



Merit Commissioner

Upholding Fair Hiring in
the BC Public Service



2011/2012 Annual Report



Merit Commissioner

2011/2012 Annual Report



National Library of Canada Cataloguing in Publication Data

British Columbia. Office of the Merit Commissioner.

Annual report. – 2001/2002-

Annual.

ISSN 1703-2865 = Annual report - British Columbia.

Office of the Merit Commissioner

1. British Columbia. Office of the Merit Commissioner - Periodicals.
2. Civil service - Recruiting - British Columbia - Periodicals.
3. Civil service reform - British Columbia - Periodicals.
4. Patronage, Political - British Columbia – Periodicals.
5. Civil service - British Columbia. I. Title. II. Title: Office of the Merit Commissioner annual report. III. Title: Merit Commissioner, annual report.

JL108B74 352.6'3235'0971105 C2002-960115-0



Office of the Merit Commissioner

The Honourable Bill Barisoff
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings, Room 207
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker:

It is my honour to present the 2011/2012 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Fiona Spencer
Merit Commissioner

Victoria, British Columbia
September 2012



Table of Contents

Message from the Merit Commissioner	1
The Office of the Merit Commissioner	3
Corporate Overview	3
Audit Advisory Committee	4
Appointments on Merit	5
Overview of the BC Public Service Staffing System	6
BC Public Service Agency Head and Delegated Authorities	6
Merit Commissioner	7
Shared Interest	8
2011 Merit Performance Audit	10
Overview	10
Audit Criteria and Process	10
Scope	11
Refinements to Audit Program	14
Results	16
Analysis and Observations	22
Appointment Process	25
Assessment	28
Documentation	32
Past Work Performance	34
Years of Continuous Service	36
Notification	39
Recommendations	41
Special Audits of Hiring Pools	42
Overview	42
Employment and Assistance Worker (EAW) Hiring Pool Special Audit	44
Audit Findings Specific to the EAW Hiring Pool	46
Clerical Hiring Pool Special Audit	48
Audit Findings Specific to the Clerical Hiring Pool	50

Message from the Merit Commissioner



I am pleased to present my third annual report highlighting the work of the Office of the Merit Commissioner for the 2011/2012 fiscal year.

This report contains the results of our 2011 Merit Performance Audit. I am able to report that for all appointments in the BC Public Service selected for audit, we found that the individuals appointed had the qualifications required to perform the work they were hired to do. This is not quite as reassuring as it sounds, however. We were unable to conclude that all of these appointments were based on the principle of merit. We determined that in 8.5 per cent of the appointments audited, merit was not applied in the recruitment and selection process – the highest rate since the Office commenced its independent audit activity in 2006 and more than double the rate found in our last full-year audit in 2009. These exceptions resulted from such actions as: unfairly including candidates in competitions without regard to others, serious administrative errors in calculating test scores or years of service, or the inconsistent treatment of candidates during the selection process. Despite the efforts of the BC Public Service Agency (BCPSA) to ameliorate the situation, I am disappointed by these results. Given that hiring is a responsibility shared for the most part between managers and the BCPSA, if improvements are to be realized all parties must be accountable and commit to increased attention, including implementing the recommendations contained in this and previous reports.

The results of our special audits of corporate hiring pools are also summarized in this report. As we were examining appointments made from corporate hiring pools in our 2010 audit, it became evident that there may be issues with the conduct of the underlying hiring processes which lead to referrals from these pools. Due to the structure of the pool processes and systems in place at that time, it was impossible for my Office to obtain all information or evidence needed to conduct a full audit of these appointments to determine if they met the test of merit. Nevertheless, I thought it appropriate in my 2010/2011 Annual Report to caution that care was needed to ensure merit was not subjugated to efficiency. Our special audits this year did confirm that there are systemic issues that need to be addressed before appointments arising from these pool processes can be considered to be based on merit without exception. In their response to our findings, the BCPSA and the Ministry of Social Development indicated that the use of hiring pools has been suspended and revisions to

processes are planned, which will take into consideration issues related to merit-based hiring. I am encouraged by this positive response and look forward to seeing appropriate improvements made.

Over the years, we have maintained a watch on the results of the government-wide Work Environment Survey (WES) to further inform us with respect to systemic issues relating to hiring and appointments. The low scores in some areas did not always align with our audit findings or the low number of requests we receive to conduct a review of a specific hiring decision or appointment. To gain a better understanding of the underlying issues related to responses to the 2011 WES, we examined in detail all comments connected to staffing or appointments reported in that survey. Many of the comments related to matters peripheral to merit-based hiring (such as position classification issues or numbers of staff in a work unit), but we found no indication of systemic issues related to merit-based hiring beyond those which are already under examination by my Office.

In this past fiscal year, 21 requests from employees to conduct reviews of appointment decisions were received – the highest number since 2004/2005. While this unexpected surge in activity strained the limited resources of my Office, we were still able to carry out a comprehensive examination with respect to each request and provide timely responses to employees and ministries. Grounds for requesting reviews varied; however, it is clear that employee applicants view openness and transparency from hiring managers as being key to building trust and confidence in fair hiring. Details related to the nature of the requests for review as well as the results of our investigations are included in this report.

I want to thank sincerely my staff for their professionalism and ongoing commitment and support, and our dedicated contract auditors. Turnover in our small team proved to be a challenge that they all faced admirably. I would also like to express my appreciation to the members of our Audit Advisory Committee who perform a vital role in our work by challenging our assumptions and providing wise counsel.

I see an interesting year ahead as we plan to conduct another audit of short-term temporary appointments in addition to our 2012 Merit Performance Audit, and undertake some further special studies.



Fiona Spencer
Merit Commissioner

The Office of the Merit Commissioner

CORPORATE OVERVIEW

The Merit Commissioner is independent of government, appointed for a three-year, renewable term by the Legislative Assembly and reports to the members of the Legislative Assembly. The mandate of the Merit Commissioner is to provide oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Merit Commissioner provides credible and relevant information about the degree to which government is fulfilling its duty to hire and promote employees based on the principle of merit.

The Office of the Merit Commissioner is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others. All those who contact the Merit Commissioner can anticipate respect and confidentiality. We are passionate about our work and understand that a vital part of being independent is having the courage to deliver facts and recommendations about what must be improved, as well as reporting progress and accomplishments.

To carry out this mandate, we focus on three business lines: audits, independent staffing reviews, and education about the requirement for merit-based staffing, including its impact on employee engagement. The products of our work include audit reports, studies, review decisions, and educational materials. These outputs all support the long-term goal of building public confidence and a strong consensus that staffing is based on the merit principle and fair process. This Office works toward that goal by producing reports on which government may act to effect changes in the conduct of staffing in the BC Public Service.

Audits are carried out in accordance with generally accepted audit standards using methodology reviewed and supported by government's Internal Audit and Advisory Services. Independent statistical specialists ensure the necessary level of rigour and

objectivity in providing random and representative samples. The Merit Commissioner uses performance auditors who are trained to ensure that the same standard of scrutiny is applied to all audits.

AUDIT ADVISORY COMMITTEE

The Office incorporates quality assurance reviews into the audit process. Further consultation, advice, challenge and review are provided by an Audit Advisory Committee, established by the Merit Commissioner for this purpose. The Audit Advisory Committee meets periodically to examine the Office's work plans, discuss issues under consideration by the Merit Commissioner, and provide input. Committee members are selected on the basis of their professional qualifications, relevant knowledge about the public service, and performance audit expertise.

Appointments on Merit

Merit has been the foundation of staffing in the BC Public Service for over 100 years. Over time, the definition of merit has evolved into the provisions that exist today in section 8 of the *Public Service Act* which state that all appointments to and from within the public service must be based on the principle of merit.

Merit is commonly accepted to mean that appointments are made on the basis of an assessment of competence and ability to do the job, and are non-partisan. The *Act* sets out a number of factors that must be considered in determining merit. These include the applicant's education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

The recruitment and selection processes that result in merit-based appointments include some essential elements: a transparent and fair process, an assessment relevant to the job, and reasonable decisions. Merit-based hiring considers the legislation and hiring policy and, where applicable, collective agreement requirements.

The *Act* distinguishes permanent and longer-term temporary appointments from those that are auxiliary or short-term temporary appointments. Employees with permanent and longer-term temporary appointments form part of the core professional career public service on which the government relies for advice and expertise. It is understandable, therefore, that a rigorous standard for making these types of appointments is set out in the *Act*.

Permanent appointments and temporary appointments exceeding seven months are to be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. These appointments require notice to attract applicants who will be assessed for merit against the selection criteria required for the job. A competitive process allows applicants to be rated, and ranked relative to one another, so that those who are appointed are considered the best qualified.

Auxiliary appointments and appointments of regular employees for temporary periods of seven months or less also require consideration of merit. A competitive process is not required by the *Act* but an individual's merit for appointment must be determined.

Overview of the BC Public Service Staffing System

The *Public Service Act* lays out the responsibilities of the Head of the BC Public Service Agency (BCPSA) and the Merit Commissioner, each of whom has certain accountabilities with respect to merit-based appointments in the public service.

BC PUBLIC SERVICE AGENCY HEAD AND DELEGATED AUTHORITIES

The Agency Head is accountable to the Minister of Finance and is responsible for personnel management in the public service including, but not limited to, advising the minister with respect to personnel policies, standards, regulations and procedures and providing direction, advice and assistance to ministries in the conduct of personnel management. This includes specific authority for the recruitment, selection and appointment of persons to or from within the public service, as well as training and development. As the BCPSA is a shared services organization, the Agency Head is also accountable to the Deputy Ministers' Council and to clients and customers in all public service ministries and agencies established through service-level agreements.

Through the Corporate Human Resource Management Accountability Framework (Accountability Framework) and human resource policies, certain responsibilities are assigned to deputy ministers and hiring managers across the BC Public Service.

All deputy ministers are accountable to the Deputy Minister to the Premier for the implementation of the Corporate Human Resource Plan. As well, deputy ministers are responsible for human resources within their organizations and for ensuring that these responsibilities are carried out consistent with applicable legislation, collective agreements, terms and conditions of employment, the Accountability Framework, and human resource policies. While deputy ministers retain overall accountability for human resource management in their organizations, the responsibility for most appointment decisions has been further delegated to individual managers.

Mandated by the Deputy Ministers' Council, hiring administration has been centralized at the BCPSA's Hiring Centre. In this service delivery model, BCPSA staff provide hiring services and advice to client organizations and assume responsibility for certain phases of a staffing process, as defined in a recruitment plan established at the beginning of a hiring process.

Independent organizations that appoint staff under the authority of section 8 of the *Act* may not receive hiring services through the BCPSA and, therefore, retain responsibility for both the staffing processes and the resulting decisions.

MERIT COMMISSIONER

The Merit Commissioner is accountable to the members of the Legislative Assembly and reports to them, on an annual basis, the results of activities in monitoring the application of the merit principle under the *Act*, including results of audits and the outcome of staffing reviews.

Merit Performance Audit

The Merit Commissioner provides independent oversight of the application of the merit principle in hiring and promotions. Merit performance audits of appointments assess whether:

- recruitment and selection processes are properly applied, to result in merit-based appointments, and
- individuals appointed are qualified for the job.

Detailed audit findings are reported to appropriate deputy ministers or organization heads. As an independent audit is a means of holding managers accountable for results and of recognizing performance, deputy ministers are expected to share audit results with individual managers and follow up as necessary to improve hiring practices within their organizations. Overall audit results are provided to the Agency Head and are made available to the Legislative Assembly through an annual report.

Review of Staffing Decisions

The *Public Service Act* provides employees who are unsuccessful applicants in a competition the right to request a review of a hiring or promotion decision. There is a three-step staffing review process, which begins when the employee is notified of the outcome

of a competition. The employee may request feedback from the hiring manager on the employee's performance during the staffing process or the reasons why he or she was not appointed. If unsatisfied, the employee may then request an inquiry by the deputy minister into the application of the principle of merit. For employees who are applying for an excluded position, the deputy minister's decision is final. For employees who are applicants to bargaining unit positions, there is further recourse available: an independent review by the Merit Commissioner following which the Merit Commissioner may find that the appointment was merit-based or may direct that the deputy minister reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

SHARED INTEREST

Responsibility for upholding merit-based hiring and promotions in the BC Public Service is shared broadly. Employees' opinions are solicited through the BC Public Service's Work Environment Survey, administered by BC Stats. Responses to questions related to staffing are examined and considered as the Merit Commissioner develops audit plans. The bargaining units which represent most BC Public Service employees (BC Government and Service Employees' Union (BCGEU), the Professional Employees Association (PEA), and the nurses' unions), as well as the BC Excluded Employees' Association, have long records of encouraging and supporting merit-based hiring in the public service.

The following table summarizes accountabilities for hiring in the BC Public Service.

Table 1: Staffing Accountabilities – BC Public Service Staffing System	
Merit Commissioner	<ul style="list-style-type: none"> • Monitors and reports on merit in staffing through random audits • Provides final and binding decisions on merit through staffing reviews for bargaining unit positions • Reports annually to the Legislative Assembly
BC Public Service Agency Head	<ul style="list-style-type: none"> • Sets staffing policies and the Accountability Framework for human resource management with the Deputy Ministers’ Council • Provides staffing support and training to client groups in the BC Public Service • Delegates responsibilities for staffing activities to deputy ministers or heads of organizations • Authorizes direct appointments in unusual or exceptional circumstances
Deputy ministers/ organization heads	<ul style="list-style-type: none"> • Work as a council to carry out the Corporate Human Resource Plan • Sub-delegate staffing activities to line managers/supervisors • Respond to the second step in a staffing review process • Receive and take action as appropriate on Merit Commissioner’s audit findings and decisions following staffing reviews
Managers/supervisors	<ul style="list-style-type: none"> • Make recruitment, selection and appointment decisions • Conduct the first step in a staffing review process by providing feedback to applicants
Employees	<ul style="list-style-type: none"> • Provide views on merit-based hiring and fair process by completing the BC Public Service annual Work Environment Survey • As applicants, may request staffing reviews of proposed hiring or promotion decisions

2011 Merit Performance Audit

OVERVIEW

Section 5.1 of the *Public Service Act* requires the Merit Commissioner to monitor the application of merit by conducting random audits of appointments to and from within the public service. Detailed audit findings are reported to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations where the appointments were made.

These results are meant to be shared with the hiring managers, as they have been delegated the responsibility to decide how best to recruit, assess and select applicants for appointments. The audit is a means of holding managers accountable for results, of recognizing performance, and of identifying problems. Organization heads are expected to take follow-up action as necessary to improve hiring practices within their organizations. Results are also reported to the Head of the BC Public Service Agency (Agency Head) for accountability purposes and to inform policy makers where modifications to hiring practices may be required. The overall merit performance results are publicly reported through this annual report to the Legislative Assembly.

AUDIT CRITERIA AND PROCESS

The *Act* sets out the following test for assessing merit:

- (a) whether the recruitment and selection processes were properly applied to result in appointments based on merit, and
- (b) whether the individuals possessed the required qualifications for the positions to which they were appointed.

In the merit performance audit, the auditor uses an established audit program to determine whether: the basic legislative, policy and collective agreement requirements relevant to merit-based hiring have been met; the factors of merit as stated in the *Act* have been considered; employees have been appointed through a fair process; and hiring decisions have been communicated to employee applicants. The auditor also makes a determination as to whether the individual appointed possesses the required qualifications for the position. The Merit Commissioner's website at www.meritcomm.bc.ca contains full details of the audit program.

The audits are based on the underlying premise that hiring managers understand the needs of the organization and are therefore best positioned to determine the critical qualifications and competencies for a position, and the most suitable tools and methods to assess them. Provided that the hiring process is reasonable and job-related, the audit is not designed to replace this judgement.

The audit of each appointment results in one of three findings: “merit applied”, “merit with exception”, or “merit not applied”. A further finding of “unable to determine” may be used in circumstances where a complete audit cannot be conducted due to the unavailability of information. In cases where there is a finding of “merit with exception”, appointments are considered merit-based but issues have been identified with either the conduct of the process or the application of policy or collective agreement provisions. A “merit not applied” finding is made where the appointment was not the result of an open, transparent, fair or reasonable merit-based process, or where there was a critical error in the process which resulted in an incorrect appointment. This finding does not suggest that the individual appointed is not qualified for the position, unless otherwise indicated.

SCOPE

Any organization to which section 8 of the *Act* applies may be audited by the Office of the Merit Commissioner. A list of organizations subject to this oversight is included in Appendix A.

Appointment Types

The merit performance audit focuses on those appointments made under section 8 of the *Act* that form the regular, long-term workforce of the BC Public Service. Specifically, these are permanent appointments and temporary appointments that exceed seven months and which are required by section 8(1) (b) of the *Act* to be the result of a process that assesses eligible applicants’ knowledge, skills and abilities. Auditing these types of appointments, where a candidate’s merit is assessed and ranked relative to that of other candidates (i.e., through a competition), reveals the most information about how the principle of merit is being applied.

Direct appointments under section 10(b) of the *Act* are also included in the audit, not only to ensure that they are based on merit but also to ensure that organizations are appropriately seeking and receiving the required approval of the Agency Head.

Time Frame

The 2011 Merit Performance Audit focused on appointments made throughout the 2011 calendar year.

Appointment and Sample Details

The appointment population consisted largely of appointment data drawn from the Corporate Human Resource Information and Payroll System (CHIPS) by the BC Public Service Agency (BCPSA). Three samples were drawn: in May 2011 for the January 1 through April 30, 2011 appointment population; in September 2011 for the May 1 through August 31, 2011 appointment population; and in January 2012 for the September 1 through December 31, 2011 appointment population. Information related to appointments made by the Liquor Distribution Branch, and the Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services) is maintained in databases separate from the overall BC Public Service and was sampled from two separate reports from those organizations in September 2011 and January 2012.

In total, a population of 4,473 permanent appointments, temporary appointments exceeding seven months, and direct appointments were reported. From this population, a random selection of appointments was conducted by BC Stats. To ensure that the random samples were representative of the actual population of appointments, the following categories were selected as being of greatest importance and used to stratify the appointment data:

- ministry/organization size: smaller than 200 employees; 200 to 499 employees; 500 to 1,000 employees; and larger than 1,000 employees;
- appointment type: permanent, temporary appointment exceeding seven months, and direct appointment;
- bargaining unit status: included or excluded; and
- appointments in the Administrative Support occupational category. (This final stratum was introduced in the 2010 audit and reflects the interest in auditing appointments from hiring pools and a concern related to the number of employees in this category who report in the Workforce Environment Survey that they do not perceive staffing to be fair or merit-based.)

