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LEGISLATIVE SUMMARY



Bill C-27:

An Act to amend the Public Service Employment Act (enhancing hiring opportunities for certain serving and former members of the Canadian Forces)

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Jean-Rodrigue Paré

Legal and Social Affairs Division
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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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CONTENTS

1	BACKGROUND.....	1
1.1	The <i>Public Service Employment Act</i>	1
1.2	Priority Hiring in the Public Service.....	2
1.2.1	Enhanced Priority for Canadian Armed Forces Members Released for Medical Reasons	3
1.3	Access to Public Service Positions for Canadian Armed Forces Members Having Accumulated Three Years of Service	3
1.3.1	Internal Appointments.....	3
1.3.2	External Appointments	4
1.4	Summary of Amended Priority Appointments.....	4
2	DESCRIPTION AND ANALYSIS	5
2.1	Priority for Appointment over All Other Persons for Members of the Canadian Armed Forces Released for Medical Reasons that are Attributable to Service (Clause 7)	5
2.1.1	Retroactivity to 1 April 2012 (Clause 13).....	5
2.1.2	Creation of Appointment Priority and Consequences (Clauses 2 and 5)	5
2.1.3	Management of Priority Rights (Clauses 8 to 10)	5
2.1.3.1	Creation of a Priority Right for Another Person (Clause 8)	5
2.1.3.2	Deployments (Clause 9)	6
2.1.3.3	Complaints Regarding Internal Appointments (Clause 10)	6
2.2	Preference Given to Veterans Having Accumulated Three Years of Service (Clauses 6 and 12).....	6
2.3	Opportunity for Serving Members and Veterans to Apply for Positions Reserved for Members of the Public Service (Clauses 3 and 4).....	6
3	COMMENTARY	7

LEGISLATIVE SUMMARY OF BILL C-27: AN ACT TO AMEND THE PUBLIC SERVICE EMPLOYMENT ACT (ENHANCING HIRING OPPORTUNITIES FOR CERTAIN SERVING AND FORMER MEMBERS OF THE CANADIAN FORCES)

1 BACKGROUND

Bill C-27: An Act to amend the Public Service Employment Act (enhancing hiring opportunities for certain serving and former members of the Canadian Forces) (short title: Veterans Hiring Act) was introduced in the House of Commons on 4 March 2014 by the Leader of the Government in the House of Commons, the Honourable Peter Van Loan, on behalf of the Minister of Veterans Affairs, the Honourable Julian Fantino.

It amends the *Public Service Employment Act* (PSEA):¹

- by mirroring the provisions in Bill C-11,² introduced on 7 November 2013, to grant priority for appointment in the federal public service to members of the Canadian Armed Forces (CAF) who are released from military service for medical reasons attributable to service;
- by adding new provisions to allow:
 - active members of the CAF who accumulate at least three years of service to apply for positions reserved for members of the public service (“advertised internal appointment process”);
 - veterans who have been honourably released from the CAF after having accumulated at least three years of service to have this same right during a period of five years after their release; and
- by amending the definition of “veteran” to allow all members who have been honourably released from the CAF and who have accumulated at least three years of service to benefit from a “preference” in any external appointment to a position in the public service if they meet the essential qualifications and once priority rights have been exercised (the definition of a “survivor of a veteran” nevertheless continues to be restricted to the surviving spouse or common-law partner of a veteran who served in the Second World War).

1.1 THE *PUBLIC SERVICE EMPLOYMENT ACT*

The PSEA was enacted as Part 3 of the *Public Service Modernization Act* on 7 November 2003 and came into force on 31 December 2005. It governs the staffing process in the federal public service, which means staffing in all institutions listed in schedules I, IV and V of the *Financial Administration Act*.³

Under the PSEA, the Public Service Commission of Canada (PSC) is responsible for recruiting and appointing qualified persons to the public service. The PSC may delegate this authority to the deputy heads of each federal institution that is subject

to the PSEA, and it may make exclusions. The deputy heads report to the PSC on how their delegation is used, and the PSC tables in Parliament its assessment of the compliance of staffing practices in federal institutions with the PSEA.

