparatory Committee on Collective Bargaining in the Public Service* [Heeney Report], July 1965, p. 27.
24. *Mounted Police Association*, paras. 9–16.
25. RCMP Regulations.

26. *Mounted Police Association of Ontario v. Canada (Attorney General)*, para. 2. The Pay Council is a council of five people established in May 1996 as an alternative to collective bargaining for resolving issues of pay, benefits and other working conditions. The council consists of an independent chairperson appointed by the commissioner in consultation with, and with the approval of, the Caucus of Staff Relations Representatives (SRRs); two management representatives appointed by the commissioner; and two member representatives appointed by the SRR Caucus.
27. *Ibid.*, paras. 26–28.
28. *Ibid.*, para. 5.
29. *Ibid.*, para. 83.
30. *Ibid.*, para. 5.
31. *Ibid.*, paras. 139–153.
32. *Ibid.*, paras. 154–158.
33. *Ibid.*
34. [Public Service Labour Relations and Employment Board Act](#), S.C. 2013, c. 40, s. 365.
35. See new section 238.02 of the Federal Public Sector Labour Relations Act (found in clause 33 of Bill C-7).
36. RCMP Act, s. 11(2).
37. [A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures](#), S.C. 2013, c. 40.
38. *An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts*, s. 86.
39. [Bill C-4, An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.