



Office of the
Merit Commissioner

Eligibility Lists

Special Study

2021

UPHOLDING FAIR HIRING IN THE
BC PUBLIC SERVICE

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Introduction

The Merit Commissioner is responsible for monitoring the application of the merit principle under the *Public Service Act*. To do so, the Office of the Merit Commissioner (the Office) conducts an annual merit performance audit of a random sample of all permanent appointments and temporary appointments over seven months that form the regular, long-term workforce of the BC Public Service. Based on the competition documentation and other evidence provided to support the appointment decision, the audit assesses whether the recruitment and selection process was properly applied to result in an appointment based on merit and if the appointed individual possessed the required qualifications for the position. In recent random samples of appointments selected for audit, the Office has observed a high level and consistent use of eligibility lists. These audits have identified a number of recurring issues associated with the establishment and use of eligibility lists that either compromise the merit of the selection process in a direct and observable way, or create a potential risk to merit-based hiring.

Objective

The purpose of this study is to consolidate the observations of four successive merit performance audits in order to summarize eligibility list related issues identified in these audits, demonstrate how they pose a risk to merit-based hiring, and provide strategies to mitigate the risk of repeating these errors. Additionally, the study reviews resources available to hiring managers relative to the establishment and use of eligibility lists, and suggests refinements that may contribute to greater transparency and fairness when this tool is used.

Scope and Approach

The primary sources of data for this study were audit results from the Office of the Merit Commissioner's four most recent audits (conducted in fiscal years 2016-17, 2017-18, 2018-19 and 2019-20). The results of each year's audit were analyzed to identify the frequency, type and severity of issues attributable to the establishment and use of eligibility lists.

The study also reviewed information about eligibility lists available to hiring managers on the BC Public Service employees' human resources website ("MyHR"), in collective agreements relevant to the BC Public Service, and in the material referenced by BC Public Service Agency (the Agency) hiring advisors to support hiring managers.



Eligibility Lists

An eligibility list is a time-limited, rank-ordered list of candidates who, based on their performance in a selection process, have demonstrated that they meet the required criteria for that position. Hiring managers are responsible for the decision to establish an eligibility list, the number of candidates to be placed on it, and the duration (term) of the list. Once established, the list is used to fill subsequent similar vacancies that might otherwise be filled through a competition. Rank order of candidates on an eligibility list is based on their scores (highest to lowest) as determined through a consistent and objective selection process in which the hiring panel evaluated each candidate's qualifications relative to the posted requirements for the role. The length of time over which an eligibility list can be used, typically six months to one year, is referred to as its term. The term begins on the date unsuccessful applicants are notified of the final competition outcome. Once a list has expired, it can no longer be used to fill vacancies.

Referred to differently in various jurisdictions (e.g., as hiring pools, employment lists, or qualified person banks), eligibility lists are a commonly-used tool in public service recruiting across Canada when there are more qualified candidates than there are available positions and when it is likely that additional positions will become available due to turnover or operational changes. In all provincial jurisdictions in which eligibility lists are used (including British Columbia) and in the Canadian federal public service, language governing their use states that they should only be used to fill vacancies for which the qualifications and duties are identical or very similar to those assessed in the original competition. When used in accordance with these guidelines, they are a fair, cost-effective and efficient method of staffing positions.

Eligibility Lists in the BC Public Service

In the BC Public Service, eligibility lists are described as inventories “of pre-qualified candidates in ranked order who have been assessed in a staffing action and are qualified to fill future vacancies.” They are recommended when there are more qualified candidates than current vacancies and:

- positions may be available in the near future due to program requirements or employee moves;
- the classification, type of position or location traditionally has high turnover; and/or,
- there are a large number of vacancies to fill and vacancies occur regularly throughout the year.

The collective agreements for the two largest unions, the BC Government and Service Employees' Union and the Professional Employees' Association, specify the requirements: to include the intention to create an eligibility list in the posting; for the maximum duration of an eligibility list (up to 12 months); and, where established, that candidates are to be placed on the eligibility list in rank order.



