



Office of the
Merit Commissioner

Upholding Fair Hiring in the BC Public Service

2017–2018
Annual Report



**Office of the
Merit Commissioner**

Upholding Fair Hiring in the BC Public Service

The Honourable Darryl Plecas
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 2017–2018 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
May 2018

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Message from the Merit Commissioner

The work of the Office of the Merit Commissioner during the 2017–2018 fiscal year is outlined in this Annual Report. I am pleased to present this document on behalf of my dedicated team, who are committed to upholding fair hiring in the BC Public Service. While this report provides a summary of our work, more detail and information can be found on our website.

Our work focuses on examining appointments to and within the public service to determine if they were based on merit. These examinations result in one of three findings—that all was well and merit was applied; that there were significant errors made and merit was not applied; or errors were found which, if not for other factors, could have had a negative impact on the appointment made. Findings in this latter category, which we term “merit with exception”, have grown in recent years and given the number of findings in this category, we are able to draw conclusions as to where changes to public service hiring policy or practice is needed.

To bring better focus to the nature of errors we are identifying, as well as the impact of those errors on appointments, we are now reporting separately on the adequacy of competition documentation. This allows us to separate what some consider a finding related to administration and instead highlight that a certain practice or policy, if not modified, has the potential to put at risk merit-based hiring.

Our last merit performance audit showed that over half (57 per cent) of all appointments made had some type of error in how the recruitment and selection process was applied. As this was the second year in a row that the number of appointments with errors has exceeded the number of appointments based on merit, there is cause for concern and attention. We also found that the documentation of the selection process in one third of audited appointments was insufficient and it was necessary to take into account verbal evidence in order to draw conclusions regarding the application of merit. This too needs attention. It is encouraging, however, that all but three individuals were found to be qualified for the position to which they were appointed.



The past year saw the highest number of requests for staffing reviews ever seen since the Office was established. Reasons for this are not evident and cannot be attributed to any particular event or ministry as requests were spread throughout the year and across the public service. Although more requests were received by the Office, this number remains low at less than one per cent of all appointments made.

Last year I indicated that there was a possibility of an expanded role for the Office based on recommendations made by the Ombudsperson in his “Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters” report. While this did not happen in 2017–2018, the Bill to amend the *Public Service Act* to assign responsibility to the Merit Commissioner for oversight of dismissal processes received approval of the House on April 17, 2018. I consider this an important role and will now focus on the most effective and efficient manner to fulfill this expanded mandate. This Annual Report, however, reflects the Office’s mandate as of March 31, 2018.

Fiona Spencer

Fiona Spencer, Merit Commissioner

The Merit Principle

The *Public Service Act* states that all appointments to and from within the BC Public Service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan.

Vision

A professional and non-partisan public service that is hired and promoted on the principle of merit.

Mission

To serve the people of British Columbia through their elected representatives of the Legislative Assembly, by monitoring public service appointments to ensure the application of the merit principle in hiring and promotions in the BC Public Service.

Role

The Merit Commissioner provides independent oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Office of the Merit Commissioner achieves this oversight by randomly auditing staffing appointments, conducting audits of specific appointment types, conducting studies, and reviewing appointment decisions upon request by employee applicants. The Office of the Merit Commissioner also informs hiring managers, employees and the public of our findings through reports and studies. As well, we deliver presentations to increase awareness about the role of the Office of the Merit Commissioner and merit-based hiring. The Merit Commissioner reports annually to the Legislative Assembly on the application of the merit principle in the BC Public Service.

The Office of the Merit Commissioner

The Merit Commissioner is appointed by the Legislative Assembly on a part-time basis for a three-year term. The Office of the Merit Commissioner (the Office) consists of a small team of core staff supplemented by contract auditors.

Our Audit Advisory Committee provides a forum for discussion, consultation, advice, and guidance with respect to our audit program and process. Members are selected for their professional qualifications, relevant knowledge about the public service, and expertise related to performance audits. The Committee meets periodically with the Merit Commissioner and her staff to provide audit advice, contribute to audit planning, and examine issues of interest.

