



Office of the
Merit Commissioner

Service Plan

Fiscal Years

2020/21 – 2022/23

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

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Overview

As I end my appointment as Merit Commissioner for BC, I present this service plan for the Office of the Merit Commissioner (the Office) to highlight the work completed over the past year and identify opportunities for the coming years.

In April 2019 the Speaker was presented with the Office's 2018/19 Annual Report. That report included summaries of: the results of the 2017/18 Merit Performance Audit which involved audits of 259 appointments to and from within the BC Public Service; consideration of 25 requests for staffing reviews; the results of two special audits; and an update on the progress towards reviewing dismissal processes.

The Office has concluded the 2018/19 Merit Performance Audit of 273 appointments for the period of April 1, 2018 to March 31, 2019. Individual findings will be communicated to deputy ministers, organization heads, and the Deputy Minister of the BC Public Service Agency (Agency Head) in the near future. An analysis of the overall results and findings, and recommendations related to these findings is being prepared and will be delivered to the Speaker later this year, and then published on the Merit Commissioner's website.

During the 2018/19 fiscal year, I received 25 staffing review requests, including one which was subsequently withdrawn and five which were found to be ineligible for consideration. Of the 19 reviews completed, three resulted in a directed reconsideration of the appointment. In the other 16 reviews, the appointment decision was upheld.

Amendments to the *Public Service Act* (the *Act*) in 2018 assigned responsibility to the Merit Commissioner for the oversight of processes related to BC Public Service just cause dismissals. Since then, the Office has developed and implemented practices and procedures to enable the conduct of this work. Files are being provided for review by the BC Public Service Agency as they become eligible and it is planned that a dedicated report on reviews conducted for dismissals processes eligible for review between April 1, 2018 and December 31, 2019 will be prepared by January 2020. A summary of the activities will be included in the Annual Report, as required by the *Act*.

Priorities for the Office going forward will be the prerogative of the incoming Commissioner; however, it is reasonable to assume that the core lines of business will remain first and foremost: auditing appointments, conducting staffing reviews, and reviewing eligible dismissal processes. The Office will provide relevant and timely feedback on hiring processes to managers, deputy ministers, organization heads, the BC Public Service Agency, and to employees, to encourage improvement in the system and to uphold fair hiring. The fair and efficient practices and procedures for the review of dismissal processes which have been established will be implemented, and findings reported to the Legislative Assembly.



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 *Act*.

The BC Public Service Agency is committed to ensuring the principles of natural justice and procedural fairness apply to all just cause dismissal decisions as these are important not only to the individuals affected by the decision, but also to the larger interest in the proper and fair administration of public services. The Merit Commissioner provides independent oversight of these processes related to just cause dismissals from the public service. This role is defined in section 5.11 of the *Act*.

The Merit Commissioner has four specific 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;
- To monitor the application of government practices, policies and standards to just cause dismissals by conducting reviews of eligible dismissal processes; and
- To report annually to the Legislative Assembly on the application of the merit principle and the conduct of dismissal processes.

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 provides credible and relevant information about staffing on which the employer may act to produce positive changes. The 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. The Office will also provide information related to the conduct of dismissals from the public service to assure the Legislative Assembly and ultimately the public that all appropriate and necessary steps have been followed prior to the dismissal of a public servant. The results of these “after the fact” reviews will also enable the employer to improve practice where necessary.

An overview of the Office’s structure is provided in Appendix A.



Context

Merit Performance Audit

BC Public Service Workforce

As of July 27, 2019, there were 39,525 employees in the BC Public Service, which is an increase of 2,549 employees in the 10 months since reporting in November 2018. These employees work in ministries and other organizations across the public service.