Sample stratification ensured correct proportional coverage within each of the categories. The chance of audit is virtually identical for each appointment, while the correct proportion of audits remains guaranteed in the most important categories.

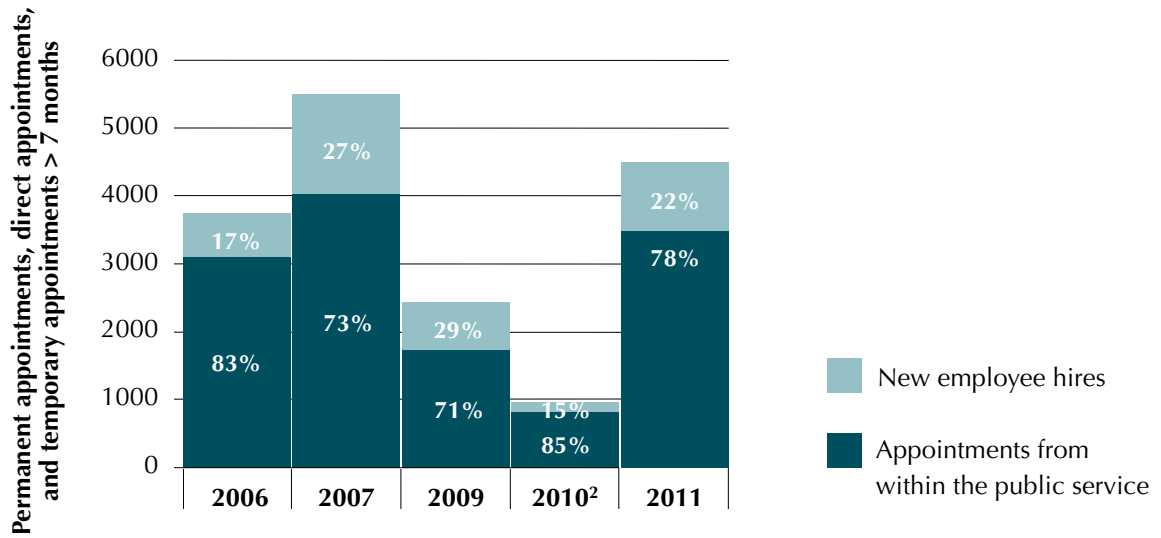
The random selection of appointment data by BC Stats was provided at a sampling rate requested by the Office. Initially, a goal of auditing approximately nine per cent of appointments was established, in order to be able to generalize the results to the general population of appointments with a high level of confidence. The sample rate also took into account the high number of appointments that were removed from samples in previous years' audits due to data errors in CHIPS. The nine per cent sampling rate included an over-sampling rate of 15 per cent for Administrative Support appointments.

Following the first sample drawn in 2011, the sampling rate was reduced to 5.4 per cent and the sampling rate for the Administrative Support appointments was reduced to nine per cent. This adjustment was made in order to re-allocate limited resources within the Office to other special audits, and to the conduct of requested staffing reviews. BC Stats ensured sampling was done in such a way as to maintain a high level of confidence in the results and their extrapolation to the general population of appointments made in 2011.

The overall sampling rate of 5.6 per cent resulted in a total audit sample of 255 appointments, 33 of which were subsequently determined to be outside the scope of the audit, due primarily to coding errors in the CHIPS database. As a result, a total of 222 appointments were audited based on an adjusted population of 3,942 appointments.

A comparison of the number of appointments in the adjusted audit populations from 2006 to 2011 is shown in Chart 1. In 2011, approximately 22 per cent of appointments within the scope of the audit were new hires to the public service, compared to 29 per cent in 2009.

Chart 1: Year-by-Year Comparison of Adjusted Annual Audit Population¹



¹ An annual audit was not conducted in 2008 due to the transition to a new audit approach.

² The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

REFINEMENTS TO AUDIT PROGRAM

In considering findings from previous merit performance audits, the Merit Commissioner identified the need for some refinements to the audit program to more accurately reflect where the identified issues had an impact on merit-based hiring. The Audit Advisory Committee was consulted, and three adjustments were introduced in the 2011 Merit Performance Audit. There were a limited number of findings affected by these adjustments; however, extreme caution should be used when making year-to-year comparisons of audit results.

The first adjustment relates to flaws in the hiring process when there is no impact on the appointment being audited. Prior to 2011, in cases where an issue with the application of the recruitment and selection process was identified, only when the outcome of the appointment selected for audit was affected would there be a finding that merit was not applied. With this refinement, any and all appointments resulting from a flawed

recruitment and selection process are considered to be flawed, and therefore assigned a finding of “merit not applied”. This change resulted in four appointments in the 2011 Merit Performance Audit being found to be “merit not applied”, which in previous audits would otherwise have been found to be “merit with exception”.

The second modification relates to the point at which a candidate is determined to have been negatively impacted by a process which is not merit-based. This issue most often arises when multiple appointments are made from a single selection process and, typically, when there is an error in the final rank order of qualified candidates resulting from a flaw in the consideration of years of continuous service. Prior to 2011, such a flaw was deemed significant and resulted in a finding of “merit not applied” if a candidate was appointed in the incorrect order and the appointment was directly affected by at least a month. With the introduction of this modification in 2011, all appointments which were made in the incorrect order, regardless of the length of the delay affecting a candidate’s appointment, were found to be “merit not applied” due to the negative impact a delay of any length may have on such factors as an employee’s classification seniority or salary. This modification to the audit program resulted in one finding of “merit not applied” which in previous audits would have been found to be “merit with exception”.

The third adjustment to the Office’s audit program relates to documentation in support of assessments of past work performance and years of continuous service. At times, through the course of the audit, verbal evidence may be accepted or hiring managers may locate missing or additional documentation to confirm these aspects of the hiring process were merit-based. This, however, does not negate the fact that there is still an issue with respect to the quality and completeness of evidence on file and therefore, a finding of “merit with exception” due to documentation is warranted. In the past, under such circumstances, this would have also resulted in a finding of “merit with exception” but the issue would have been categorized differently. This change to the program was implemented to ensure consistency with audit findings related to other issues. There has been no resultant change in the number of “merit with exception” findings; however, this change in approach resulted in one finding of “merit with exception” due to documentation that would previously have been found to be based on past work performance.

RESULTS

Qualifications

The 2011 audit found no evidence that any individual was not qualified for the position to which he or she was appointed. Also, no evidence was found that any appointment audited was the result of patronage.

Recruitment and Selection Process

Table 2 shows the overall results of the 2011 Merit Performance Audit. The statistically valid sample ensures that these results can be extrapolated from the audited appointments to the larger population of the same types of appointments (i.e., permanent appointments, temporary appointments of more than seven months and direct appointments) made during 2011.

**Table 2: Merit in the Recruitment and Selection Process
2011 Merit Performance Audit**

Conclusion	Number of Appointments Audited	
Merit applied	146	65.8%
Merit with exception	55	24.8%
Merit not applied	19	8.5%
Unable to determine	2	0.9%
Total appointments audited¹	222	100.0%

¹ The 2011 audit sample consisted of 255 appointments, of which 33 were determined to be outside the scope of the audit, resulting in the audit of 222 appointments.

Table 3 shows the extrapolated results, further details of which can be found in the BC Stats report in Appendix B. These results reveal the strengths and weaknesses of merit-based hiring in the BC Public Service in 2011.

Table 3: Extrapolated Results – Estimated Population¹ 2011 Merit Performance Audit		
Conclusion	Estimated Population of Appointments	
Merit applied	2,655	67.4%
Merit with exception	932	23.6%
Merit not applied	324	8.2%
Unable to determine	31	0.8%
Total estimated population of appointments	3,942	100.0%

¹ Weighted extrapolations were provided by BC Stats, as well as the margins of error which are provided in Appendix B.

Of the 222 appointments audited, 65.8 per cent were found to be the result of a merit-based process with no exceptions. A further 24.8 per cent were found to be based on merit, but issues were identified with either the conduct of the process or the application of policy or collective agreement obligations. Although the appointment decisions were not affected in these appointments, the audits found substantial flaws, errors or omissions that have been brought to the attention of senior management for improvement. These cases were categorized as “merit with exception”.

The audit found that 8.5 per cent of the appointments were not the result of a merit-based process, some due to more than one issue. In five of these cases, recruitment and selection processes were compromised as they were not open and reasonable. In seven cases, there were inconsistencies in the scoring or assessment of candidates. In two cases, candidates

were appointed without an assessment of past work performance (a factor of merit), and in nine cases, there was either no assessment of the employee candidates' years of continuous service (another factor of merit) or the assessment was conducted incorrectly, resulting in erroneous appointments. A selection of these cases appears later in this report. It should be noted that refinements to the audit program introduced with this audit resulted in five appointments being categorized as "merit not applied" which in earlier audits would have been categorized as "merit with exception". Had the refinements not been introduced the audit would have found that 14 (6.3 per cent) of the appointments audited were not the result of a merit-based process.

In two appointments (0.9 per cent of appointments audited) a determination of merit was unable to be made as all or significant portions of the documentation related to the appointment decisions were unavailable for the audit.

Overall, the audit results point to areas of potential risk to merit-based staffing in the BC Public Service. In 33.3 per cent of the appointments examined in the audit – and by extrapolation, in an estimated 31.8 per cent of appointments made in 2011 – flaws were found in the application of hiring policy, collective agreement provisions, statutory obligations that relate to merit, or the conduct of the process.

Thirty-three of the 255 sample appointments identified were found to be outside the scope of the audit due primarily to CHIPS coding errors or issues in identifying the appointment type. The error rate, at 12.9 per cent of the appointments sampled in 2011, has been consistently high since 2009 and continues to draw into question the reliability of CHIPS data. As CHIPS provides source data for many reports and studies, some of which impact hiring in the public service, data integrity is of concern. The issue has been noted and raised with the BCPSA repeatedly since 2009.

Comparison of Results for the Administrative Support Category

As previously outlined, the 2011 Merit Performance Audit once again included a higher rate of sampling for appointments in the Administrative Support occupational category. Table 4 provides the audit results for this category, and Table 5 provides the extrapolated results. As no significant difference was found between the Administrative Support category and the general population in either the 2010 or 2011 audit results, there is no observed necessity to continue over-sampling this occupational category going forward.

**Table 4: Audit Results – Administrative Support Occupational Category
2011 Merit Performance Audit**

Conclusion	Number of Appointments Audited ¹			
	Admin		Non-Admin	
Merit applied	46	62.2%	91	66.9%
Merit with exception	19	25.7%	34	25.0%
Merit not applied	8	10.8%	10	7.4%
Unable to determine	1	1.4%	1	0.7%
Total appointments audited	74	100.0%²	136	100.0%

- ¹ Stratification by Administrative Support occupational category undertaken only for appointments in the general population, i.e., excludes Liquor Distribution Branch and Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services)
- ² Rounded to 100.0%

**Table 5: Extrapolated Results – Administrative Support Occupational Category¹
2011 Merit Performance Audit**

Conclusion	Estimated Population of Appointments ²			
	Admin		Non-Admin	
Merit applied	532	65.8%	2,037	68.1%
Merit with exception	166	20.5%	732	24.5%
Merit not applied	93	11.5%	209	7.0%
Unable to determine	17	2.1%	14	0.5%
Total estimated population of appointments	808	100.0%³	2,992	100.0%³

- ¹ Weighted extrapolations were provided by BC Stats, as well as the margins of error, which are provided in Appendix B.
- ² Stratification by Administrative Support occupational category undertaken only for appointments in the general population, i.e., excludes Liquor Distribution Branch and Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services)
- ³ Rounded to 100.0%

Year-by-Year Comparison of Merit Performance

Table 6 and Chart 2 provide the findings over past years. Due to the centralization of some hiring processes to the BCPSA's Hiring Centre, changes were implemented to hiring process and practice in the first part of 2010. To allow time for these changes to take effect, the 2010 Merit Performance Audit was undertaken only for appointments in the latter part of year. As this partial audit covered only a four-month period, the findings cannot be extrapolated or directly compared to other full-year results.

A distinct increase in the percentage of “merit not applied” findings was observed in 2011. At 8.5 per cent this is more than three times the rate observed in the previous full-year audit conducted in 2009. Although this percentage would be 6.3 per cent without the refinements to the interpretations of the audit results, there is still an increased rate of occurrence of over 2.5 times that of 2009. It is noted that the types of issues most commonly identified within this category are similar to those in previous years, and are summarized in the Analysis and Observations section which follows.

The percentage of appointments flagged as “merit with exception”, where the audit identified issues with the conduct of the process or the application of policy or collective agreement provisions, has remained relatively stable (24.8 per cent) since the last full-year audit in 2009 (23.8 per cent). The findings in this category would have been somewhat higher (27 per cent) had refinements to the audit program not been introduced.

With the overall increase in the percentage of appointments where issues and problems have been identified, there has been a consequential decrease in the percentage of audited appointments where there has been a clear finding of “merit”. These findings have decreased in each full audit year from 80 per cent in 2007, to 73.5 per cent in 2009, to a current low of 65.8 per cent in 2011. This is a markedly negative trend.

Examining the data from a different perspective reveals the same trend. The two categories of findings that are considered to be merit-based (“merit applied” or “merit with exception”) together represent 90.6 per cent of findings, a much lower percentage than the combined total of 97.3 per cent of findings in 2009 and lower than that of the 94.9 per cent of findings in 2007. Without taking into account those findings resulting from changes to the audit program, this figure would be 92.8 percent for 2011: still lower than in any past year.

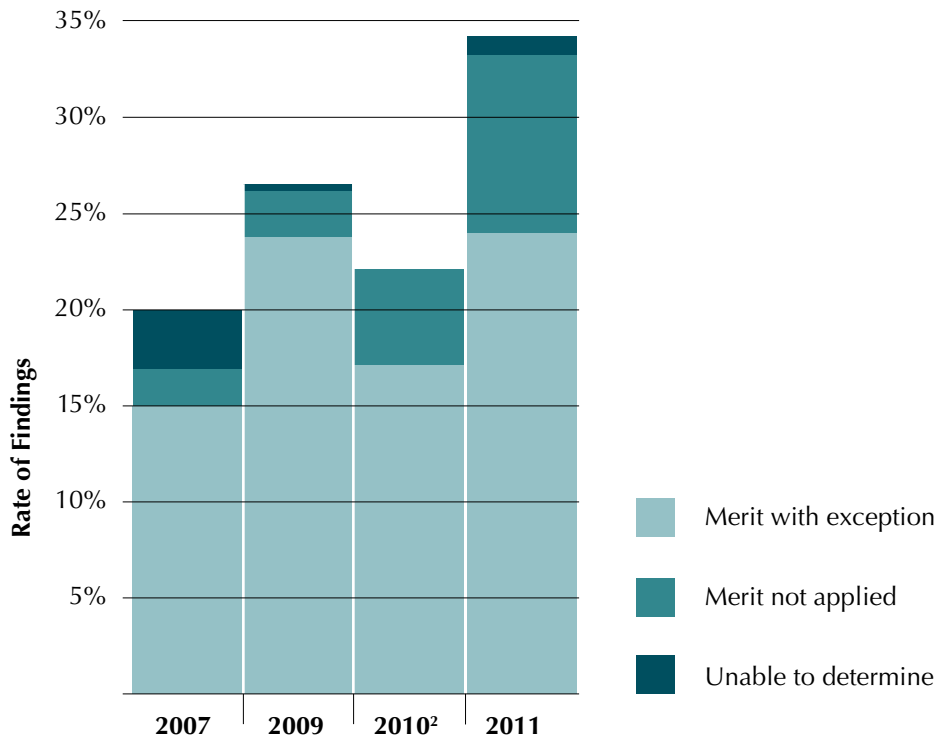
Overall, the findings of the 2011 Merit Performance Audit and their comparison to previous years’ results show a continual downward trend in the extent to which hiring in the BC Public Service is merit-based and in the quality of the hiring processes which support appointments. While the BCPSA has taken steps to address the recommendations contained in past annual reports, it appears that reversing this negative trend is proving difficult.

Table 6: Year-by-Year Merit Performance Results¹				
	2007	2009	2010²	2011
Total appointments audited	531	302	183	222
Merit applied	423 (80%)	222 (73.5%)	143 (78.1%)	146 (65.8%)
Merit with exception	81 (15%)	72 (23.8%)	32 (17.5%)	55 (24.8%)
Merit not applied	12 (2%)	7 (2.3%)	8 (4.4%)	19 (8.5%)
Unable to determine	15 (3%)	1 (0.3%)	nil	2 (0.9%)

¹ An annual audit was not conducted in 2008 due to the transition to a new audit approach.

² The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

Chart 2: Year-by-Year Findings Other than “Merit Applied”¹



¹An annual audit was not conducted in 2008 due to the transition to a new audit approach.

²The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

ANALYSIS AND OBSERVATIONS

Table 7 indicates the major issues identified through the 2011 Merit Performance Audit, and provides some insight into hiring practices throughout the BC Public Service over time. Documentation, notification and the assessment of years of continuous service through the “qualified relatively equal” (QRE) calculation (which is required for appointments to positions in the BCGEU), remain the three most prevalent issues identified, although the percentage of issues with respect to the assessment of years of continuous service has decreased overall since 2009. Issues related to the assessment of past work performance have remained relatively stable, but in all other categories, there has been an increase in the frequency of issues. It is noted that although assessment was not one of the three largest

issues, it is an area of interest for future study as this number has more than doubled since the 2009 Merit Performance Audit. The refinements to the audit program do not impact this observation, as it is based on an aggregate of “merit not applied” and “merit with exception” findings.

Table 7: Year-by-Year Percentages of Issues Identified

Issue	Percentage of Appointments			
	2007 % of 531 Appts. Audited	2009 % of 302 Appts. Audited	2010 ¹ % of 183 Appts. Audited	2011 % of 222 Appts. Audited
Appointment process	1.1%	1.3%	2.2%	5.9%
Assessment	3.8%	3.6%	1.6%	7.7%
Documentation/evidence	8.3%	5.3%	7.7%	12.6%
Notification	3.4%	8.3%	3.3%	11.7%
Past work performance	–	2.0%	1.6%	2.3%
Years of continuous service (BCGEU) ²	5.4%	11.7%	13.1%	9.8%

1 As the 2010 Merit Performance Audit was not a full-year audit, data is included for information purposes only and not for year-by-year comparison.

