

**BILL C-40: AN ACT TO AMEND THE CANADA
LABOUR CODE, THE CANADA STUDENT FINANCIAL
ASSISTANCE ACT, THE CANADA STUDENT LOANS ACT
AND THE PUBLIC SERVICE EMPLOYMENT ACT**

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LEGISLATIVE HISTORY OF BILL C-40

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	4 February 2008
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SENATE

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N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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ASSISTANCE ACT, THE CANADA STUDENT LOANS ACT
AND THE PUBLIC SERVICE EMPLOYMENT ACT*

BACKGROUND

On 8 January 2008, the Minister of Labour, the Honourable Jean-Pierre Blackburn, announced the government's intention to table a bill to protect the civilian jobs of reservists working for federally regulated employers and the federal public service.⁽¹⁾ The proposed bill would also cover reservists attending post-secondary institutions full time, by allowing them to retain their active student status in the Canada Student Loans Program and exempting them from interest accrual and payment obligations while on leave.⁽²⁾

On 4 February 2008, in the 2nd Session of the 39th Parliament, Minister Blackburn tabled Bill C-40 (An Act to amend the Canada Labour Code, the Canada Student Financial Assistance Act, the Canada Student Loans Act and the Public Service Employment Act).⁽³⁾ On 13 February 2008, pursuant to the motion of the government House Leader, the Honourable Peter Van Loan, Bill C-40 was deemed to have moved through all stages and passed by the House.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Human Resources and Social Development Canada, "Canada moves forward on protecting jobs for reservists," News release, Kingston, 9 January 2008, <http://news.gc.ca/web/view/en/index.jsp?articleid=371299> (accessed 7 February 2008).

(2) Ibid.

(3) Note that a Private Senator's Public Bill to provide job protection for reservists was also tabled in the 2nd Session of the 39th Parliament. Bill S-202 (An Act to amend certain Acts to provide job protection for members of the reserve force), tabled by the Honourable Senator Hugh Segal, received first reading on 17 October 2007.

As anticipated, this bill amends the *Canada Labour Code*⁽⁴⁾ in order to provide employees with a right to job protection when they take a leave of absence without pay for service in the Reserve Force. It also prohibits discrimination in employment on the basis of reservist status. In the same vein, Bill C-40 amends the *Public Service Employment Act*,⁽⁵⁾ which governs the staffing process for the federal public service, to ensure that public servants have the right to reinstatement following an absence due to service in the Reserve Force. Finally, it amends the *Canada Student Loans Act*⁽⁶⁾ and the *Canada Student Financial Assistance Act*⁽⁷⁾ to allow the government to modify repayment and interest rules in the case of reservists who have student loans.

According to a news release from Human Resources and Social Development Canada,⁽⁸⁾ the proposed amendments will apply to some 3,000 reservists working in federal sectors (such as telecommunications, banks, interprovincial trucking, federal Crown corporations and the federal public service)⁽⁹⁾ and to 12,000 student reservists. In addition to the proposed amendments, the federal government also announced its intention to work with the provinces and territories regarding best practices and the uniform application of reservist reinstatement policies across Canada.⁽¹⁰⁾

(4) R.S.C. 1985, c. L-2.

(5) S.C. 2003, c. 22, ss. 12, 13.

(6) R.S.C. 1985, c. S-23.

(7) S.C. 1994, c. 28.

(8) Human Resources and Social Development Canada, "The Government of Canada stands up for the Canadian Reserve Force – Minister Blackburn introduces legislation to provide job protection for reservists and support to student reservists," News release, Ottawa, 4 February 2008, <http://news.gc.ca/web/view/en/index.jsp?articleid=376429> (accessed 7 February 2008).