The Agency provides expertise and resources to hiring managers with respect to all aspects of staffing, including the establishment and use of eligibility lists, on their “MyHR” website. In addition to the web-based information, hiring managers can also seek information on eligibility lists from Agency hiring advisors who have access to internal-use reference material referred to as “topic guides”.

Audit Observations - Eligibility Lists in the BC Public Service

In recent random samples of appointments selected for audit, the Office has observed a high level and consistent use of eligibility lists. Table 1 illustrates the percentages of unique competitive processes that were selected for audit between 2016-17 and 2019-20 in which an eligibility list was created or in which the appointment selected for audit was made from an existing eligibility list.

Audit Sample	Audit Sample Competitions Establishing Eligibility Lists	Audit Sample Appointments Made from Eligibility Lists
2016-17	52%	24%
2017-18	56%	19%
2018-19	58%	25%
2019-20	60%	15%

In each of these audit years the Office observed problems related to the establishment or use of eligibility lists which had a detrimental effect on the integrity of the selection process. The effect varied from severe (e.g., those that resulted in the appointment of an unqualified candidate or gave an unfair advantage to a lesser-qualified candidate) to less significant (e.g., those that affected the transparency of a process). The same or similar problems were identified repeatedly in most of the audit years reviewed.

Audit Observations Related to the Establishment of Eligibility Lists

Where audits have identified concerns associated with the establishment of eligibility lists, these concerns range from oversights that negatively affect the transparency of the selection process, to more significant errors that could affect or had already negatively affected the merit of the selection process. The most frequent issues and their impacts are described below.

Notice of opportunity

As eligibility lists are used to fill future vacancies, a transparent competition approach requires the posting to expressly indicate if an eligibility list may be established, how it will be used (i.e., for



permanent, temporary, full-time, and/or part-time appointments) and the scope (e.g., other branches, divisions, ministries or geographic areas) for which the list will be used. However, the most frequent oversight with respect to the establishment of, or intention to establish, eligibility lists is the failure of the posting to communicate this key information. Each year, the Office's audit identified multiple competitions in which the posting did not include relevant information about the eligibility list. The omission of this information detracts from the transparency of the process as it means that potential applicants are not fully informed about all possible opportunities presented by the competition. If there is any chance that a list may be used for vacancies beyond the scope of the specific position under recruitment, a complete and comprehensive description of the possible uses of the list in the posting is important to ensure that potential applicants have a fair opportunity to apply for those roles.

Deferred assessment of past work performance

By definition, candidates placed on an eligibility list are those who have been assessed in a staffing action and are qualified to fill future vacancies. However, a significant and frequently identified error is the decision of the panel to defer a critical stage of assessment - past work performance - for candidates placed on eligibility lists. Past work performance assessment is used to evaluate and/or verify the ability of candidates to perform at the standard required for the position and, based on human resources policy, must be observed and assessed by a supervisor or equivalent. It is a critical assessment and necessary to ascertain that an individual is qualified for the role.

The placement of either employees or non-employees on an eligibility list without consideration of past work performance introduces the risk of hiring an unqualified individual. While this was not observed in the audit years covered by the scope of this study, it was identified in prior audit samples where the hiring manager forgot that past work performance had not been assessed and, contrary to policy, made appointments from the list without this final verification of candidate qualifications. Failure to complete past work performance for candidates placed on an eligibility list also creates vulnerability for the integrity of the process when, as is a common occurrence, the hiring manager responsible for the maintenance of the list changes for any reason (e.g., advancement, retirement). If a newly appointed hiring manager assumes responsibility for an eligibility list and makes an appointment from the list based on the assumption that all candidates were fully evaluated, including verification of their qualifications through an assessment of past work performance, there is a risk that they will appoint someone who might not have passed this key evaluation and is not, in fact, qualified for the position.

Deferring past work performance for an employee candidate is problematic as there is no guarantee that the individual will pass this stage of assessment. If an employee candidate placed on an eligibility list fails this factor when it is finally assessed, their rights to recourse (including the right to request a staffing review by the Merit Commissioner, if applicable) may be negatively impacted. To ensure that employee candidates can be fully and accurately informed of their standing at the end of a competition,



and able to exercise their recourse rights, it is essential that panels complete their assessment of the qualifications of all employee candidates before they are placed on an eligibility list.