Employees are appointed under the *Act* on a regular or auxiliary (temporary) basis. They may be unionized, excluded managers or other non-unionized employees. The 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 July 27, 2019)

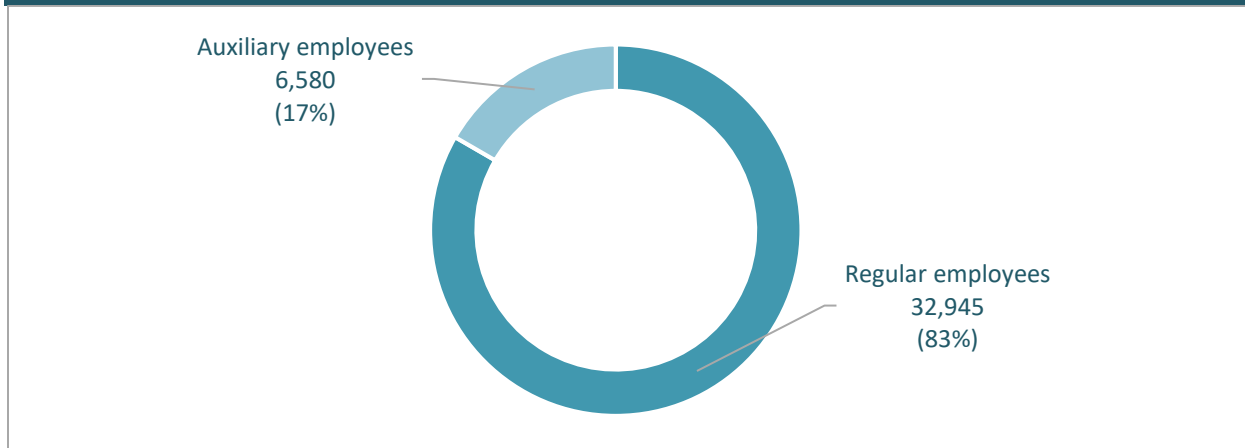
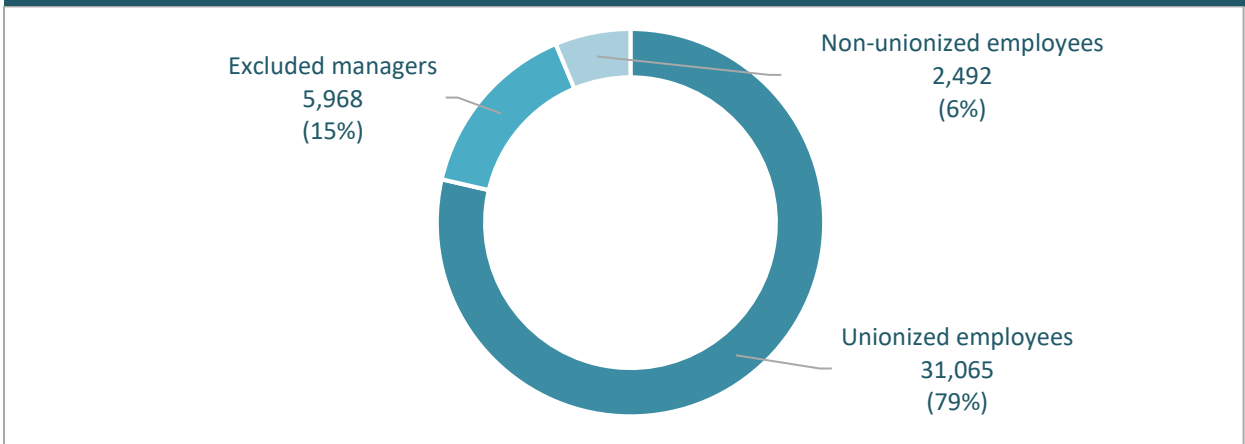