(9) Federal jurisdiction over labour law arises from the right to regulate subjects expressly assigned to Parliament by section 91 of the *Constitution Act, 1867*, or expressly excepted from provincial jurisdiction by section 92. These subjects are of a national, international or interprovincial nature, such as railways and banks. In addition, Parliament has the jurisdiction to regulate works wholly within a province that have been declared by Parliament to be "for the general advantage of Canada or for the advantage of two or more of the provinces," such as grain elevators, feed mills and uranium mines. By virtue of its exclusive power to regulate certain works and undertakings, Parliament has the incidental power to enact labour laws relating to those works and undertakings.

Provincial authority to regulate labour laws derives from the "property and civil rights" head of power in subsection 92(13) of the *Constitution Act, 1867*. The right to enter into contracts is a civil right. Labour laws impose certain restrictions on contracts between employers and employees; therefore, these laws fall within provincial authority as property and civil rights legislation. Provinces also have the right to legislate on "local works and undertakings" other than those expressly assigned to Parliament (section 92(10)).

See Human Resources and Social Development Canada, "Division of Legislative Powers," http://www.hrsdc.gc.ca/en/lp/spila/cli/eslc/02Division_of_Legislative_Powers.shtml (accessed 7 February 2008).

(10) Ibid.

If Bill C-40 is adopted, the federal jurisdiction will join a growing number of Canadian jurisdictions that are providing job protection for reservists. To date, six provinces (Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island) have already enacted legislation to protect the civilian jobs of reservists working under their jurisdiction.⁽¹¹⁾ Many of Canada's allies, including the United States,⁽¹²⁾ the United Kingdom⁽¹³⁾ and Australia,⁽¹⁴⁾ have also adopted legislation to protect reservists against loss of civilian employment.

OVERVIEW OF THE RESERVE FORCE

The Canadian Reserve Force is provided for by section 15(3) of the *National Defence Act*.⁽¹⁵⁾ It is the component of the Canadian Forces that consists of “officers and non-commissioned members who are enrolled for other than continuing, full-time military service when not on active service.” The primary role of the Reserve Force is to augment, sustain and support the regular force.⁽¹⁶⁾ Existing reserve units could also be used to

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- (11) *Labour Standards Act* of Saskatchewan, R.S.S. 1978, c. L-1, section 80.1 and *Labour Standards Regulations*, 1995, R.R.S., c. L-1, Reg. 5, section 34.1; *Employment Standards Code* of Manitoba, C.C.S.M. c. E110, sections 59.5-60; *Employment Standards Act*, 2000 of Ontario, S.O. 2000, c. 41, section 50.2; *Employment Standards Act of New Brunswick*, S.N.B. 1982, c. E-7.2, section 44.031; *Labour Standards Code* of Nova Scotia, R.S.N.S. 1989, c. 246, section 60H and *General Labour Standards Code Regulations*, N.S. Reg. 298/90, section 7B; and *Employment Standards Act* of Prince Edward Island, R.S.P.E.I. 1988, c. E-6.2, section 23.1.
- (12) Job protection for reservists in the United States is accorded primarily under the *Uniformed Services Employment and Reemployment Rights Act* (USERRA) of 1994. USERRA provides reservists with a right to unpaid leave for service and to reinstatement following leave. The cumulative length of absences with the same employer generally cannot exceed five years. USERRA also prohibits discrimination in employment on the basis of military service. Further information is available on the website of the US Department of Labor at <http://www.dol.gov/vets/programs/userra/main.htm> (accessed 7 February 2008).
- (13) In the UK, reservists are protected under the *Reserve Forces (Safeguard of Employment) Act*, 1985. The Act provides employees with the right to unpaid, job-protected leave if they are mobilized for service and protects them against discrimination in employment on the basis that they are liable to be mobilized. Further information is available on the Ministry of Defence's SaBRE (Supporting Britain's Reservists and Employers) website at <http://www.sabre.mod.uk/output/page1.asp> (accessed 7 February 2008).
- (14) The *Australian Defence Reserve Service (Protection) Act 2001* and the *Defence Reserve Service (Protection) Regulations 2001* provide for the right to unpaid leave of a sufficient duration to cover a period of defence service and the right to reinstatement following such leave. The Act prohibits discrimination in employment on the basis of service in the Defence Reserves. For further information, please see the Defence Reserves Support website at <http://defencereserves.deadline.net.au/aspx/home.aspx> (accessed 7 February 2008).
- (15) R.S.C. 1985, c. N-5.
- (16) Human Resources and Social Development Canada (4 February 2008).