2 The qualified relatively equal (QRE) calculation is required for BCGEU positions only. The figure shown is based on the BCGEU appointments audited, i.e., 153 BCGEU appointments were audited in 2011, 137 in 2010, 205 in 2009, and 355 in 2007.

Table 8 shows the reasons for audit findings other than “merit”, including multiple findings for some appointments. Of the 19 appointments with a “merit not applied” finding, four of the appointments had more than one issue that warranted that finding, for a total of 23 issues. Further, 10 of the appointments with a finding of “merit not applied” also had one or more findings of “merit with exception” due to other issues. These cases, combined with 13 appointments where “merit with exception” was found for multiple issues, resulted in the identification of a total of 81 “merit with exception” issues.

Table 8: Issues Identified			
2011 Merit Performance Audit			
Issue	Number and Type of Finding		
	Merit With Exception	Merit Not Applied	TOTAL (% of all issues identified)
Appointment process	8	5	13 (12.5%)
Assessment	10	7	17 (16.3%)
Documentation/evidence	28	–	28 (26.9%)
Notification	26	–	26 (25.0%)
Past work performance	3	2	5 (4.8%)
Years of continuous service (BCGEU)	6	9	15 (14.4%)
Total issues	81	23	104

It is noted that through the special audits of the clerical and Employment and Assistance Worker (EAW) hiring pool processes (the results of which are included later in this report), a systemic issue was identified which resulted in 14 of the findings of “merit with exception” for notification. Further, another issue was identified which affected all EAW pool processes and resulted in eight findings of “merit with exception” with regard to process.

The following sections provide further details concerning the issues identified through the 2011 Merit Performance Audit.

Appointment Process

Section 8(1) of the *Act* requires that appointments to and from within the public service be based on the principle of merit and be the result of a process designed to assess the knowledge, skills and abilities of eligible applicants.

The merit performance audit determines whether the appointment process included a reasonable and transparent approach to attracting an appropriate number of applicants with the necessary skill set, given the requirements of the position. The audit also examines whether applicants were assessed for merit relative to one another, resulting in the appointment of the best-qualified candidate(s). While a merit-based process ensures that candidates are treated consistently and fairly, such a process need not be identical for every candidate, as long as reasonable decisions are made.

Under section 10 of the *Act*, there are exceptions permitted to the general statutory requirement for appointments to be based on a competitive process; for example, the direct appointment of an individual into a position. In such a case, after assessing an individual's merit relative to the job requirements, an organization may outline to the Agency Head the unusual or exceptional circumstances they consider warrant a direct appointment. The Agency Head then may exercise sole authority to approve such an appointment under section 10(b)(iii) of the *Act*.

Results

In the 2011 audit, issues were identified with the appointment process in 13 (approximately six per cent) appointments audited. Five of these appointments were not merit-based as they did not result from an open and reasonable process as required under section 8(1)(b) of the *Act*. The individuals appointed, however, were found to be qualified. In the other eight appointments, exceptions to a merit-based process were found as a result of a systemic flaw in the Employment and Assistance Worker (EAW) hiring pool process. These findings, which relate to the procedure used to refer candidates in the pool for testing and interviews, are detailed further in the Special Audit section of this report.

Of the five appointments where a process flaw led to a finding that merit was not applied, an issue was identified in two with the use of a previous auxiliary hiring process as the basis for making an appointment to a regular position. One of these scenarios is described in Case #1.

Case #1: Regular Appointment Based on Auxiliary Hire

An auxiliary employee was appointed to an excluded regular position based on the results of the initial auxiliary appointment process conducted several months earlier. The regular position was not entry-level, and there was neither a posting of the regular opportunity nor a notice of the auxiliary opportunity indicating that it might be used to fill regular positions in the future. Such a practice does not afford other potential employee applicants the opportunity to be considered and a larger applicant pool could have been reasonably anticipated, had the regular vacancy been advertised. A merit-based process requires some form of public notice that could attract more than one applicant for each position. While there is no requirement to post auxiliary positions, if the hiring process is to be subsequently used as the basis for a regular appointment, it must meet the test of merit. (While the position cited in this case was excluded, collective agreement provisions require a posting when a regular BCGEU position is to be filled.)

Two other appointments where process issues resulted in a finding that merit was not applied originated from the clerical hiring pool process. In these cases, flaws in the process were introduced when it was combined with a restricted expression of interest, or supplemented by the inclusion of a specific candidate from outside the pool referral process. Such deviations from established practice circumvent a meritorious process as not only were one or more individuals given preferential consideration, but also they were not subjected to the same testing and assessment processes as other candidates who were formally part of the clerical pool. Additional details of results related to the clerical hiring pool process may be found in the Special Audit section of this report.

Direct Appointments

Five appointments in the 2011 Merit Performance Audit were considered direct appointments, as described previously. In each case, the authorization of the Agency Head was requested by the organization, and approval was received prior to appointment. All five direct appointments were found to be merit-based.

Restricted Competitions

In most cases, positions continue to be posted internal to the BC Public Service, although deputy ministers may request that the Hiring Centre open specific opportunities to non-employees through an external posting. This corporate control of external recruitment ensures that any employees in the Workforce Adjustment process are given first consideration for suitable vacancies, and protects career advancement opportunities for potential applicants already employed in the public service.

In the 2011 Merit Performance Audit it was noted that approximately 70 per cent of the competitions audited were open to employee applicants only. In 2010, when similar restrictions on external postings were in place, this figure was 76 per cent. In 2009, however, where corporate policy for most of the year required all job opportunities to be open to both current public servants and outside applicants, only 18 per cent of competitions were limited to employee applicants.

It was observed that in 2011, in 35 per cent of all in-service competitions there were further restrictions such as to: a ministry, a geographic area, a ministry within a geographic area, an organizational unit within a ministry, or other very limited groups of employees (e.g., regular employees at a specific classification level within a ministry and a geographic area). In 2010, these further restrictions were observed in 43 per cent of all in-service competitions audited. As previously noted in the Merit Commissioner's 2010/2011 Annual Report, such restrictions to the area of competition were accepted as reasonable, given the significant government reorganizations that had occurred.

Despite the fact that corporate controls on external recruitment are in place, the audit found no evidence of corporate oversight or control on restricted competitions. There were no observed measures to guide ministries in posting and filling positions internally, or to indicate under what circumstances and to what level restriction may be appropriate.

Without such practical guidelines the requirement for fair, open and transparent processes may be at risk given the impact unreasonable restrictions have on employee career paths and fair hiring in general. Further study of this matter may be warranted.

Assessment

Managers are accountable for their hiring decisions and as such, are also responsible for determining which qualifications are required to perform the job, and which tools and methods are the most appropriate to use in assessing applicants against these criteria. Accurately describing and posting these requirements is critical to a transparent and merit-based process as it helps potential applicants determine whether they are qualified and eligible to apply, and allows for an objective and impartial staffing process by assessing applicants against these defined criteria. As well, it gives others, both staff and the general public, confidence that the individual hired is qualified for the position.

The merit performance audit acknowledges the hiring managers' responsibilities in this regard. The audit determines whether the appointment was the result of a fair, reasonable and job-related merit-based staffing process; applicants were objectively and consistently assessed relative to the posted staffing criteria; and all factors of merit were appropriately considered. The factors of merit, outlined in section 8(2) of the *Act*, include the applicant's education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

Results

In the 2011 Merit Performance Audit, it was found that seven of the appointments audited were not merit-based as the assessments did not consider all the factors of merit or did not meet all the critical elements of a merit-based process. One of these audit findings was affected by the modifications to the audit approach described earlier. In a further 10 cases, there were exceptions found to a merit-based process. Together, these findings indicate that 7.7 per cent of appointments audited resulted from flawed assessments. This is a substantial number of issues related to the assessment process, in particular with respect to audits that resulted in findings of "merit not applied". It was further noted that findings related to assessment issues have more than doubled since 2009 when the figure was 3.6 per cent.

Administrative Errors

As in previous years, a number of administrative errors in calculating or transcribing scores were identified, most of which did not affect the final outcome of the competitions. In the 2011 audit, however, two such errors led to findings that merit was not applied and three other errors led to findings of “merit with exception”. In one case where merit was not applied, candidate marks were inaccurately transferred onto the rating guide resulting in the incorrect ranking and subsequent appointment of a candidate. In another case, a mistake in the addition of a candidate’s test scores resulted in that candidate being placed on the eligibility list rather than being offered one of the initial appointments.

Candidates’ scores determine their placement relative to other candidates in a competition so it is critical that managers ensure scores are carefully calculated and correctly entered as even a minor error may compromise the integrity of the assessment process, as was seen in the two appointments referenced above.

Two other administrative errors with equally significant consequences were also observed in the audit. In one competition restricted to employees within a division, an applicant from the division was mistakenly eliminated. As the audit was able to determine that the eliminated employee was qualified for assessment, the audit found this was not a merit-based process. In the other case, a candidate who met the required education and experience was short-listed by the Hiring Centre, but was then overlooked by the hiring manager and not considered further. This also resulted in a finding that merit was not applied.

Short-listing Inconsistencies

In the short-listing stage, applications or resumes are assessed against the advertised mandatory education and experience requirements of the position to determine which individuals are qualified to move forward. Inconsistent treatment of applicants at the short-listing stage compromises the fairness, objectivity and relevance of the assessment process.

Almost half the assessment issues identified in 2011 were related totally or in part to inconsistencies in short-listing. In addition to the previously described cases of administrative errors, the audit noted cases where short-listing decisions related to some applicants were based on unadvertised or undefined equivalencies, and there was a lack of evidence that applicants were all assessed using the same criteria. In other cases, some applicants were short-listed based on lesser criteria than had been posted, or on the basis of the hiring

manager's knowledge of an employee's experience rather than what was stated in their resume, while others with similar backgrounds were not afforded the same consideration. In those cases where the outcome was affected, the appointment was not found to be the result of a merit-based process.

Inconsistencies in Assessment

In some appointment processes, the inconsistent treatment of candidates was observed in other stages of the competition beyond the initial short-listing. Inconsistent treatment which unfairly advantages one candidate over others compromises a merit-based process.

In one competition there were inconsistencies in both the short-listing and assessment of candidates as described in Case #2.

Case #2: Applicants Disadvantaged by Inconsistencies in Short-listing and Assessment

A number of issues were identified in this competition. One applicant was unaccounted for following short-listing and several applicants appeared to meet the short-listing criteria but were screened out. No conclusive evidence could be provided to account for these discrepancies. As a result, a consistent, fair and transparent short-listing assessment process could not be confirmed.

As well, short-listing decisions that were documented were not consistent with the posted criteria. The manager indicated that a change to the criteria had been introduced to allow for some equivalencies but there was no evidence as to how the revised criteria were defined and whether they were consistently and fairly applied. Clearly stating the accepted equivalencies in the job description or posting would have added transparency and assisted potential applicants in determining if they were eligible to apply.

The assessment portion of the competition was divided into two stages for administrative ease. Successful candidates in the first stage were issued offers before any second-stage candidates, regardless of their overall ranking in the competition. As candidates' scores should determine their merit standing relative to other candidates in a competition, from a merit perspective there is no principled reason to offer a lower-ranked candidate a position before a higher-ranked one. The two-stage approach further compromised the integrity of the overall selection process.

In another case, two candidates whose total scores were identical following the assessment process were treated inconsistently in that one candidate was deemed qualified and placed on the eligibility list, whereas the other candidate was determined to have failed.

In a different process, two candidates did not meet the minimum established pass score, however, the lower-scoring of the two was advanced and the higher-scoring was eliminated from consideration. Although the rationale provided for this decision was that the eliminated candidate had less experience, the audit noted the experience was comparable to that of a third candidate, who was appointed.

Assessment Methodologies

This year, as in previous years, managers used a variety of methods to assess candidates. It is generally accepted that multiple assessment methods add credibility and validity to the appointment process. In over half the processes audited in 2011, multiple assessment methods such as questionnaires, written exams, written assignments, oral presentations, and interviews were used before a selection decision was made. However, in approximately 41 per cent of the processes audited, an interview was the only method used to assess short-listed candidates other than mandatory past work performance checks.

In many of the appointments audited it was noted that a competency-based interview (i.e., behavioural event interview, or “BEI”) was used to assess candidates. Competencies are any behavioural or personal characteristics that a person has demonstrated which would enable them to do the job well. Although panel members and employee applicants have access to updated and detailed competency assessment information through the BCPSA’s intranet, the audit observed a wide variety of uses of BEI assessment tools and associated scoring methodologies. These deviations may indicate lack of training or experience in the use of this complex assessment methodology. The observed continued reliance on competency-based interviews remains of interest to the Office insofar as it impacts merit-based hiring. Further study may be warranted.

Documentation

Managers are required to document hiring activities as thoroughly as they are required to document other business decisions with financial implications. It must be evident that throughout the recruitment and selection process the merit principle was upheld and actions were in keeping with the elements of transparency, consistency, relevance, fairness and reasonableness. Managers are also accountable for providing feedback to employees who participate in a competitive process and proper documentation enables them to do so. An absence of evidence supporting an applicant's assessment may impact their perception of the fairness of the hiring process. Also, at times eligibility lists are used by other hiring managers and a well-documented account of the hiring decision increases their confidence that the initial competition was merit-based and therefore valid and reliable for future appointments.

In the 2009 Merit Performance Audit, the results indicated that there had been an overall improvement in documentation since the 2007 audit (from documentation being identified as an issue in 8.3 per cent of appointments in 2007 to 5.3 per cent in 2009). However, in the 2010 partial-year audit, findings reflecting issues related to insufficient evidence increased to 7.7 per cent, due in part, it was concluded, to the transition to centralized record-keeping by the Hiring Centre. In response to the Merit Commissioner's recommendations regarding documentation in the 2010/2011 Annual Report, the BCPSA implemented changes to the administration of the competition file system.

Results

Over the course of the audit, both paper and electronic files were received. Approximately 87 per cent of the files were in electronic format, most of which were forwarded to the Office through or by the Hiring Centre. The remaining 13 per cent were hard-copy files sent directly by ministries or independent organizations.

The timeliness and completeness of electronic competition files provided by the Hiring Centre has improved with respect to basic information such as the job posting, job description, applications and resumes, and offer and regret letters. However, the audit still found issues with these electronic files pertaining to insufficient evidence of assessment processes and decisions.

In many cases during the audit it was necessary to work with the Hiring Centre and hiring managers to attempt to locate evidence related to short-listing and assessment that should normally be readily found on file, such as final short-listing decisions, interview notes and marking details. Often, hiring managers were able to produce the supporting documents required or provide verbal evidence of decisions. The fact that hiring processes were not documented properly to file may indicate a lack of understanding of what evidence is required to support hiring decisions.

Findings related to documentation issues grew from 5.3 per cent in the 2009 audit to 12.6 per cent in the 2011 audit. Due to the refinements to the audit program described previously, one finding of “merit with exception” in this category would previously have been found to be related to issues with the assessment of past work performance.

In the appointments audited with documentation issues (28 cases), the absence of evidence was sufficient to warrant a finding of “merit with exception” and, in many of these cases, there was more than one concern identified related to documentation. Similar to the 2010 partial-year audit, the majority of files with documentation issues contained inadequate or no information related to short-listing decisions. This made it difficult to determine who was considered qualified for further assessment in a competition and who was not, and the basis for those decisions. At times, evidence included the Hiring Centre’s initial short-listing recommendations but did not include the hiring manager’s final short-listing decisions, which were often different.

The audit also identified an increasing number of issues with respect to the lack of assessment evidence. In more than half of the appointments where documentation was identified as an issue, essential supporting evidence related to the assessment process, including panel notes, testing results, or rating details, was missing. This issue is highlighted in Case #3 which follows.

Case #3: Lack of Assessment Documentation

In this case, there was no documentation on file related to the marking approach or rating system that the panel used to assess candidates. Missing from the file was documentation related to: the target competency levels or standards, the points assigned to interview questions, the points assigned to candidate responses and final candidate ratings. The hiring manager provided verbal evidence as to how the panel assessed the candidates which was determined to be consistent with panel notes and therefore acceptable.

Candidate rating and appointment decisions must not only be reasonable, objective and transparent but also must be documented to ensure there is supporting evidence that demonstrates the rationale for ranking one candidate over another, and that appointment decisions are fair and not arbitrary.

In the 2011 audit, an improvement in one aspect of documentation was observed. An analysis of merit performance audit results from previous years revealed that approximately 10 per cent of appointments audited lacked proper documentation of past work performance, and that it was necessary to rely on verbal evidence to confirm that employment references were conducted. In 2011, only three per cent of the appointments audited were flagged as “merit with exception” due to insufficient documentation related to past work performance.

Past Work Performance

Assessing an individual’s past work performance is a critical element of a selection process and contributes to an informed and quality hiring decision. Conducted well, it may be used to validate any part of the assessment process that has relied on information self-reported by candidates; it can provide additional evidence that candidates meet the knowledge, skills, abilities and competencies required for the position; and it can serve to confirm that the successful candidate is a match for the job. Properly documented, the assessment of past work performance also adds transparency and credibility to the overall process.

The *Act* specifies past work performance as one of six factors that must be considered when determining merit. In addition, BC Public Service hiring policy specifically requires an

assessment of past work performance which includes at least one employment reference from a current or previous supervisor or equivalent. The merit performance audit looks for documented evidence to confirm that this factor of merit was properly considered, as required by statute and policy.

Results

In the 2011 audit, issues were identified with the assessment of past work performance in five appointments audited (approximately two per cent of the appointments). Of these five appointments, three were merit-based but exceptions were found with the conduct of the process or the application of hiring policy or collective agreement provisions, and two were not found to be merit-based. In each of these latter two appointments, a candidate was appointed without any assessment of past work performance. Case #4 describes one of these appointments.

Case #4: Failure to Assess Past Work Performance

Following the assessment process in this competition, the two highest-scoring candidates were offered appointments. The audit noted that a decision was made to proceed without an assessment of past work performance when the panel members could not reach the candidates' referees. One of the two candidates appointed was acting in the position so panel members had direct supervisory knowledge of this individual's performance. However, there was no evidence that the panel had any direct supervisory knowledge of the other candidate's work performance.