Audits also identified many competitions in which reference checks were deferred for non-employee candidates placed on eligibility lists. Placement of these candidates on a list is less problematic as they do not have the same right of recourse held by employee candidates. External candidates have other factors at play (e.g., employment pressures, job security) that make it reasonable to defer assessment of their past work performance until there is an actual offer of appointment available. Nonetheless, every audit year, a frequent observation is the failure to advise external candidates placed on an eligibility list that a future offer of employment is conditional on the successful completion of a supervisory reference. The omission of this information detracts from the transparency of the process. If an additional stage of assessment is required for external candidates prior to appointment, they should be clearly informed of this condition in their regret letters.

Tied scores

In a selection process, all candidates identified as meeting the standard of assessment must be placed in a clear rank order based on merit criteria. Offers of positions and placement of any candidates on an eligibility list must align with that ranking. Where a selection process results in candidates with tied final assessment scores, the panel must break the ties in order to determine each candidate's unique rank order.

Audits have observed multiple cases in which panels either do not break the tie and place the candidates on the eligibility list with the same ranking (e.g., both candidates ranked third on the list), or rely on arbitrary factors (such as date of application or alphabetical order by name) to break the ties and determine the final rank order of candidates. The approach in both situations is unreasonable. In the first scenario, the candidates will not have an accurate understanding of their status in the competition and, if appointments are made off of the list, the panel will have to determine to whom the first offer should be made. In the second scenario, an arbitrary determination may disadvantage the candidate placed at the lower rank on the list. Instead, the panel must break any ties using merit-based criteria in order to determine a distinct, final ranking for every candidate prior to establishing the eligibility list. As with all critical decisions made during the selection process, the rationale for the breaking of tied scores should be clearly documented.

Notification

Notification advising applicants that they have not been selected for the position are commonly referred to as "regret letters". Timely, comprehensive and accurate regret letters are important to ensure that employee candidates have necessary information about the competition outcome should they choose to challenge the merit of an appointment through the staffing review process. Where an eligibility list is established, regret letters to candidates placed on the list must indicate their rank and the term over



which the list will be used, and the regret letters to applicants not on the list must clearly indicate both that a list was established and that they were not placed on it.

In practice, audits continue to identify many competitions in which key information about the eligibility list is omitted from regret letters. The most frequent oversight is the failure of the letters to advise applicants that an eligibility list has been established. Less frequently, information in the regret letter relative to the eligibility list is incomplete: candidates are not advised that they have been placed on the list; the term of the eligibility list is not indicated; or, there is no offer of feedback to candidates placed on the list. In the vast majority of cases, the omissions do not have a negative effect on the merit of the selection process; however, the failure to provide detailed and complete information about the competition outcome detracts from its transparency and credibility.

While infrequent, audits have found situations in which notification letter errors were of greater potential consequence to the outcome of the process. In all of these cases, candidates placed on the eligibility list were correctly ranked in competition documentation but the regret letters incorrectly advised candidates about their rank order on the list. This type of mistake introduces the potential of hiring an individual based on the information contained in the regret letters instead of the overall rating guide. This is especially true in larger processes in which there are many individuals on the eligibility list.

Documenting, Managing and Tracking of Eligibility Lists

MyHR states that hiring managers are responsible for maintaining a record of an established eligibility list and referring to it when vacancies arise; however, a concern identified by the Office is that both MyHR and the eligibility list topic guide are silent on what constitutes an eligibility list established in a competition. Unlike some other jurisdictions where a specific form or document is used to record, track and manage eligibility lists, there is no such requirement within the BC Public Service. As a result, the Office observes eligibility lists in many different formats including the competition storyline, regret letters, word documents or excel spreadsheets. The lack of consistency of format can create risks both for creating an eligibility list (for example, candidates are ranked before years of continuous service is calculated) and, more frequently, for its subsequent use (for example, when there is conflicting information in the competition documentation such as different rank order in the notification letters than the order recorded in the competition storyline). Additionally, most eligibility lists record only the name and rank order of candidates but not other critical information such as the term and expiry dates (which introduces the risk of appointment off of an expired list), or the name and contact information of the person (or position) responsible for managing the list.



