



Office of the
Merit Commissioner

Service Plan

Fiscal Years

2018/19 – 2020/21

Presented to
The Select Standing Committee on Finance and Government Services
Legislative Assembly of British Columbia

November 8, 2017



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Overview

I am pleased to present this service plan for the Office of the Merit Commissioner. This plan highlights the work completed by the Office over the past year and identifies plans for the coming years.

In May 2017 the Speaker was presented with our 2016/17 Annual Report. That report included summaries of: the results of the 2015/16 Merit Performance Audit which involved audits of 321 appointments to and from within the BC Public Service, and staffing reviews conducted during the year.

The Office is nearing conclusion of the 2016/17 Merit Performance Audit of 257 appointments for the period April 1, 2016 to March 31, 2017. Individual findings were communicated to deputy ministers, organization heads, and the Head, BC Public Service Agency (BCPSA) in October 2017. An analysis of the overall results and findings, and recommendations related to these findings will be shared in draft form with the Head, BCPSA and a response is expected by mid-November. The audit report will then be finalized and delivered to the Speaker by the end of November and will be published on our website.

In the 2016/17 fiscal year, I received 14 staffing review requests, three of which were ineligible. In all but one of the 11 reviews conducted, the ministry's hiring decision was upheld.

Our priority for the coming year is to remain focused on our core lines of business: auditing appointments and conducting staffing reviews. Providing relevant and timely feedback to hiring managers through deputy ministers, organization heads, the BC Public Service Agency, and to employees is considered key to encouraging improvement in the system and upholding fair hiring.



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.

Responsibilities

All appointments to and from within the BC Public Service must be made on the principle of merit. Merit means that appointments are made on the basis of an assessment of competence and ability to do the job, and are not influenced by patronage.

The Merit Commissioner provides independent oversight of appointments to and from within the BC Public Service. This oversight role applies to appointments made in accordance with section 8 of the *Public Service Act* (the Act).

The Merit Commissioner has three responsibilities under the Act:

- to monitor the application of merit by conducting random audits of appointments and reporting the audit results to the deputy ministers or heads of the organizations in which the appointments were made;
- to provide a review of the application of merit as the final step in a staffing review process for bargaining unit positions; and
- to report annually to the Legislative Assembly on the application of the merit principle.

The Merit Commissioner may also undertake special audits or studies of systemic issues related to areas where there may be potential risk to merit-based hiring.

The Office of the Merit Commissioner (see Appendix A) provides credible and relevant information about staffing on which the employer may act to produce positive changes. These outputs all support the long-term goal of building public confidence and a strong consensus that the BC Public Service is qualified, and hired fairly according to the principle of merit.



Context

BC Public Service Workforce

As of September 23, 2017, there were 35,108 employees in the BC Public Service, which is an increase of 1,372 employees in the 12 months since reporting at this time last year. These employees work in ministries and central agencies; agencies, boards and commissions; and independent offices of the Legislature.

Employees are appointed under the *Public Service Act* on a regular or auxiliary (temporary) basis. They may be unionized, excluded managers or other non-unionized employees. Distribution of the population by these categories is shown below in Charts 1 and 2.

Chart 1 – Employees Appointed Under the *Public Service Act* – By Status

(As of September 23, 2017)