As past work performance is one of the factors of merit that must be considered under the *Act*, and policy provisions require an employment reference from a supervisor, the Merit Commissioner found that the appointment audited failed to meet the requirements of a merit-based process.

In one of the three appointments where "merit with exception" was found, past work performance was assessed but there was no evidence that the assessment had been obtained from a previous or current supervisor. In each of the other two cases, only verbal evidence was available to confirm that a past work performance assessment was conducted, but this reference check formed the basis for eliminating a candidate from further consideration. Given the significant consequences for the candidates concerned,

the findings from these two audits focussed on the assessment of past work performance, rather than the issue of documentation. In all five of the appointments where issues were identified with past work performance, it was noted that a specific assessment of past work performance, as it relates to the position for which the candidate is being considered, is required as part of a merit-based selection process and that the results of this assessment must be documented for reasons of transparency, accountability and credibility.

Years of Continuous Service

When determining merit, another of the six factors that must be considered under the *Act* is an employee's years of continuous service with the BC Public Service.

For appointments to positions covered by the collective agreement with the BC Government and Service Employees' Union (BCGEU), the "qualified relatively equal" (QRE) calculation is the agreed-upon method of assessing candidates' years of continuous service. In a competition for a BCGEU position, if the candidate rated highest overall after the final stage of all other assessment processes does not have the most years of continuous service in the BC Public Service, the QRE formula is applied to determine whether any other employee candidate who has also passed all stages of assessment is considered "relatively equal" to that candidate. If this is determined to be the case, then the employee candidate with the most years of continuous service is declared successful and offered the appointment. Where more than one vacancy is being filled, or an eligibility list is being established, other "relatively equal" candidates are ranked for appointment in order of their years of continuous service, followed by the remaining qualified candidates in order of their point scores. These calculations are typically documented on a rating guide summary of the selection process, and provide important evidence to support the final order in which candidates are appointed.

For excluded positions and for positions covered by the Professional Employees Association (PEA) or nurses' collective agreements, years of continuous service is still a factor of merit that must be considered under the *Act*, although there is no requirement that it be specifically assessed. Previous audits of appointments to non-BCGEU positions where this factor has been assessed have observed the common practice of assigning a 10 per cent weighting to continuous service. In hiring and selection processes for such positions, it remains important to document: that this factor has at least been considered; the resultant decision that has been made as to whether or not it will be assessed; and, if assessed,

the weighting calculation and results of the assessment. Close examination is given to competitions where a calculation other than the standard 10 per cent has been used, in order to ensure the decision was reasonable and results were not skewed to favour a particular candidate.

Results

In the 2011 audit, 153 (69 per cent) appointments audited were to positions included in the BCGEU. In those appointments which required the calculation of QRE, the audit found that QRE was either not calculated, or calculated incorrectly, in 15 (9.8 per cent) cases. Flaws or errors in the QRE calculation can impact whether a candidate is appointed, or may affect placement order on an eligibility list for future hiring.

In nine appointments, issues with QRE resulted in incorrect appointments, leading to audit findings that these appointments were not merit-based. Two of these audit findings were affected by the Office's previously noted refinements to the audit approach. Two examples illustrating issues related to the consideration of years of continuous service follow in Case #5 and Case #6. In six other cases, the resulting appointments were not impacted by the errors and the appointments were found to be merit-based but the processes were flagged with an exception.

Case #5: Failure to Consider Years of Continuous Service

The audit of a position covered by the BCGEU collective agreement revealed no documented evidence that qualified employee candidates' years of continuous service were considered. The hiring manager confirmed that candidates were ranked and appointed in order of their point scores without this consideration. The auditor applied the "relatively equal" calculation and found that the ranking of the first two employee candidates should have been reversed and had years of continuous service been assessed, the second-ranked candidate would have received the permanent appointment.

Case #6: Regular Appointment Based on Prior Temporary Appointment

A position covered by the BCGEU collective agreement was initially filled through a short-term temporary appointment. The posting for this temporary appointment stated that applications might be considered for other vacancies, including permanent positions. Several months subsequent to this temporary appointment, the ministry wished to make a permanent appointment from the initial process; however, the requirement to consider years of continuous service was overlooked. In these circumstances, a key consideration is to ensure that the initial appointment was the result of a merit-based process. In this case, the failure to assess years of continuous service resulted in the wrong candidate ultimately receiving an appointment to a permanent position.

In more than half of the appointments to BCGEU positions in which the audit identified issues with the assessment of years of continuous service, it was confirmed that the hiring manager had not assessed this factor of merit. In the remaining cases, the assessment was incorrect, typically based on an erroneous understanding of the calculation or its application.

The assessment of years of continuous service for appointments to BCGEU positions has been a recurring issue, resulting in recommendations by the Merit Commissioner following each of the three previous merit performance audits. The percentage of BCGEU appointments audited where QRE was either not done, or done incorrectly, increased from 5.4 per cent in 2007 to 11.7 per cent in 2009. However, some overall improvement was noted in the 2011 results when the rate of occurrence dropped to 9.8 per cent.

Following the 2009 and 2010 Merit Performance Audits, the BCPSA responded to the Merit Commissioner's recommendations related to the assessment of years of continuous service by offering training for managers, encouraging the use of and administering the calculation of "relatively equal" in the Hiring Centre, introducing supports for Hiring Centre staff, and monitoring to ensure improvements were realized. Although there may be other reasons for the improvement in these findings, it is reasonable to consider that the actions taken by the BCPSA to date in this regard are a contributing factor. Nonetheless, the audit results indicate that some managers continue to be unaware of both their obligations in this regard and the support and assistance available to them from the BCPSA.

Notification

The absence of notification to unsuccessful employee applicants is an exception to a merit-based hiring process. Although best practice is to keep all applicants apprised of their status in a hiring process, it is critical that managers notify employee applicants about the final outcome of the hiring process. Such notice serves to fulfill the requirement under the *Act* to provide them the right to challenge the merit of an appointment through a staffing review process. As the first step of the review process (i.e., feedback) can only be initiated once an employee receives notification that another candidate is to be appointed, the absence of this final notification obstructs the unsuccessful employee's opportunity to exercise their statutory rights in this regard.

Accounting for the outcome of a selection process is also an essential element of ensuring transparency in the conduct of public business. Failure to provide appropriate notification undermines confidence in the merit of the appointment and may lead to the perception that managers are not accountable for their hiring decisions.

Providing appropriate notification also gives managers an opportunity to demonstrate leadership and accountability for their decisions and affords them an occasion to build internal capacity by giving feedback useful to employees in their career planning. Managers' demonstration of such leadership is a key factor in increasing employee commitment and engagement.

Results

In 26 of the appointments subject to audit, final notification to some or all of the unsuccessful employee applicants was not provided. In some cases where final notification was absent, applicants were notified of their status during the course of the competition; however, this interim notification does not fulfill the requirement of providing notification of the final appointment decision. Although the appointments where notification was found to be an issue were considered to be based on merit (unless other issues were identified), the appointments were flagged "with exception".

In 2011, 14 of the 26 appointments in which final notification was not provided to all unsuccessful employee applicants resulted from the two corporate hiring pool processes. An issue with notification was identified in the Merit Commissioner's 2010/2011 Annual Report and confirmed through special audits of these two pool processes. The issue, simply stated,

is that the hiring pool processes recognize as applicants only those individuals referred to a hiring manager for final assessment and selection. Unsuccessful employee applicants who are not referred for interview are not provided final notification of the results of appointments made and are thereby denied the opportunity to exercise their statutory review rights. The following section on the special audits of hiring pools includes further details on this issue.

A lack of final notification was one of the two most commonly found process errors in both the 2009 (8.3 per cent) and 2011 (11.7 per cent) merit performance audits, and occurred at a much higher rate than in 2007 (3.4 per cent). The previously mentioned issue related to how an “applicant” to a hiring pool process is defined accounts for some increase in these findings since 2009. That aside, however, the number of exceptions to merit-based hiring processes identified indicates that improvements are still required. It is noted that the refinements to the audit program did not impact any findings with respect to notification. Case #7 describes a relevant finding.

Case #7: Employee Applicants Not Advised of Appointment Decision

In this competition, employee applicants who were not short-listed received interim notification that they would not be considered further and that they would be advised of the final outcome of the competition. However, there was no evidence that the final appointment decision was communicated to all unsuccessful employee applicants. This omission obstructed employees’ right to seek formal recourse of the appointment decision (i.e., a request for review) as granted by legislation. Lack of transparency in not disclosing the results of the competition may undermine confidence in the selection process and in the merit of the appointment.

Despite the services available through the Hiring Centre related to the issuing of notification letters, as well as the improved wording in standard letters regarding feedback, not all previously identified issues have been addressed. Not reflected in the above results are cases where additional transparency and accuracy concerns were noted. For example, in some competitions, final notification was provided but details such as the name and classification of the successful candidate or the fact that an eligibility list was established were not fully disclosed to unsuccessful employee applicants. A lack of transparency in

fully providing information and communicating results can lead employees to question the integrity of the staffing process. This may also contribute to a general level of distrust in the integrity of public service hiring.

RECOMMENDATIONS

The recommendations noted below relate to the 2011 Merit Performance Audit. Recommendations arising from the special audits of hiring pools are included in that section of this report. Appendix C is the BCPSA's response to all recommendations made this year. The Merit Commissioner is encouraged to note the Agency's shared concern with the increased number of appointments where merit was not applied, and is also encouraged by the steps that are being taken to address the issues identified.

The Merit Commissioner makes the following recommendations:

1. That in order to meet their obligations of accountability with respect to the conduct of merit-based hiring, managers ensure all actions supporting appointment decisions are appropriately documented and retained on the hiring file;
2. That all employee applicants receive appropriate and timely final notification of appointment decisions, given the implications with respect to their right of recourse; and
3. That as a factor of merit, years of continuous service be considered, and accurately calculated and documented.

Special Audits of Hiring Pools

OVERVIEW

The Merit Commissioner is responsible for monitoring the application of the merit principle under the *Public Service Act*. Section 8(1) of the *Act* requires appointments to and from within the public service to be based on the principle of merit, and be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. The process traditionally used to fill public service vacancies has been to post notice of individual positions as they become available. In the alternative corporate hiring pool model, applicants to pools are pre-assessed and referred to hiring managers for consideration as vacancies become available. The approach is intended to streamline hiring for high-volume positions while allowing applicants to participate in one pre-assessment process for multiple opportunities.

During the 2010 Merit Performance Audit, a number of Employment and Assistance Worker (EAW) and clerical hiring pool appointments were randomly selected for audit. Due to limited availability of the data related to the pool processes, audits of these appointments were only able to examine the selection process as it was applied to those candidates referred from the pool to the hiring manager, from the point of referral onward. Consequently, to ensure a comprehensive review of the application of merit in the general hiring pool processes, the Merit Commissioner undertook special audits of the EAW and clerical hiring pools in 2011 that included an examination of the recruitment, screening, testing, assessment and referral processes which precede the referral of candidates from the pools.

While separate audits were conducted, given the similarity between the hiring pool processes, the results are summarized together in this section.

OBJECTIVE

The objective of the audits was to determine if the hiring pool processes are merit-based, including whether: the recruitment and selection processes are fair, transparent and properly applied; the assessment methods are relevant to the job; the decisions made are reasonable; and, the individuals appointed possess the required qualifications.

SCOPE AND APPROACH

Meetings were held with BC Public Service Agency (BCPSA) representatives to obtain information required for these audits. As well, Ministry of Social Development representatives were consulted regarding the EAW hiring pool. Several human resource specialists from other provinces and from the federal government provided information regarding the use of pool hiring and associated practices within their jurisdictions.

A random sample of applicants to each pool was selected from specific 2011 pool processes. The chosen sampling approach allowed for the review of a reasonable number of applicants while ensuring reliability of results.

With respect to the EAW hiring pool, a random sample of 73 individuals was drawn from an out-of-service posting for positions in Vancouver and the Fraser Valley. An audit was conducted of the application of the assessment processes to these individuals as they progressed from their date of application to March 7, 2012, the date the audit commenced. With respect to the clerical hiring pool, a random sample of 59 applicants from an in-service posting for clerical positions in Victoria was drawn, and an audit of the selection process from the application stage to the referral stage as of March 30, 2012 was conducted.

In addition, audits were conducted of eight EAW appointments and six clerical appointments randomly selected as part of the 2011 Merit Performance Audit. These audits focused on only the post-referral aspects of the selection processes due to the challenges with respect to the large number of applicants in the preliminary stage of the pool processes and the unavailability of some relevant information.

EMPLOYMENT AND ASSISTANCE WORKER (EAW) HIRING POOL SPECIAL AUDIT

EAW Hiring Pool Process

In 2009, the Ministry of Social Development initiated a pool approach to hire for Employment and Assistance Worker (EAW) positions in order to fill an increasing number of positions and provide candidates with a streamlined hiring experience by allowing them to participate in one pre-assessment process for multiple opportunities. This corporate approach evolved into the EAW hiring pool, which is jointly administered by the ministry and the BCPSA's Hiring Centre. Initially, the EAW hiring pool was used to fill positions across the province. Subsequently its use was limited to areas where it has been found to be more effective than individual competitions (e.g., Vancouver, Victoria and most of the Fraser Valley). Typically, three to four pool opportunities per region are posted each year, open for a two-week period to both in-service and out-of-service applicants.

The start of the pool process is a posting outlining the EAW staffing criteria, with a link to the job description and other related on-line EAW hiring pool process information. Interested applicants submit an on-line profile along with a multiple-choice questionnaire that requires them to indicate their levels of education and experience in several job-related areas.

For each hiring process, ministry and Hiring Centre representatives determine the amount of experience which will be considered mandatory and if there is any additional preferred experience which will be required in order to be short-listed. These decisions enable short-listing to a reasonable number of applicants based on the forecast number of vacancies and the number of applications received. Applicants are assessed against the established short-listing criteria, and are notified as to whether or not they will proceed to the next stage, referred to as "the bank".

When vacancies arise, hiring managers contact the Hiring Centre to request candidates proceed to the testing stage from the bank. The number of candidates who move forward is based on the number of vacancies to be filled and on past experience that approximately 70 per cent of those tested will pass. The candidates who are referred are invited to complete the Comprehensive Candidate Profile (CCP). This test battery was designed by

an industrial and organizational psychology company to assess analytical abilities and behavioural traits. Although the test battery can be evaluated in a number of ways, the ministry has chosen a pass/fail approach which requires candidates to achieve minimum scores in two areas in order to pass.

Candidates are referred for testing based on their location preference and level of experience – those with greater levels of experience in the mandatory and preferred areas are referred first. Where this filtering process results in more candidates than the hiring manager has requested, candidates with similar levels of experience are referred in the order generated by the database.

When hiring managers request candidates for interview, they are generally referred three to five per vacancy. Candidates are referred based on their preferred locations and the date they are considered to have entered the pool, which is the date they passed the CCP test. When the CCP test was first introduced in 2007, referrals were based on CCP scores. However, in 2010, the criteria for referral changed to the date of entry into the pool, in order to provide a shorter time between testing and interview for those candidates being referred. Where the use of the changed referral criteria results in too many candidates, individuals are referred for interview in the order that the database generates names.

Once candidates are referred for interview, the Hiring Centre provides the managers with standardized assessment materials including possible interview questions, behavioural competency and marking information, as well as rating guide templates, and past work performance assessment questions. Candidates' interview responses are assessed against the identified competency recruitment levels and rated on a five-point scale. To pass, candidates must meet the recruitment level established for each competency. Hiring managers check past work performance with at least a current direct supervisor and a previous supervisor or equivalent. Once all assessments are complete, the managers forward the completed interview rating guide to the Hiring Centre for final candidate ranking based on the consideration of years of continuous service. The candidates who qualify are rank-ordered and offered positions in that order or, if they are not appointed, are returned to the pool as a "prospect" to be offered an EAW position at a future date in accordance with their location preference and rank order.

The Hiring Centre notifies candidates by email of their status after the initial stage of screening based on their completed questionnaires and after they go through CCP testing. They are advised if they have passed and qualify for the pool, or if they have failed and been removed from further consideration. The Hiring Centre also notifies any candidates who were interviewed, of the final appointment outcome for the particular referral process of which they were a part. However, any employee applicants who were not referred for interview are not provided final notification of appointments made as a result of these hiring pool processes.

AUDIT FINDINGS SPECIFIC TO THE EAW HIRING POOL

The following are findings resulting from the special audit that are specific to the EAW hiring pool process. Other findings which are common to both the EAW and the clerical hiring pool appear at the end of this section of the report.

Selection Criteria and Screening

The audit found that the EAW selection criteria are sufficient, job related and consistently assessed across applicants. However, it was also found that the EAW job requirements (i.e., experience and competencies) changed, and the specific posting and job description reviewed in this audit did not reflect the new requirements. In addition, there was no indication in the posting and job description of the minimum amount of experience required, and no indication that preference might be given to candidates with more than the minimum experience. Accurately describing and posting the selection criteria would ensure a transparent and merit-based process, and would assist potential EAW applicants in determining if they are interested and eligible to apply.

Pre-Assessment

The audit concluded that the EAW pre-assessment tools (i.e., the questionnaire and CCP test) were comprehensive and relevant to the job responsibilities, and were administered fairly. The audit also found that the Hiring Centre has improved the pool processes over time through more rigorous administration (e.g., no referrals from outside the pool, and improved practices related to the consideration of years of continuous service), the provision of standardized assessment materials to hiring managers, and increased communications with interested applicants.

In the specific hiring process that was audited, applicant questionnaires and CCP tests were evaluated in accordance with the established criteria and applicants were appropriately determined to have passed or failed. In one case, an applicant was incorrectly notified of having passed the questionnaire pre-screening stage.

CCP and Interview Referral

In accordance with the general EAW hiring pool approach, candidates are grouped and referred for CCP testing based on their location preferences and level of experience. However, in the specific process audited, the selection of candidates for referral did not follow what should have been a progressive, tiered approach based on the highest level of experience. Instead, the first group of candidates referred for interview had less experience than the subsequent group of candidates. Further, given the large number of candidates, it was not possible for all those with the same level of experience to be tested at the same time. Instead, groups of similarly qualified candidates had to be tested over a period of time, with the timing of testing determined by the order of names on the list generated by the database sort.