Audit Observations Related to the Use of Eligibility Lists

Where audits have identified concerns associated with the use of eligibility lists, these errors, while less frequent than those made when establishing a list, are often of considerably greater consequence. The following descriptions of errors are illustrative of the most common and serious mistakes.

Out-of-order offers

In every year assessed in this study, audits identified competitions in which offers were made to candidates on the eligibility list that did not respect the rank order of the list. In these situations, lower-ranked candidates were unfairly offered opportunities ahead of other candidates with higher placement on the list. When asked to provide their rationale for out-of-order offers, in some cases, hiring managers acknowledged that it was an error. However, other hiring managers advised that, at the time of offer, they re-assessed eligibility list candidates against a new criterion and then made the appointment based on that re-evaluation. Examples of the types of factors considered by hiring managers in these circumstances included their perception of relative strength and weaknesses of candidates, “suitability” for the role, or existing membership in the work unit. It is both unreasonable and unfair to make post-competition adjustments of ranking based on criteria that were not considered sufficiently important to assess during the competition. Out-of-order offers from an eligibility list undermine the assessment process and are unfair to candidates whose superior performance in the selection process is disregarded.

Misaligned positions

Audits identified circumstances in which individuals were appointed off of an eligibility list established for one position to another position at the same classification but with significantly different qualifications and duties. This is an unreasonable and flawed use of an eligibility list. The premise of selection processes is that each competition assesses the factors of merit relative to the essential qualifications for the specific posted position. Candidates placed on an eligibility list have been assessed as qualified for that particular role or other roles with identical or very similar qualifications. Where an eligibility list is used to fill a vacancy for which the qualifications or duties are different from those assessed when establishing the list, there is a substantive risk that the candidate appointed may not, in fact, be qualified for the role. Additionally, incorrect use of an eligibility list to fill a vacancy in this manner impacts fairness as potential applicants have not had the ability to apply for the opportunity.

Types of Appointments (temporary vs permanent)

Although rare, audits have identified situations in which the highest-ranked candidate on an eligibility list was correctly offered the first available appointment from the list but the appointment was to either a temporary assignment or auxiliary position. When a permanent position became available at a later date, it was offered to the next candidate on the list on the basis that the highest-ranked candidate had already been appointed. However, as the first appointee was only in a temporary or auxiliary position,



they were disadvantaged by the decision to award the permanent opportunity to a candidate further down the list.

Expired Lists

All eligibility lists have a set term for use, the maximum of which is 12 months, and all appointments off of a list must be made while it is still valid. Although an infrequent occurrence, an audit did identify a situation in which an individual was appointed off an expired list. The use of the expired eligibility list does not comply with the collective agreement and is unfair to potential new applicants who miss the opportunity to apply for the position once the eligibility list had expired.

Mitigating Risks to Merit-Based Hiring Associated with Eligibility Lists

Recent merit performance audits continue to frequently observe eligibility list related problems of different orders of magnitude and frequency. While the prevalence of these issues and the risk they pose to merit-based hiring within the BC Public Service is of concern, the majority are easily avoided. This section of the study suggests changes that might be considered to improve hiring practices with respect to the establishment and use of eligibility lists.

Mitigating Risk – Improving Hiring Manager Practices

With delegated responsibility for staffing, hiring managers must ensure they exercise this authority in a responsible and informed manner. The table on the following page summarizes the eligibility list associated risks to merit-based hiring that have been described in this study and lists strategies for hiring managers to mitigate or reduce each issue identified. The issues are described in three categories reflecting their potential to negatively affect the integrity of the selection process:

- High Risk – issues that pose the greatest chance of an unfair appointment being made;
- Medium Risk – issues that pose a moderate risk of appointment of candidates who have not been fully assessed; and,
- Low Risk – issues that affect transparency of the selection process.