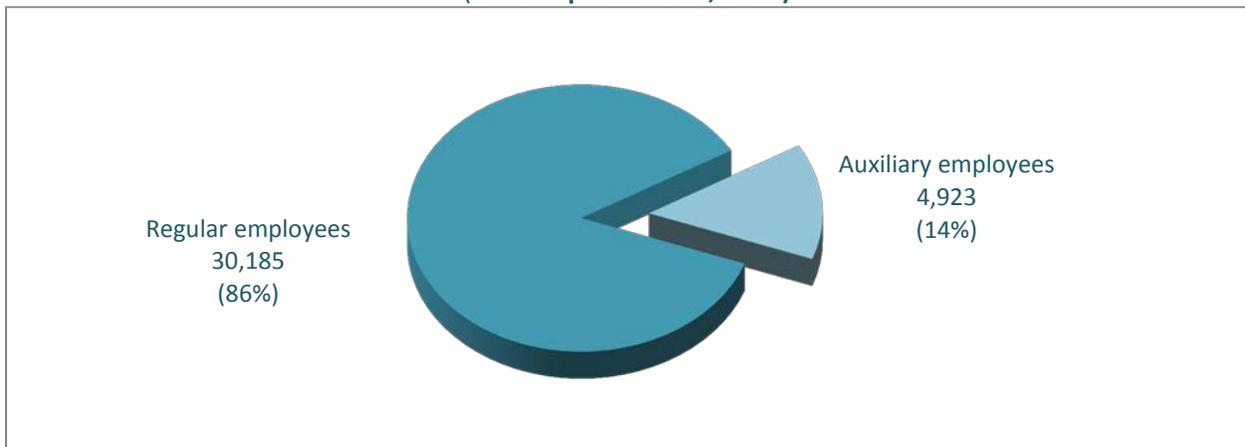
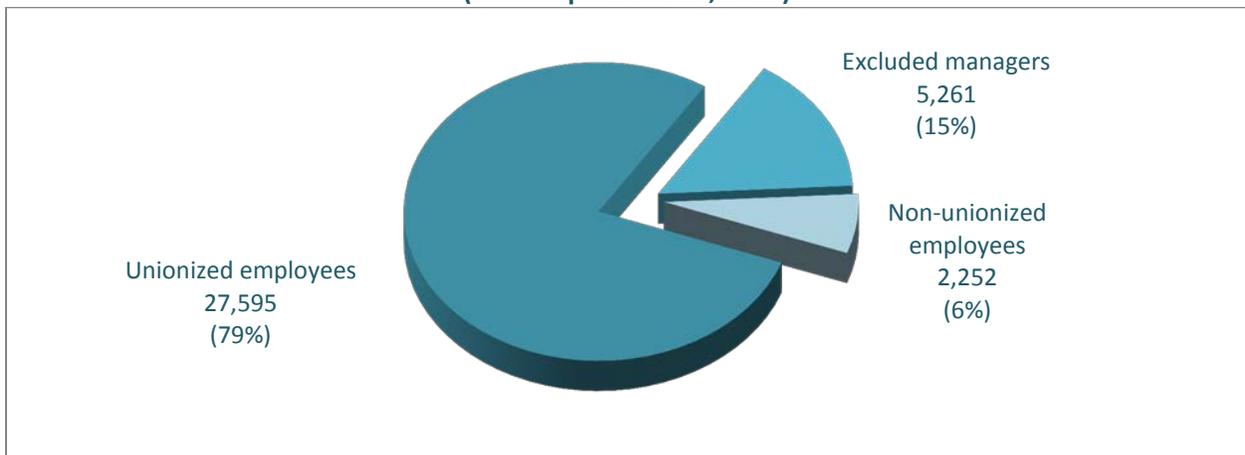


Chart 2 – Employees Appointed Under the *Public Service Act* – By Type

(As of September 23, 2017)