In the Office's 2010 Merit Performance Audit, using timing as the criteria for interview referral (i.e., the date the candidate passed the CCP test and became part of the pool) rather than using merit, was identified as problematic. This special audit found that although interview referrals were intended to be based on levels of experience rather than timing; when the bank contained a large number of candidates with the same level of experience, instead of using some form of merit-based criteria, a database sort was used to determine which candidates would be referred.

CCP and interview referral processes based on merit criteria would ensure candidates are treated fairly and consistently.

Interview

The audit found the standardized interview materials to be relevant to the EAW job responsibilities. In all of the interview processes involving either candidates from the audit sample or candidates from the eight appointment processes drawn in the 2011 Merit Performance Audit, a consistent approach to interviewing was followed using these standardized assessment materials. All candidates were appropriately determined

to have passed or failed and those who passed had past work performance assessments completed and documented and years of continuous service properly considered.

The audits of the specific EAW hiring pool process and the eight appointments selected for the 2011 Merit Performance Audit identified the use of different marking approaches between regions within the same pool process. One region used the marking guideline provided by the Hiring Centre while the other region introduced modifications to provide greater differentiation among candidates. While the modified approach does not impact which candidates passed or failed, it would have affected the order of candidates had they been ranked. As all qualified candidates reviewed were offered appointments following their interview, the rank order was not an issue; however, it is noted that candidates received different treatment within the same hiring pool process depending on where the interview was conducted. Inconsistent treatment of candidates within the same hiring pool process has the potential to negatively impact a candidate's rank order and subsequent appointment date should all qualified candidates not receive immediate offers.

CLERICAL HIRING POOL SPECIAL AUDIT

Clerical Hiring Pool Process

A pooled approach to clerical hiring in the BC Public Service was introduced in 2008 and, at the time of the audit, was being used to fill a variety of clerical positions in the lower mainland and Victoria. Clerical pool opportunities are posted throughout the year and are typically open to applicants for several months at a time. The clerical hiring pool process has undergone several significant changes since its inception. Originally, pool opportunities were open to both internal and external applicants; however, with hiring restrictions in recent years, external applicants have only been eligible to apply for auxiliary positions. Also, the practical skills test originally in use was eliminated as a pre-assessment tool as it did not sufficiently differentiate among applicants. Further, the Hiring Centre ceased the practice of short-listing candidates for referral based on their date of entry into the pool.

The process for hiring through the clerical pool starts with a posting outlining the basic requirements necessary to be considered for the pool and advising potential applicants that further assessments may be required to determine their administrative and clerical skills. Interested applicants submit an on-line questionnaire and profile to the Hiring Centre indicating their education and level and type of office experience. Applicants also indicate

their desired job classification levels from the following: Office Assistant R7; Clerk/Clerk Stenographer R9; Clerk/Clerk Stenographer R11; and Clerk 14.

While there are no guidelines regarding the order or timelines within which individual applications are reviewed, typically they are initially considered based on date of application or the need for candidates with specific qualifications. Upon review, applicants whose questionnaires indicate one year of administrative and/or clerical office experience (or an equivalent combination of education, experience and training) are short-listed. Short-listed candidates are interviewed by Hiring Centre staff to assess three core competencies and to determine if they demonstrate the minimum recruitment level established for each competency.

To be considered pre-qualified for specific clerical/administrative job classification levels, candidates must demonstrate the requisite years of experience in combination with the target competency levels specified for that classification. To aid in determining levels, the Hiring Centre developed a matrix which outlines the pre-qualification standards.

While candidates are advised if they have passed and will be included in the clerical pool, unless they specifically ask, they are not advised of the classification level(s) for which they are considered to be pre-qualified. Also, in situations where the recruiter has pre-qualified a candidate at a lower classification level than the candidate has requested, there is no established re-assessment process or criteria should the candidate gain additional experience or other requirements which may serve to pre-qualify that individual at a higher level.

When hiring managers decide to use the clerical pool to fill a position, they contact the Hiring Centre to request the referral of candidates. All interested candidates who are both pre-qualified at the appropriate job classification level and who possess any additional qualifications required for the position are referred. Although it is not the Hiring Centre's usual practice to refer specific candidates from the pool, at the hiring manager's request, they will send individuals who may not otherwise be included for referral.

Once candidates are referred, hiring managers are responsible for further assessments such as interviews and tests, and conducting reference checks with current and/or previous supervisors. At the end of the assessment process, hiring managers forward the completed and finalized rating guide to the Hiring Centre for the consideration of years of continuous service and, where the BCGEU qualified relatively equal provision is applicable, the determination of the final ranking.

After candidates' pre-assessment questionnaires are reviewed and they are interviewed, the Hiring Centre notifies them verbally as to whether they have passed and qualify for the pool, or have failed and been removed from further consideration. The Hiring Centre also notifies those candidates who were referred for interviews for a specific appointment of the final outcome of that particular process. However, employee applicants to the pool process who were not referred for interview or who were unsuccessful at other stages in the process receive no notification of appointments made through the clerical hiring pool process.

AUDIT FINDINGS SPECIFIC TO THE CLERICAL HIRING POOL

The following are findings resulting from the special audit that are specific to the clerical hiring pool process. Other findings which are common to both the EAW and the clerical hiring pool appear at the end of this section of the report.

Selection Criteria and Screening

The audit found that the minimum qualifications to be considered for the clerical hiring pool were reasonable, relevant and consistently assessed across applicants. However, although the minimum experience requirements for entry-level clerical jobs were posted, the requisite years of experience for higher-level job classifications were not stated in the posting or included in the on-line information. Publishing these requirements would ensure a transparent and merit-based process, and would assist potential applicants in determining their eligibility.

During the period subject to the special audit, the Hiring Centre changed the process for determining the order in which qualified applicants would be pre-assessed, from use of the date of application, to use of the Hiring Centre's assumption of applicants' interest in a job classification level. This change was implemented as the majority of demands were to fill positions at the R9 classification level but applicants' interest in this level was negligible. The Hiring Centre decided only auxiliary applicants in positions classified at the R7 or R9 level would likely be interested in R9 level positions, and therefore only these applicants were reviewed for short-listing. These efforts to streamline the process overlooked employee applicants in regular positions, including those who expressed an interest in positions classified at the R9 level. This need for administrative expediency compromised due process and resulted in auxiliary applicants receiving preferential treatment over regular employee applicants. All applicants should be considered fairly against the same objective criteria.

Pre-Assessment

The audit found that the pre-assessment tools (i.e., the questionnaire, interview questions, summary document and matrix) were objective and relevant to a wide variety of clerical jobs. Also, the criteria established for passing or failing the pre-assessment stage of the process were reasonable.

In the specific process audited, the pre-assessment questionnaire and interview process were consistently administered and candidates in the audit sample were appropriately evaluated and determined to be pre-qualified for job classification levels in accordance with the matrix, with one exception. This candidate was pre-qualified at a higher level than was warranted by her interview results. The audit also noted several cases where candidates expressed an interest in job classification levels that were higher than their pre-qualified assessment level, but they were not informed of these results.

Interview Referral

Approximately 75 per cent of the pre-qualified candidates in the audit sample were referred to one or more job opportunities in accordance with the established referral criteria. The audit identified valid reasons why the remaining 25 per cent of pre-qualified candidates had not been referred to any jobs as of March 30, 2012 (e.g., candidates did not possess the additional selection criteria required for a specific position referral).

Since the 2010 Merit Performance Audit, the Hiring Centre changed the procedure for referring pool candidates to hiring managers. The audit found the revised procedure, which is to refer interested candidates based on their qualifications, to be merit-based. However, the audit identified two cases where the application of the referral criteria resulted in the inconsistent treatment of candidates.

In a small number of the referrals, it was evident that the hiring manager had requested a specific individual for referral along with the other candidates identified by the Hiring Centre. Generally, the selected individuals were found to have been appropriately pre-qualified and placed in the pool; however, in one case, the individual requested was given priority for pre-assessment ahead of other applicants with similar qualifications who had applied to the pool earlier. The short-listing of an applicant based on a hiring manager's

request without other similarly qualified applicants at the same stage of the process being given the same consideration results in preferential treatment.

In another case, the audit identified a discrepancy between a candidate's questionnaire and resume with respect to the years of experience required for referral to a hiring manager. There was no evidence that the candidate's experience presented in her questionnaire was reviewed for accuracy in either the pre-qualification or the referral stage. The candidate was ultimately successful and appointed to the position. As this part of the special audit was limited in scope to the application of processes up to the point of referral, it was not determined if this individual was qualified for the position to which she was appointed.

Further, the audit found several errors and discrepancies in how applicant information was coded in the Hiring Centre's recruitment information system. These coding errors may have prevented applicants from being referred to job opportunities.

Interview

The six clerical appointments included in the 2011 Merit Performance Audit sample were audited from the point of referral of candidates to the hiring manager, to appointment. All six audits found that interview materials were relevant to the positions being filled and were typically based on an assessment of behavioural competencies. The marking approaches taken were reasonable and consistently applied. Past work performance was assessed for all successful candidates with either a direct supervisor or an equivalent. In all cases, years of continuous service were appropriately considered.

Two of the six audited appointments were found not to have resulted from merit-based processes due to the inclusion of applicants from outside the hiring pool in the selection process. A process that provides consideration to some applicants without requiring them to demonstrate the same qualifications in the same manner as others, is favouritism and inconsistent treatment which compromises a merit-based process.

AUDIT FINDINGS COMMON TO BOTH EAW AND CLERICAL HIRING POOLS

In addition to the audit findings outlined previously, the following are broader systemic findings common to both the EAW and the clerical hiring pool processes.

Notification

The audit found that the Hiring Centre's approach to applicant notification has not changed since this issue was identified in the Merit Commissioner's 2010/2011 Annual Report; that is, only those employee candidates who are referred to hiring managers for interview receive final notification of appointments made in that particular appointment process. This approach does not consider that employees who have applied for the pool but are not referred are also "applicants" and therefore entitled to notification when they are unsuccessful.

The Merit Commissioner's opinion is that all employee applicants to or from within a pool, who have not otherwise excluded themselves, must be considered as applicants for the purposes of the review provisions outlined in sections 17 to 19 of the *Act* with respect to all appointments arising from the pool. Consequently, failure to notify unsuccessful employee applicants that an appointment has been made obstructs their right to seek formal recourse of the appointment decision as granted by legislation.

Access to Information

Since the Merit Commissioner's earlier review of corporate hiring pools, availability of information for audit has improved. As the recruitment information system has limited tracking, linking and reporting capabilities, these limitations resulted in difficulty obtaining meaningful and time-specific information on applicants and difficulty in the production of ad hoc reports. In addition, as the Hiring Centre's pool processes were not always documented, in conducting this audit it was often necessary to rely on "corporate memory" which proved challenging due to staff turnover in the BCPSA.

HIRING POOL CONCLUSIONS

Based on the findings of these special audits and due to the lack of notification to all unsuccessful employee applicants, all appointments from both the EAW and clerical hiring pools must be considered to result from processes where there were exceptions to merit-based hiring policies.

For appointments resulting from the EAW hiring pool, there was a further issue identified – the approach taken in identifying candidates for referral at various stages of the selection process using non-merit-based criteria (i.e., database sort).

With respect to the specific clerical hiring pool audited, a flaw was identified in that applicants were screened for pre-assessment based on the Hiring Centre's assumption that only auxiliary employees would be interested in referral to certain levels.

HIRING POOL RECOMMENDATIONS

In light of the findings of these two special audits, the Merit Commissioner makes the following recommendations specific to hiring pools:

1. That where different competitions may have different education or experience requirements for the same type of position, potential applicants be advised of the relevant selection criteria to be used for assessment;
2. That where multiple job classification levels may be available, potential applicants be advised of the mandatory education and experience requirements for each level and that they be advised of their assessed pre-qualification status with respect to those levels;
3. That a comprehensive and effective means of tracking pool applicants be developed to ensure appropriate documentation is available to support merit-based hiring decisions;
4. That where there is further reduction in the number of initially short-listed candidates, it be accomplished using merit-based criteria. That where merit-based criteria have been applied and all else is equal, if still required, true random selection be considered to advance a reasonable number of candidates;
5. That a standardized marking approach, which provides a merit-based means of

distinguishing among candidates, be used to rate and rank all candidates within one selection process;

6. That when a pool process is utilized, applicants outside the hiring pool not be included for consideration at any stage. (This is in keeping with the Merit Commissioner's 2010/2011 recommendation); and
7. That the pool process recognize any employee who has applied for inclusion in the pool as an employee applicant for appointments arising from the pool, whether they are accepted into the pool or not, and provide these employees with appropriate notification in accordance with the *Act*. (This is in keeping with the Merit Commissioner's 2010/2011 recommendation.)

ORGANIZATION AND MINISTRY RESPONSE

The BCPSA, which administers both hiring pools, was provided with draft copies of both special audit reports. The Ministry of Social Development, which is responsible for the EAW hiring pool process, was provided with a draft copy of the EAW report.

The BCPSA responded that they considered hiring pool processes to be an efficient and cost-effective means of filling high-volume positions and/or responding to increased hiring demands. It was further noted that coincident with the undertaking of this special audit, the Agency had conducted an internal business process evaluation and determined that a redesign of the pool processes was necessary. As a result, the Hiring Centre suspended the use of pool processes pending their review with the intent of developing new processes that meet the BCPSA's corporate objectives and also ensure applicants are provided appropriate rights of review. The Ministry of Social Development responded that along with the BCPSA, they have identified enhancing the process for EAW hiring as a key priority. They acknowledged that the observations and recommendations from the special audit will be taken into account in redesigning the EAW hiring pool process.

Review of Staffing Decisions

OVERVIEW

Since December 2003, Part 4 of the *Public Service Act* has given employees who are unsuccessful applicants in a competition the right to request a review of a hiring or promotion decision. The request must relate to the grounds that the appointment did not comply with the test of merit: that the individual was qualified for the job, and that the selection process was merit-based.

The staffing review process begins with the employee requesting feedback from the hiring manager on their own performance during the staffing process or with respect to the reasons for not being appointed. If unsatisfied, the employee may then request an internal inquiry by the deputy minister into the application of the principle of merit. For employees who applied for an excluded position, the deputy minister's decision is final.

For employees who are applicants to bargaining unit positions, there is further recourse available: an independent review by the Merit Commissioner. This review involves discussions with the employee who requests the review and an analysis of all documentation related to the staffing process in question. The Office of the Merit Commissioner may have discussions with, or request additional information from, the manager responsible for the appointment decision, or with others involved in the assessment process. These discussions help to clarify the issues and establish facts. After completing this review, the Merit Commissioner may find that the appointment was merit-based or may direct that the deputy minister reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

Employee applicants request a review of a hiring or promotion decision because they believe that the proposed appointment is not merit-based. Review decisions by the Merit Commissioner give deputy ministers, hiring managers and these employees an independent determination of whether the appointment was the result of a fair and reasonable merit-based process.

The Merit Commissioner’s review is guided by the requirements of legislation, hiring policy and collective agreement provisions that are related to merit-based hiring. It acknowledges that managers have been delegated staffing authority: they are responsible and accountable for staffing decisions. A decision by the Merit Commissioner is not intended to be a substitute for the judgement of a hiring manager.

The Merit Commissioner’s independent review is based on the grounds submitted by the employee to the deputy minister/organization head at the inquiry stage. The review concentrates on the grounds submitted by the employee; however, the overall recruitment and selection process is also examined to determine if the assessment was based on the factors relevant to the work to be performed; whether the steps in the process and decisions made were fair, consistent, transparent, reasonable, and objective; and whether all factors of merit were considered.

INTERNAL INQUIRIES

Information on requests received within ministries for internal inquiries conducted at the deputy minister level is provided to the Merit Commissioner by the BC Public Service Agency (BCPSA) and directly to the Office by some organizations which do not receive services from the BCPSA. Of the 35 eligible bargaining unit internal inquiries reported in the 2011/2012 fiscal year, the deputy minister upheld 32 of the appointment decisions. Of these, 21 requests (66 per cent) were subsequently submitted to the Merit Commissioner for review. The overall number of requests for deputy minister/organization head or Merit Commissioner review remains low in relation to the overall number of appointments in the BC Public Service.

In both the 2009/2010 and 2010/2011 Annual Reports, the Merit Commissioner observed the occurrence of significant delays in the completion of internal inquiries by deputy ministers. There are strict five-day time limits imposed on employees when requesting feedback, an internal inquiry, or a review. Hiring managers are required under the *Act* to provide feedback “as soon as practicable”. No timelines are prescribed for the deputy minister to respond to requests for an internal inquiry.

An analysis shows deputy minister response times improved considerably in 2011/2012. The majority of internal inquiries were completed in less than 41 days, with responses delivered in an average of 34 days, as compared to the previous three years, in which the overall average response time was 43 days.

FREQUENCY OF REQUESTS FOR REVIEW BY THE MERIT COMMISSIONER

The 21 requests for review received by the Merit Commissioner in 2011/2012 was the highest in any year since 2004/2005 and is nearly double that of 2010/2011. Ineligible requests for review continue to be a sizable portion of total requests. Table 9 below provides further details.

Table 9: Year-to-Year Comparison of Staffing Reviews				
Fiscal Year	2008 – 2009	2009 – 2010	2010 – 2011	2011 – 2012
Requests for review received	15	6	11	21
Requests for review outstanding from previous fiscal year	–	–	–	–
Requests for review ineligible or withdrawn	4	2	4	5
Total eligible requests for review*	11	4	7	16
Decisions issued	11	4	7	15
Decisions deferred to next fiscal year	–	–	–	1
Appointments complying with merit	11	4	6	12
Appointments not complying with merit	–	–	1	3

MERIT COMMISSIONER DECISIONS

Requests filed in the 2011/2012 Fiscal Year

During the 2011/2012 fiscal year, the Merit Commissioner received 21 individual requests for review of appointments in eight ministries and in 12 geographic locations. Five requests were deemed ineligible: two were outside the prescribed timelines for review; one was in regard to an appointment through lateral transfer, which is exempt from the requirement for merit under the *Act*; one was from an employee who was not an applicant for the position; and one was from an individual who was no longer an employee.

Of the 16 requests eligible for review, 15 decisions were issued by the Merit Commissioner by the end of the fiscal year. The decision with respect to the other request, which was received late in the fiscal year, was issued in 2012/2013. Decisions were issued within six to 56 days of receipt of the appointment documentation, with an average response time of 32 days. Delays beyond the targeted response time of 30 days were the result of an increased number of review requests in conjunction with staff turnover in the Office.

