

2020-2021

ANNUAL REPORT



Office of the
Merit Commissioner

Upholding Fair Hiring in the BC Public Service



Office of the Merit Commissioner

Upholding Fair Hiring in the BC Public Service

The Honourable Raj Chouhan
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 2020-2021 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 Legislature, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Maureen Baird
Merit Commissioner

Victoria, British Columbia
May 2021

The Merit Commissioner and her staff would like to acknowledge that we are living and working with gratitude and respect on the traditional territories of the Indigenous peoples of British Columbia.



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Message from the Merit Commissioner

I have now completed a full year as Merit Commissioner. When I wrote my first Message from the Commissioner last year, we were all adjusting to life under the pandemic. At that time there was much uncertainty and some anxiety about how long it would take to return to pre-COVID-19 life and what it all meant for us until then and beyond. When the state of emergency was declared, we transitioned to working remotely as much as possible, supported by enhanced technology.

We continue with our oversight roles which are to uphold fair hiring and to monitor just cause dismissals in the BC Public Service. This report illustrates the ways we have fulfilled those commitments.

The work of our Office continues to focus on its three main areas of responsibility: conducting merit performance audits, reviewing individual staffing decisions upon request by eligible individuals, and reviewing processes that resulted in just cause dismissals.

This report contains the results of our 2019/20 Merit Performance Audit, which was based on auditing 267 appointments randomly selected from the approximately 7,500 appointments made to the BC Public Service over the 2019/20 fiscal year. The overall results were that 57 percent of the appointments audited were the result of a merit-based process with no error. We determined that merit was not applied in six percent of the appointments audited, meaning that there was an error with a known negative impact on the

competition outcome. The remaining 37 percent of appointments were based on merit, but the audit found an error in the design or application of the hiring process which had a mitigated or unknown impact on the competition outcome. A total of 98 percent of the individuals appointed were qualified for the position into which they were hired. There was no evidence of patronage in any appointment.

Following our analysis of the results of the 2019/20 audit, we developed recommendations aimed at improving merit-based hiring processes related to clear qualifications, assessment tools, and candidate standings. These recommendations were directed to deputy ministers and organization heads who, with the support of the BC Public Service Agency, can ensure that merit-based hiring continues to improve.

Based on the audit results, I am confident that merit-based hiring in the BC Public Service is fundamentally sound but always subject to improvement.

In 2020/21 our Office received 11 eligible requests for staffing reviews involving seven ministries. This represents a decrease from 20 eligible reviews the previous year. Reviews were conducted for all 11 requests, and nine were completed by the end of March. Two reviews resulted in a direction for reconsideration of the appointment. The concerns raised for these requests included the design and conduct of short-listing, interviewing and testing, and past work performance.

I am pleased to be able to report for the first time on observations from our reviews of 19 eligible just cause dismissal files. We found that, in general, these files were well conducted, with a thorough analysis preceding any decision to terminate an employee for just cause. We identified two cases where the review could not conclude that the process had properly applied practices, policies, and standards. In other cases, there were a variety of errors or omissions identified that were considered less than best practice but did not impact fairness. These observations will be shared to inform future practice.

In March 2021 we published a special study on eligibility lists. This study was undertaken by our Office because we observed a high level and consistent use of eligibility lists in the annual merit performance audits. The study analyzed the observed risks and identified strategies to mitigate the risk of repeating these errors to contribute to greater transparency and fairness in the hiring process.

Our plan for next year is to stay the course by fully performing our mandate. We will continue to explore how we can add value to the oversight of merit-based appointments and the monitoring of just cause dismissals.

A handwritten signature in black ink that reads "Maureen Baird". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Maureen Baird, Merit Commissioner



Vision

Merit-based hiring and fair process in just cause dismissals in the BC Public Service.

Mission

To strengthen and support fairness and transparency in the BC Public Service by:

- Monitoring the application of the merit principle to appointments.
- Reviewing the application of government practices, policies, and standards to just cause dismissals.

Responsibilities

- Conduct random audits of appointments.
- Conduct reviews of the application of merit as the final step in the staffing review process.
- Conduct reviews of the processes that result in just cause dismissals.

Who We Are

The Merit Commissioner is Maureen Baird. The role of Merit Commissioner was established in November 2005 in accordance with the *Public Service Act* (the *Act*). The Merit Commissioner is an independent officer of the Legislature, appointed by the Legislative Assembly on a part-time basis for a three-year term.

The Merit Commissioner has two main lines of oversight:

- Monitoring the merit principle in provincial government organizations that have employees appointed under the *Act*.
- Monitoring the application of government practices, policies, and standards to eligible dismissals in accordance with the *Act* by conducting reviews of eligible dismissals.

The Merit Commissioner is supported by a small team of dedicated staff and a number of contract resources, known collectively as the Office of the Merit Commissioner (the Office).

Our Office is **independent** and we are passionate about our work.



All of our work is guided by the principles of **fairness** and **impartiality**. We uphold the same standards of integrity in performance and accountability that we apply to others. All those who contact our Office are treated with respect.

The actions and decisions concerning hiring and dismissal are varied and complex. A number of other individuals and organizations are directly involved in these functions.

Roles Associated with Merit-Based Hiring and Dismissal Processes		
Merit Commissioner	BC Public Service Agency/ Agency Head	Deputy Ministers/ Organization Heads
<p>Monitors the merit principle in hiring competitions through audits and by conducting independent staffing reviews</p> <p>Reviews processes resulting in just cause dismissals for application of government practices, policies, and standards</p> <p>Makes recommendations that have potential to inform future policy and practice</p>	<p>Sets HR policy and accountability framework for HR management</p> <p>Provides staffing and labour relations advice, training, and support</p> <p>Prior to termination action, confirms that appropriate due process has been followed</p>	<p>Ensure that hiring and labour relations processes within respective ministry/ organization follow established practices, policies, and standards, as well as collective agreements</p> <p>Complete internal inquiries for employee applicants who are dissatisfied with feedback following a hiring process</p>
<p>Hiring Managers</p> <p>Conduct hiring and dismissal processes and make related decisions in a manner consistent with government practices, policies, and standards, as well as collective agreements</p>		
<p>Unions and Employee Associations</p> <p>Represent and advocate for interests of employees</p>		

About Our Work

The Office has three central responsibilities:

- Conducting merit performance audits.
- Reviewing specific staffing decisions upon request by eligible individuals.
- Reviewing processes that have resulted in just cause dismissals.

We also conduct special audits and studies when relevant.

The following describes our central responsibilities and how we do our work.

Merit Performance Audits

The Office monitors the application of the principle of merit in the BC Public Service by conducting random performance audits each year. Permanent appointments and temporary appointments greater than seven months' length are the subject of these audits.