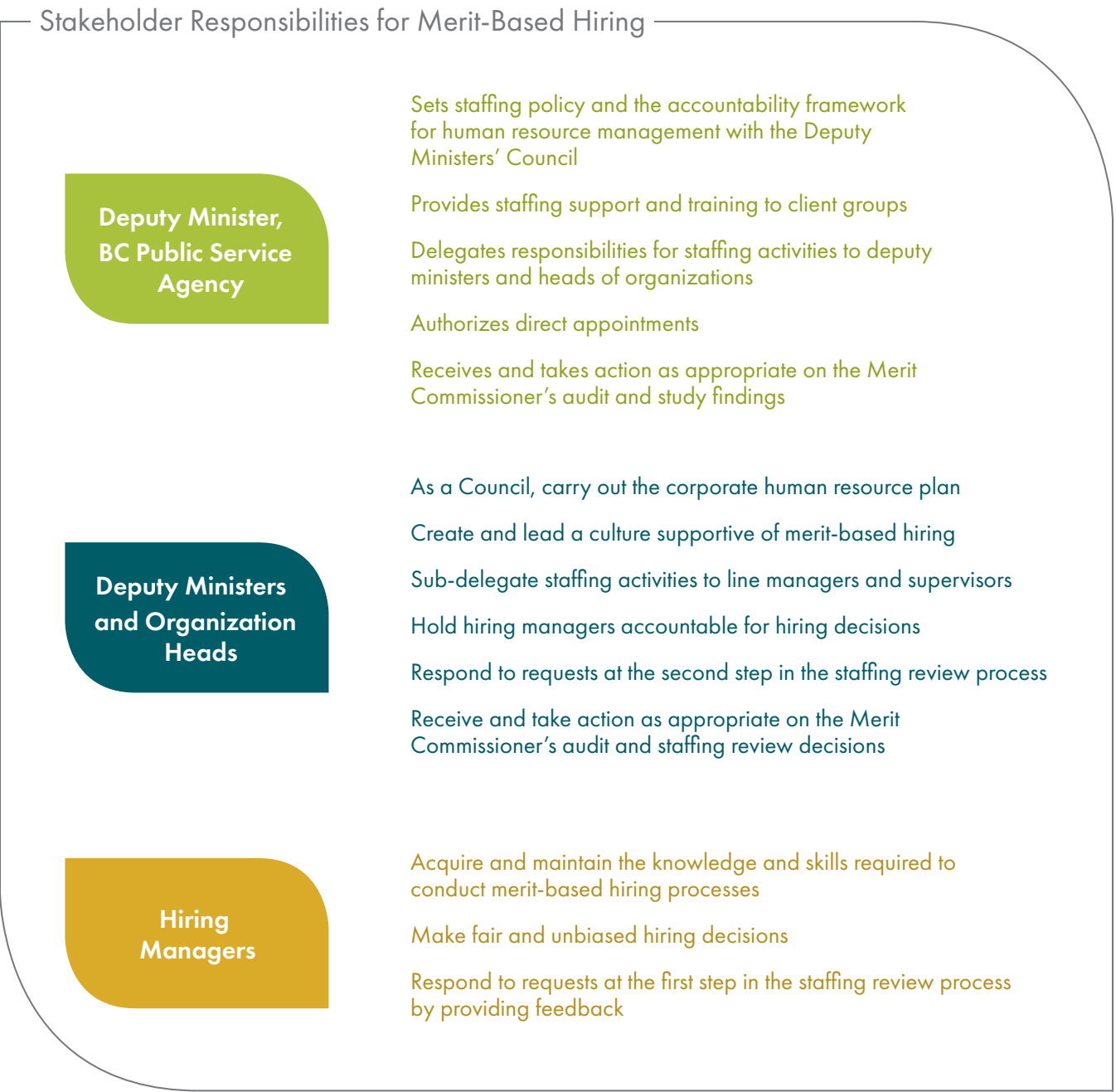
The Office is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others, and we make certain all those who contact the Office are treated with respect. We are passionate about our work and understand that a vital part of being independent is to have the courage to deliver facts and recommendations about where improvements are needed, as well as to report on progress and accomplishments.



Stakeholders

The Office provides oversight of provincial government organizations that have employees appointed under the *Public Service Act* (the Act), including: ministries, tribunals, agencies, boards, commissions, independent offices of the Legislature, and the offices of the Courts. The Office broadly shares responsibility for upholding merit-based hiring and promotions in the BC Public Service with key stakeholders as illustrated below.

Fair hiring practices are of significant interest to employees, and are key to their engagement and retention. Employees can have a positive impact on hiring practices when they raise issues and concerns to the Office, as that helps us gauge the state of merit-based hiring within the BC Public Service, and contributes to informing the Office’s work related to future audits and special studies.



The bargaining units that 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.

Appointments on Merit

Section 8(1) of the Act requires that, other than in some defined exceptions, 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.

Our Work

The Office has two main lines of business: conducting merit performance audits and, upon request by eligible individuals, reviewing individual staffing decisions. The following sections include synopses of work completed during 2017–2018 and work in progress. Detailed reports related to the work we completed in 2017–2018 and past years can be found at www.meritcomm.bc.ca.