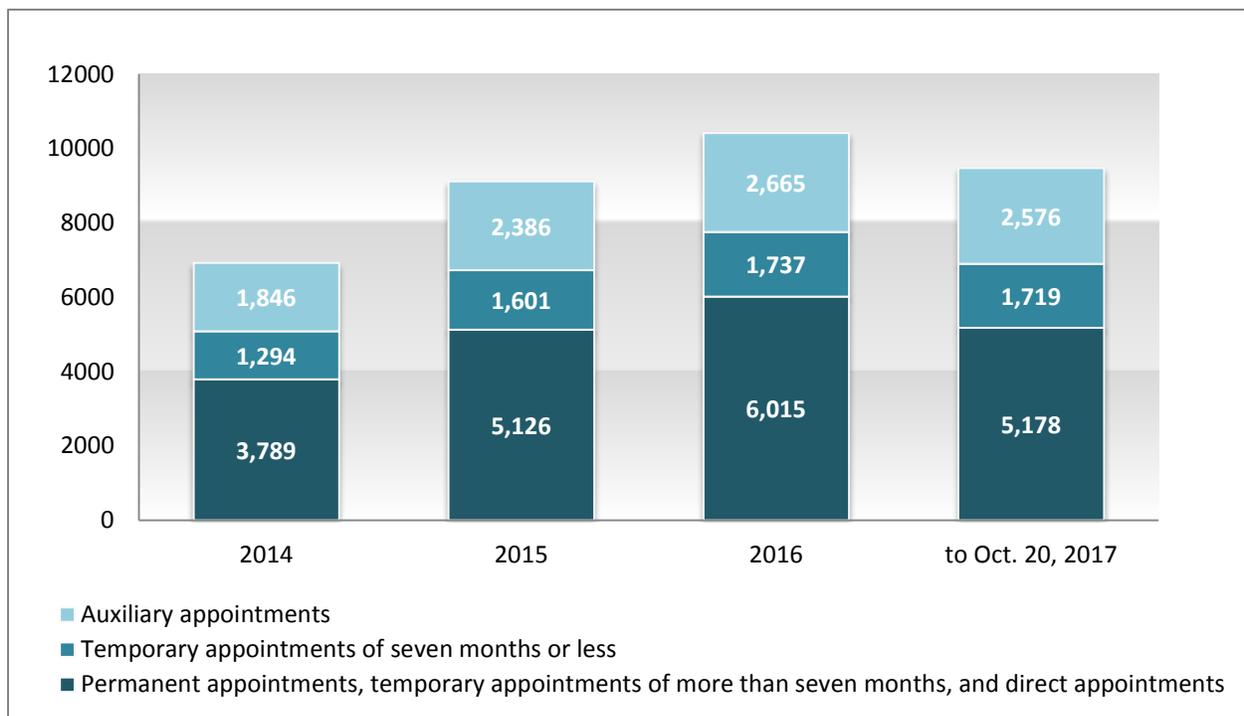




Appointment Activity

The Office of the Merit Commissioner (the Office) audits appointments to and from within the public service that are made under section 8 of the *Public Service Act*. A complete list of organizations subject to oversight by the Merit Commissioner appears in Appendix B. Chart 3 shows total numbers of these appointments, by appointment type, for the last four years.

**Chart 3 – Year-by-Year Comparison of Appointments
Subject to Oversight by the Merit Commissioner**





Indicators of Merit-based Hiring

Merit-based hiring requires the commitment of all public servants. The framework shown in Chart 4 provides an overview of indicators of merit-based hiring.

Chart 4 – Indicators of Merit-based Hiring		
Indicator		Office of the Merit Commissioner Related Responsibilities
Regulatory Framework	BC Public Service hiring complies with hiring policy, legislation and relevant collective agreement provisions	<ul style="list-style-type: none"> Report annually on the status of BC Public Service hiring to the Legislative Assembly and the BC Public Service Agency
	Organization heads and hiring managers are aware of hiring policy, legislation and relevant collective agreement provisions	<ul style="list-style-type: none"> Publish annual report of merit performance audit, special audits and studies, and staffing review findings and recommendations
Hiring Practices	Hiring practices are transparent, fair, and decisions are reasonable and job related	<ul style="list-style-type: none"> Conduct merit performance audits, special audits and studies, and report results Available for and carry out staffing reviews Increase awareness of merit-based hiring practices by reporting out to organizations and to the public by publishing on the Office of the Merit Commissioner website Provide comment and/or recommendations on hiring practices
Workplace Culture	Organization heads are seen and believed to be committed to merit-based hiring	<ul style="list-style-type: none"> Report audit findings to organizations Monitor organizational responses to audit and review findings
	Managers and supervisors uphold merit in hiring	<ul style="list-style-type: none"> Perform individual audits and report findings Conduct individual staffing review investigations and report findings
	Use of the staffing review process	<ul style="list-style-type: none"> Provide clear and easily accessible information for employees Monitor and report review process usage
	Employee responses to staffing related questions on work environment surveys	<ul style="list-style-type: none"> Analyze related responses Carry out special studies



Performance Measures and Targets

The Office establishes and publishes performance measures and targets in a number of areas. We hold ourselves accountable for respecting and achieving these targets, and examine our practices and procedures regularly with a view to continuous improvement.

Merit Performance Audit

The goal in our annual merit performance audits is to have a sample size that is sufficiently robust to allow the audit results to be confidently generalized to the population of all appointments made within the same time period.

Detailed audit results are reported to deputy ministers, heads of organizations, and the Head, BC Public Service Agency. Summary results are contained in the Merit Commissioner's annual report to the Legislative Assembly which is publicly available on the office's website. Detailed analyses and a final report are also made available on the website.

Performance Measures	Target and Results			
	2016/17		2017/18	2018/19
	Target	Results	Target	Target
Generalizable audit results confidence level margin of error	Simple random sampling 95% 6%	Simple random sampling 95% 6%	Simple random sampling 95% 6%	Simple random sampling 95% 6%
Report audit results to organization heads and BCPSA within six months of audit period	September 2017	October 2017	September 2018	September 2019
Publish annual audit findings within four months of reporting individual results	November 2017	pending (expected by November 24, 2017)	November 2018	November 2019



Special Audits and Studies

Results of special audits and studies are reported as soon as possible following the conclusion of the audit or study so that follow-up action may be taken as required and appropriate. Information is made public through the Office of the Merit Commissioner website.