Appointments in any organization that is subject to section 8 of the *Act* may be audited by the Office. Appendix A includes the list of organizations the Merit Commissioner monitors for the application of the merit principle to appointments.

We conduct audits in accordance with generally accepted professional audit standards and methodology. Periodically, we have our audit

approach reviewed by independent experts to ensure our sampling methodology supports our objectives. We also conduct quality assurance reviews of our audits to ensure results and findings are consistent.

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.

Merit-based hiring is an important part of:

- Building a qualified and professional public service.
- Sustaining an engaged and productive workforce.
- Demonstrating trust-based leadership.
- Maintaining public trust.

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.

The Merit Principle

The *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:

- Appointments are based on an assessment of competence and ability to do the job.
- Appointments are non-partisan.

Factors of Merit

Section 8(2) of the *Act* lists the matters to be considered in determining merit. These must include:

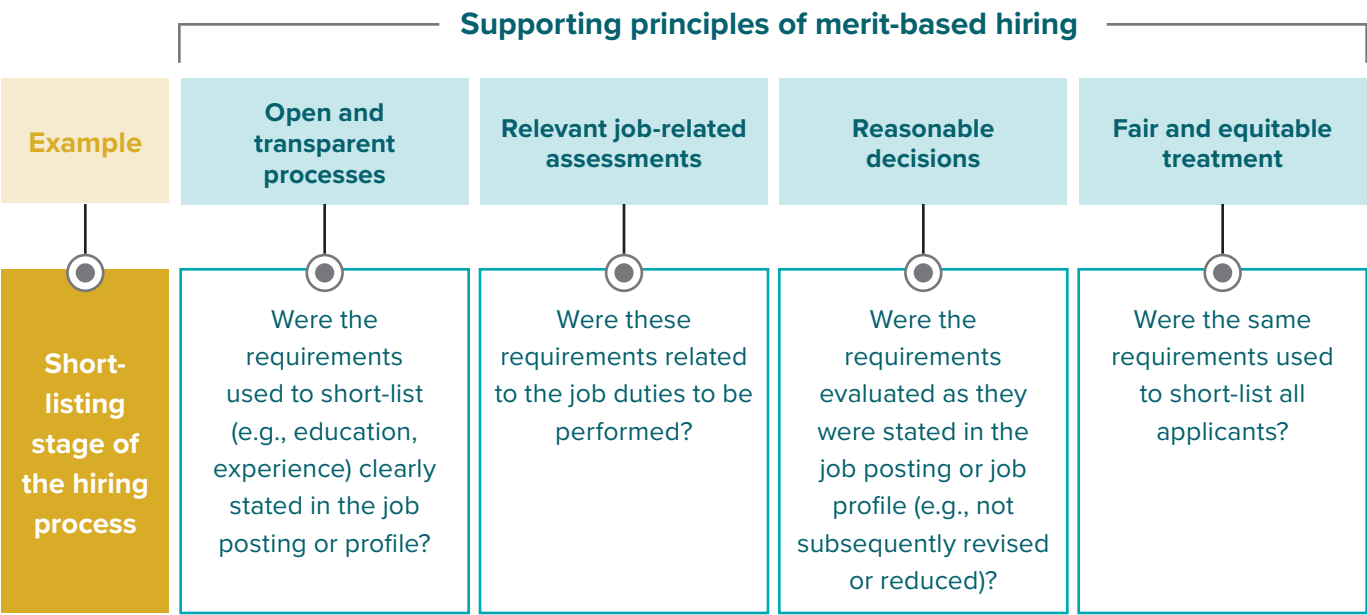
- Education
- Skills
- Knowledge
- Experience
- Past work performance
- Years of continuous service

Our audits follow established practices to determine whether hiring processes have been designed and conducted in a way that leads to merit-based appointments.

Audit Process for Each Appointment Selected for Audit	
We examine	<p>The overall approach used to recruit and select applicants.</p> <p>The five common stages of a hiring process:</p> <ol style="list-style-type: none">1. Short-listing2. Interviewing and testing3. Past work performance4. Years of continuous service5. Notification
We consider	<p>The application of relevant legislation, policy, and provisions of collective agreements.</p> <p>The application of the key principles of merit-based hiring:</p> <ul style="list-style-type: none">● Open and transparent processes.● Relevant job-related assessments.● Reasonable decisions.● Fair and equitable treatment.
We make	<p>Two audit findings:</p> <ul style="list-style-type: none">● Whether the recruitment and selection process was based on merit.● Whether the individual appointed was qualified. Did the individual:<ul style="list-style-type: none">– Possess the education and experience specified as required for the position.– Meet the minimum criteria established for the other factors assessed during the hiring process. <p>One determination:</p> <ul style="list-style-type: none">● Whether there was sufficient and appropriate documentation on file to support the hiring decision.

The detailed audit program can be viewed at www.meritcomm.bc.ca.

Below is an example of how each principle can apply to the short-listing stage.



Below are the definitions for each of the findings and the determination we make for each audited appointment.

Recruitment and Selection Process Findings	Individual Appointment Findings	Documentation Determinations
<p>Merit: The recruitment and selection process was both properly designed and applied to result in an appointment based on merit.</p> <p>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.</p> <p>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.</p> <p>A finding of merit not applied is also made if there is insufficient evidence to demonstrate that the design or application of a process was based on merit.</p>	<p>Qualified: The individual, when appointed, possessed the qualifications specified as required for the position.</p> <p>Not qualified: The individual, when appointed, did not possess the qualifications specified as required for the position.</p> <p>Qualifications not demonstrated: There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.</p>	<p>Good: The hiring process was comprehensively documented with minimal or no follow-up required.</p> <p>Sufficient: The hiring process was partially documented. Some documents were missing or incomplete and/or some aspects of the process required clarification. There was sufficient information to complete the audit.</p> <p>Insufficient: The hiring process was insufficiently documented. Key aspects of the process were not documented and/or verbal evidence was required to complete the audit.</p>