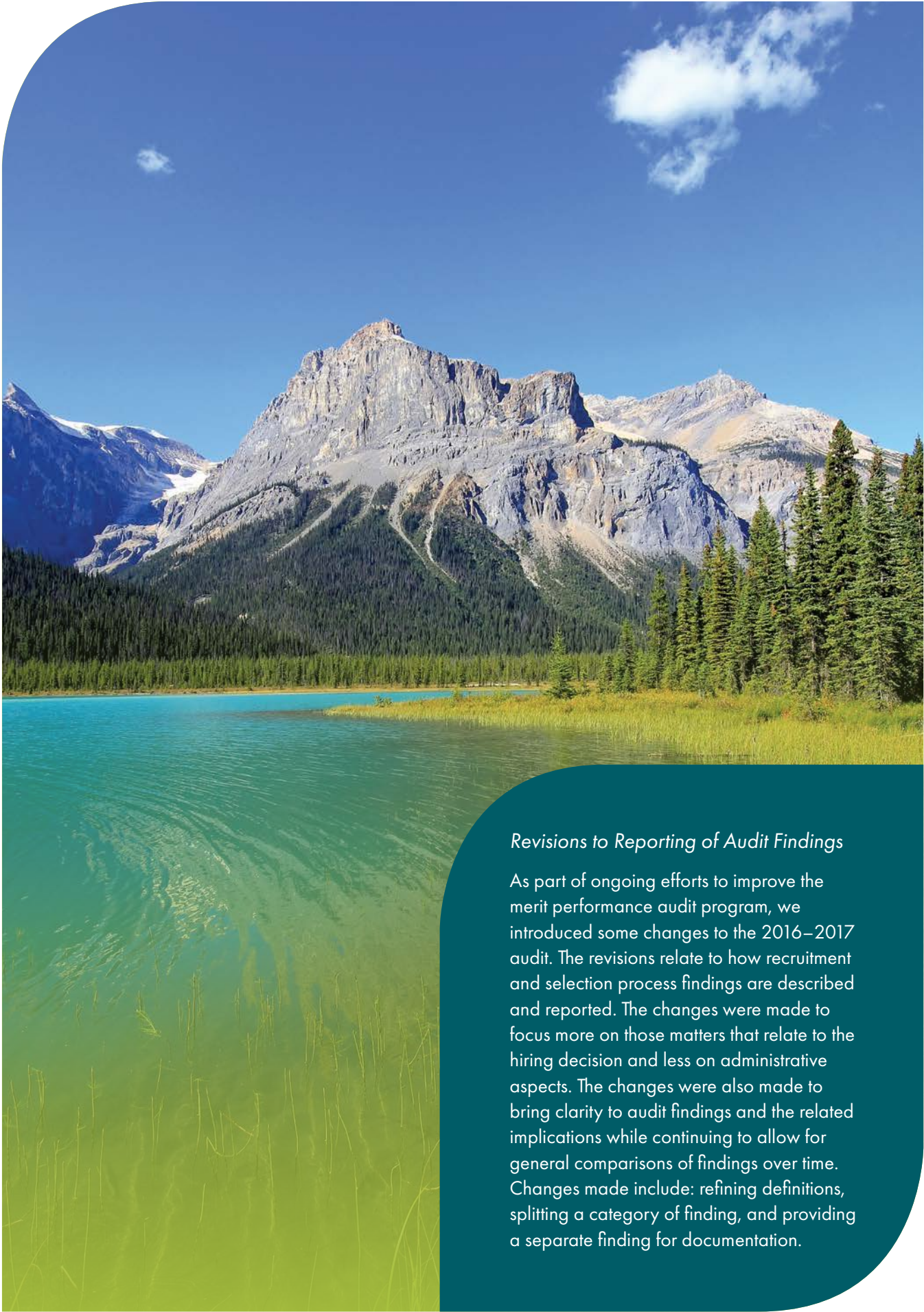
Merit Performance Audits

Overview

The Office monitors the application of the principle of merit in the BC Public Service by conducting random audits of permanent appointments and temporary appointments greater than seven months. Any organization to which section 8 of the Act applies may be audited by the Office.

We conduct audits in accordance with generally accepted professional audit standards and methodology, work with independent statisticians to ensure our methodology is rigorous and objective in obtaining random and representative samples, and incorporate quality assurance reviews into the audit process.

- In accordance with section 5.1 (a) of the Act, the purpose of a merit performance audit is to determine 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.



Revisions to Reporting of Audit Findings

As part of ongoing efforts to improve the merit performance audit program, we introduced some changes to the 2016–2017 audit. The revisions relate to how recruitment and selection process findings are described and reported. The changes were made to focus more on those matters that relate to the hiring decision and less on administrative aspects. The changes were also made to bring clarity to audit findings and the related implications while continuing to allow for general comparisons of findings over time. Changes made include: refining definitions, splitting a category of finding, and providing a separate finding for documentation.

Recruitment and Selection Process

In accordance with an established audit program, we determine whether the design and conduct of a hiring process led to merit-based appointment(s). As part of this determination, we consider the application of relevant legislation, policy, and provisions of collective

agreements, and whether the hiring decisions were properly communicated to employee applicants. The overall approach (i.e., process) employed to recruit and select applicants is examined, as well as specific aspects of the process, which we categorize as short-listing, interviewing and testing, past work performance, years of continuous service, and notification. We also consider whether there was sufficient supporting documentation (i.e., evidence) of the actions taken and decisions made. The detailed audit program can be viewed at www.meritcomm.bc.ca. For each appointment audited, one of the following findings is made.

Factors of Merit

Section 8(2) of the Act sets out the matters to be considered in determining merit, which must include the applicant’s education, skills, knowledge, experience, past work performance, and years of continuous service.

Recruitment and Selection Process Findings

Merit

The recruitment and selection process was both properly designed and applied to result in an appointment based on merit.

Merit with exception

The recruitment and selection process contained one or more errors in design or application: there was no identifiable negative impact on the outcome.

Merit not applied

The recruitment and selection process contained one or more errors in design or application: the impact on the outcome was known to be negative and as a result, the appointment was not based on merit.

Individual Appointed

We also determine, in accordance with the established audit program and based on the evidence provided, whether the individual appointed possessed the education and experience specified as required for the position and met the minimum criteria established for the other factors assessed during the process. This determination leads to one of the findings below.

Audit findings for each appointment are reported to the respective deputy minister or organization head. A report of overall results is provided to the Deputy Minister of the BC Public Service Agency (Agency Head) and presented to the Legislative Assembly before being posted on our website. The merit performance audit is a means of

bringing issues and opportunities for improvement to the attention of the Agency Head, deputy ministers, and organization heads, and holding managers accountable for hiring decisions. It also acknowledges and supports good hiring practices throughout the BC Public Service.

Documentation

The state of competition documentation is now being reported as a separate audit result instead of as part of the process determination. For each audit, a documentation result of good, sufficient or insufficient is made.

Individual Appointed Findings

Qualified

The individual, when appointed, possessed the qualifications specified as required for the position.

Not qualified

The individual, when appointed, did not possess the qualifications specified as required for the position.

Qualifications not demonstrated

There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.

Audit Determinations

Each audit results in two determinations: whether the recruitment and selection process was based on merit, and whether the individual appointed was qualified.