1.2 PRIORITY HIRING IN THE PUBLIC SERVICE

Under the PSEA and the *Public Service Employment Regulations* (PSER),⁴ certain categories of individuals who meet specific criteria have a priority right to appointments in the federal public service over all other persons. Provided that the eligible candidates meet the essential qualifications of the position, the priority levels set out in the PSEA, including under the amendments made in Bill C-27, would follow this order:

1. a member who is released from the CAF for medical reasons that are *attributable to military service*;
2. an employee who is surplus within his or her organization – who has been informed that he or she will be laid off⁵ but has not yet been laid off – because the employee’s services are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside of the public service (section 40 of the PSEA);
3. both an employee on leave of absence whose position was staffed for an indeterminate period and a person who replaced an employee on leave of absence, if that replacement was appointed for an indeterminate period, a priority over all others for up to one year following the return of the employee who had been on leave of absence (sections 41(1)(a) and 41(1)(b) of the PSEA);
4. a person already laid off because his or her services are no longer necessary for the reasons listed in point 1 (section 41(4) of the PSEA);
5. the following persons or classes of persons designated by the PSER pursuant to section 22(2)(a) of the PSEA, who are given fourth level priority over all others, in no particular order:
 - before a layoff becomes effective, a surplus employee from another federal organization whose services are no longer required but before any layoff becomes effective (section 5 of the PSER);
 - an employee who becomes disabled and is no longer able to carry out the duties of his or her position (section 7 of the PSER);
 - a member of the CAF or the Royal Canadian Mounted Police (RCMP) who is released or discharged for medical reasons (section 8 of the PSER);
 - the surviving spouse or common-law partner of an employee or of a member of the CAF or the RCMP whose death is attributable to the performance of duties (section 8.1 of the PSER);
 - an employee on a leave of absence as a result of the relocation of his or her spouse or common-law partner (section 9 of the PSER); and
 - a priority employee who was appointed or deployed to a lower level position in the public service (section 10 of the PSER).

Priority consideration given to members of the CAF released for medical reasons *not attributable to military service* continues to have the same standing as other fifth-level priority categories provided by the PSEA. (For members of the RCMP, the fifth-level priority category applies to all releases for medical reasons, whether attributable to service in the RCMP or not.)

1.2.1 ENHANCED PRIORITY FOR CANADIAN ARMED FORCES MEMBERS RELEASED FOR MEDICAL REASONS

Bill C-27, mirroring the provisions of Bill C-11, which precedes it, adds a priority right that takes precedence over all others. This right is given to members of the CAF released for medical reasons, provided that these reasons are attributable to their military service.

This new right creates a distinction between members of the CAF released for medical reasons that are attributable to service and those released for medical reasons that are not attributable to service. This second group continues to receive priority under the PSER – now for a longer period – while the priority for those released for medical reasons that are attributable to service takes precedence over any other group designated in the PSEA or the PSER.

Currently, the PSER states that members of the CAF released for medical reasons have:

- up to five years following their release to *assert their right* to priority appointment if the individual is certified within this period as being ready to return to work; and
- up to two years starting from the date on which the individual asserted his or her right to *exercise this priority* and apply for positions.

Minister Fantino has stated that the PSER will also be amended so that the priority will be valid for five years following the date on which the member of the CAF asserts his or her right. The amendment to the PSER should entitle all those released for medical reasons – whether attributable to service or not – to benefit from this new five-year window. This means that all members released for medical reasons will have five years to recover, and, once they are fit to work, be entitled to the priority right for another five-year period.

Furthermore, the definition of who is considered personnel of the CAF will now include persons who are members of cadet organization administration and training services, as well as members of Rangers.⁶

1.3 ACCESS TO PUBLIC SERVICE POSITIONS FOR CANADIAN ARMED FORCES MEMBERS HAVING ACCUMULATED THREE YEARS OF SERVICE

1.3.1 INTERNAL APPOINTMENTS

Currently, active members of the CAF cannot participate in an “advertised internal appointment process” – meaning restricted to members of the public service – unless the organizational criteria for the position state that it can only be filled by a member

of the CAF. From now on, all active members of the CAF having accumulated at least three years of service can apply for any position for which they meet the essential qualifications, as if they were part of the public service.

This right is extended to veterans who have been honourably released and have accumulated three years of service, but for a limited period of five years after their date of release from the CAF.

1.3.2 EXTERNAL APPOINTMENTS

Currently, sections 39(1)(a) and 39(1)(b) of the PSEA give “a person who is in receipt of a pension by reason of war service” and “a veteran or a survivor of a veteran,” in that order, preference over “a Canadian citizen” in an “advertised external appointment process,” meaning a process not restricted to members of the public service.

However, according to the definitions of a “person in receipt of a pension by reason of war service” and a “veteran” provided in the schedule to the PSEA, this preference applies to veterans of the Second World War only. These sections are for all practical purposes obsolete, since few survivors remain whose age would allow them to exercise this right to a preference.

The bill amends the definition of “veteran,” and it allows all former members honourably released from the CAF and having accumulated three years of service to benefit from this preference, if they meet the essential qualifications of the position.