Performance Measures	Targets for Special Audits and Studies	
	Auxiliary Appointments	Direct Appointments
	Target	Target
Report findings of special audits and studies to organization head and BCPSA within 30 days of conclusion, where applicable	May 2018	December 2018
Publish information on website within 60 days of conclusion	July 2018	February 2019

Staffing Reviews

It is important to the employer, and to the employee who may request the Merit Commissioner undertake a review of an appointment decision, that a thorough review takes place and a timely decision is rendered.

Performance Measures	Target and Results			
	2016/17		2017/18	2018/19
	Target	Results	Target	Target
Complete reviews within an average of 30 days	30 days	27 days	30 days	30 days



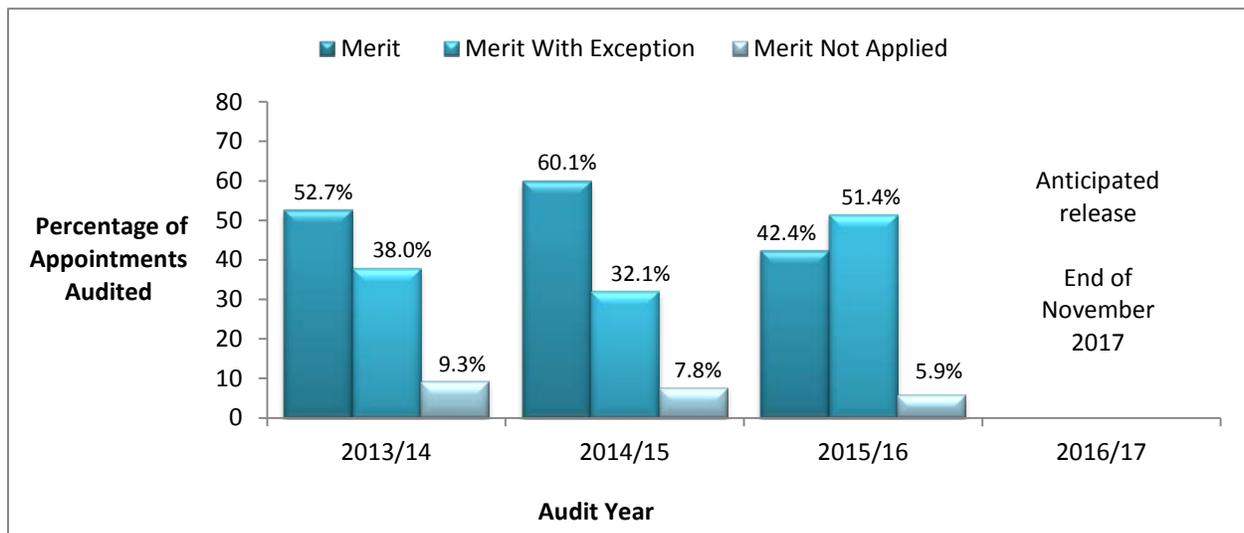
Progress on Key Commitments

Merit Performance Audit (2016/17)

This year, a robust full-year audit was undertaken of 257 appointments to allow for results which could be generalized to all appointments of the same type across the public service. The appointments were selected randomly from organizations across the public service and from all employee groups and levels.

Deputy ministers and organization heads received detailed reports and the Head, BC Public Service Agency received the overall results of the audit in October 2017. The overall report of the analyses of audit results and recommendations to address identified areas of weakness or concern will be provided to the Speaker and released publicly by the end of November 2017. The chart below reflects the merit performance audit results for the past three completed audit cycles. Changes to the way audit findings, related to the recruitment and selection process, were captured and reported were introduced for the 2016/17 audit. These changes are intended to improve accuracy, clarity and precision and will allow for some general comparisons over time.

Chart 5 – Previous Audit Results



Notes: Audit sample results included.

A partial year audit (seven months) was conducted in 2013/14.

Findings for "Did Not Demonstrate" are not included for prior to 2015/16. From 2016/17 onwards, "Did Not Demonstrate" findings are included with "Merit Not Applied" findings.



Staffing Reviews

During the 2016/17 fiscal year, the Merit Commissioner received 14 staffing review requests, three of which were found to be ineligible for consideration. In light of the grounds submitted, the appointment decision was upheld in 10 of the 11 reviews conducted and the reviews were dismissed. In the other case, a reconsideration of the appointment decision was directed.