Work Completed

2016–2017 Merit Performance Audit

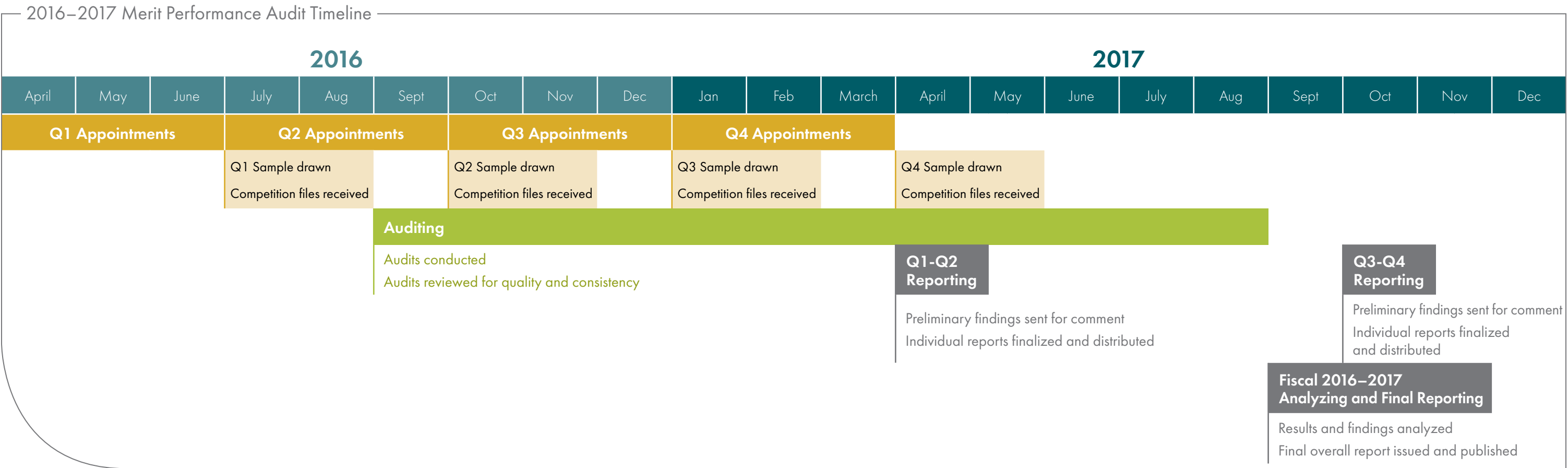
A total of 5,934 permanent appointments and temporary appointments exceeding seven months were made between April 1, 2016, and March 31, 2017. In order for it to be possible to generalize the results of the audit to all 5,934 appointments, a simple random sample, based on a pre-determined sample size, was chosen each quarter from this population of appointments. A total of 268 appointments were selected, of which 11 were determined to be outside the scope of the audit and removed from consideration. The Office conducted audits of the remaining 257 hiring processes.

Where preliminary findings of “merit not applied” were made, we provided the responsible deputy minister or organization head with the draft results and the opportunity to provide additional or clarifying information. All deputy ministers and organization heads received a final report for each appointment audited within their organization and were encouraged to share the results with the responsible hiring managers.

At the conclusion of the audit, we completed a comprehensive analysis of the overall findings and made recommendations. Our findings and analysis were reported to the Legislative Assembly in November 2017 and were published on our website. A graphic representation of the timeline for the 2016–2017 Merit Performance Audit is shown below.

Individual Appointed

The 2016–2017 Merit Performance Audit found that in all cases except three, the individual appointed met the qualifications specified as required for the position at the time of appointment. One audit resulted in a “not qualified” finding, and two other audits resulted in a finding of “qualifications not demonstrated” due to insufficient evidence demonstrating that the individuals, when appointed, possessed the qualifications required. There was no evidence that any of the 257 appointments audited were the result of patronage.



Recruitment and Selection Process

The audit found that 43 per cent of appointments in the sample were the result of a merit-based recruitment and selection process with no errors. A total of 48 per cent of audited appointments were in the “merit with exception” category, indicating a design or application error in the hiring process that did not have a known negative impact on the outcome. The “merit not applied” findings indicate there were identified errors which did have an impact on the outcome. It was found that merit was not applied in nine per cent of the audited appointments. When these findings are extrapolated to the related BC Public Service appointments made over the 2016–2017 fiscal year, an estimated 2,459 appointments were free of error, and another 2,725 appointments contained errors where the

impact on the outcome was unknown or mitigated by other factors. Further, an estimated 501 appointments were not merit-based, as the errors identified had a negative impact on the outcome (i.e., the appointments). The errors identified with the design and application of the recruitment and selection process were grouped into the following categories: approach, short-listing, interviewing and testing, past work performance, years of continuous service, and notification.

While many appointments had more than one error identified, there was only one overall recruitment and selection process determination reported for each audit, as shown below. Also illustrated is the percentage of appointments audited with an error by category of finding.

The pattern of findings for 2016–2017 remains similar to those of the 2015–2016 Merit Performance Audit. The errors of most concern are related to the areas of short-listing, and interviewing and testing.



Categories of Errors

Approach	Was the overall approach to recruit and select applicants fair, reasonable and transparent, given the job and its requirements?
Short-listing	Were applicants consistently and appropriately assessed in accordance with the minimum requirements of the position?
Interviewing and testing	Were applicants consistently and appropriately evaluated in accordance with the factors of merit, typically involving skills, knowledge, and experience?
Past work performance	Was this factor properly assessed, including at least one reference from a supervisor or equivalent?
Years of continuous service	Was this factor properly considered, and calculated where and as applicable?
Notification	Were employee applicants notified of the final outcome of the hiring process?