mobilize or expand the Canadian Forces should the nation ever need to respond to a large-scale crisis. Most reservists work part time with the Reserve Force, while holding civilian jobs full time or studying.⁽¹⁷⁾

There are currently more than 74,000 personnel with the Reserve Force, with more than 9,500 reservists in full-time employment with the Canadian Forces.⁽¹⁸⁾ The Primary Reserve, the largest subcomponent of the Reserve Force, is what is commonly referred to when using the term “reservists.”⁽¹⁹⁾ It has more than 34,000 members, who train regularly on a part-time basis with occupational periods of full-time service.⁽²⁰⁾ The Primary Reserve is divided into the following reserves: Naval, Army, Air, Communications, Health Services, Legal and the National Defence Headquarters Primary Reserve List. The other subcomponents of the Reserve Force are the Cadet Instructors Cadre, the Supplementary Reserve and Canadian Rangers.⁽²¹⁾

DESCRIPTION AND ANALYSIS

A. Amendments to the *Canada Labour Code* (clause 1)

Clause 1 of Bill C-40 amends Part III of the *Canada Labour Code* (CLC) to provide a right to unpaid leave of absence for qualifying employees to take part in specified operations and activities related to their membership in the Reserve Force.⁽²²⁾ Part III of the CLC establishes minimum labour standards for works, undertakings and businesses that fall under the legislative authority of the Parliament of Canada, including air and marine transportation; interprovincial and international rail, road and pipeline transportation; banking; broadcasting; telecommunications; and Crown corporations.⁽²³⁾ (The terms and conditions of employment of federal public servants are governed by other Acts, including the *Public Service Employment Act*,⁽²⁴⁾ as well as Treasury Board of Canada policies and regulations.)

(17) Department of National Defence, Army Reserve home page, http://www.army.forces.gc.ca/LF/English/army_reserve.asp (accessed 7 February 2008).

(18) Human Resources and Social Development Canada (4 February 2008).

(19) Ibid.

(20) Ibid.

(21) For further information on the Reserve Force, please the website of the Chief of Reserves and Cadets at http://www.vcds.forces.gc.ca/dres/intro_e.asp.

(22) Leave is provided under a new division of the CLC (Division XV.2, entitled “Leave of Absence for Members of the Reserve Force”), which is comprised of new sections 247.5-247.97.

(23) See Human Resources and Social Development Canada, “Division of Legislative Powers.”

(24) S.C. 2003, c. 22, s. 2.

In order to qualify for leave, employees must have completed at least six consecutive months of continuous employment with the same employer (or a shorter period of employment that is prescribed by regulation for some classes of employees). The operations and activities for which employees may take leave include:

- an operation in Canada or abroad that is designated⁽²⁵⁾ by the Minister of National Defence, including preparation, training, rest or travel time;
- an activity prescribed by regulation;
- annual training for up to 15 days, or another period prescribed by regulation;
- training that the employees are ordered to take, or duties they are called out on service to perform, under section 33(2)⁽²⁶⁾ of the *National Defence Act*; and
- service in aid of a civil power for which they are called out pursuant to section 275⁽²⁷⁾ of the *National Defence Act*.

In addition, employees can take leave for “treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from service” in any of the operations or activities just mentioned. Bill C-40 does not specify a limit as to the duration of leave (apart from leave for annual training) or the number of leaves of absence that may be taken in total. However, it allows the government to prescribe such limits by regulation.