Two of the competitions reviewed were open to external applicants and the remainder of the competitions were limited to in-service applicants. Further restrictions, such as to employees within a branch, were imposed in three of the in-service competitions. In one competition, requests for review were received from two different employees. In 12 cases, the Merit Commissioner found the appointments were the result of merit-based processes and the individuals appointed were qualified. In three cases, the Merit Commissioner found that although the individuals appointed were qualified, the appointments were not the result of merit-based processes. Consequently, the deputy ministers were directed to reconsider the appointments.

Key Themes

In these staffing review requests, employees typically submitted a number of reasons why they believed that a merit-based hiring decision was not made. Key themes are identified as follows.

Assessment

Assessment design, conduct of the process and scoring were the most frequently noted areas of concern for employee applicants requesting a staffing review.

There are many ways to design a merit-based competition; for example, the selection of a knowledgeable panel, the identification of the areas for assessment, the development of assessment tools (e.g., tests, interview questions, role plays), and the pre-determination of a rating system and marking approach. There is no single best model; however, a well-designed hiring process will consider all factors of merit in light of the specific job requirements. Several employees identified issues with the design of the competitions and cited such concerns as poor question design, the panel's disregard of a demonstrated competency, a lowered pass mark requirement, insufficient consideration of experience, and the addition of an unexpected question. For the reviews where these issues were raised, the Merit Commissioner found that the assessment processes were job-related, that the decisions or changes made during the process were reasonable, and that no candidate was advantaged or disadvantaged.

The conduct of the process, or how the staffing action was undertaken, was the source of a number of concerns. Candidates must demonstrate how their qualifications exceed those of the other candidates; therefore, they are understandably attentive to the consistency and fairness of staffing practices. Employees requesting a staffing review presented concerns regarding exceptions to a merit-based process for the following reasons: insufficient probing for anticipated responses, lack of time to prepare, lack of information about job requirements, and inconsistent test schedules. In all these cases, the Merit Commissioner concluded that although candidates were not necessarily treated identically, they were treated reasonably and fairly, and therefore merit was applied. For example, in one competition candidates were given different periods of advance notification for a written

test. It is considered good practice to notify all candidates at the same time of their status in a competition and to schedule assessments as close together as possible, in order to increase transparency and minimize any advantage to candidates in terms of time for preparation. However, the Merit Commissioner found that the relatively short delay in notification due to administrative scheduling arrangements did not impact the outcome of the written test.

In their grounds for requesting a review, five individuals identified scoring in the assessment process as an issue. In these cases, employees believed that the quality of their answers warranted higher marks than were assigned by the panel. These differences of opinion were predominantly related to the assessment of competencies through behavioural event interviewing. The Merit Commissioner determined in each case the panel had used a reasonable approach to marking which was consistently applied to all candidates, ensuring no candidate was advantaged or disadvantaged.

Past Work Performance

Past work performance is a critical component of a hiring process and one of the legislated factors of merit. The BC Public Service has staffing policy that requires an assessment of past work performance which must include a reference from a supervisor or equivalent. Past work performance assessments are usually conducted at the end of the hiring process and may be carried out for one or more candidates.

Six reviews considered issues with past work performance. In two of these reviews, the Merit Commissioner found a serious flaw and directed the deputy ministers to reconsider the appointment decision. In one of these flawed competitions, the panel chose not to assess past work performance for one candidate; however, based on the scoring structure for the competition, this candidate may have moved ahead in the ranking and been offered a position had her past work performance been assessed. It is a hiring panel's decision as to how to assign points and rank candidates and, therefore, determine which candidates are to be assessed on past work performance. However, this decision must be fair to all candidates.

In the other decision where reconsideration was directed, the Merit Commissioner determined that the scoring system established to assess past work performance was overly rigid and did not allow for managerial judgement and discretion in considering candidate circumstances.

In three of the review requests related to past work performance, employees disagreed with the marking systems (e.g., scoring, weighting of the past work performance scores relative to overall marks, and determination of marks). BCPSA guidelines provide a variety of options for assessing past work performance such as reference checks, performance appraisals, and work samples and indicate that these assessments may be point-scored or rated on a pass/fail basis. There is not just one correct way to score past work performance and as such, hiring managers may select the assessment method they determine to be the most appropriate as long as policy requirements are met. In these three reviews, the Merit Commissioner supported the hiring panels' decisions with respect to the approach to past work performance assessments as these decisions were considered reasonable and fairly applied.

Further, three of the requests for review by the Merit Commissioner raised concern with the choice and use of a reference; including consideration of informal comments, the number of references used, or that other references should have been contacted. In reviewing these concerns, the Merit Commissioner considered whether hiring policy had been applied and if hiring managers conducted an objective and consistent assessment. For these competitions, the Merit Commissioner found the overall past work performance assessment processes to be fair.

Years of Continuous Service

Years of continuous service is a factor of merit that must be considered, and for those employees applying for bargaining unit positions in the BCGEU its assessment must occur through the "qualified relatively equal" (QRE) calculation. Five of the 2011/2012 requests for review included concerns with the application of this calculation.

The consideration of years of continuous service occurs at the end of the assessment process for all candidates who have passing marks once all points have been assigned. In the reviews, two employees considered they should have received credit for years of

continuous service. However, it was found that as they had not passed the earlier sections of the assessment they were appropriately not subject to the QRE calculation. In another case, a concern was raised that the calculation was incorrect. The candidates' public service seniority documentation could not be located and, without this evidence, the Merit Commissioner was unable to confirm that this aspect of the selection process was conducted appropriately and that the QRE calculations were correctly applied. As a result, the deputy minister was directed to reconsider the appointment decision. In two other requests for review the employees believed QRE should have been calculated. Although in each case the employee had passed the earlier assessment process, their marks were below the range in which they could potentially be determined relatively equal to the highest-scoring candidate. Both reviews found the panels had completed the correct assessment of years of continuous service.

Bias

Panel members are required to make informed and defensible hiring decisions: their actions must be, and be seen to be, fair and objective.

Three candidates raised issues with perceived panel bias such as concerns that panel members worked in the same office as the successful candidate. The Merit Commissioner found no evidence of bias in these cases due, in part, to precautions taken by the panels to ensure candidates were marked fairly and consistently; resulting in reasonable assessments based on job-related criteria.

Feedback

Feedback provides employee applicants with the opportunity to improve their performance as well as to increase their confidence in the appointment process. Providing constructive feedback on an individual's performance in a competition also adds transparency. In 2011/2012, four employees raised concerns that they did not receive sufficient or detailed information about their own performance. The amount of information provided is at the panel's discretion; managers are encouraged to give clear, open, timely and specific feedback to improve candidates' understanding of decisions made during the hiring process. In the reviews conducted by the Merit Commissioner, these concerns were investigated but there was no evidence that a merit-based process was compromised.

OBSERVATIONS

The Merit Commissioner has previously commented on the need for increased transparency as it relates to the staffing review process. Some progress has been made in this regard.

Information is now regularly reported to this Office by the BCPSA on the number of internal inquiry investigations they have undertaken on behalf of deputy ministers. As well, positive changes with regard to employees' access to information on their right of review have been noted in the BCPSA's standard notification letter, which directs unsuccessful employee applicants to the hiring manager for feedback. An information sheet related to seeking feedback and requesting a review, including a link to this Office's website, is available on-line although not easily found. The Office continues to receive feedback from employees who are frustrated by the difficulty in finding information about the staffing review process on the BCPSA's website for employees. Again, it is suggested that transparency could be improved by ensuring this information is easily accessed. The BCPSA continues to update their website content and the Office will monitor the site.

In the 2010/2011 Annual Report, the Merit Commissioner stated an intention to follow up on the need for deputy ministers and organization heads to have an organizational culture supportive of an employee's right of review. This work will be given priority in 2012/2013. The Merit Commissioner will also canvas the independent offices and agencies, boards and commissions about internal inquiries received in their organizations and how they handle these requests. These two initiatives will give the Office a comprehensive view of how employee concerns are addressed at the review stage of the staffing process.

Budget and Operations

On November 15, 2011, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to review results of the work of the Office over the previous year, to establish priorities for the year ahead, and to review budget requirements for the next three fiscal years. The Committee considered the budget estimates to be prudent and responsible and recommended approval of the proposed budget.

BUDGET AND EXPENDITURES 2011/2012

The Office of the Merit Commissioner's approved operating budget and expenditures for the 2011/2012 fiscal year are shown by expenditure type in Chart 3. Total expenditures were under budget by approximately \$131,000 or 12.3 per cent.

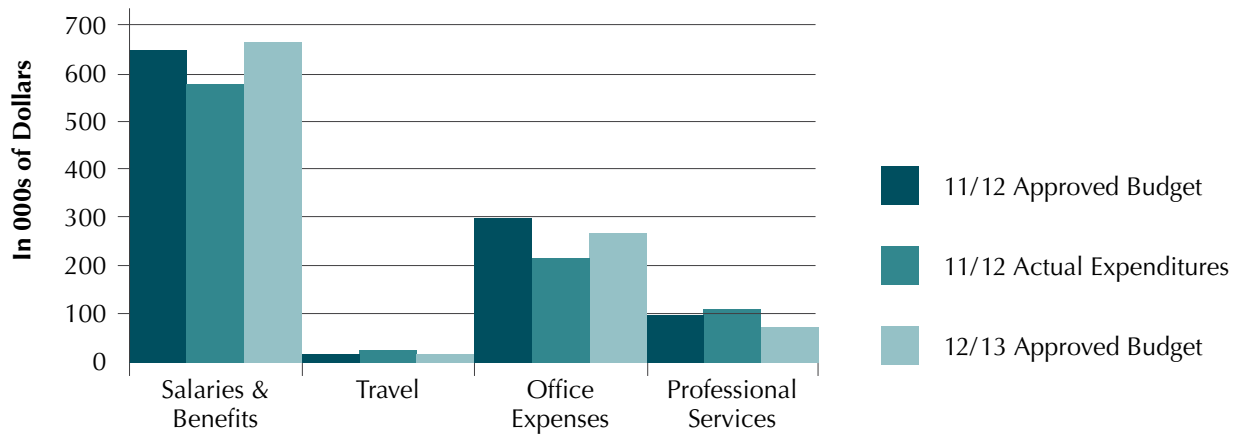
SERVICE PLAN 2012/2013 TO 2014/2015

The Service Plan for the Office of the Merit Commissioner outlined future challenges and priorities for the coming years. Specifically, it addressed plans for an audit of appointments made during the 2012 calendar year; special audits of temporary appointments and appointments made through corporate hiring pools; and studies related to specific aspects of the staffing process.

BUDGET 2012/2013

Given the Office of the Merit Commissioner's ability to manage well within the past years' budget allocations, the Merit Commissioner was able to propose to the Committee a 4% reduction in the 2012/2013 budget requirements. The Committee expressed appreciation for the Commissioner's recommendations and approved an operating budget for the Office in the amount of \$1,024,000 for fiscal year 2012/2013, details of which are also contained in Chart 3.

Chart 3: Operating Budget and Expenditures 2011/2012 and Approved Operating Budget 2012/2013



Resources

Staff

Manager, Performance Audit and Review

Catherine Arber

Performance Auditors

Jill Inget

Lynn Kingham

Cathy Leahy

Administrative Assistant

Lorina Miklenic

Audit Advisory Committee

Errol Price, FCA, CMC

Thea Vakil, PhD

Arn van Iersel, FCGA, ACC

Contracted Auditors

Reg Effa

Bruce McLennan

Judi Pringle

Norma Quinn

The Office of the Merit Commissioner

Suite 502 – 947 Fort Street

PO Box 9037

Stn Prov Govt

Victoria, BC

V8W 9A3

Phone: 250 953-4208

Fax: 250 953-4160

Website: www.meritcomm.bc.ca

APPENDIX A

Organizations Subject to Oversight by the Merit Commissioner

MINISTRIES (as of June 22, 2012)

Aboriginal Relations and Reconciliation
Advanced Education
Agriculture
Children and Family Development
Community, Sport and Cultural Development
Education
Energy and Mines
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
Jobs, Tourism and Innovation
Justice
Labour, Citizens' Services and Open Government
Social Development
Transportation and Infrastructure

INDEPENDENT OFFICES

Auditor General
Elections BC
Information and Privacy Commissioner
Merit Commissioner
Ombudsperson
Police Complaint Commissioner
Representative for Children and Youth

AGENCIES, BOARDS AND COMMISSIONS

Agricultural Land Commission
BC Pension Corporation
BC Public Service Agency
Broadmead Care Society
Employment and Assistance Appeal Tribunal of BC
Environmental Appeal Board
Financial Institutions Commission
Forensic Psychiatric Hospital and Riverview Hospital
(BC Mental Health and Addiction Services)
Forest Appeals Commission
Forest Practices Board
Islands Trust
Oak Bay Lodge Continuing Care Society
Office of the Premier
Provincial Capital Commission
Public Sector Employers' Council
Royal BC Museum

APPENDIX B

Report Prepared by BC Stats: “Random Selection for the 2011 Merit Performance Audit”

RANDOM SELECTION FOR THE 2011 MERIT PERFORMANCE AUDIT

Prepared for the Office of the Merit Commissioner

July 2012



BCStats



CONTACT INFORMATION

If you have any questions about the information in this report, please contact BC Stats at 250-356-0025.

BACKGROUND

The Office of the Merit Commissioner was established by legislation in August 2001. Under this legislation, the Merit Commissioner is responsible for performing audits of public service appointments, as part of a program of monitoring the application of the merit principle under section 8 of the *Public Service Act*. The results of the audits are reported to the heads of ministries and other organizations. In aggregate, the results are also communicated to the Legislative Assembly as part of the annual report of the Commissioner.

The audits are designed to assess whether recruitment and selection practices have resulted in appointments based on merit, and whether individuals possess the required qualifications for the position to which they were appointed. This requires a close study of the details of each appointment audited by an expert in staffing processes. In 2011, the Office of the Merit Commissioner identified the need for refinements to the audit program and adjustments were introduced.

To support the audit process, BC Stats developed a sampling solution to ensure that the cases selected for the audit were both random and representative. This paper describes the appointments that occurred within the 2011 calendar year, and explains the method that was used to make an audit selection from these appointments.

Between 2001 and 2005, the resources available for auditing were limited and the number of appointments audited were constrained accordingly. With the 2006 appointment of the first Merit Commissioner as an independent Officer of the Legislature, the annual audit increased in size. The sample rate was increased such that it was robust enough to generalize the audit results to the population of appointments for a hiring year with greater certainty. The increase in the sampling rate was maintained for both the 2007 and 2009 audit years. The 2010 audit was a partial year audit, covering appointments from September 1, 2010 to December 31, 2010. Focusing on the 2011 audit, 222 appointments were audited from an adjusted population of 3,942 appointments¹, which allowed for continued generalization of the audit results to the population of appointments for the 2011 calendar year.

Table 1(a) summarizes the in-scope population and sample counts across audit years *prior* to the establishment of the Office of the Merit Commissioner as an independent office.

¹ See "Random Selection of Cases" for a full discussion of the number of appointments originally put forward for audit. A certain proportion, upon review, was deemed out of scope and this proportion was then estimated back into the original population.

Table 1(a): Year-Over-Year Comparison of In-Scope Population and Sample Counts

Year	Number of Appointments	Number of Audits	Sampling Rate
2001	1,481	39	2.6%
2002	1,835	30	1.6%
2003	2,772	40	1.4%
2004	2,904	39	1.3%
2005	2,871	70	2.4%

Table 1(b) summarizes the in-scope population and sample counts across audit years *following* the establishment of the Office of the Merit Commissioner as an independent office.

Table 1(b): Year-Over-Year Comparison of In-Scope Population and Sample Counts

Year	Number of Appointments	Number of Audits	Sampling Rate
2006	3,754	308	8.2%
2007	5,508	531	9.6%
2008 ¹	n/a	n/a	n/a
2009	2,429	302	12.4%
2010 ²	942	183	19.4%
2011	3,942	222	5.6%

¹ An audit was not conducted in 2008 and, as a result, a count of appointments occurring within the 2008 calendar year was not obtained for this study.

² The 2010 audit was a partial year audit, covering appointments from September 1, 2010 to December 31, 2010.

2011 APPOINTMENT DEMOGRAPHICS

The Office of the Merit Commissioner defined the population of appointments for the 2011 audit according to two key factors: the type of appointment and the timeframe in which the appointment occurred. The 2011 audit timeframe was January 1, 2011 to December 31, 2011. The type of appointment to be audited included direct appointments, permanent appointments and temporary appointments for more than seven months. The remaining appointments within the Merit Commissioner's jurisdiction of appointments made under section 8 of the *Public Service Act* (i.e., auxiliary appointments and temporary appointments of seven months or less), were excluded from the audit population. Based on these query parameters, a final population of 4,270 appointments was identified.

A high level demographic and geographic analysis indicated that appointments occurring in the 2011 calendar year tended to cluster around a relatively small number of occupations, organizations and geographies.

With respect to the occupational results, of the job classifications within the 2011 audit population, four were found to comprise over one-quarter (28%) of the total population of 4,270 appointments. Similar to the 2009 and 2010 audit population, the job classification with the highest incident in 2011 was “Business Leadership” with 386 appointments. A summary of the top four job classifications for 2011 is provided in Table 2.

Table 2: Top Four Job Classifications by Number of Appointments

Job Description	Number of Appointments	Percentage of All Appointments
Business Leadership	386	9.0%
Clerk R9	285	6.7%
Applied Leadership	277	6.5%
Community Prog Off (EAW) R15	239	5.6%

At the organization or ministry level, the frequency of appointments was higher for those organizations with larger populations. In combination, the five organizations with the largest number of appointments collectively accounted for just under half (46%) of the total number of appointments in 2011. Table 3 provides a summary of the top five organizations' results.

Table 3: Top Five Organizations* by Number of Appointments

Ministry	Number of Appointments	Percentage of All Appointments
Social Development	491	11.5%
Children & Family Development	456	10.7%
Attorney General	400	9.4%
Public Safety & Solicitor General	308	7.2%
Transportation & Infrastructure	295	6.9%

* Ministries in effect at the time of the appointment.

Looking at the appointment population on a geographic level revealed that half (50%) of the appointments are in Victoria, with the remaining appointments in the Greater Vancouver Regional District (GVRD) and the rest of the province (23% and 27%, respectively). A breakdown of these results can be found in Table 4.