2016–2017 Overall Recruitment and Selection Process Determinations

Merit	43%
Merit with exception	48%
Merit not applied	9%

Percentage of Appointments Audited with an Error by Category of Finding

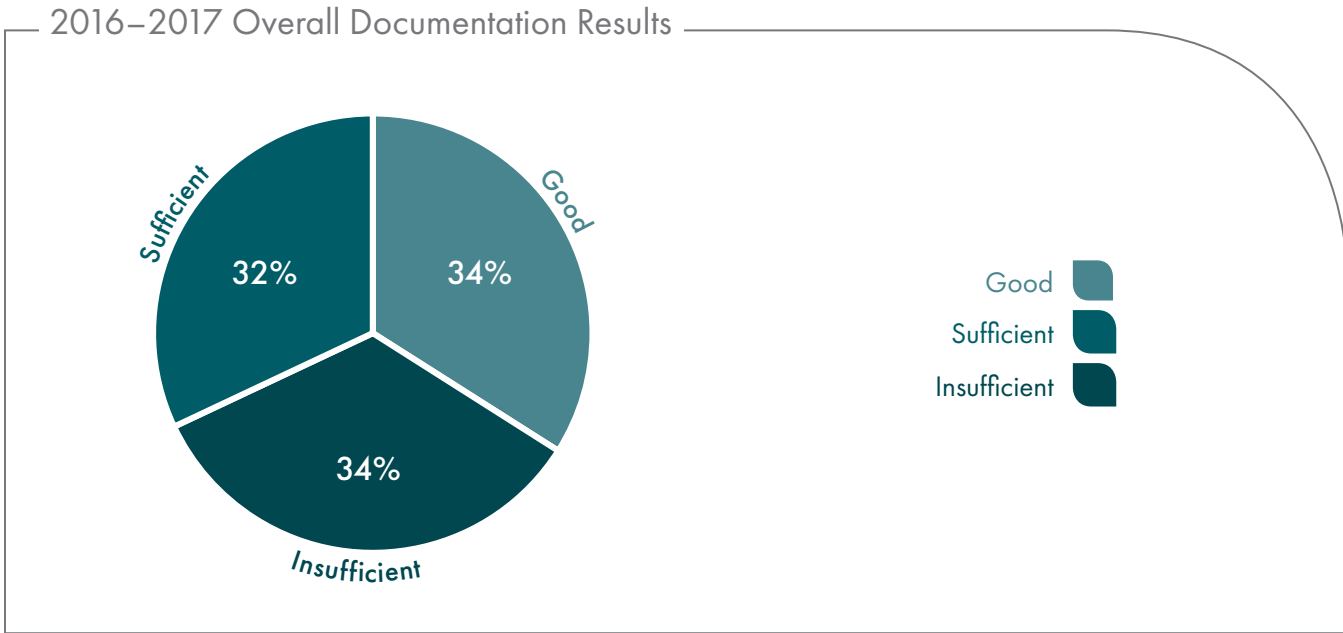
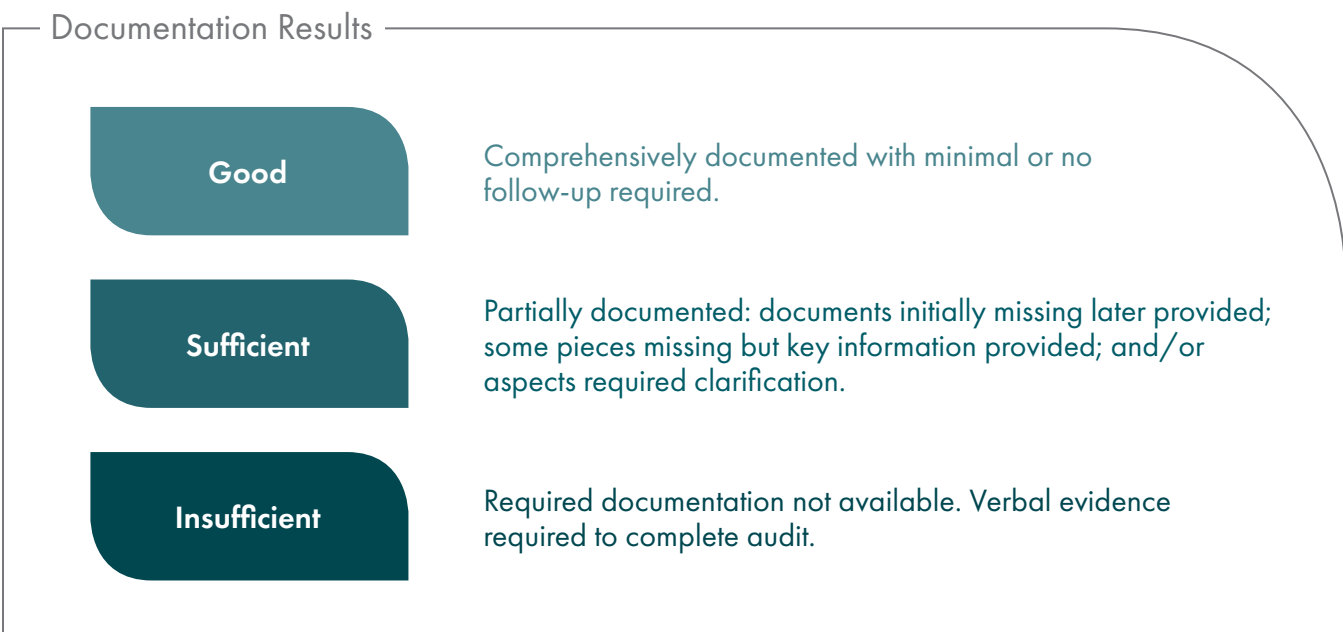
Approach	9%
Short-listing	29%
Interviewing and testing	24%
Past work performance	12%
Years of continuous service (BCGEU and PEA appointments; excluded appointments where applied)	11%
Notification	9%

Note: The above values do not sum to 100 per cent due to multiple findings in some appointments.

Documentation

As illustrated below, the documentation results were nearly equal across the three categories, with 34 per cent, 32 per cent, and 34 per cent of the audits described as having good, sufficient, and insufficient documentation, respectively. This means that only one third of appointments were fully documented.