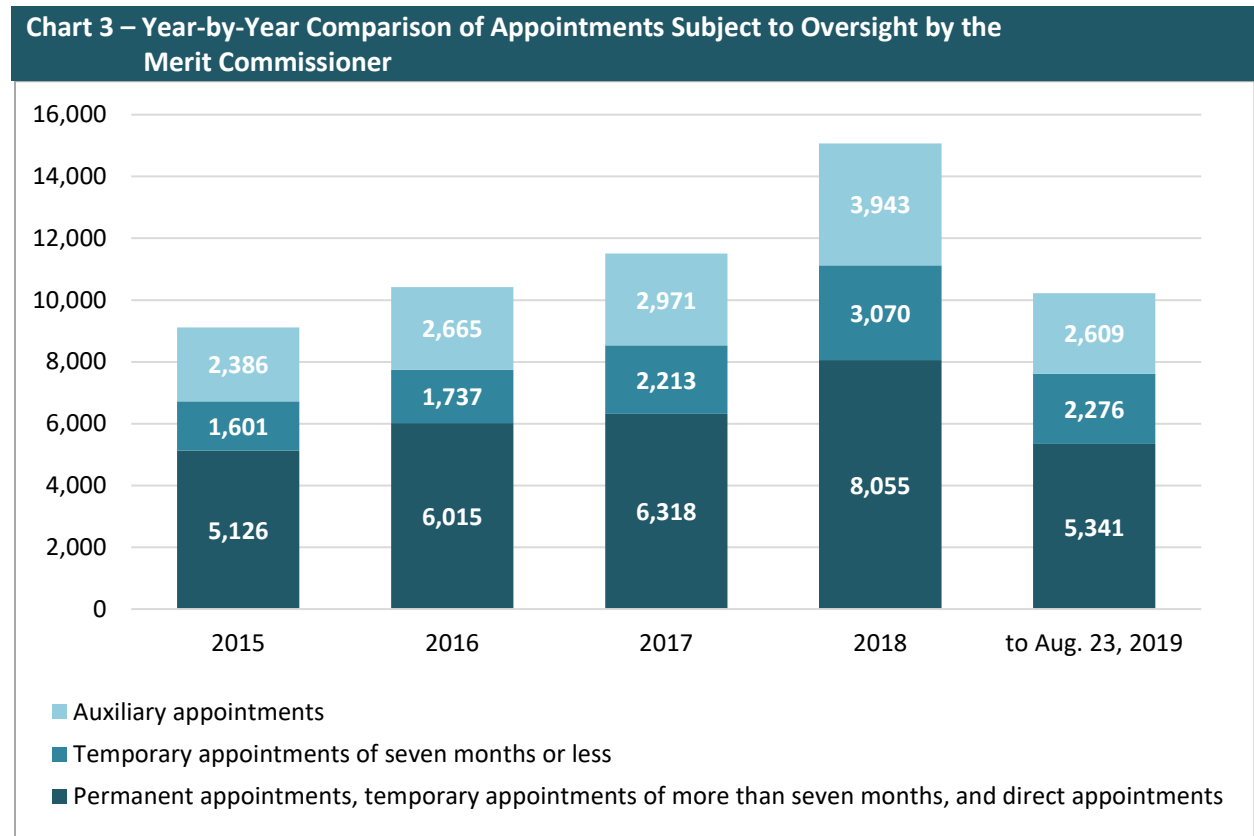
Chart 2 – Employees Appointed Under the *Public Service Act* – By Type (as of July 27, 2019)





Appointment Activity

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





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"> Public 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’s 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



Dismissal Process Review

The new function conferred upon the Merit Commissioner in April 2018 relates to the review of all just cause dismissals. The legislation requires that this review of the process resulting in a dismissal for just cause occur only after all avenues to challenge that decision have been exhausted, and a set time period has elapsed. Given these parameters, the workload associated with actual process reviews will be variable as the number of dismissals that may occur cannot be predicted, just as it cannot be predicted what, if any, avenue of redress may be pursued and, if so, when such action might be completed.

In years prior to 2018, the average number of applicable dismissals from the BC Public Service was approximately 25 annually. Dismissals eligible for review from April 1, 2018 to December 31, 2019 are expected to be less than 10.

The legislation does not specify how the Merit Commissioner should conduct the reviews or the number of dismissal processes that must be reviewed; however, in order to provide a robust baseline for comparison going forward, all eligible dismissals in this period will be reviewed. These reviews will be based on an established protocol based on best practice, relevant legislation and policy guidelines.