Table 2 – Mitigating Risks Through Improved Practices

Risk Level	Problem Practice	Ways to Mitigate Risk
HIGH RISK	Appointments not made in rank order	<ul style="list-style-type: none"> • Extend offers to eligibility list candidates in rank order as determined by their score in the competition. • Ensure employees who reject an offer remain on the list in their current ranked position unless they withdraw from the selection process or ask to be removed from the list. Even where higher-ranked candidates have rejected previous offers, continue to offer all opportunities that become available over the term of the list in rank order. • Track the type of appointments (temporary, auxiliary, permanent) made from the list to ensure compliance with rank order. Where a candidate has accepted a temporary appointment from the list and a permanent opportunity subsequently becomes available, the offer for the permanent position must be made to the highest-ranked candidate on the list who is in a temporary or auxiliary role.
	Inappropriate use of the list	<ul style="list-style-type: none"> • Definitively document the list in the competition file. • Use the eligibility list only for the type and location of positions as described in the posting (e.g., permanent, temporary, full-time, part-time, geographic area, branch/division/ministry). • If the list is used to staff a position other than the one described in the original posting, ensure position classifications are the same and that the required qualifications were assessed in the selection process used to establish the list. • Record the contact information of the person (or position) responsible for the creation and management of the list.
	Rank order errors	<ul style="list-style-type: none"> • Determine final rank of all candidates using a merit-based means to break tied scores. • Check candidate placement on the list to ensure it reflects the rank order of candidates in the competition.
	Appointment off expired list	<ul style="list-style-type: none"> • Accurately determine eligibility list expiry date using the day on which applicants are notified of competition results as day one of the list. Appoint from the list only when it is still valid. Extend the list prior to its expiry.
MEDIUM RISK	Incomplete assessment prior to placement on eligibility list	<ul style="list-style-type: none"> • Complete assessment of past work performance for employee candidates to be appointed or placed on an eligibility list prior to finalizing competition results and establishing an eligibility list. • If past work performance is not assessed for out-of-service candidates on the list, include a statement in their notification letters to advise that future offers are conditional upon a satisfactory reference. • When appointing off of an eligibility list, ensure that a supervisory past work performance assessment has been conducted. If not, complete assessment using the same questions asked for all other candidates.
LOW RISK	Insufficient or incomplete information in posting	<ul style="list-style-type: none"> • Clearly indicate in the posting that an eligibility list may be established and provide key information (status, geographic location, organizational unit) about how and where the list might be used.
	Incomplete notification	<ul style="list-style-type: none"> • Notification to unsuccessful candidates should expressly state that an eligibility list has been established and specify the candidate’s rank on the list, if applicable, OR advise that they have not been placed on the list; the term (duration) of the list; and, that feedback is available.



Mitigating Risk – Resources

The Office recognizes the extensive resources made available to hiring managers, in particular MyHR and Agency hiring advisors who provide information to hiring managers using internal, subject-specific topic guides. Most of the information available to hiring managers on MyHR is clear; however, there are some instances in which greater detail or a more instructive approach could be beneficial, particularly with respect to the information on improved practices presented in the above table. Similarly, some of the topic guide content on eligibility lists is vague at times, creating opportunity for varied interpretation and application. For example, information could be improved by:

- expressly stating that past work performance for employee candidates must be fully assessed prior to conclusion of the competition and placement on an eligibility list;
- specifying that regret letters to out-of-service candidates on the list for whom past work performance has not been assessed should include notification that any future offer of an appointment off of the list is conditional based on a satisfactory supervisory assessment of past work performance; and,
- describing the process to extend the term, including notifying candidates on the list that the term has been extended.

These examples are not exhaustive but intended to illustrate how refining and improving the language on MyHR and in the topic guide, or similar tool/resource, has the potential to improve hiring manager practices with respect to eligibility lists.

Conclusion

Created and used properly, eligibility lists are an efficient and cost-effective way of filling multiple vacancies for the same position or for positions with very similar qualifications and accountabilities. They are used extensively in BC Public Service competitions. Audit sample data indicates that their use is consistent across sample years, and successive audits continue to identify repeated problems related to their establishment and use which impact the fairness and transparency of appointment processes. Given the frequency with which eligibility lists are created and individuals are appointed from these lists, it is important that this tool is properly used and understood. Accordingly, this study has consolidated the observations of four successive merit performance audits in order to summarize eligibility list related problems identified in these audits, demonstrated how they pose a risk to merit-based hiring, and identified strategies that would mitigate the risk of repeating these errors and contribute to greater transparency and fairness.

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