The type of recruitment and selection errors and the state of documentation will continue to be closely monitored in subsequent audits.



2016–2017 Merit Performance
Audit Recommendations

Based on the analysis of the 2016–2017 Merit Performance Audit findings, the Merit Commissioner made a number of recommendations to deputy ministers and organization heads to strengthen merit-based hiring, recognizing that assistance by the BC Public Service Agency may be necessary to support implementation.

- Specify clear and accurately defined qualifications for a position as these form the foundation of a merit-based process.
- Establish specific job-related assessment standards and criteria for all methods of assessment in order to have an objective and consistent basis for the evaluation of candidates.
- Fully assess employee candidates who may be offered an appointment or placed on an eligibility list, including consideration of their past work performance and credit for their years of continuous service, to ensure correct outcome and notification.
- Respect the merit-based rank order of candidates when making initial and eligibility list offers of employment.
- Ensure each stage of assessment is documented sufficiently to support hiring decisions, particularly concerning all applicants and their status at each relevant stage in the process.

Work Underway

2017–2018 Merit Performance Audit

The 2017–2018 audit of appointments made from April 1, 2017, through March 31, 2018, is currently underway. Random samples of appointments were drawn for each quarter, and in April 2018, audit reports for 124 appointments from the first two quarters were provided to deputy ministers and organization heads.

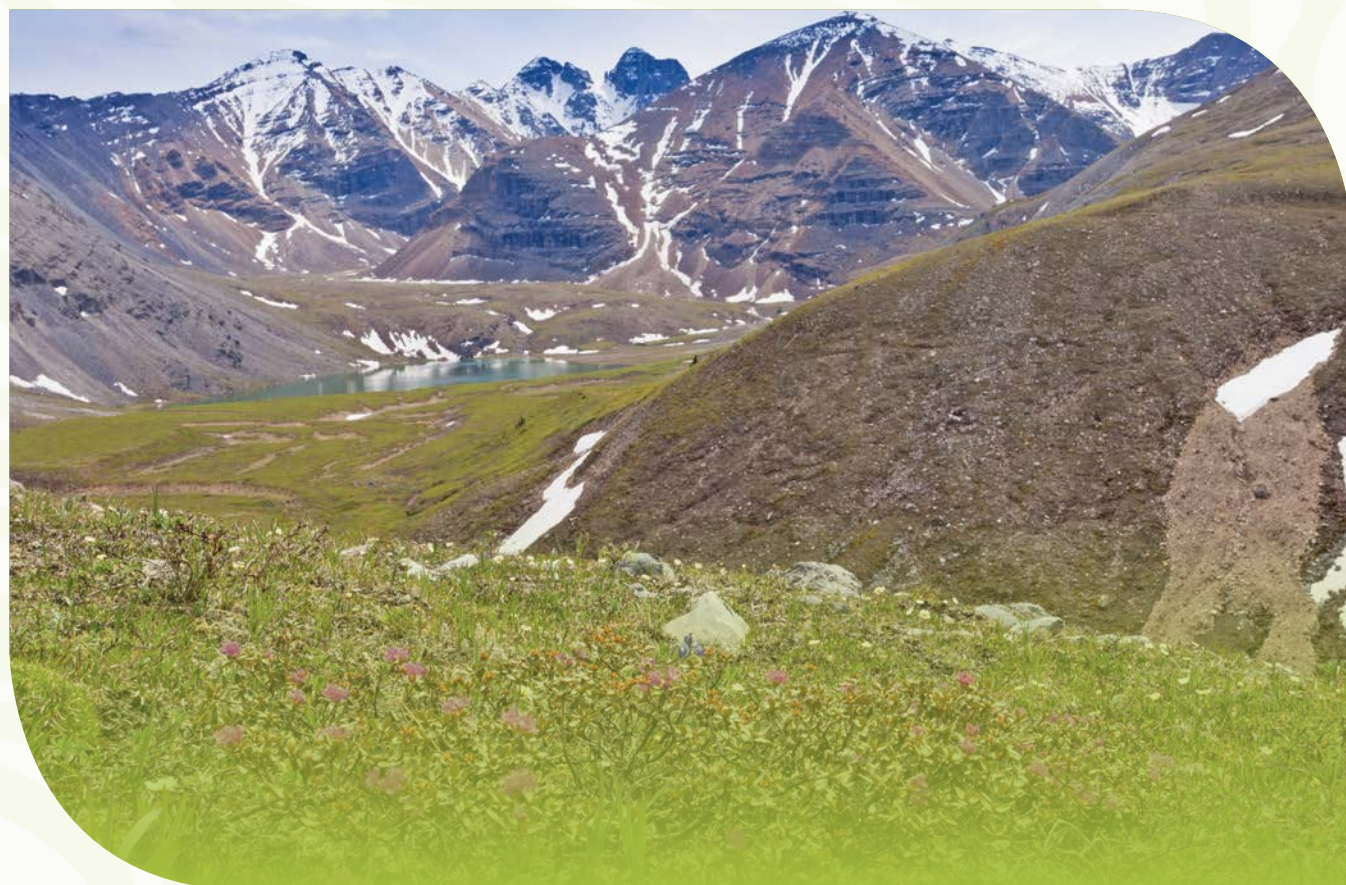
The audit reports for appointments identified in the last two quarters of the fiscal year are expected to be distributed in the fall of 2018. The final comprehensive report, including the analysis and summary of the overall audit results, is targeted for publication in November 2018.



Audit of Auxiliary Appointments

Section 8 of the *Act* requires appointments to and from within the public service to be based on merit. While this includes auxiliary appointments, section 10 of the *Act* exempts such appointments from the requirement that they result from a competitive process. The main purpose of this audit is to determine whether the identified auxiliary employees met the minimum position requirements (e.g., education and experience) at the time of their initial appointment. Given the likelihood that a significant number of these employees may transition to the permanent workforce, it is of interest to know the basis upon which these individuals were identified and selected.