1.4 SUMMARY OF AMENDED PRIORITY APPOINTMENTS

Pursuant to the amendments made by this bill, appointments will be made in the following order, if the candidate meets the essential qualifications of the position:

1. a member who is released from the CAF for medical reasons that are attributable to service;
2. all other individuals benefiting from a priority right, in the order described in section 1.2 of this Legislative Summary;
3. in the following order for positions that are not restricted to current members of the public service, and if more than one candidacy remains once all priority rights have been exercised:
 - CAF veterans having accumulated three years of military service;
 - other Canadian citizens.

2 DESCRIPTION AND ANALYSIS

2.1 PRIORITY FOR APPOINTMENT OVER ALL OTHER PERSONS FOR MEMBERS OF THE CANADIAN ARMED FORCES RELEASED FOR MEDICAL REASONS THAT ARE ATTRIBUTABLE TO SERVICE (CLAUSE 7)

Clause 7 of Bill 27 mirrors the wording of clause 5 of Bill C-11. It adds new section 39.1 to the PSEA, under which top priority for appointment to a public service position is given to members of the CAF released for medical reasons that are attributable to service.

2.1.1 RETROACTIVITY TO 1 APRIL 2012 (CLAUSE 13)

Clause 13 of Bill C-27 mirrors the wording of clause 9 of Bill C-11. Under this clause, the bill's provisions are made retroactive to 1 April 2012. This provision allows members of the CAF who are released for medical reasons that are attributable to service and who assert their priority status under the PSER after 1 April 2012 to be given top priority for appointment for up to five years after this priority has taken effect, once the bill has come into force, instead of for the two years currently provided by the PSER. This extension is also given to veterans whose former two-year priority status expired after 1 April 2012 and before the bill comes into force.

2.1.2 CREATION OF APPOINTMENT PRIORITY AND CONSEQUENCES (CLAUSES 2 AND 5)

Clauses 2 and 5 of Bill C-27 mirror the wording of clauses 2 and 3 of Bill C-11.

Under section 22(2)(a) of the PSEA, the PSC may determine who will be granted a priority right under the PSER. Such statutory priorities are last in the order of precedence of priority rights. Clause 2 places new section 39.1 at the top of the list of priority rights that take precedence over those provided for by the PSER.

According to the *Public Service Commission Guide on Priority Administration*:

Priority persons need only meet the *essential qualifications* referred to in PSEA 30(2)(a) and the conditions of employment of the position in order to be appointed. They are *not* required to meet any other merit criteria, such as asset qualifications, operational requirements or current or future organizational needs.⁷ [Emphasis in original]

Clause 5 extends this exemption to members of the CAF released for medical reasons that are attributable to service and who have a priority right.

2.1.3 MANAGEMENT OF PRIORITY RIGHTS (CLAUSES 8 TO 10)

2.1.3.1 CREATION OF A PRIORITY RIGHT FOR ANOTHER PERSON (CLAUSE 8)

Section 43 of the PSEA provides the PSC with the discretionary authority to not apply a priority right if, by domino effect, it would create a new priority right by requiring another person to be declared surplus. Clause 8 adds a reference to new

section 39.1 and consequently adds to the list of priority rights that the PSC may choose not to apply the priority right of members of the CAF released for medical reasons that are attributable to service.

2.1.3.2 DEPLOYMENTS (CLAUSE 9)

Under section 53(2) of the PSEA, the deputy head of a federal institution may disregard priority rights in the case of a deployment. Clause 9 adds a reference to new section 39.1, thereby adding priority rights for members of the CAF released for medical reasons that are attributable to service to those that a deputy head may disregard.

2.1.3.3 COMPLAINTS REGARDING INTERNAL APPOINTMENTS (CLAUSE 10)

Under section 87 of the PSEA, appointments resulting from the exercise of a priority right may not be appealed to the Public Service Staffing Tribunal. Clause 10 adds priority rights for members of the CAF released for medical reasons that are attributable to service to the list of priority rights for which appointments cannot be appealed.

2.2 PREFERENCE GIVEN TO VETERANS HAVING ACCUMULATED THREE YEARS OF SERVICE (CLAUSES 6 AND 12)

Since there are few “person[s] in receipt of a pension by reason of war service” or “veteran[s]” of the Second World War – using the definitions found in the schedule to the PSEA – whose age would allow them to exercise this right to a preference (see section 1.3.2 of this Legislative Summary), existing section 39(1) of the PSEA states simply that, subject to certain priorities, preference is given to “Canadian citizen[s]” in an “advertised external appointment process,” meaning a competition not restricted to members of the public service.