Table 4: Broad Geographies by Number of Appointments

City	Number of Appointments	Percentage of All Appointments
Victoria	2,126	49.8%
GVRD	1,004	23.5%
Other	1,140	26.7%

RANDOM SELECTION OF CASES

The objective of the Office of the Merit Commissioner's merit performance audit is to randomly sample all permanent new hires and promotions, and temporary appointments greater than seven months, in order to obtain an unbiased picture of the application of the merit principle under the *Public Service Act*. However, while a random sample offers a generally unbiased representation of an overall population, the sample's representativeness for specific groups within the population may be limited due to constraints imposed by the size of the population and the sample. For this reason, the population was stratified prior to sample selection to ensure adequate representation in the final sample. The data stratification process is described later in this report.

The samples for the 2011 audit were selected at quarterly intervals within the 2011 calendar year. Appointments within the Liquor Distribution Branch (LDB) and Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services) were sampled twice from their own source data for appointments that took place between January 1, 2011 to June 30, 2011 and July 1, 2011 to December 31, 2011.

Appointments for positions that were broadly identified as administrative in scope were sampled at a higher rate than for positions that were not administrative. As administrative appointments typically have a lower incidence in the population than non-administrative appointments, the over-sample, at double the sampling rate, was performed so that results from the two groups could be more readily contrasted. In September 2011, the sampling requirements were adjusted to meet the demands of constrained resources in the Office of the Merit Commissioner. The resulting adjusted sampling rate culminated in a 5.6% overall sample rate for the 2011 calendar year.

For each sampling window, a cumulative list of appointments made from January 1, 2011 to the date of the pull, was provided to BC Stats. The list was filtered to distinguish appointments that had already appeared in any previous sampling window. In addition to identifying new appointments, the filtering process was also used to identify unique appointments for employees with multiple entries in the cumulative list. This filtering process provided a final population of appointments from which independent samples could be drawn.

In total, seven samples were drawn for the 2011 audit. A summary of the seven sampling windows and their associated sampling rates are provided in Table 5.

Table 5: 2011 Sampling and Population Characteristics

Organizations	Sampling Window	Occupation Group	Population	Sample Size	Systematic Sampling Rate*	Actual Sample Rate
BC Public Service	Jan 1 - Apr 30	Admin Staff	223	36	16.1%	16.1%
		Non-Admin Staff	1,021	74	7.2%	7.2%
	May 1 - Aug 31	Admin Staff	305	28	9.0%	9.2%
		Non-Admin Staff	1,193	54	4.5%	4.5%
	Sept 1 - Dec 31	Admin Staff	327	19	9.0%	5.8%
		Non-Admin Staff	1,059	31	4.5%	2.9%
Liquor Distribution Branch	Jan 1 - June 30	All Staff	50	5	10.0%	10.0%
	July 1 - Dec 31	All Staff	75	4	5.3%	5.3%
Forensic Psychiatric & Riverview Hospitals	Jan 1 - June 30	All Staff	15	2	7.5%	13.3%
	July 1 - Dec 31	All Staff	2	2	100.0%	100.0%
TOTAL			4,270	255	-	-

*The systematic sampling rate represents the initial rate at which sample points were drawn from a sample window. As none of the population sizes were evenly divisible by their respective systematic sample rate, in addition to the influence of random start counts, the actual sampling rates slightly differed from the systematic rates.

Based on the sampling plan summarized in Table 5, a final sample size of 255 appointments was drawn from the total population of 4,270 appointments.

As in previous years, three key categories were selected to stratify the data, based on their relative importance. Using a set of category definitions similar to those used in previous annual audits, the 2011 appointments were stratified by their bargaining unit status and appointment type. Due to the statistical complexities² arising from an overly stratified sample, a previously-used ministry/organization *type* stratum was replaced in favour of a ministry/organization *size* stratum for the 2009 audit. The three categories chosen for 2009, and again in 2010 and 2011, were defined as follows:

- ◆ Ministry/organization size - Smaller than 200 employees, 200 to 499 employees, 500 to 1000 employees, larger than 1000 employees;
- ◆ Appointment type - Permanent appointment, temporary appointment of more than seven months, direct appointment; and
- ◆ Bargaining unit status – Included, excluded.

A 4x3x2 matrix was built to reflect the number of possibilities in each of the above three categories, providing a total of 24 “cells” into which appointments could be sorted.

In 2011 certain portions of the population were under-sampled so as to better optimize the distribution of the full sample. A post stratification weighting adjustment ensured that any bias introduced by disproportionate sampling was largely minimized in the final population estimates.

Of the 255 randomly-sampled appointments, the Office of the Merit Commissioner identified 33 cases as being out-of-scope, primarily due to coding errors in the source data. These 33 cases were removed from the sample, leaving 222 appointments that were audited.

However, since 33 records represented a significant fraction of the sample size (i.e., 13%), BC Stats used the strata information to estimate back into the original population how many cases would likely be deemed to be out-of-scope if in fact the entire population of cases had been audited. The statistics presented in the rest of the report are based on this reduced population (222/3,942). In summary, random sampling was used to ensure broad-based auditing of all appointments. Sampling independently in the above-mentioned categories ensured correct proportional coverage of:

- a range of differently-sized organizations/ministries;
- permanent, temporary and direct appointments; and
- bargaining unit status (included versus excluded) appointments.

² The ministry/organization *type* stratification used prior to the 2009 audit presented two concerns. Firstly, to account for the possibility of organizational restructuring, an ongoing sampling plan stratified by individual organizations was determined to be unfeasible (i.e., samples drawn before and after the restructuring would have limited comparability). Secondly, as high levels of stratification can lead to inflated standard error estimates, this would be particularly problematic given the low incidence of certain merit findings. With over 30 organizations included in the audit, the resulting number of cells in the stratification plan would likely lead to over-stratification, even for large samples.

As a final note regarding the stratification plan, the calculation of sample weights was not limited to the sample strata, but included information from the differing sample rates for administrative and non-administrative appointments. In total, a set of 47 unique weights were created to adjust for bias in the overall sample.

DISTRIBUTION OF AUDITS

The following three tables show how the audits are distributed according to various characteristics of appointments. The tables (appointment type, bargaining unit status and ministry/organization size) represent the categories that were used in sample stratifications for earlier iterations of the study. In all cases, percentages were rounded to the first decimal place, and sum to 100%. The match between the sample percentages and the corresponding percentages among all appointments is close, suggesting that the sample is reasonably representative of the whole. As discussed above, unique weights were created to adjust for bias in the overall sample.

Table 6: Audits by Appointment Type

Appointment Type	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Direct Appointment	19	0.5%	8	3.6%
Temporary > 7 Months	299	7.6%	30	13.5%
Permanent Hire	3,624	91.9%	184	82.9%

Table 7: Audits by Bargaining Unit Status

Bargaining Unit Status	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Excluded	922	23.4%	62	27.9%
Included	3,020	76.6%	160	72.1%

Table 8: Audits by Organization Size

Organization Size*	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Large	3,053	77.4%	153	68.9%
Small	889	22.6%	69	31.1%

* Organization size was based on total regular employment at the start of the study period. In this table, organizations with more than 1,000 employees were deemed large, and organizations with 1,000 employees or less were deemed small (i.e., combines three sizes in the stratum: 500 to 1000 employees; 200 to 499 employees; and smaller than 200 employees).

USES AND LIMITATIONS OF AUDIT RESULTS

Sampling is used to control costs and minimize respondent burden. Auditing competition files after the competitions have closed is both expensive and time-consuming. As each file in an audit must be reviewed with the same degree of diligence, there are limited cost savings for conducting a larger sample. The appointments selected for auditing provided a random and representative sample of all appointments that occurred between January 1, 2011 and December 31, 2011 and as a result, the audit selection was unbiased in regards to the sampling framework.

In terms of year-over-year comparisons, while the number of audits conducted in 2011 (222) was less than in 2009 (302), the number was more than in 2010 (183) which was a result of a shorter timeframe of four months versus a full calendar year. The number of audits conducted in 2011 was a result of constrained resources and a change in sampling requirements in September 2011. Results from the 2011 audit continue to offer a high degree of assurance about the application of merit in the appointment process. Given the precision of the estimates, and the representativeness of the sample, a high level of confidence can be placed in the accuracy of the 2011 merit findings.³

³ See the Appendix, page 10 of this report, for a summary of the estimated audit findings and their associated confidence intervals.

APPENDIX

ESTIMATES AND CONFIDENCE INTERVALS FOR 2011 APPOINTMENT AUDIT DATA

In order to apply confidence intervals to the estimates for the 2011 Merit Performance Audit, BC Stats employed a methodology that was similar to what was used in the 2010 audit. As with the 2010 audit, the confidence intervals in 2011 were based on a Poisson distribution, whereas the intervals from previous years employed an F-distribution. While both methods provided accurate estimates, the Poisson offered a greater degree of flexibility, particularly for generating estimates for rare events.

- In order to minimize sample bias and produce the best estimates, the micro data was weighted prior to generating the estimates.
- As the sample size (222) relative to the rate of 'Merit Not Applied' findings was so low, a normal approximation to the binomial could not be used. As a result, a more exact calculation was made through a Poisson distribution. This in turn produced asymmetric confidence intervals around the estimates.
- Due to year-over-year changes in sampling strategies (e.g., differing stratification schemes and sampling rates) and adjustments to the audit program, extreme caution should be used when interpreting the cumulative audit results.
- The interpretation of the 95% interval is that there is less than one chance in 20 (less than 5% probability) that the true population percentage lies outside the interval.

Table 9: Estimated Audit Findings and Confidence Intervals

Audit	Audit Finding	Estimate (weighted)	95% Confidence Interval	
			Lower	Upper
All Audits (2001 – 2011)*	Merit Not Applied	3.6%	2.5%	4.3%
	Unable to Determine	1.6%	1.0%	2.3%
2011 Audit	Merit Not Applied	8.2%	4.8%	12.3%
	Unable to Determine	0.8%	0.0%	2.1%
	Merit With Exception	23.6%	17.5%	30.2%
	Total	32.6%	25.4%	40.3%

* As appointments for the 2010 audit were only drawn from a four month review, rather than the full 2010 calendar year, the 2010 merit results were not incorporated into the cumulative year-over-year results.

If you have any questions
about the information in this report,
please contact
BC Stats.
250-356-0025



APPENDIX C

BC Public Service Agency's Response to Recommendations: 2011 Merit Performance Audit and Special Audits of the Clerical and EAW Hiring Pools

August 9, 2012

CLIFF: 5143

Fiona Spencer
Merit Commissioner
Suite 502 – 947 Fort Street
PO Box 9037 Stn Prov Govt
Victoria, BC V8W 9A3

Dear Fiona Spencer:

I am pleased to respond to the 2011/12 Annual Report – 2011 Merit Performance Audit.

I note that your audit found all individuals were qualified for the position to which he or she was appointed and that no appointments were the result of patronage. Ultimately, these are the results we want. That said, I am very concerned with the change in the number of appointments where merit was not applied. This is the first time that the number of appointments was below 95% of all appointments made. Clearly, our efforts to continuous improvement in the hiring process need to be strengthened.

As we have discussed, we have implemented a new HR service delivery model in the BC Public Service Agency and we are moving ahead with transformation initiatives within the Hiring Centre. More recently, we have adopted a Lean process review which will result in more changes to the way we manage the hiring process including:

- restructuring of the Hiring Centre and implementation of new roles and accountabilities including more specialization in some areas;
- implementation of a new quality assurance function within the Hiring Centre;
- more dedicated resources for the development and implementation of enhanced screening and assessment methods; and
- increased training for all those involved in the hiring process.

Our goal is to improve customer service and to ensure our services add value to our customers. We expect to better meet our customer needs by tailoring hiring services to their individual needs while at the same time, having the opportunity to do more strategic work with them. The services and tools being made available are expected to continually improve and enhance our processes.

We are also focused on ensuring that we continue to address your concerns regarding documentation, notification and relatively equal calculations in assessing years of continuous services. I share these concerns and will be closely monitoring the improvement efforts that we have in place to ensure these practices are taking hold and resulting in better results in these areas.

Documentation:

A considerable number of hiring managers are utilizing the service provided by the Hiring Centre to retain competition files in an electronic format. We will continue to encourage hiring managers to use the service provided by the HR Service Centre. Regular communication between the Office of the Merit Commissioner and the Hiring Centre will help us ensure that we address any ongoing issues in this area.

.../2

Notification:

The Hiring Centre has continued to address system and process issues to ensure unsuccessful applicants are properly notified of competition results. With the launch of MyHR and AskMyHR, on-line information is available to hiring managers and applicants regarding the review process and review rights. The BC Public Service Agency is continually reviewing and updating information available on-line and making changes or updates as needed.

Years of Continuous Service:

As part of the Hiring Centre transformation, the calculation of relatively equal will be conducted by trained, dedicated staff in the BC Public Service Division. New rating forms and guides for assessing candidates are being developed by the Hiring Centre and will include a section strictly for the consideration of calculating relatively equal.

Special Audit of Clerical Hiring Pool and Special Audit of Employment and Assistance Worker (EAW) Hiring Pool

In an earlier letter to you, I responded to the Special Audits conducted on the Clerical Hiring Pool and the Employment and Assistance Worker (EAW) Hiring Pool. It was noted that the BC Public Service Agency has used hiring pools to streamline the staffing process required to fill high-volume positions in the public service and/or respond to increased hiring demands. Hiring pools create efficiencies and are a responsible public policy approach to hiring that eliminates the need to fill competitions on a position-by-position basis.

Coincident with your special audits, a recent internal business process evaluation on the pooling process has identified a number of administrative issues necessitating a comprehensive redesign of the pooling process. We have suspended the use of pools and are reviewing pooling/collective hiring practices in other jurisdictions with the intent of developing new processes that meet the objectives of the BC Public Service, while also ensuring that applicants are provided appropriate rights of review.

The review and examination of the hiring pools process is occurring over the summer and will take into consideration the recommendations made in your special audit. Upon conclusion of the review, I will discuss the outcome with you. My objective is to consider ways in which effective and efficient merit-based appointments can continue to be made without administrative burdens that drive up our costs and impact the overall candidate experience for our applicants.

Thank you for continuing to offer your feedback to improve merit-based hiring in the public service. The observations made and recommendations provided help to identify areas for improvement. I remain committed to bring about changes that will demonstrate improvements in the tools, training, information and services that are provided to hiring managers, and I am confident that we will continue to hire qualified individuals and provide an engaging and rewarding career for employees in the BC Public Service.

Yours truly,



Lynda Tarras
Head of the BC Public Service Agency

APPENDIX D

Public Service Act

PUBLIC SERVICE ACT
[RSBC 1996] CHAPTER 385

Contents

Part 1 — Introductory Provisions

- 1 Definitions
- 2 Purposes of Act
- 3 Application of Act
- 4 Consultation process

Part 2 — Agency Head and Merit Commissioner

- 5 BC Public Service Agency
 - 5.01 Appointment of merit commissioner
 - 5.1 Merit commissioner
 - 5.2 Annual report of merit commissioner
 - 5.3 Expenses of merit commissioner
- 6 Delegation
- 7 Access to facilities and records

Part 3 — Appointments to the Public Service

- 8 Appointments on merit
- 9 Probation
- 10 Exceptions to section 8
- 11 Repealed
- 12 Deputy ministers
- 13 Deputy ministers' pensions
- 14 Declaration of deputy minister status
- 15 Appointment by Lieutenant Governor in Council

Part 4 — Review of Staffing Decisions

- 16 Definitions
- 17 Request for feedback on staffing decision
- 18 Inquiry into staffing decision
- 19 Review by merit commissioner
- 20 Power to compel persons to answer questions and order disclosure
 - 20.01 Contempt proceeding for uncooperative person
 - 20.02 Immunity protection
 - 20.1 Decision final

Part 5 — Miscellaneous

- 21 Oaths
- 22 Dismissal and suspension of employees
- 23 Repealed
- 24 Annual report
- 25 Power to make regulations
- 26 Transitional — deputy ministers' pensions

Part 1 — Introductory Provisions

Definitions

1 In this Act:

“agency” means the BC Public Service Agency continued under section 5 (1);

“agency head” means the head of the agency appointed under section 5 (2);

“auxiliary employee” means an auxiliary employee as defined in the regulations;

“deputy minister” means

(a) a person appointed as a deputy minister under section 12, or

(b) subject to section 14, a person who by an Act or by an order in council under that section is declared to have the status of a deputy minister;

“employee” means a person appointed under this Act other than a person appointed under section 15;

“merit commissioner” means the merit commissioner appointed under section 5.01.

Purposes of Act

- 2** The purposes of this Act are to
- (a) facilitate the provision of service to the public in a manner that is responsive to changing public requirements,
 - (b) recruit and develop a well qualified and efficient public service that is representative of the diversity of the people of British Columbia,
 - (c) encourage the training and development of employees to foster career development and advancement,
 - (d) encourage creativity and initiative among employees, and
 - (e) promote harmonious relations of the government and employees and bargaining agents that represent employees in the public service.

Application of Act

- 3** Except as otherwise provided in this Act or in another Act, this Act applies
- (a) to all ministries of the government, and
 - (b) to any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares this Act, or a provision of this Act, to apply.

Consultation process

- 4** (1) In this section, "**consult**" means seeking advice or an exchange of views or concerns prior to the making of a decision respecting the matters that determine merit under section 8 (2) or the making of regulations under section 25.
- (2) The agency must consult with representatives of the employees' bargaining agents certified under the Public Service Labour Relations Act with respect to
- (a) the application of the matters that determine merit under section 8 (2), and
 - (b) regulations that may affect the employees represented by the bargaining agents that the minister intends to recommend to the Lieutenant Governor in Council under section 25.
- (3) In addition, the agency may consult with employees who are not represented by the bargaining agents referred to in subsection (2) with respect to the matters referred to in that subsection that affect members of those groups.