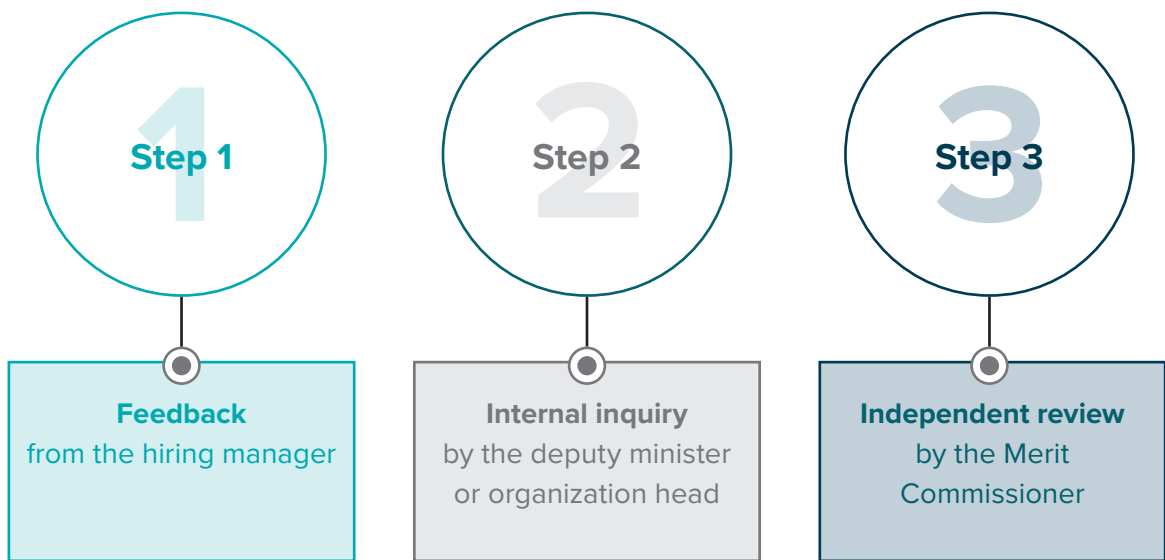
Audit findings and the documentation determination for each appointment are reported to the respective deputy minister or organization head.

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 of holding managers accountable for hiring decisions. It also acknowledges and supports good hiring practices throughout the BC Public Service.

Staffing Reviews

The Act provides employee applicants who are unsuccessful 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. For each step, the employee must act within a defined time limit before moving on to the next step. Competitions must be for permanent appointments or temporary appointments exceeding seven months.



The third step in the process, a review by the Merit Commissioner, is available to employees who are applicants for bargaining unit positions. If an employee proceeds to this step, the Merit Commissioner conducts an independent review of the areas of concern in the hiring process.

Review Process for Each Eligible Staffing Review Request	
We examine	<p>The aspects of the hiring process that are related to the employee’s grounds for concern.</p> <p>The relevant evidence contained within the competition file.</p> <p>Information obtained through discussions with the employee requesting the review, the panel chairperson and, where necessary, other relevant individuals, such as hiring panel members.</p>
We consider	<p>The application of relevant legislation, policy, and provisions of collective agreements.</p> <p>The key principles of merit-based hiring:</p> <ul style="list-style-type: none">● Open and transparent processes.● Relevant job-related assessments.● Reasonable decisions.● Fair and equitable treatment.
The Merit Commissioner decides	<p>To uphold the appointment decision where the aspects comply with the requirements of section 8(1) of the <i>Act</i>, or</p> <p>To direct a reconsideration of the appointment decision, where the aspects do not comply with the requirements of section 8(1) of the <i>Act</i>.</p>

The Merit Commissioner’s decision is final and binding.

The target to issue decisions is within 30 days after the Office receives the documents necessary to conduct the review.

Dismissal Process Reviews

Amendments to the *Act* in April 2018 conferred upon the Merit Commissioner the responsibility to review processes related to eligible just cause dismissals from the BC Public Service.

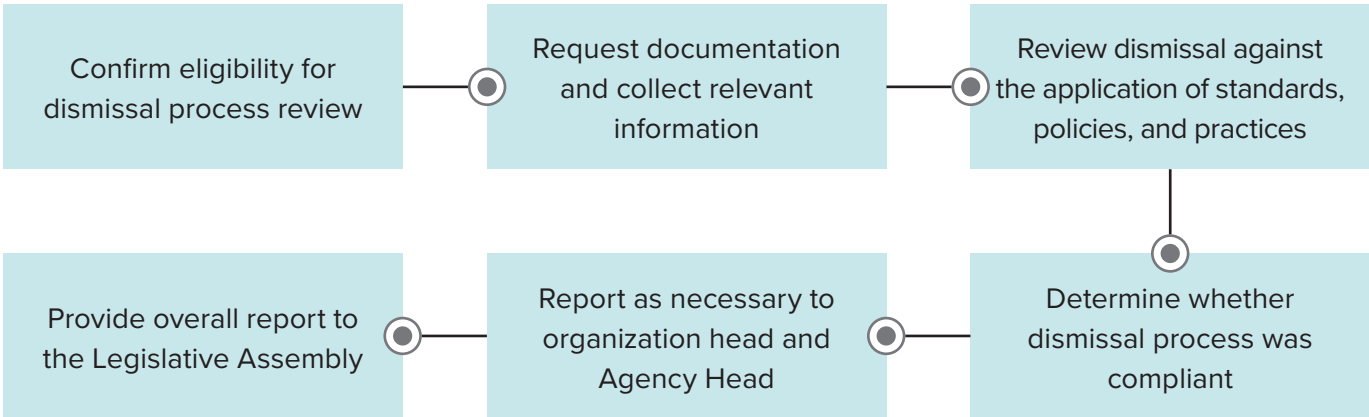
For a process to be eligible for review by the Merit Commissioner, all avenues of redress or recourse must be expired or exhausted.

- If there is no challenge to a dismissal, the process becomes eligible for review 12 months following the dismissal.
- If the employee chooses to challenge the dismissal, the process becomes eligible for review six months after all redress or recourse proceedings are complete.

The Office considers all dismissal process documentation and relevant information to conduct a full review.

The purpose of the review is not to determine whether the action met the legal standard for a just cause dismissal. Rather, it is to determine whether the dismissal process adhered to all necessary practices, policies, and standards.