Clause 12 updates the preference list in section 39(1) of the PSEA by adding CAF veterans having accumulated three years of military service to the definition of “veteran.” For external appointments, this amendment gives these veterans preference over Canadian citizens in general. Section 6(2) of the bill provides that this preference is valid for five years after their date of release from the CAF.

Clause 12 also specifies that the definition of “survivor of a veteran” remains restricted to survivors of veterans who served in the Second World War.

2.3 OPPORTUNITY FOR SERVING MEMBERS AND VETERANS TO APPLY FOR POSITIONS RESERVED FOR MEMBERS OF THE PUBLIC SERVICE (CLAUSES 3 AND 4)

Clause 3 opens an “advertised internal appointment process” to active members of the CAF who have accumulated three years of military service. However, like other candidates, the appointment must respect, where applicable, the criteria set out in the *Employment Equity Act*.

Clause 4 opens this same process to members who have been honourably released from the CAF and who have accumulated three years of military service. This right is limited to the five years following their honourable release from the CAF, during which time they are deemed to be employed in the public service. Their appointment must therefore meet the same conditions as those for other members of the public service, including the criteria set out in the *Employment Equity Act*.

3 COMMENTARY

During debate at second reading in the House of Commons on 16 May 2014, the opposition parties gave their support to the bill, while pointing out that the bill would likely have limited impact on the employment of veterans in the federal public service.⁸

Veterans Ombudsman Guy Parent had offered support for the Bill C-11, but he had raised some concerns over the distinction made between members released for medical reasons that are attributable to service and those released for medical reasons that are not:

I believe that all medically releasing [*sic*] Canadian Armed Forces members should be treated the same way, because there is an inherent service relationship for every Canadian Armed Forces member who is medically released because the individual can no longer serve in uniform.⁹

On an administrative point, Member of Parliament Sylvain Chicoine had already pointed out that Bill C-11 – which is also true for Bill C-27 – does not specify who is responsible for determining whether the medical reasons resulting in a member's release are attributable to military service or not and that this may pose a problem with respect to the bill.¹⁰

Currently, the decision to release a member of the CAF for medical reasons is the responsibility of the CAF, while the responsibility for confirming the link between medical reasons and military service lies with Veterans Affairs Canada. Veterans who believe that their release for medical reasons is attributable to military service may, if the department does not share that view, appeal to the Veterans Review and Appeal Board. This may entail a lengthy process that could shorten or completely eliminate the priority period provided by the bill to the individual in question. Not until the amendments to the PSER are published will there be a clear picture as to how this situation will be handled.

At second reading debate, Mr. Chicoine also tried to find out why members of the RCMP are excluded from the opportunities provided by Bill C-27.¹¹ Member of Parliament Rosane Doré Lefebvre tried to discover why surviving spouses of veterans who died as a result of Canadian military operations since the Second World War are excluded.¹² At the time of writing, the main veterans' rights organizations had yet to make their official position on the bill known.

NOTES

1. [Public Service Employment Act](#), S.C. 2003, c. 22, ss. 12 and 13.
2. [Bill C-11: An Act to amend the Public Services Employment Act \(priority hiring for injured veterans\) \(short title: Priority Hiring for Injured Veterans Act\)](#), 2nd Session, 41st Parliament.
3. [Financial Administration Act](#), R.S.C., 1985, c. F-11.
4. [Public Service Employment Regulations](#), SOR/2005-334.
5. This priority for appointment is valid only during the period prior to the layoff, within a single federal institution.
6. House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 2nd Session, 41st Parliament, 19 November 2013, 1158 (Honourable Julian Fantino, Minister of Veterans Affairs); House of Commons, [Debates](#), 2nd Session, 41st Parliament, 20 November 2013, 1520 to 1525 (Honourable Julian Fantino, Minister of Veterans Affairs); see also Veterans Affairs Canada, [“Government of Canada Announces Priority Hiring for Injured Veterans.”](#) News release, 7 November 2013.
7. Public Service Commission of Canada, [“Nature of Entitlements.”](#) Section 1.3 in “Part I – General Information Applicable to All Priority Types,” *Public Service Commission Guide on Priority Administration*.
8. House of Commons (20 November 2013), 1520 to 1725.
9. Guy Parent, Veterans Ombudsman, [Changes to Priority Hiring of Veterans in the Public Service](#), Blog, 15 November 2013.
10. House of Commons (20 November 2013), 1555 (Sylvain Chicoine, MP, Châteauguay–Saint-Constant).
11. House of Commons, [Debates](#), 2nd Session, 41st Parliament, 16 May 2014, 1045 (Sylvain Chicoine, MP, Châteauguay–Saint-Constant).
12. *Ibid.*, 1310 (Rosane Doré Lefebvre, MP, Alfred–Pellan).