Indicators of Proper Process related to Just Cause Dismissals

Chart 5 – Indicators of Proper Process related to Just Cause Dismissals		
Indicator	Office of the Merit Commissioner Related Responsibilities	
Regulatory Framework	Dismissal policies are consistent with government processes and standards	<ul style="list-style-type: none"> Report annually on the results of monitoring the application of government practices, policies and standards respecting eligible dismissals to the Legislative Assembly
Dismissal Processes	Dismissal processes adhere to government practices, policies and standards; and follow established protocol	<ul style="list-style-type: none"> Conduct reviews of eligible dismissal files to assess compliance and adherence Identify any gaps in compliance and any systemic issues Report annually to the Legislative Assembly on overall results of these review and make broad recommendations as appropriate
Workplace Culture	Organization heads and the BC Public Service Agency apply good practice in the conduct of just cause dismissals	<ul style="list-style-type: none"> Make broad recommendations to the BC Public Service Agency where it is identified that improvements to practice could be made



Performance Measures and Targets

The Office establishes and publishes performance measures and targets in a number of areas; holds itself accountable for respecting and achieving these targets; and examines practices and procedures regularly with a view to continuous improvement.

Merit Performance Audit

The goal in the 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 Agency Head. 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*		
	2018/19	2019/20	2020/21
	Target	Target	Target
Generalizable audit results	Simple random sampling	Simple random sampling	Simple random sampling
Confidence level	95%	95%	95%
Margin of error	6%	6%	6%
Report audit results to organization heads and the BC Public Service Agency within six months of audit period	September 2019	September 2020	September 2021
Publish annual audit findings within four months of reporting individual results	November 2019	November 2020	November 2021

*Due to the early submission of this Service Plan results are not available for 2018/19. Targets are expected to be met.



Special Audits and Studies

Results of special audits and studies are reported as soon as possible so that follow-up action may be taken as required and appropriate. Information is made public through the Office’s website.

Performance Measures	Target and Results			
	Auxiliary Appointments		Direct Appointments	
	Target	Results	Target	Results
Report findings of special audits and studies to organization heads and the BC Public Service Agency within 30 days of conclusion, where applicable.	Original Target: May 2018 *Revised Target: November 2018	December 2018	December 2018	March 2019
Publish Information on website within 60 days of conclusion	Original Target: July 2018 *Revised Target: December 2018	December 2018	February 2019	March 2019

*Original target was revised due to difficulties obtaining information necessary for audit.

Staffing Reviews

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

Performance Measures	Target and Results			
	2018/19		2019/20	2020/21
	Target	Results	Target	Target
Complete reviews within an average of 30 days	30 days	30 days	30 days	30 days



Dismissal Process Review

The results of the dismissal process reviews will be reported annually. As review of eligible dismissals has just commenced, additional performance measures have not been established.

Performance Measures	Target and Results			
	2018/19		2019/20	2020/21
	Target	Results	Target	Target
Conduct review of all eligible dismissal processes within one month of the end of the calendar year which they become eligible.	100 per cent			
Report activities annually to Legislative Assembly	May 2019	April 2019	May 2020	May 2021

Progress on Key Commitments

Merit Performance Audit (2018/19)