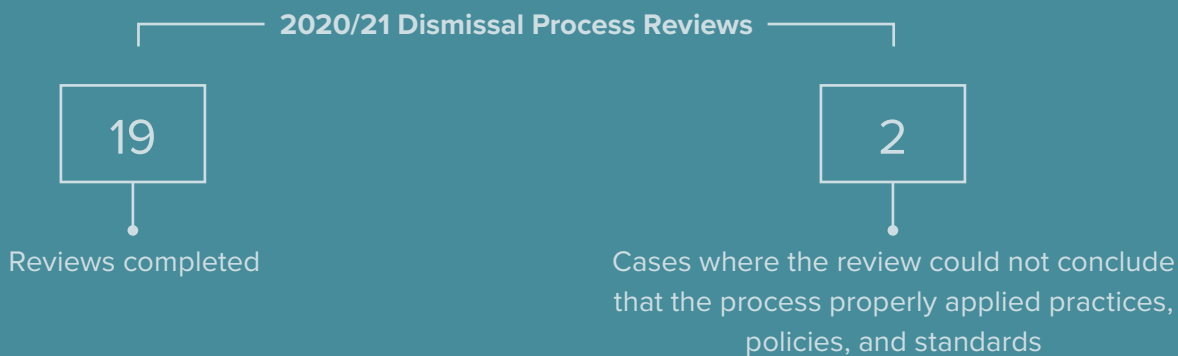
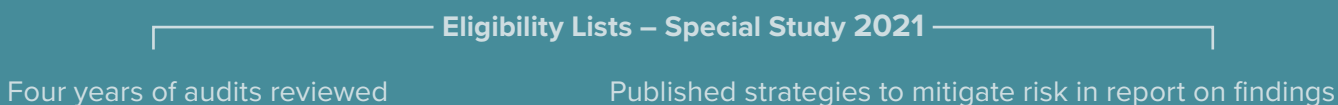
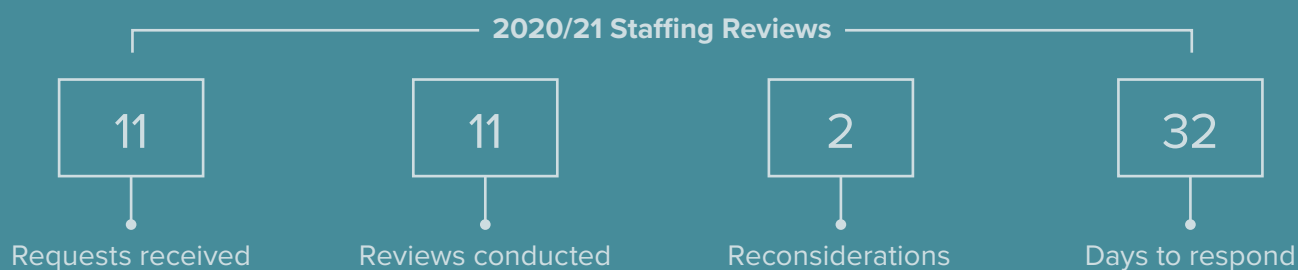
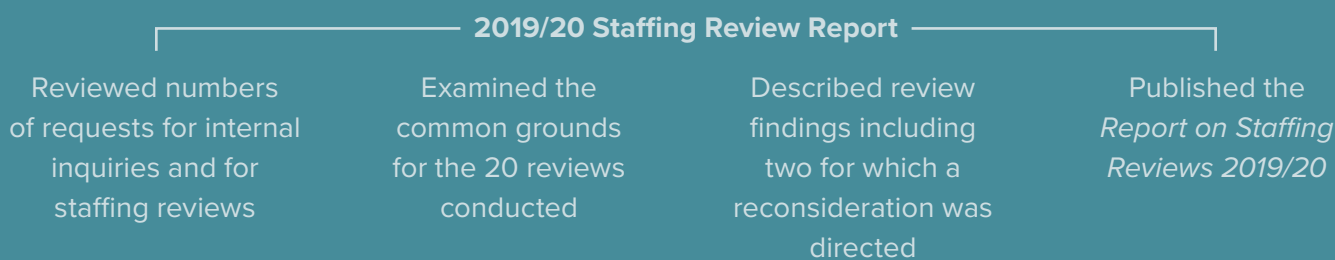
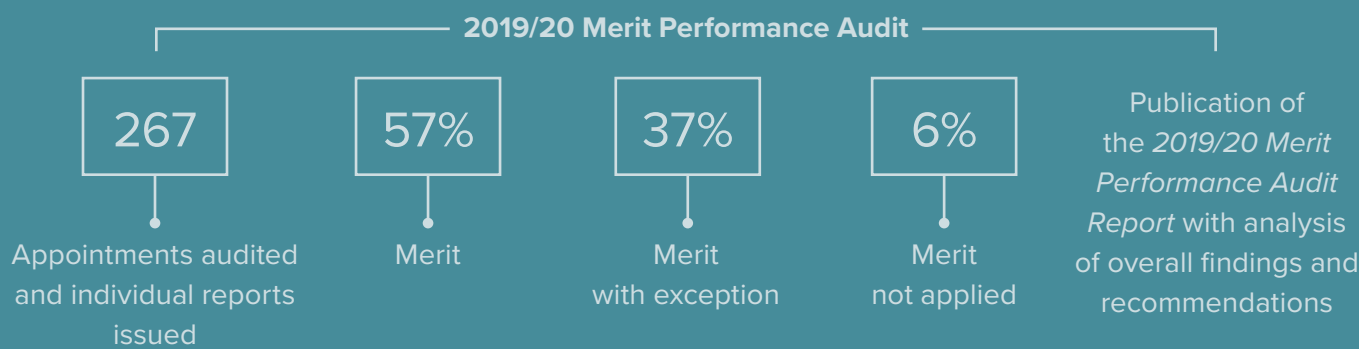
The general process for conducting reviews of dismissal processes is illustrated below.



Reviews of eligible just cause dismissal processes provide:

- Independent assurance that dismissal processes adhere to all necessary practices, policies, and standards.
- Oversight of government processes and actions.
- Increased accountability.

The Year in Review



The following sections include summaries of work completed during 2020/21. Detailed reports related to the work completed can be found at www.meritcomm.bc.ca.

2019/20 Merit Performance Audit Findings

A total of 7,751 permanent appointments and temporary appointments (those exceeding seven months) to and within the public service between April 1, 2019 and March 31, 2020 were identified for sampling. In order to be able to generalize the results of the audit to all of these appointments, a simple random sample, based on a predetermined sample size, was chosen each quarter from this population of appointments. This resulted in:

- A sample of 280 appointments selected for audit. Of these, 13 were determined to be outside the scope of the audit. These were removed from consideration.
- The audit of the hiring processes for the remaining 267 appointments.