(25) Bill C-40 also amends the CLC to empower the Minister of National Defence to designate an operation for these purposes, or to authorize another person to do so. It stipulates that a designation takes effect on the date on which it is made or any other date fixed by the Minister or other person. The Minister or other person making the designation can also fix the expiry date of the designation.

(26) Section 33(2) of the *National Defence Act* provides:

The Reserve Force, all units and other elements thereof and all officers and non-commissioned members thereof

(a) may be ordered to train for such periods as are prescribed in regulations made by the Governor in Council; and

(b) may be called out on service to perform any lawful duty other than training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council.

(27) Section 275 of the *National Defence Act* provides:

The Canadian Forces, any unit or other element thereof and any officer or non-commissioned member, with materiel, are liable to be called out for service in aid of the civil power in any case in which a riot or disturbance of the peace, beyond the powers of the civil authorities to suppress, prevent or deal with and requiring that service, occurs or is, in the opinion of an attorney general, considered as likely to occur.

Two major exceptions apply to the right to leave. Employees are not entitled to a leave of absence if the Minister of Labour is of the opinion that the leave would

- 1) adversely affect public health or safety; or
- 2) cause undue hardship to the employer.

Furthermore, in order to take a leave of absence, employees are subject to extensive notice requirements. First, they must provide at least four weeks' notice to their employer before the date on which leave is to begin, unless there is a valid reason for not doing so, in which case they must notify their employer "as soon as practicable." They must also inform their employer of the length of leave. Second, they must notify their employer of any change in the length of the leave at least four weeks before the new day on which the leave is to end, if they are taking a shorter leave than anticipated, or four weeks before the day that was most recently indicated for the leave to end, if the leave is longer. Employees may be excused from this requirement if there is a valid reason for not notifying the employer of the change. Third, all of the required notices and information must be provided in writing, unless there is a valid reason for not doing so.

Finally, if employees do not notify the employer at least four weeks in advance of the end date of leave, the employer is entitled to postpone their return to work for up to four weeks from the date on which they actually do provide notice.⁽²⁸⁾ The period of postponement is deemed to be part of the leave.

Employers can request proof that employees are entitled to take a leave of absence. In this case, employees must provide their employer with a document that was approved by the Chief of the Defence Staff appointed under the *National Defence Act* or a document prescribed by regulation (if any). In the absence of such documentation, employees must, upon the request of the employer, provide it with a document from their commanding officer specifying that they are taking part in an operation or activity covered by the CLC. Proof of entitlement to a leave of absence must be provided within three weeks after the day on which the leave begins, unless there is a valid reason for not doing so.

Upon returning to work, employees have the right to be reinstated in the position that they occupied immediately before the leave of absence began or, if the employer is unable to reinstate them in that position for a valid reason, in a comparable position in the same location

(28) This provision does not apply where employees have informed their employer as required of the length of leave, and the length has not changed since leave began.

with the same wages and benefits. However, employees who are not able to perform the functions of their former position, or of a comparable one, may be assigned to a position with different terms and conditions of employment.

Leaves of absence are unpaid, and employers are not required to provide benefits during an employee's leave. However, employment before and after such leave is deemed to be continuous for the purposes of calculating benefits (e.g., pension, health and disability benefits). Furthermore, seniority continues to accrue during the leave. Employees are also entitled to postpone their annual vacations until after the end of their leave of absence.

If there is a reorganization in the workplace during the employee's absence, resulting in changes to the wages and benefits of the employee group of which he or she is a member, the employee is entitled, upon reinstatement, to the wages and benefits that would have applied had he or she been working during the reorganization. The employer must notify the employee of any changes to wages and benefits resulting from the reorganization. Furthermore, the provisions of the CLC that deem employment to be continuous before and after a transfer of a business apply even if the employee is absent during the transfer due to reservists' leave.