In December 2017, 206 randomly selected new-hire auxiliary appointments that had been made between May 15 and November 15, 2017, were identified for audit. An online questionnaire will be used to collect data focusing on each appointee's qualifications vis-a-vis the position to which they were appointed, and on how each appointee was identified and selected for the position. The data received will be analyzed and it is planned that a summary report of the audit's findings will be posted on our website by the fall of 2018.



Staffing Reviews

Overview

The *Act* provides employee applicants who are unsuccessful in competitions for permanent appointments or temporary appointments exceeding seven months, with the right to request a review of the appointment

decision. There is a three-step staffing review process, which an employee may initiate when notified of a competition outcome.



The third step in the process, a review by the Merit Commissioner, is available to employees who are applicants for bargaining unit positions. Should an employee proceed to this step, the Merit Commissioner conducts an independent review and determines whether the aspects of the selection process related to the employee's grounds comply with the requirements of section 8(1) of the *Act*. If these aspects do comply, the Merit Commissioner upholds the appointment decision; if not, she directs a reconsideration of the appointment decision. The Merit Commissioner's decision is final and binding. In general, decisions are issued within 30 days following receipt of the documents necessary to conduct the review.

Work Completed

2016–2017 Report on Staffing Reviews

The Merit Commissioner received 14 requests for a staffing review in 2016–2017, and reviews were conducted for the 11 found to be eligible. An overall analysis of the 11 reviews was completed and a report was published on our website in July 2017. Given the small number of reviews, broad conclusions were not drawn; however, the report discussed the common grounds put forward by the employees who requested this final level of examination of appointment decisions. These grounds, representative of submitted employee concerns, were similar to those identified in previous years and included: improper consideration or weight given to a factor of merit (typically education and experience), unfair assessment of interview or test responses, and improper consideration of past work performance.

In 10 of the cases, the Merit Commissioner dismissed the review and upheld the original appointment decision. In one review, the Merit Commissioner found a serious flaw in the short-listing approach of the competition and directed a reconsideration of the appointment decision.

The report also highlighted the Merit Commissioner’s concerns that the provisions of the Act have implications for the fairness of the staffing review process. Specifically, they limit her authority with respect to determining eligibility for a request for review and making findings outside a requestor’s grounds.

There are notification and feedback issues found in conducting audits and reviews which have serious implications for the fairness of the staffing review process. Instances have been identified where individuals were not properly notified of the final hiring decision and their right of recourse. There have also been times where applicants were provided insufficient information to understand the competition process or their performance within it. Without adequate notification and feedback, individuals are obstructed from making an informed decision about whether to exercise their right to request a staffing review.

2017–2018 Staffing Reviews

In 2017–2018, the Merit Commissioner received 25 requests for a review of a proposed appointment within eight different ministries or organizations. This represents the highest number of requests in any one year since the inception of the Office. Eight of the review requests were ineligible because: the appointment was for an excluded position, prescribed timelines were not met, or an internal inquiry was not conducted (e.g., no appointment was made). Reviews of the other 17 selection processes were undertaken.

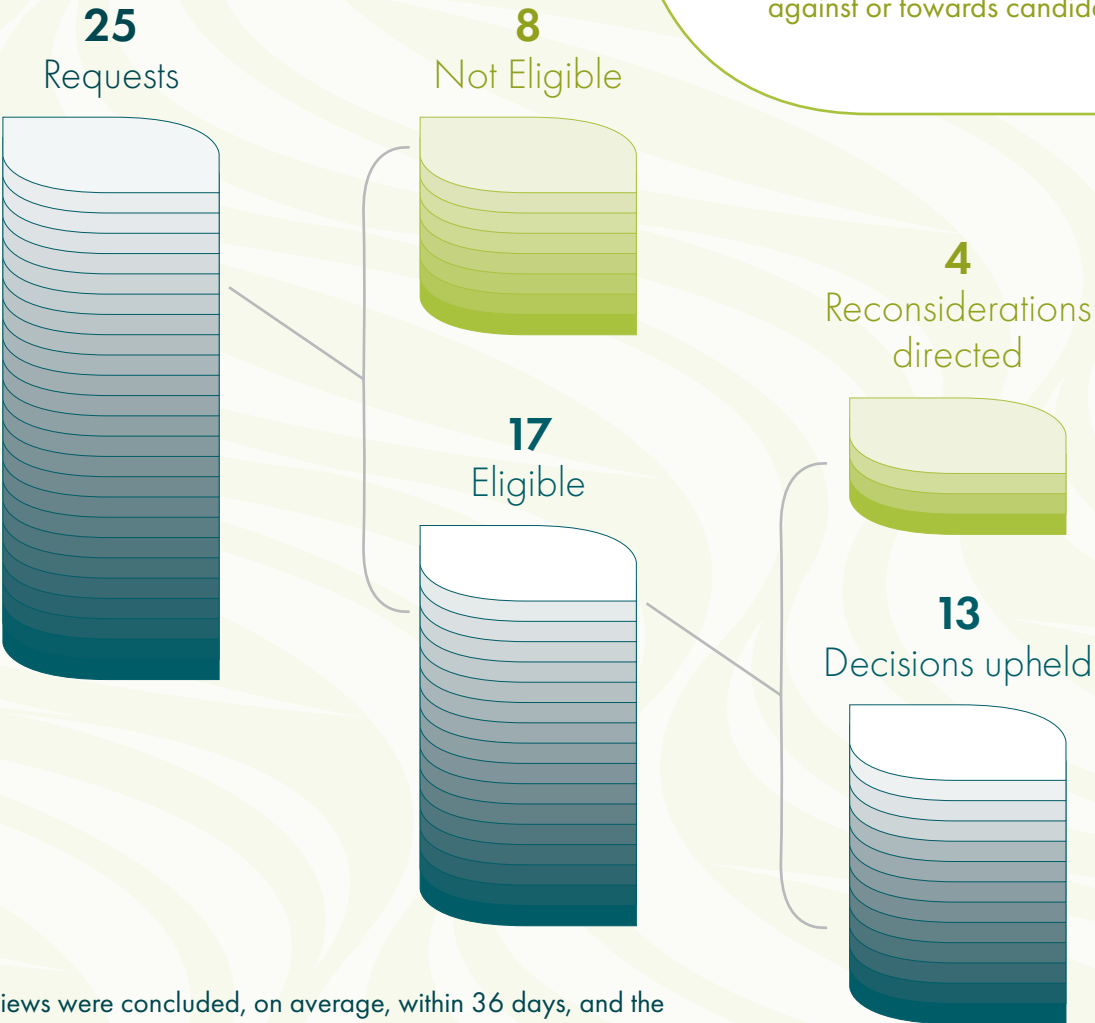
Each review involved a detailed analysis of the documented evidence contained within the competition file, supplemented by information obtained through discussions with the employee requesting the review, the hiring manager, and where necessary, other relevant individuals such as hiring panel members. Each review was guided by the requirements of legislation, collective agreement provisions, and hiring policies. Consideration was given as to whether the hiring process was fair and transparent, the assessment conducted was relevant to the job, and the decisions made were reasonable.