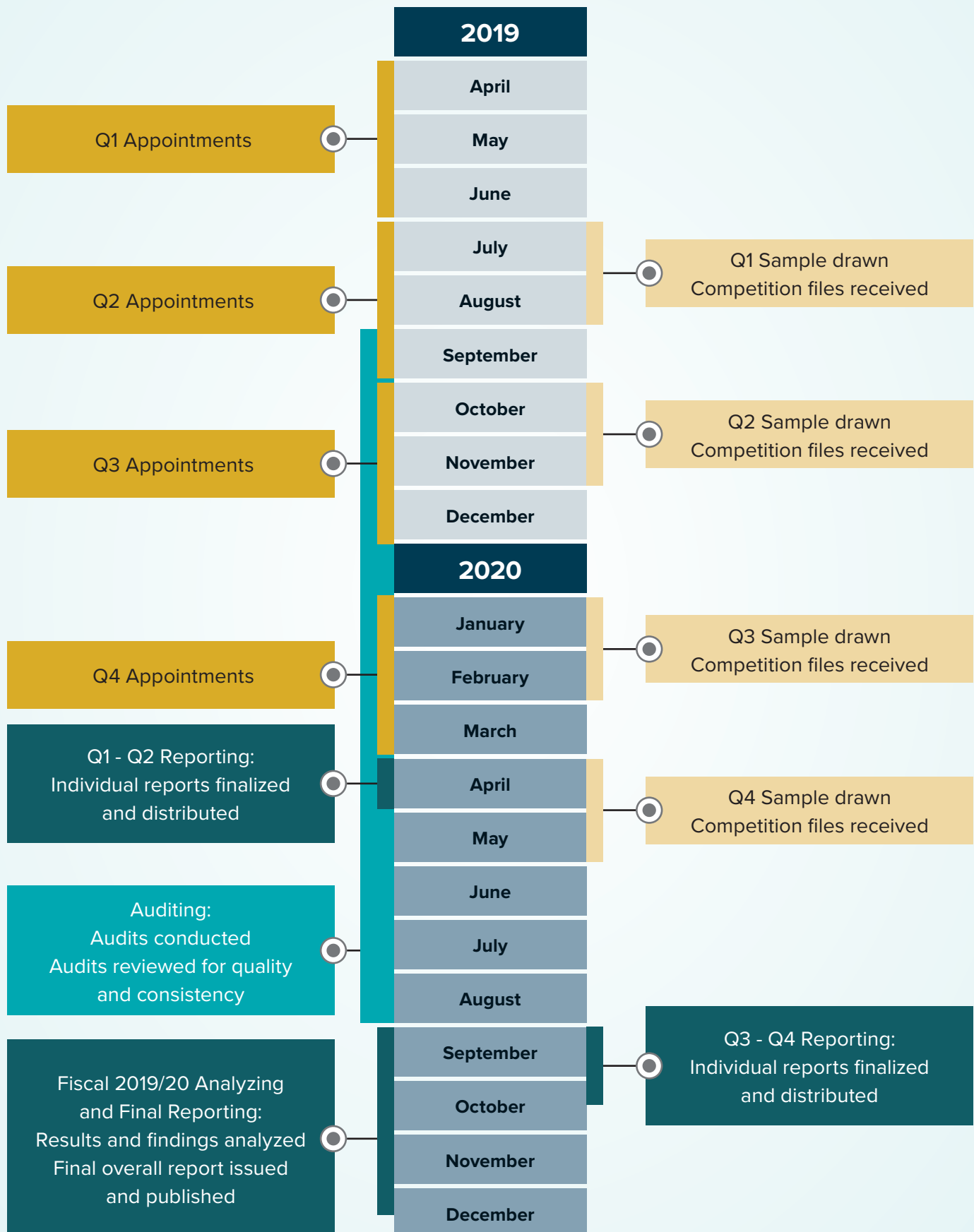
For the final quarter of the audit, we modified how we collect documentation because of the COVID-19 pandemic. For this quarter, the timeframe to provide information was flexible, rather than fixed. We received all materials in time to meet the end-of-year final reporting.

In cases where we made a preliminary finding of **merit not applied**, we provided the responsible deputy minister or organization head with the opportunity to review the draft results and provide additional or clarifying information.

All deputy ministers and organization heads received a final report for each appointment audited within their organization, regardless of the audit finding. They were encouraged to share the results with the responsible hiring managers.

At the conclusion of the audit, we completed a comprehensive analysis and made recommendations. These overall findings were reported to the Legislative Assembly and the Agency Head in December 2020 and were published on our website. The timeline for the 2019/20 Merit Performance Audit follows.

2019/20 Merit Performance Audit Timeline



Individual Appointed

In all cases except five, the individual appointed met the qualifications specified as required for the position at the time of appointment.

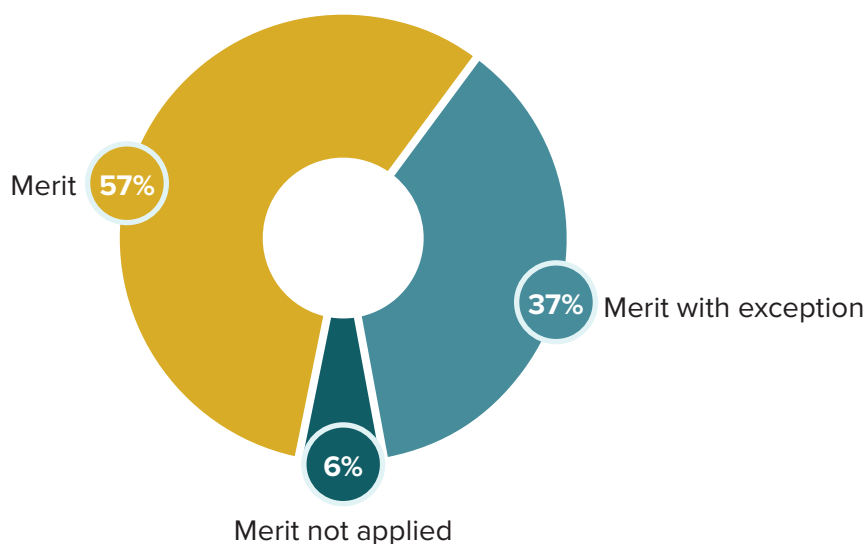
For two of the five exceptions, it was clear that the appointee was missing a key qualification required for the position.

For the other three exceptions, the finding was **qualifications not demonstrated** due to insufficient evidence (typically a lack of a supervisory reference) that the appointee possessed the qualifications required.

There was no evidence that any of the 267 appointments audited were the result of patronage.

Recruitment and Selection Process

2019/20 Overall Recruitment and Selection Process Findings



When the above findings are extrapolated to the adjusted total population of BC Public Service appointments for the 2019/20 fiscal year, it is estimated that:

- 4,232 appointments were error free (**merit**).
- 2,760 appointments had errors but with no identifiable negative impact (**merit with exception**).
- 421 appointments had errors with a known negative identifiable impact (**merit not applied**).