Part 2 — Agency Head and Merit Commissioner

BC Public Service Agency

- 5 (1) The division of the government known as the Public Service Employee Relations Commission is continued as the BC Public Service Agency under the administration of the minister.
- (2) The Lieutenant Governor in Council must appoint, under section 12, an individual to be the agency head.
- (2.1) to (2.5) [Repealed 2005-35-36.]
- (3) The agency head is responsible for personnel management in the public service including but not limited to the following:
- (a) advising the minister respecting personnel policies, standards, regulations and procedures;
 - (b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;
 - (c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;
 - (d) developing, providing, assisting in or coordinating staff training, educational and career development programs;
 - (e) developing, establishing and maintaining job evaluation and classification plans;
 - (f) acting as bargaining agent for the government in accordance with section 3 of the Public Service Labour Relations Act;
 - (g) developing, establishing and maintaining occupational health and safety programs;
 - (h) developing and implementing employment equity policies and programs;
 - (i) conducting studies and investigations respecting staff utilization;
 - (j) carrying out research on compensation and working conditions;
 - (k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;
 - (l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;
 - (m) establishing and maintaining a personnel management information system;
 - (n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.
- (4) Subject to this Act and the regulations and on the recommendation of the agency head, the minister may issue policies respecting the matters referred to in subsection (3).

Appointment of merit commissioner

- 5.01** (1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an individual to hold office as the merit commissioner under this Act.
- (2) The merit commissioner is an officer of the Legislature and must
- (a) faithfully, honestly and impartially exercise the powers and perform the duties of the office, and
 - (b) not divulge any information received under this Act, except if permitted by this Act.
- (3) The Legislative Assembly must not recommend an individual to be appointed under subsection (1) unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.
- (4) The merit commissioner is to be appointed for a term of 3 years and may be reappointed in the manner provided in this section for further 3 year terms.
- (5) The merit commissioner is entitled
- (a) to be paid, out of the consolidated revenue fund, compensation as may be fixed by the Lieutenant Governor in Council, and
 - (b) to be reimbursed for reasonable travelling and out of pocket expenses personally incurred in performing the duties of the office.
- (6) The Lieutenant Governor in Council may appoint an acting commissioner if
- (a) the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting,
 - (b) the commissioner is suspended when the Legislative Assembly is not sitting,
 - (c) the commissioner is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection (1) before the end of the session, or
 - (d) the commissioner is temporarily absent because of illness or for another reason.
- (7) An acting commissioner holds office until
- (a) a person is appointed under subsection (1),
 - (b) the suspension of the commissioner ends,
 - (c) the Legislative Assembly has sat for 30 days after the date of the acting commissioner's appointment, or
 - (d) the commissioner returns to office after a temporary absence, whichever is the case and whichever occurs first.

Merit commissioner

- 5.1** (1) The merit commissioner is responsible for monitoring the application of the merit principle under this Act by
- (a) conducting random audits of appointments to and from within the public service to assess whether
 - (i) the recruitment and selection processes were properly applied to result in appointments based on merit, and
 - (ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed, and
 - (b) reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made.
- (2) In carrying out his or her responsibilities as merit commissioner under this section he or she must not conduct audits or issue reports in respect of the period before June 5, 2001.
- (3) [Repealed 2005-35-38.]

Annual report of merit commissioner

- 5.2** (1) The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made under this section.
- (2) The Speaker must lay each annual report before the Legislative Assembly as soon as practicable, if it is in session.
- (3) If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.
- (4) The report of the merit commissioner under this section must not disclose
- (a) personal information, as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act, relating to individuals who applied for or were appointed to positions in the public service, or
 - (b) the identity of persons who participated on behalf of the ministries, boards, commissions, agencies or organizations, as the case may be, in the selection of the individuals appointed to positions in the public service.

Expenses of merit commissioner

5.3 The merit commissioner may make a special report to the Legislative Assembly if the merit commissioner believes that the amounts and establishment provided for the office of merit commissioner in the estimates are inadequate for fulfilling the duties of the office.

Delegation

6 Subject to the regulations, the agency head may

- (a) delegate any of his or her powers, duties or functions under this Act to an employee of the agency,
- (b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act to
 - (i) a deputy minister or other employee of the ministry, or
 - (ii) a member, officer or employee of the board, commission, agency or organization,
- (c) delegate dismissal authority under section 22 (2)
 - (i) to an assistant deputy minister or an employee who has an equivalent classification level to an assistant deputy minister, and
 - (ii) to a member or officer of a board, commission, agency or organization to which this Act applies,
- (d) establish conditions, standards or requirements for any delegation, and
- (e) amend, replace or revoke any delegation made under this section.

Access to facilities and records

7 For the purposes of carrying out their duties under this Act, the agency head and merit commissioner are entitled to access to

- (a) ministries,
- (b) boards, commissions, agencies and organizations that are declared to be subject to this section under section 3, and
- (c) records, of ministries or of those boards, commissions, agencies and organizations, containing information pertinent to those duties or to personnel matters.

Part 3 — Appointments to the Public Service

Appointments on merit

- 8** (1) Subject to section 10, appointments to and from within the public service must
- (a) be based on the principle of merit, and
 - (b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.
- (2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.
- (3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate
- (a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and
 - (b) the long term career development and advancement of employees appointed under this Act.
- (4) Subject to the regulations, the agency head may direct in respect of a vacancy or class of vacancies in the public service, that applicants be
- (a) limited or given preference in a manner intended to achieve employment equity objectives,
 - (b) limited to employees to encourage career development and advancement,
 - (c) limited to employees of a stated occupational group, position level or organizational unit, or
 - (d) limited to a stated geographical area or locale.

Probation

- 9** (1) If a person who is not an employee is appointed to a position in the public service, the person is on probation until he or she has worked the equivalent of 6 months' full time employment.
- (2) If the appointment is made from within the public service, a probation period in the new position not exceeding the equivalent of 6 months' full time employment may be imposed.

(3) A deputy minister or the agency head may reject an employee during the probation period if the deputy minister or agency head considers that the employee is unsuitable for employment in the position to which he or she was appointed.

Exceptions to section 8

10 Subject to the regulations

(a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and

(b) section 8 (1) (b) does not apply to the following:

(i) a temporary appointment of not more than 7 months in duration;

(ii) an appointment of an auxiliary employee;

(iii) a direct appointment by the agency head in unusual or exceptional circumstances.

Repealed

11 [Repealed 2003-88-10.]

Deputy ministers

12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.

(2) An associate deputy minister has all the powers of a deputy minister.

(3) Sections 5.1, 8 and 18 do not apply to appointments under this section.

Deputy ministers' pensions

13 (1) Subject to subsection (2), when calculating the amount of a pension under the Public Service Pension Plan, continued under the Public Sector Pension Plans Act, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.

(2) Subsection (1) does not apply

(a) to a person appointed as a deputy minister on or after September 1, 2001, or

(b) to a person holding the position of acting deputy minister.

(2.1) Despite subsection (2) (a), subsection (1) continues to apply to a person who is a deputy minister before September 1, 2001 and is reappointed as a deputy minister on or after that date as long as there is no break in service as a deputy minister.

(3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Declaration of deputy minister status

- 14** The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

Appointment by Lieutenant Governor in Council

- 15** (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers
- (a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or
 - (b) will be appointed to a position that requires special professional, technical or administrative qualifications.
- (2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.
- (3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

Part 4 — Review of Staffing Decisions

Definitions

- 16** In this Part, "**deputy minister**" means,
- (a) with respect to a position in a ministry, the deputy minister of that ministry, and
 - (b) with respect to a position with a board, commission, agency or organization, the person having overall responsibility for the board, commission, agency or organization.

Request for feedback on staffing decision

- 17** (1) An employee who is an unsuccessful applicant for an appointment to the public service may, within the prescribed time, request from the individual responsible for the appointment an explanation of the reasons why he or she was not appointed.
- (2) The responsible individual must provide an explanation as soon as practicable after receiving a request under subsection (1).

Inquiry into staffing decision

- 18** (1) An employee who has made a request under section 17 may request an inquiry into the application of section 8 (1) with respect to the appointment.
- (2) A request under subsection (1) must be made within the prescribed period to the deputy minister responsible for the position and must include a detailed statement specifying the grounds on which the request is made.
- (3) The deputy minister who receives an application under subsection (1), or a person designated by the deputy minister, must inquire into the appointment and confirm the appointment or proposed appointment or direct that the appointment or proposed appointment be reconsidered.

Review by merit commissioner

- 19** (1) An employee who is an unsuccessful applicant for an appointment to a position in a bargaining unit under the Public Service Labour Relations Act who has made a request under section 18 and disagrees with the decision of the deputy minister or designate under that section may request a review of the appointment by the merit commissioner on the ground that section 8 (1) has not been complied with.
- (2) A request under subsection (1) must be made in writing within the prescribed period to the merit commissioner and may only be based upon the grounds submitted to the deputy minister under section 18 (2).
- (3) Subject to the regulations, the merit commissioner must establish the procedure for the expeditious consideration of requests for reviews under subsection (1).
- (4) If an applicant requests a review under subsection (1), the merit commissioner must, before undertaking the review, inform the deputy minister of the review.
- (5) The merit commissioner may summarily dismiss a request for a review under subsection (1) if
- (a) the request for review is not made within the time limit prescribed under subsection (2),
 - (b) the merit commissioner considers that the request for review is frivolous, vexatious or trivial or is not made in good faith,
 - (c) the request for review does not contain sufficient information to determine whether section 8 (1) has been complied with, or
 - (d) the grounds, even if proven, are not sufficient to establish that section 8 (1) has not been complied with.

- (6) After conducting a review, the merit commissioner may
 - (a) dismiss the review, or
 - (b) direct that the appointment or the proposed appointment be reconsidered.
- (7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

Power to compel persons to answer questions and order disclosure

- 20** (1) For the purposes of a review under section 19, the merit commissioner may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the merit commissioner to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the merit commissioner a record or thing in the person's possession or control.
- (2) The merit commissioner may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (1), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Contempt proceeding for uncooperative person

- 20.01** The failure or refusal of a person subject to an order under section 20 to do any of the following makes the person, on application to the Supreme Court by the merit commissioner, liable to be committed for contempt as if in breach of an order or judgement of the Supreme Court:
- (a) attend before the merit commissioner;
 - (b) take an oath or make an affirmation;
 - (c) answer questions;
 - (d) produce records or things in the person's possession or control.

Immunity protection

- 20.02** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the merit commissioner, or a person acting on behalf of or under the direction of the merit commissioner, because of anything done or omitted
- (a) in the performance or intended performance of any duty under section 19, or
 - (b) in the exercise or intended exercise of any power under sections 19 to 20.01.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Decision final

20.1 A decision of the merit commissioner under section 19 is final and binding.

Part 5 — Miscellaneous

Oaths

21 A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

Dismissal and suspension of employees

22 (1) The agency head, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.
(2) The agency head, a deputy minister or an individual delegated authority under section 6 (c) may dismiss an employee for just cause.

Repealed

23 [Repealed 2007-21-6.]

Annual report

24 The minister must lay before the Legislative Assembly as soon as practicable, a report for the fiscal year ending March 31 respecting the work of the agency.

Power to make regulations

25 (1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations respecting government personnel management, including regulations respecting the following:

- (a) the definition of "auxiliary employee" in section 1;
- (b) recruitment, selection and appointment of staff including standards and procedures respecting advertising vacancies and who may apply for those vacancies;
- (c) probation periods for employees who are appointed to positions in the public service;
- (d) health and safety of employees;
- (e) terms and conditions of employment;
- (f) job evaluation and classification;
- (g) standards of employee conduct;
- (h) all matters respecting discipline, suspension and dismissal of employees;
- (i) monitoring and auditing of all personnel functions.

(2) Regulations under subsection (1)

(a) may be different for different categories of employees, and

(b) may be made retroactive to a date not earlier than the date this section comes into force, and if made retroactive are deemed to have come into force on that date.

(3) The Lieutenant Governor in Council may make regulations respecting the terms and conditions of employment of persons appointed under section 15.

(4) The Lieutenant Governor in Council may make regulations respecting inquiries and reviews under Part 4 including regulations respecting the manner of applying for an inquiry under section 18 or a review under section 19 and the time limits for those applications.

(5) [Repealed 2003-88-12.]

Transitional — deputy ministers' pensions

26 (1) Despite section 13, section 4.1 of the *Public Service Act*, S.B.C. 1985, c. 15, continues to apply with respect to a person who became a deputy minister before November 5, 1991 and to whom the section would otherwise have applied.

(2) For greater certainty, a deputy minister appointed on or after September 1, 2001 has no claim for payment of compensation because he or she is ineligible for the benefit provided under section 13 (1).

APPENDIX E

Review of Staffing Decisions Regulation

Public Service Act
REVIEW OF STAFFING DECISIONS REGULATION

Definition

- 1 In this regulation, "**Act**" means the *Public Service Act*.

Request for feedback

- 2 (1) An unsuccessful applicant for an appointment to the public service who wishes to make a request for an explanation to the individual responsible for the appointment under section 17 of the Act must do so within five days of receiving notice of the staffing decision.

(2) The request may be made orally, either in person or by telephone, or in writing.

(3) A written request must be given to the individual responsible or sent to that individual by courier or electronic transmission.

Request for an inquiry

- 3 (1) An employee who wishes to request an inquiry under section 18 of the Act must make a written request to the deputy minister within five days of receiving an explanation under section 17 of the Act.

(2) The written request must be given to the deputy minister or sent to the deputy minister by courier or electronic transmission.

Request for a review

4 (1) An employee who wishes to make a written request for a review under section 19 of the Act must do so within five days of receiving the results of the inquiry under section 18 of the Act.

(2) The written request must be given to the merit commissioner or sent to the commissioner by courier or electronic transmission.

Remedy of irregularities

5 A review under section 19 of the Act is not invalid because of a defect in form, a technical irregularity or an error of procedure that does not result in a denial of natural justice, and the merit commissioner may relieve against those defects, irregularities or errors of procedure on just and reasonable terms.

Note: *this regulation repeals B.C. Reg. 133/94.*

[Provisions of the *Public Service Act*, R.S.B.C. 1996, c. 385, relevant to the enactment of this regulation: section 25]

APPENDIX F

Glossary

AUXILIARY APPOINTMENT

The appointment of an individual to work that is not of a continuous nature. As defined by regulation, and in the applicable collective agreements, “auxiliary employee” means an employee who

- a) is specified under a collective agreement to be an auxiliary employee, or
- b) is not covered by a collective agreement and performs work by (i) substituting for another employee on maternity, parental, adoption or other extended leave or on assignment to a special project; or (ii) working on a special project or other work of limited duration.

BARGAINING UNITS

There are three employee bargaining units in the BC Public Service: the BC Government and Service Employees’ Union (BCGEU), the Professional Employees Association (PEA), and the nurses’ unions (BC Nurses’ Union and Union of Psychiatric Nurses).

BC PUBLIC SERVICE

Refers to:

- a) all ministries of the government, and
- b) any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares the *Public Service Act*, or a provision of this *Act*, to apply.

DEMOTION

The movement of an employee to a position with a lower maximum salary than their previous base position.

DIRECT APPOINTMENT

Under the authority of section 10 of the *Public Service Act*, an employee who has been directly appointed to a position in the public service by the Head of the BC Public Service Agency in unusual or exceptional circumstances.

FACTORS OF MERIT

Section 8(2) of the *Public Service Act* outlines the matters to be considered in determining merit. These include the applicant's education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

HIRING MANAGER

The Office of the Merit Commissioner uses the term "hiring manager" to refer to the individual accountable for the hiring decisions related to a specific recruitment process. Often the hiring manager chairs the recruitment panel and is normally the supervisor of the position requiring an appointment.

INDIVIDUAL MERIT

Under section 10 of the *Public Service Act*, there are exceptions permitted to the general statutory requirement for a competitive process. Auxiliary appointments, appointments of regular employees for temporary periods of seven months or less, and direct appointments by the Agency Head require consideration of an individual's merit for appointment but do not require a competitive process. The Office of the Merit Commissioner refers to these circumstances as individual merit.

LATERAL TRANSFER

A lateral transfer, provided for under section 10(a) of the *Public Service Act*, refers to the movement of an employee to a position with the same maximum salary as their base position.

MERIT NOT APPLIED (MNA)

A category of audit finding by the Merit Commissioner related to an appointment: the appointment was found not to be the result of a merit-based process and/or the individual was not qualified for the position to which he or she was appointed.

MERIT PERFORMANCE AUDIT

The conduct of a random audit of appointments to and from within the public service, used by the Merit Commissioner to assess appointments against the dual test of merit (recruitment and selection processes are properly applied to result in merit-based appointments, and individuals appointed are qualified) as set out in the *Public Service Act*.

MERIT PRINCIPLE

Section 8 of the *Public Service Act* states that all appointments to and from within the public service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are made on the basis of an assessment of competence and ability to do the job, and are non-partisan. The *Act* sets out a number of factors that must be considered in determining merit. (See “Factors of Merit”.) Order in Council appointments are excluded from these requirements.

MERIT WITH EXCEPTION (MWE)

A category of audit finding by the Merit Commissioner related to an appointment: the appointment was found to be based on merit; however, issues were identified with the conduct of the process, or the application of policy or collective agreement provisions.

ORDER IN COUNCIL (OIC) APPOINTMENT

As provided by section 15 of the *Public Service Act*, individuals may be appointed by the Lieutenant Governor in Council. These appointments are outside the jurisdiction of the Merit Commissioner.

PROMOTION

The movement of an employee to a position with a higher maximum salary than their previous base position.

QUALIFIED RELATIVELY EQUAL (QRE)

Under section 8(2) of the *Public Service Act*, one of the six factors that must be considered when determining merit is an employee applicant’s years of continuous service in the public service. In hiring for positions in the BCGEU, the “qualified relatively equal” calculation is the agreed-upon method of assessing this factor.

REGULAR APPOINTMENT

The appointment of an individual who is employed for work that is of a continuous nature, either full-time or part-time.

RELATIVE MERIT

Section 8(1) of the *Public Service Act* requires appointments to and from within the public service to be based on the principle of merit and be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. As this gives rise to a comparative assessment, the Office of the Merit Commissioner refers to these circumstances as relative merit. These requirements apply to permanent appointments and temporary appointments exceeding seven months. Other appointment types are exempt from some of these requirements by Section 10 of the *Act*.

TEMPORARY APPOINTMENT

The appointment of a regular employee to another position for a limited period of time (e.g., to cover an employee on leave or to undertake a time-limited project, seasonal or temporary relief work). There are more rigorous selection process requirements for temporary appointments greater than seven months.



Merit Commissioner

www.meritcomm.bc.ca



PRINTED ON RECYCLED PAPER