Grounds for Review
2017–2018

Common grounds for review in the fiscal year included:

- insufficient or inappropriate consideration or weight given to education and/or experience;
- incorrect marking of test or interview responses;
- unfair evaluation of past work performance; and,
- bias in the hiring process either against or towards candidates.

The Merit Commissioner issued 17 decisions in 2017–2018. Each decision was rendered after thoughtful consideration of the employee’s concerns and a thorough examination of the relevant aspects of the hiring process. In 13 of these cases, the appointment was found to be merit-based. There were four cases where the Merit Commissioner found that the aspects of the selection processes related to the employees’ grounds did not comply with section 8(1) of the Act, and directed the responsible deputy minister or organization head to reconsider the appointment.



The reviews were concluded, on average, within 36 days, and the detailed reports were shared with the employee and responsible deputy minister or organization head. Delays beyond the targeted response time of 30 days were the result of the high number of review requests received, as well as the complexity of the issues raised.

Work Underway

2017–2018 Report on Staffing Reviews

An analysis of the staffing reviews conducted in 2017–2018 is being undertaken, and a final report will be published in the summer of 2018. Recurring themes

in employees’ grounds provide the Office with insight into areas where future audits or studies of specific aspects of the hiring process may be warranted.



Merit-based hiring is an important part of:

- building a qualified and professional public service;
- sustaining an engaged and productive workforce;
- demonstrating credible leadership; and
- maintaining public trust.

Budget

The Office’s budget and expenditures for the 2017–2018 fiscal year are shown below by expenditure type.

In November 2017, 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, establish priorities for the year ahead, and review budget requirements for the next three fiscal years. The Committee acknowledged the work

of the Office and endorsed the Service Plan as it was presented. Subsequently, the Office was allocated a budget of \$1,141,000 for fiscal 2018–2019. Details of this budget allocation are also shown below.

Budget and Expenditures

	Approved Budget 2017–2018	Actual Expenditures 2017–2018	Approved Budget 2018–2019
Salaries & Benefits	\$ 655,000	\$ 648,207	\$ 662,000
Travel Expenses	\$ 17,000	\$ 12,676	\$ 17,000
Operating Expenses	\$ 317,000	\$ 290,979	\$ 321,000
Professional Services	\$ 136,000	\$ 150,446	\$ 141,000
Total	\$ 1,125,000	\$ 1,102,308	\$ 1,141,000

Appendix A

Organizations Subject to Oversight by the Merit Commissioner (as of March 31, 2018)

Ministries

- Advanced Education, Skills and Training
- Agriculture
- Attorney General
- Children and Family Development
- Citizens’ Services
- Education
- Energy, Mines and Petroleum Resources
- Environment and Climate Change Strategy
- Finance
- Forests, Lands, Natural Resource Operations and Rural Development
- Health
- Indigenous Relations and Reconciliation
- Jobs, Trade and Technology
- Labour
- Mental Health and Addictions
- Municipal Affairs and Housing
- Public Safety and Solicitor General
- Social Development and Poverty Reduction
- Tourism, Arts and Culture
- Transportation and Infrastructure

Independent Offices

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

Courts of British Columbia

- BC Court of Appeal
- Provincial Court of BC
- Supreme Court of BC

Other Public Sector Organizations

- Agricultural Land Commission
- Auditor General for Local Government
- BC Human Rights Tribunal
- BC Pension Corporation
- BC Public Service Agency
- BC Review Board
- Community Care and Assisted Living Appeal Board
- Destination BC
- Employment and Assistance Appeal Tribunal
- Environmental Appeal Board
- Financial Institutions Commission
- Financial Services Tribunal
- Forest Appeals Commission
- Forest Practices Board
- Health Professions Review Board
- Hospital Appeal Board
- Independent Investigations Office
- Islands Trust
- Office of the Premier
- Oil and Gas Appeal Tribunal
- Property Assessment Appeal Board
- Public Guardian and Trustee
- Public Sector Employers’ Council Secretariat
- Royal BC Museum
- Safety Standards Appeal Board
- Surface Rights Board



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Office of the
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