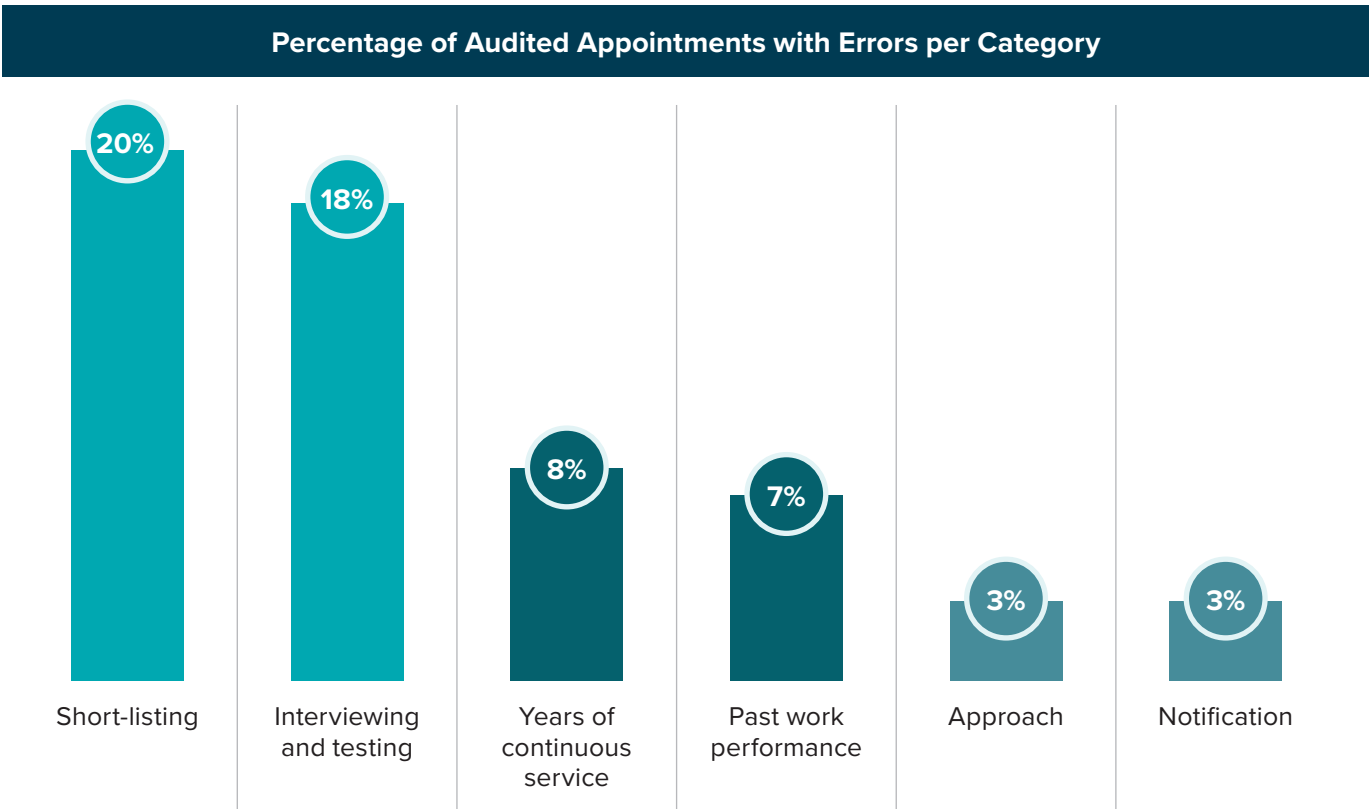
Note that only one overall recruitment and selection process finding was reported for each audit. However, some appointments had more than one error, and a few had multiple errors.

For each category or stage of the process, errors in design or application are identified and reported. These categories (the overall approach and the five common stages of hiring) are defined below.

Description of the Categories	
Approach	<p>The overall structure of the hiring process and the key elements necessary to support merit-based hiring. Includes:</p> <ul style="list-style-type: none"> • The initial notice • The scope and type of hiring process • The final rank order of qualified candidates • Offers of appointment
Short-listing	<p>The initial review of applications (e.g., cover letters, resumes, application forms, and questionnaires) determines which individuals possess the necessary requirements for further consideration. These requirements typically involve education and experience.</p>
Interviewing and testing	<p>The assessment of qualitative aspects required for the role (e.g., knowledge, skills, and behavioural competencies) through a variety of methods (e.g., interviews, tests, practical exercises, presentations, and role plays).</p>
Past work performance	<p>The evaluation and/or verification of the requirements (qualifications, standards of conduct, etc.) necessary for the role. At a minimum, a reference from a supervisor or equivalent is required.</p>
Years of continuous service	<p>Credit given for the amount of time an employee has been continuously employed by the BC Public Service. This is required for positions covered by the BC Government and Service Employees' Union (BCGEU) and the Professional Employees Association (PEA) collective agreements. This credit is calculated at the end of the process using a prescribed formula. While some form of credit may also be given to positions not covered by a union agreement, there is no requirement to do so.</p>
Notification	<p>Unsuccessful employee applicants must be properly informed of the competition's final outcome in order to have access to their recourse rights in accordance with the <i>Act</i>.</p>

In comparison to the previous two Merit Performance Audits (2017/18 and 2018/19), most categories showed either a decrease or no change in the percentage of appointments with errors. The exceptions were **interviewing and testing** and **years of continuous service**, which showed an increase.

Illustrated below are the number of appointments with errors in each of the categories as a percentage of all appointments audited.



Note: As some appointments had more than one error, the percentages above sum to greater than the 43% of appointments identified as having errors.

The majority of competitions were found to have open and transparent processes. They generally used objective, relevant methods to assess applicants. The areas of greatest risk were:

- Use of quick and generic methods of assessment, rather than reasoned and tailored to the position being filled.
- Decisions or simple mistakes that impacted the equitable treatment of applicants.

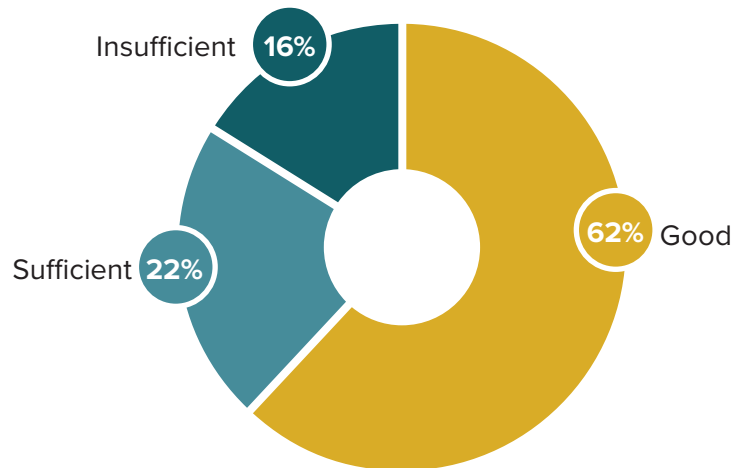
Of note:

- The **short-listing** category had the greatest number of appointments with errors. Most occurred because of decisions to change, lower, or waive mandatory qualifications or requirements.
- The most frequent error across categories involved assessment tools and standards – specifically, a lack of substantive marking criteria and an over-reliance on generic marking scales. There were also errors where tools and standards existed but were either incorrectly used or not applied.
- The errors with the most serious impacts arose from unreasonable decisions and administrative mistakes.