Bill C-40 also amends the CLC to protect reservists from discrimination in employment. Employers are prohibited from dismissing, suspending, laying off, demoting, or disciplining employees because of their membership in the Reserve Force or because they exercise the right to a leave of absence. Employers also cannot take into account, in deciding whether or not to promote or train an employee, the fact that a person is a member of the Reserve Force or has exercised the right to a leave of absence. Furthermore, employers may not refuse to employ a person on the grounds that he or she is a member of the Reserve Force.

Finally, Bill C-40 amends the CLC to allow the government to make regulations concerning leaves of absence for members of the Reserve Force.

B. Amendments to the *Public Service Employment Act* (clause 6)

The *Public Service Employment Act* (PSEA) establishes the staffing framework for the public service.⁽²⁹⁾ Bill C-40 amends the PSEA to provide for a right to reinstatement for public service employees who take a leave of absence for any of the operations or activities for

(29) The term "public service" refers to the positions in the departments, organizations and agencies listed in Schedules I, IV and V, respectively, of the *Financial Administration Act*.

which reservists' leave may be taken under the CLC. The amendment requires deputy heads to reinstate employees in the position that they held immediately before the leave begins, unless this is not possible because of a workforce adjustment.⁽³⁰⁾

Note that the proposed amendment to the PSEA does not accord employees the right to a leave of absence, but only the right to reinstatement following such leave. The "Backgrounder" to Bill C-40 indicates that the government will amend Treasury Board policies⁽³¹⁾ in order to provide public service employees with protections equivalent to those that will be provided to employees who are covered by the CLC.⁽³²⁾

C. Amendments to the *Canada Student Financial Assistance Act* and the *Canada Student Loans Act* (clauses 2-4)

The Canada Student Loans Program (CSLP) provides loans and grants to qualified students who need financial assistance to pursue post-secondary education. The mission of the CSLP, which was created in 1964, is to promote accessibility to post-secondary education for students with a demonstrated financial need by lowering financial barriers through the provision of loans and grants, and to ensure Canadians have an opportunity to develop the knowledge and skills needed to participate in society and the workplace.⁽³³⁾

(30) The term "workforce adjustment" is not defined in the PSEA or in Bill C-40. However, the *Work Force Adjustment Directive* of the Treasury Board of Canada defines "workforce adjustment" as follows:

Work force adjustment (réaménagement des effectifs) – is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function, a relocation in which the employee does not wish to relocate or an alternative delivery initiative.

The *Work Force Adjustment Directive* was developed in partnership by employer and bargaining agent representatives at the National Joint Council (NJC) of the Public Service of Canada. Its provisions form part of the collective agreements of the participating parties. The provisions also apply to persons not covered by collective agreements as indicated in the Directive or by employer policy. The text of the Directive is available on the Treasury Board of Canada Secretariat website at http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_858/wfad-dre-PR_e.asp?printable=True (accessed 7 February 2008).

(31) The terms and conditions of employment of federal public service employees are set out in a number of different instruments. The *Public Service Terms and Conditions of Employment Regulations* (Appendix A to the Treasury Board of Canada's *Terms and Conditions of Employment Policy*), and other relevant employment policies established by the Treasury Board, are intended to ensure consistent terms and conditions of employment for those public servants for whom the Treasury Board is the employer.

(32) Human Resources and Social Development Canada (4 February 2008).

(33) Human Resources and Social Development Canada, *About the Canada Student Loans Program*, 29 September 2006, http://www.hrsdc.gc.ca/cgi-bin/hrsdsc-rhdsc/print/print.asp?Page_Url=/en/hip/cslp/about/01_ab_missionprogram.shtml (accessed 7 February 2008).