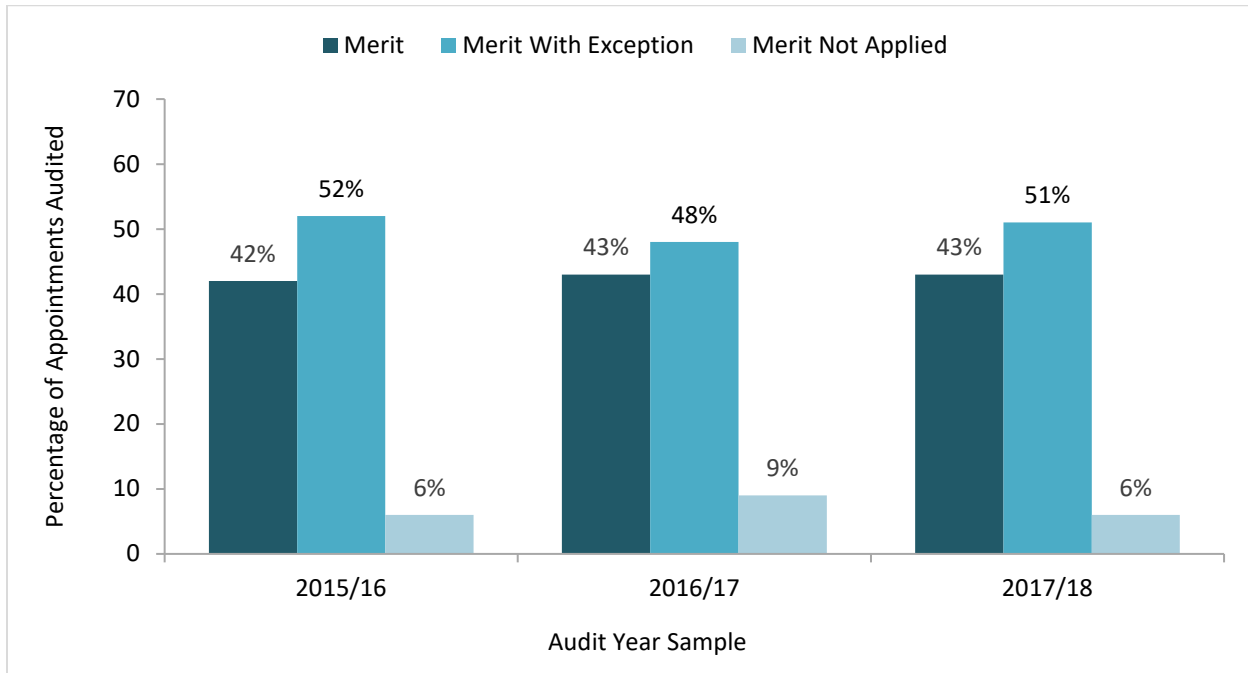
This year, a robust full-year audit was undertaken of 273 appointments to allow for results to be generalized to all appointments of the same type across the BC Public Service. The appointments were selected randomly from organizations across the public service and from all employee groups and levels.

Organization heads will receive detailed reports and the Agency Head will receive the overall results of the audit in September 2019. The overall report of the analyses of audit results and recommendations to address identified areas of weakness or concern is intended to be provided to the Speaker and released publicly mid-November 2019.



Chart 6 reflects the merit performance audit results for the past three completed audit cycles. Results for the 2018/19 Merit Performance Audit are pending.

Chart 6 – Previous Audit Results



Staffing Reviews

During the 2018/19 fiscal year, the Merit Commissioner received 25 staffing review requests, including one which was subsequently withdrawn and five which were found to be ineligible for consideration. Of the 19 reviews completed, three resulted with the Merit Commissioner directing a reconsideration of the appointment. In the other 16 reviews, the Merit Commissioner upheld the appointment decision.

The most common ground put forward was the incorrect marking of test or interview responses. In two reviews of this nature, a reconsideration was directed because of inconsistencies in the marking of candidates and lack of established marking criteria. Another commonly submitted ground was the general concern that the hiring process did not fairly or reasonably assess all the factors of merit. Concerns were also raised in several cases that the approach used to short-list applicants was unreasonable. Other issues raised related to administrative issues, the assessment of past work performance, and bias in the hiring process either from a procedural perspective, or against or towards candidates.

The average time taken to complete the reviews and respond to the requests was just under 30 days following receipt of the required documentation. On average, the 30-day timeframe the Office has



established for itself was met despite the unusually heavy workload, however, individual decisions were rendered between nine and 55 days.

Reviews of Dismissal Processes

A report to the Legislative Assembly on actions taken to establish the review program, the number of files reviewed, and the overall results of that review is planned for early 2020.

Much time has been committed over the course of the year to the development of the review process to be conducted, and the testing of that process. Files are being received from the BC Public Service Agency and their cooperation and diligence in ensuring the Office is provided with whatever information is at their disposal has been appreciated.

On another note, the Office has been frustrated in its efforts to establish an information sharing protocol with the Attorney General to enable the Office to have access to evidence and information necessary to complete meaningful file examinations. It is hoped that these efforts will come to a satisfactory conclusion, which will allow work to be completed in a timely manner to meet legislated requirements.