Documentation

As illustrated below, the determinations related to documentation varied. Compared to the two previous audit cycles, we noted that the overall quality of documentation has improved.

2019/20 Overall Documentation Determinations



Recommendations

Based on the findings and most significant issues identified through the 2019/20 Merit Performance Audit, the Merit Commissioner made three recommendations to deputy ministers and organization heads. These recommendations are intended to guide their delegated hiring managers to strengthen merit-based hiring. We recognize that assistance by the BC Public Service Agency may be necessary to support implementation.

1. Review education and experience qualifications prior to posting to accurately identify which are mandatory and which are preferred, and state where alternatives may be acceptable.
2. Establish and properly use assessment standards and tools (e.g., apply short-listing criteria; and identify and apply marking criteria) which are appropriate for the specific hiring process.
3. Verify the accuracy of candidate standing at each stage of the process prior to progressing to the next stage.

2020/21 Merit Performance Audit

The 2020/21 audit of appointments made from April 1, 2020, through March 31, 2021, is currently underway.

- Random samples of appointments were drawn for each quarter.
- We are continuing our modified approach to the collection of documentation in response to the COVID-19 pandemic (the timeframe to provide information is flexible rather than fixed).
- Audit reports for 140 appointments audited in the first two quarters were provided to deputy ministers and organization heads in April 2021.
- We expect to distribute the audit reports for appointments audited in the last two quarters of the fiscal year in the fall of 2021.
- We are targeting publishing the final comprehensive report, including the analysis and summary of the overall audit results, in November 2021.

Special Audits and Studies

Eligibility Lists – Special Study 2021

Eligibility lists are rank-ordered inventories of candidates who have been assessed in a hiring process and found to be qualified for future vacancies. Created and used properly, they are an efficient and cost-effective way of filling multiple positions.

Over successive merit performance audits, the Office has observed a consistent and high level of use of eligibility lists. We have also found related repeated problems that pose risks to the merit principle.

This special study consolidated the observations of four successive merit performance audits. It summarized these problems and demonstrated how they pose a risk to merit-based hiring. The study also outlined strategies to mitigate the risk of repeating these errors. These strategies also have the potential to contribute to greater transparency and fairness.

2019/20 Staffing Review Report

In July 2020, we published our *Report on Staffing Reviews 2019/20* on our website. The report examined the 20 requests for reviews received over the fiscal year and the Merit Commissioner's findings.

A consistently low number of reviews were requested in comparison to the number of appointments made within the BC Public Service. It is therefore not possible to identify systemic issues. However, several common concerns were put forward, including:

- Inappropriate methods or criteria used for assessment in the **interviewing and testing** stage.
- Inappropriate weight given to a **factor of merit** (i.e., education or experience).
- Unfair consideration of **past work performance** and **years of continuous service**.
- Concerns about bias either toward or against candidates.
- Concerns related to administrative procedures.

In 18 of the reviews, the Merit Commissioner upheld the original appointment decision. In the other two reviews, the Merit Commissioner identified a serious flaw involving short-listing in one process and past work performance in the other, and directed a reconsideration of these appointment decisions.

In a few instances, some candidates raised additional concerns (e.g., discrimination, performance management, and career development). As these types of issues are outside of the Merit Commissioner's authority, they were recognized but not considered.

On average, we took 29.5 days to complete an audit after we received the required documentation. This average excludes the additional number of days (ranging from three to 102) that five requests for review were held in abeyance during the four months the Merit Commissioner position was vacant.

2020/21 Staffing Reviews

In 2020/21, the Merit Commissioner received 11 requests for review of appointments. The requests came from within seven different ministries or organizations. As all the requests were eligible and none were withdrawn, the Merit Commissioner undertook all 11 reviews.

The Merit Commissioner issued nine decisions in 2020/21.

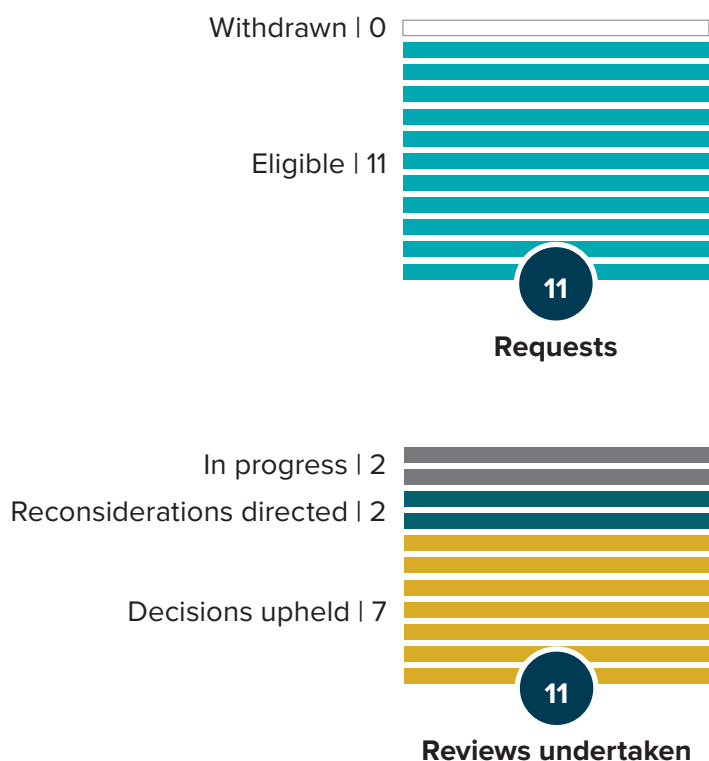
- In seven cases, the ministry decision was **upheld**.
- In the other two cases, the Merit Commissioner found that an aspect of the selection process related to the employee's grounds did not comply with section 8(1) of the *Act*. In these two cases, the responsible deputy minister was directed to **reconsider** the appointment.

At the end of fiscal 2020/21, two staffing reviews were still in progress.

The average time to conclude staffing review requests, from the date the Office received the required competition documentation, was 32 days.

Detailed reports were shared with the employee submitting the request and the responsible deputy minister or organization head.

An analysis of the staffing reviews conducted in 2020/21 will be undertaken and a report published in the summer of 2021.



Grounds for Review 2020/21

Grounds for review in the fiscal year included:

- Criteria used to short-list were not relevant or not properly considered (e.g., equivalent combinations of education and experience).
- Interview or testing responses, typically behavioural competencies, were incorrectly marked.
- Technical knowledge and skills necessary to perform the role were either not clearly stated as qualifications or not assessed at any stage of the process.
- Unsuitable referees were contacted and/or performance observations provided were inaccurate.
- An inconsistent approach or treatment of candidates at a stage in the process advantaged one or more candidates.