The Government of Canada jointly administers the CSLP and other forms of student financial assistance with nine participating provinces and the Yukon Territory. The Government of Canada provides transfer payments to Quebec, the Northwest Territories and Nunavut for their own provincial/territorial student assistance programs, as these jurisdictions do not participate directly in the CSLP. The participating provinces and territories determine eligibility and assess students' financial need based on federal criteria, award the aid by issuing a loan certificate, and designate eligible educational institutions. The funding of a borrower's loan is shared by federal and provincial/territorial governments. The Government of Canada funds 60% of a borrower's loan, up to a weekly maximum, while provincial and territorial governments fund the remaining 40%.⁽³⁴⁾

The *Canada Student Loans Act* applies to loans negotiated prior to 1 August 1995. The *Canada Student Financial Assistance Act* applies to loans negotiated on or after that date.⁽³⁵⁾ Since 1964, there have been three different loan regimes under the CSLP: guaranteed loans, risk-shared loans, and direct loans. Between 1964 and 1994, financial assistance was provided to students through banks and credit unions in the form of 100% government-guaranteed loans. In 1995, the *Canada Student Financial Assistance Act* was enacted to allow for a risk-sharing arrangement between the federal government and nine participating financial institutions. Under this arrangement, the government paid lenders a risk premium of 5% a year of the value of loans in repayment, in order to compensate for defaults. Recovery of loans was the full responsibility of financial institutions. As of 1 August 2000, the federal government directly finances loans. The *Canada Student Financial Assistance Act* and its regulations were amended in 2000 to allow for directly financed loans.⁽³⁶⁾

Borrowers are subject to repayment obligations and interest accrual when they are no longer in school (whether by graduation, leaving school or taking time off from studies). Borrowers must generally begin repaying their Canada Student Loan six months after full-time studies end, and interest begins to accrue on the loan after the end of that six-month period.⁽³⁷⁾

(34) Human Resources and Social Development Canada, *Canada Student Loans Program Annual Report, 2004-2005*, Gatineau, Quebec, 2007, p. 6.

(35) See Human Resources and Social Development Canada (29 September 2006).

(36) Ibid.

(37) Government of Canada, *Investing in Your Future: Canada Student Loans Program for Full-Time Students (Information Guide)*, November 2006, pp. 10 and 15.

Bill C-40 amends the *Canada Student Financial Assistance Act* and the *Canada Student Loans Act* to allow the Minister of Human Resources and Social Development to enter into an agreement with a lender respecting the payment of interest by borrowers who are members of the Reserve Force. The Minister may also enter into an agreement with a province respecting the payment of interest on provincial student loans. In the absence of an agreement, the Minister may pay the interest on the borrowers' behalf. Bill C-40 also amends the two Acts to allow the Government to make regulations respecting the circumstances in which no interest, principal or fees will be payable by members of the Reserve Force for their student loans.

D. Coming Into Force (clause 7)

The provisions of Bill C-40 come into force on a date or dates to be fixed by the order of the Governor in Council.

COMMENTARY

Measures to protect the jobs of reservists have been the subject of debate for a number of years in Canada. The 1995 Special Commission on the Restructuring of the Reserves⁽³⁸⁾ recommended the adoption of job-protection legislation. The 1995 Commission

(38) National Defence Minister David Collenette appointed the Special Commission on the Restructuring of the Reserves (SCRR) on 5 April 1995. The SCRR was charged with the task of examining the "need to restructure Canada's Reserve Forces, notably the Militia, with the aim of enhancing their ability to respond to requirements in the new global environment."

At the time, Canada was relying heavily on Reserve Force units to bolster Regular Force units in order to meet its peacekeeping commitments in Yugoslavia and elsewhere. Moreover, in 1992 and again in 1994, the Auditor General of Canada issued reports on the state of the Reserve Force that painted a bleak picture of the Reserve Force's readiness, equipment and training. The Special Joint Committee of the Senate and the House of Commons on Canada's Defence Policy also examined the Reserves in 1994, and recommended a significant reorganization of the Reserve Force, as well as a bolstering of their training and equipment to allow them to provide more effective support to the Regular Force. Finally, the 1994 Defence White Paper called for a more thorough examination of the Primary and Supplementary Reserves.