Priorities for Fiscal 2020/21

Merit Performance Audit 2019/20

An audit of appointments made in 2019/20 has commenced. A random sample of appointments made throughout the province, in all organizations, in bargaining unit and excluded management positions, and all occupational groups will be audited. The sample size is fixed to a robust value to not only ensure results are valid and generalizable, but also to enable efficient management of the audit activity and associated costs. The 2019/20 audit will be composed of a fixed sample size of 280 (70 appointments per quarter). The results from this merit performance audit is targeted to be reported in the early fall of 2020.

Staffing Reviews 2019/20

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 mid-September 2019, the Office had received 11 requests.



Dismissal Process Reviews

The first dismissal process was eligible for review in May 2019, therefore, the conduct of reviews of eligible dismissal processes is now underway. Adjustments and refinements to the review protocol are being made as the newly established process becomes operational. The BC Public Service Agency is ensuring that any eligible files are provided to the Merit Commissioner for review as quickly as possible. A report on the oversight of dismissal review processes is expected to be provided to the Legislative Assembly in early 2020.

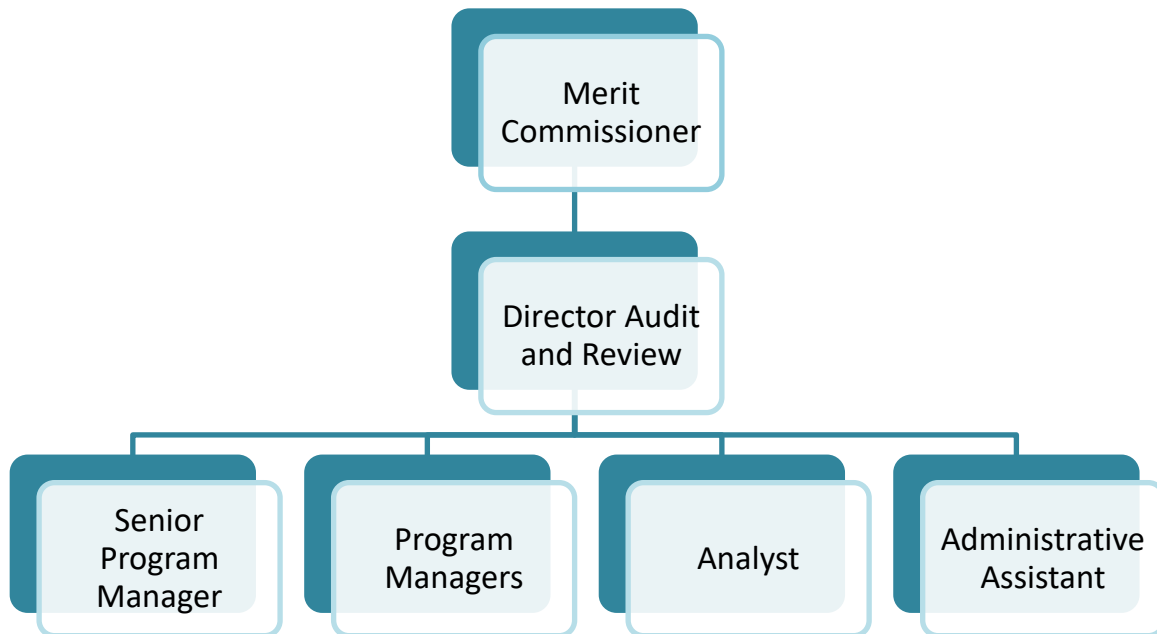
Special Audits and Studies for Fiscal 2020/21 and Beyond

The Office will continue to focus its resources on its mandated responsibilities of conducting merit performance audits, conducting staffing reviews, and conducting reviews of dismissal processes. The results of the core activities guide the Office in determining where special audits or studies may be appropriate to address potential areas of risk to merit-based hiring or dismissal processes. As a new Merit Commissioner is to be appointed, any identification of special projects or assignments will be left to his or her discretion.



Appendix A

Office Structure





Appendix B

Organizations Subject to the Merit Commissioner's Oversight of Appointments

(As of March 31, 2019)

Ministries

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

Independent Offices

Auditor General
Elections BC
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
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
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