2020/21 Dismissal Process Reviews

The Ombudsperson's report *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters* recommended that the Merit Commissioner be provided with oversight authority of dismissal review processes.

Recommendation 27

By March 31, 2018, government introduce legislation for consideration by the Legislative Assembly to amend the *Public Service Act* to provide the Merit Commissioner with the authority to:

- a. Conduct reviews of all public service dismissals for just cause, to ensure adherence to public service standards and legal requirements. Such reviews are to take place following the completion of all labour relations or litigation proceedings related to the termination.
- b. Publicly report the results of these reviews, along with whatever recommendations the Merit Commissioner considers appropriate in the circumstances.

The *Act* was subsequently amended and now states that the Merit Commissioner “is responsible for monitoring the application of government practices, policies and standards to eligible dismissals” and may note particular instances or identify persistent patterns of related non-compliance as well as make recommendations in relation to dismissal processes.

There have been changes to the required elements of a dismissal process in the past few years, and the current human resources policy, “Terminations for Just Cause,” is considered to embody related practices and standards. This policy includes two administrative due process checklists, one each for included and excluded employees, which

includes procedural steps for review and approval, as well as an investigation best-practice protocols checklist. As this is the standard to which the BC Public Service holds itself accountable, it also forms the basis of the Merit Commissioner's review of dismissal processes. The reviews undertaken are done carefully and thoughtfully against each aspect of the dismissal process. The Merit Commissioner observes and reports on any aspect that is considered non-compliant, as well as makes related recommendations on best-practice issues in order to improve future dismissal processes.

In the *2019-2020 Annual Report*, the Merit Commissioner reported that three dismissal files were received in 2019. Partial reviews of those files were completed while the Merit Commissioner worked toward entering into a protocol agreement with the Ministry of Attorney General concerning privileged legal information. A pilot protocol for the provision of privileged legal information for those three files was entered into in March 2020 and extended in November 2020. Another 16 files were received over the course of the year. Documentation supplied by the BC Public Service Agency was provided in a timely and comprehensive manner. The Office has now had an opportunity to review the 19 files in their entirety.

It is apparent from a review of these dismissal files that, in general, a thorough analysis was undertaken by the responsible parties before a recommendation to terminate the employee was made to the deputy minister or equivalent. In relation to monitoring the application of government practices, policies, and standards respecting eligible dismissals, there were no issues of non-compliance, with the following two exceptions.

In each of these exceptional cases, the conduct of the dismissal process contained a number of errors or omissions such that the dismissal process did not meet a standard of fairness. In these cases, the process did not follow that specified in the related policy, including the

required steps of receiving required employee relations advice, and the insufficient or lack of completion of the mandatory checklists.

While the dismissals themselves may have been well founded, based on the documentation provided, the review could not conclude that the processes properly applied practices, policies, and standards.

For the other 17 dismissal processes, the review found some circumstances that were considered to be outside of best practice but not sufficient to result in the fairness of the dismissal process being compromised. Two of these types of situations are detailed below to provide guidance in future cases.

First, in a few circumstances an employee was not informed of the reason for suspension without pay while the alleged misconduct was investigated. It is recommended that when a decision is made to suspend an employee with or without pay pending the outcome of a disciplinary investigation, the employee be given a clear, written explanation for the decision. If exceptional circumstances make such disclosure inappropriate, these should be documented.

Second, there were instances where an employee raised an issue of potential non-culpable conduct or mitigating circumstances during the investigation that were not followed up on. For example, the dismissal file did not demonstrate whether an identified personal issue was investigated as a potential contributing factor to the alleged misconduct or considered as a potential mitigating factor in the decision to dismiss the employee. In another case, the file materials showed that the employee had raised an issue that was a potential mitigating factor, but this factor was not identified in the investigation findings. Where mitigating circumstances are not specifically addressed and documented in the investigation, they may not be known or considered by the decision

maker. It is recommended that any non-culpable conduct or mitigating factors identified during the investigation be included in the investigation report. Failure to do so can impact the fairness of the decision to terminate.

Practical issues with the administration of the process were also identified. For example, a concern was noted with the insufficient level of detail used to complete the checklists for administrative due process for just cause terminations and investigation best-practice protocols. Another practical issue was related to the timeliness of investigations.

It is recommended that the due process checklist be amended to include a question about timeliness and that an explanation be provided for any delay in completing the investigation or decision to dismiss. These observations will be shared directly with the BC Public Service Agency.

Given this is the first opportunity we have had to share observations of the dismissal review processes, we expect our work to evolve with the learning and experience gained over the last four months of 2020/21. We plan to review our processes and reporting in 2021/22.

Budget

The Office's budget and expenditures for the 2020/21 fiscal year are shown below by expenditure type. In February 2021, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to:

- Review results of the Office's work over the previous year.
- Establish priorities for the year ahead.
- 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 \$1,377,000 for fiscal 2021/22. Details of this budget allocation are shown below.

Budget and Expenditures			
Type	Approved budget 2020/21	Actual expenditures 2020/21	Approved budget 2021/22
Salaries & benefits	\$ 703,000	\$ 641,132	\$ 674,000
Travel expenses	\$ 17,000	\$ 1,978	\$ 17,000
Operating expenses	\$ 373,000	\$ 351,144	\$ 414,000
Professional services	\$ 272,000	\$ 134,887	\$ 272,000
Total	\$ 1,365,000	\$ 1,129,141	\$ 1,377,000

Appendix A

Organizations Subject to the Merit Commissioner's Oversight of Appointments

(as of March 31, 2021)

Ministries

Advanced Education and Skills Training
Agriculture, Food and Fisheries
Attorney General
Children and Family Development
Citizens' Services
Education
Energy, Mines and Low-Carbon Innovation
Environment and Climate Change Strategy
Finance
Forests, Lands, Natural Resource Operations
and Rural Development
Health
Indigenous Relations and Reconciliation
Jobs, Economic Recovery and Innovation
Labour
Mental Health and Addictions
Municipal Affairs
Public Safety and Solicitor General
Social Development and Poverty Reduction
Tourism, Arts, Culture and Sport
Transportation and Infrastructure

Independent Offices

Auditor General
Elections BC
Human Rights Commissioner
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 Farm Industry Review Board
BC Human Rights Tribunal
BC Pension Corporation
BC Public Service Agency
BC Review Board
Civil Resolution Tribunal
Community Care and Assisted Living Appeal Board
Destination BC
Employment and Assistance Appeal Tribunal
Environmental Appeal Board
Financial Services Tribunal
Forest Appeals Commission
Forest Practices Board
Health Professions Review Board
Hospital Appeal Board
Independent Investigations Office
Industry Training Appeal Board
Islands Trust
Mental Health Review Board
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
Workers Compensation Appeal Tribunal



Office of the
Merit Commissioner

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