The SCCR, composed of the Right Honourable Brian Dickson (Chairman), Lieutenant-General (Retired) Charles H. Belzile, and Professor Jack Granatstein, held public hearings throughout Canada before presenting its report on 30 October 1995. The report contained 41 recommendations. One of its major recommendations was the amendment of the mobilization plan outlined in the 1994 Defence White Paper in order to define more clearly the role reserve units would be expected to play. Most of the other major recommendations dealt with the Militia.

See Michel Rossignol, *The Reserve Force of the Canadian Forces: Restructuring Process*, MR-138E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 10 May 1996. And see J.L. Granatstein and LGeneral (Ret'd) Charles Belize, *The Special Commission on the Restructuring of the Reserves, 1995: Ten Years Later*, Canadian Defence and Foreign Affairs Institute and the Centre for Military and Strategic Studies, University of Calgary, September 2005, pp. 5-8.

was concerned that reservists might be called up or volunteer for service and, as a result, lose their jobs. This was especially worrying in the case of specialists whose skills could help the Canadian Forces. The Commission recommended that job-protection legislation provide for time off for reserve training and require an employer to accommodate, if reasonably possible, a reservist's request for longer periods of leave for the purpose of participating in Canadian Forces operations.⁽³⁹⁾ A follow-up Commission report published in 2005⁽⁴⁰⁾ reiterated the concern that reservists deployed abroad would lose their civilian jobs as a result, and recommended that job-protection legislation be implemented to ensure sufficient numbers of Army Reserve soldiers could be secured for Task Force deployments. The 2005 report also pointed out that the United States had implemented job-protection legislation for reservists deployed abroad.⁽⁴¹⁾

Others, including the Canadian Forces Liaison Council (CFLC), have in the past hesitated to support job-protection legislation. To date, the Department of National Defence has relied on the work of the CFLC, which is composed of Canadian business people, to educate employers on the roles and value of reservists and to encourage them to voluntarily reinstate reservists who are absent because of training and military operations.⁽⁴²⁾ The CFLC had previously taken the position that since Reserve service is voluntary, job protection for reservists should also be voluntary, rather than required by legislation.⁽⁴³⁾ There have also been concerns that legislated job protection could result in discrimination in hiring practices whereby employers could, for example, avoid hiring or promoting reservists because of the possibility that they might be absent for a long time due to military duty.⁽⁴⁴⁾ **However, through the testimony of its representative before the Standing Senate Committee on National Security and Defence, the CFLC took a supportive position in relation to Bill C-40. In its report on Bill C-40, the Standing Senate Committee on National Security and Defence formulated two suggestions that would draw on the expertise of the CFLC.⁽⁴⁵⁾ First, the Committee proposed that, in the preparation of regulations to be adopted under section 247.97 of the *Canada Labour***

(39) Granatstein and Belize (2005).

(40) Ibid.

(41) Ibid., pp. 18-20 and 36.

(42) Goetz et al., *Bill C-7: The Public Safety Act, 2002*, LS-463E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 12 February 2004, p. 32.

(43) See the Canadian Forces Liaison Council website at http://www.cflc.forces.gc.ca/general/council/council_e.asp (accessed 8 February 2008).

(44) Goetz et al. (2004), p. 32.

(45) See *Standing Senate Committee on National Security and Defence, Fifth Report, 16 April 2008*, <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/defe-e/rep-e/rep05apr08-e.htm>.

Code, as amended by Bill C-40, the Minister of Labour consult with the CFLC, among others. Second, the Committee suggested that the CFLC monitor the impact of Bill C-40, the CFLC's findings be reported to the Minister of National Defence, and such findings be tabled before both Houses of Parliament.