There were some common issues raised in the requests for review related to insufficient consideration given to training and experience, incorrect marking of test or interview responses, flawed test or interview administration, and unfair evaluation of past work performance. A reconsideration was directed in a case where stated experience requirements were not used to short-list candidates thereby disadvantaging individuals who may have applied had they known lesser qualifications would have been acceptable.

Also, two other notable issues highlighted limitations of the current statutory provisions related to employees' right to recourse with respect to appointment decisions: one of which concerned a request for a review made outside of the prescribed timelines, and the other related to the limitation of conducting a review on the submitted grounds only.

The average time taken to complete the reviews and respond to the requests was 27 days following receipt of the required documentation.

Priorities for Fiscal 2018/19

Merit Performance Audit 2017/18

An audit of appointments made in 2017/18 has commenced. A random sample of appointments made throughout the province, in all organizations, in bargaining unit or excluded management positions, and all occupational groups will be audited. The sample size is fixed to a robust value to not only ensure audit results are valid and generalizable, but also to enable efficient management of the audit activity and associated costs. The 2017/18 audit will be composed of a fixed sample size of 276 (69 appointments per quarter). The results from this Merit Performance Audit will be reported in the fall of 2018.

Staffing Reviews

The Office gives priority to conducting staffing reviews when requested. Only unsuccessful employee applicants for bargaining unit positions are eligible to request a review by the Merit Commissioner. As appointments are normally held in abeyance pending the Merit Commissioner's decision, the Office makes every effort to respond to requests for review within a 30 day timeframe. There is no way of predicting the number or complexity of staffing reviews the Merit Commissioner may receive in a year; however, as of the beginning of November 2017, the Office has received 19 requests, which is nearly as many as the maximum ever received in one fiscal year (21 in 2011/12).



Special Audit of Auxiliary Appointments

Since the establishment of the Office of the Merit Commissioner in 2005, the Office has been auditing various appointments that fall under Section 8 of the *Public Service Act* that are required to be merit-based. While the *Act* does not require auxiliary appointments to be the result of a selection process, they still must be based on the principle of merit and are therefore of interest. A special audit of auxiliary appointments will be conducted to determine, to the extent possible, whether qualified individuals were appointed; that is, did they possess the minimum required education and experience for the position at the time of appointment. Work has commenced on this project but operational pressures and priorities have prevented full implementation. The collection of information for this special audit will be completed in 2017/18 with the analysis and report to follow.

Special Audits and Studies for Fiscal 2019/20 and Beyond

The Office is focusing resources on its core mandate of conducting merit performance audits and staffing reviews. The results of these merit performance audits guide the Office in determining where special audits or studies may be appropriate to address potential areas of risk to merit-based hiring. A future audit is planned for direct appointments and possible areas for study include hiring trends, and the creation and use of eligibility lists.

Implications Related to Ombudsperson's April 2017 Report

The Ombudsperson released his referral report No. 1 "MISFIRE: The 2012 Ministry of Health Employment Terminations and Related Matters" ("Misfire") in April 2017. In that report he made the following recommendation (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."

On April 2, 2017, government responded and accepted the Ombudsperson's recommendations. As of October 2, 2017 no action had been taken with respect to Recommendation 27. No briefings or consultation with the Merit Commissioner have taken place to date and it is understood that none will occur until after the BC Public Service Agency receives policy direction from government. Once the Agency is positioned to move forward with implementation of this recommendation, implications for the Office of the Merit Commissioner will be analyzed with respect to impact on operational and policy requirements, the workload of the office, and resource requirements, including fiscal implications.



Review of the *Public Service Act*

The Office of the Merit Commissioner considers that merit-based hiring could be enhanced and fairness and transparency in the recourse process improved if some amendments were made to the *Public Service Act*. The office is considering potential changes based on knowledge and experience gained through the audits and reviews conducted in the 12 years since the Office was established. It is recognized that the best time to make any proposals for amendment to the *Act* is at the time when other possible amendments are being introduced, some of which are likely to result from implementation of the “Misfire” recommendations. Should this initiative proceed, resource implications are expected to be limited to the cost of legal advice through a professional services contract.



Appendix A

Office Structure





Appendix B

Organizations Subject to Oversight by the Merit Commissioner

(As of March 31, 2017)

Ministries

Aboriginal Relations and Reconciliation
Advanced Education
Agriculture
Children and Family Development
Community, Sport and Cultural Development
Education
Energy and Mines
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
International Trade
Jobs, Tourism and Skills Training
Justice
Natural Gas Development
Public Safety and Solicitor General
Small Business and Red Tape Reduction
Social Development and Social Innovation
Technology, Innovation and Citizens' Services
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

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

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