In the wake of the 11 September 2001 terrorist attacks, the federal government introduced a number of bills that implemented various measures to deal with the threat of terrorism. One of these bills was the *Public Safety Act, 2002* (Bill C-7)⁽⁴⁶⁾ tabled in its original form in November 2001.⁽⁴⁷⁾ It was considered by Parliament over a period of almost three years and in various forms before it was given Royal Assent on 6 May 2004.

The bill proposed a number of amendments to 23 different Acts, including the *National Defence Act*. The proposed amendments to the *National Defence Act* included new provisions to accord reservists the right to reinstatement in their civil employment when they were called up on service in respect of an “emergency,” defined as an insurrection, riot, invasion, war or armed conflict. The amendment would apply to officers and non-commissioned members of the Reserve Force. Employers would be required to reinstate a reservist called up on duty, even if the reservist was hospitalized following duty to recover from injuries. However, these provisions, like other aspects of the *Public Safety Act, 2002*, have not been proclaimed into force. This is perhaps due to the controversial nature of other features of the legislation, as well as the requirement in the *Public Safety Act, 2002* for the Minister involved to consult with provincial governments and other individuals or groups before implementing the job-protection legislation. In July 2004, a message to Canadian Forces personnel (CANFORGEN) indicated that the process of implementing the job-protection provisions was expected to take two years.⁽⁴⁸⁾ **To ensure that Bill C-40 was reconciled with and did not overlap with sections 285.01 to 285.13 of the *National Defence Act* when the sections come into effect, the Standing Senate Committee on National Security and Defence, in its observations⁽⁴⁹⁾ on the bill, proposed that the Minister of National Defence and the Minister of Labour conduct a joint study.⁽⁵⁰⁾**

(46) Now chapter 15 of the Statutes of Canada, 2004.

(47) For further information about Bill C-7, please see Goetz et al. (2004).

(48) See paragraph 2 of CANFORGEN 090/04 of July 2004 from the office of the Assistant Deputy Minister, Human Resources – Military (ADM/HRMIL), Department of National Defence.

(49) **Observations carry no legal weight but serve to indicate to the Senate and the government some of the issues the Committee was concerned with. As noted in a Speaker's Ruling from the Senate, “These observations are not a procedurally significant part of [Senate Committee] reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation.” Senate, Journals, 11 December 2002, p. 412.**

(50) See Standing Senate Committee on National Security and Defence (16 April 2008).

The 2005 Commission Report described the proposed job-protection legislation as a good step forward, but insufficient because of its limitation to emergency situations.⁽⁵¹⁾ For instance, the report noted that overseas operations would not be covered by the proposed amendments.⁽⁵²⁾ Bill C-40, which covers absences due to training, overseas operations and other “non-emergency” activities, is broader in scope. However, note that Bill C-40 only applies to workers who fall under federal jurisdiction, whereas the proposed amendments to the *National Defence Act* under the *Public Safety Act, 2002* would apply to all workers across Canada.

Federal legislation that would extend the job-protection measures under the *National Defence Act* to cover non-emergency situations could be unconstitutional. The *Public Safety Act, 2002* would provide reservists with job protection in emergency situations on the basis of Parliament’s legislative jurisdiction over the “militia, military, naval service and defence” (section 91(7) of the *Constitution Act, 1867*), but this authority may not be seen as justifying such a broad measure. The government has been seeking provincial cooperation with respect to the implementation of the Bill C-7 amendments, presumably to avoid any court challenge, or other dispute, on the basis that the bill infringes on provincial jurisdiction over labour laws. On the other hand, the fact that many of the provinces have now adopted job-protection legislation for reservists has narrowed the legislative gap in this area: the federal government may have decided for that reason to implement broad protections to cover those workers falling under its jurisdiction.

Bill C-40 has been widely reported on in the media, but does not seem to be controversial, perhaps because many of the provinces have already adopted similar legislation.

(51) Granatstein and Belize (2005), p. 19.

(52) Ibid.