



Office of the
Merit Commissioner

Service Plan

Fiscal Years

2021/22 – 2023/24

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

February 1, 2021



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Overview

I am pleased to present this Service Plan for the Office of the Merit Commissioner (the Office). This plan highlights the work completed over the past year and identifies opportunities for the coming years.

In May 2020 the Speaker was presented with the Office's 2019-2020 Annual Report. That report included summaries of: the results of the 2018/19 Merit Performance Audit which involved audits of 273 appointments to and from within the BC Public Service; consideration of 22 requests for staffing reviews; and an update on the progress towards reviewing dismissal processes.

The Office has concluded the 2019/20 Merit Performance Audit of 267 appointments for the period of April 1, 2019 to March 31, 2020. Individual findings were communicated to deputy ministers, organization heads, and the Deputy Minister of the BC Public Service Agency (Agency Head) in October, 2020. In December 2020, an analysis of the overall results and findings, and recommendations related to these findings was delivered to the Speaker and published on the website of the Merit Commissioner.

During the 2019/20 fiscal year, I received 22 staffing review requests, including two which were subsequently withdrawn. Of the 20 reviews completed, two resulted in a directed reconsideration of the appointment. In the other 18 reviews, the appointment decision was upheld.

Dismissal process files were provided by the BC Public Service Agency as they became eligible and the Office has reviewed them for the proper application of government practices, policies and standards.

Priorities will remain the core lines of business including 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. Findings related to dismissal processes will be 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 role of the Merit Commissioner is to provide independent oversight of these appointments. This oversight role applies to appointments made in accordance with section 8 of the *Public Service Act* (the *Act*).

The application of the principles of natural justice and procedural fairness to all just cause dismissal decisions 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 BC 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 hiring on which the employer may act to produce positive changes and that supports 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 provides information related to the conduct of just cause 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 December 25, 2020, there were 39,079 employees in the BC Public Service, which is a decrease of 446 employees since reporting in September 2019. 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 December 25, 2020)

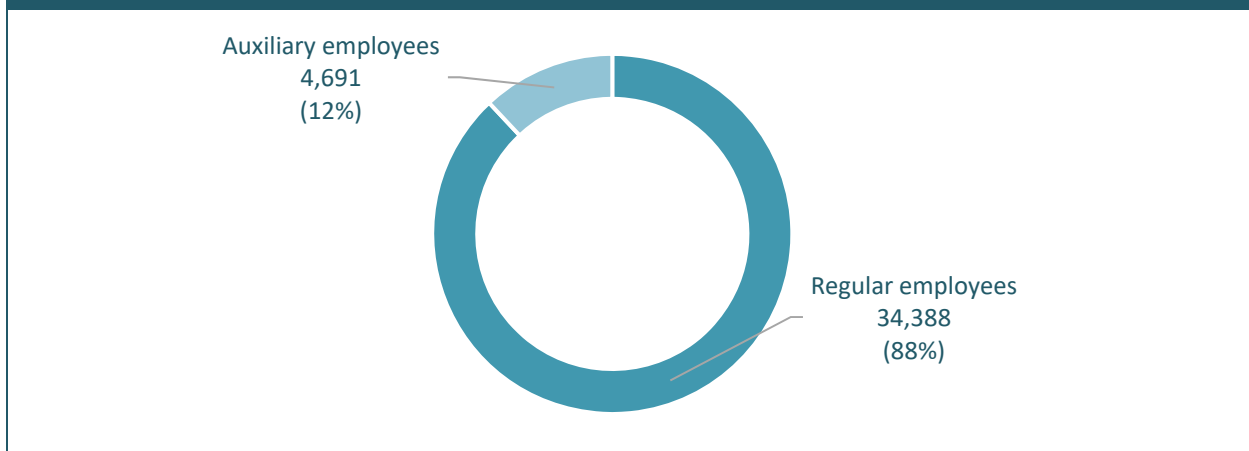
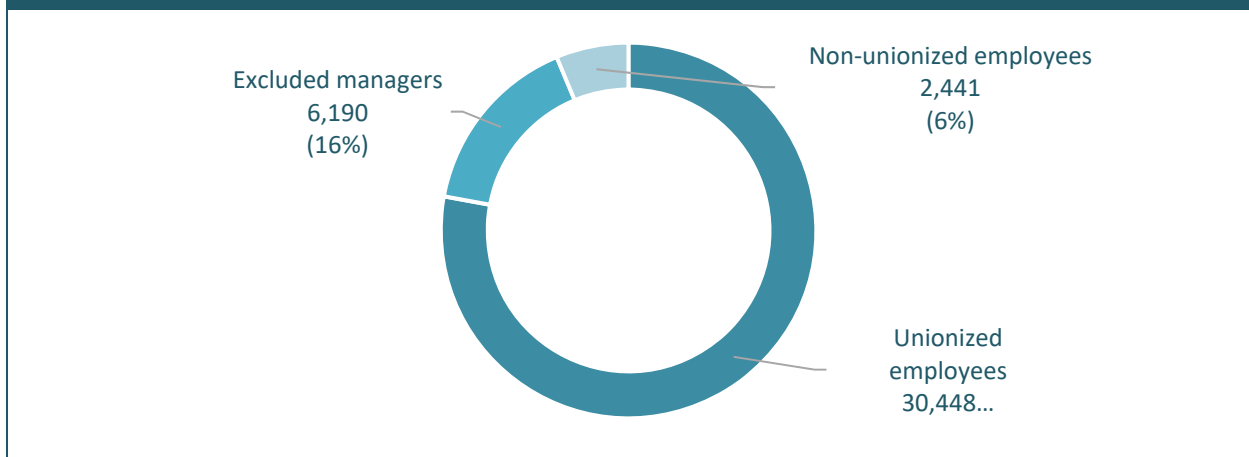


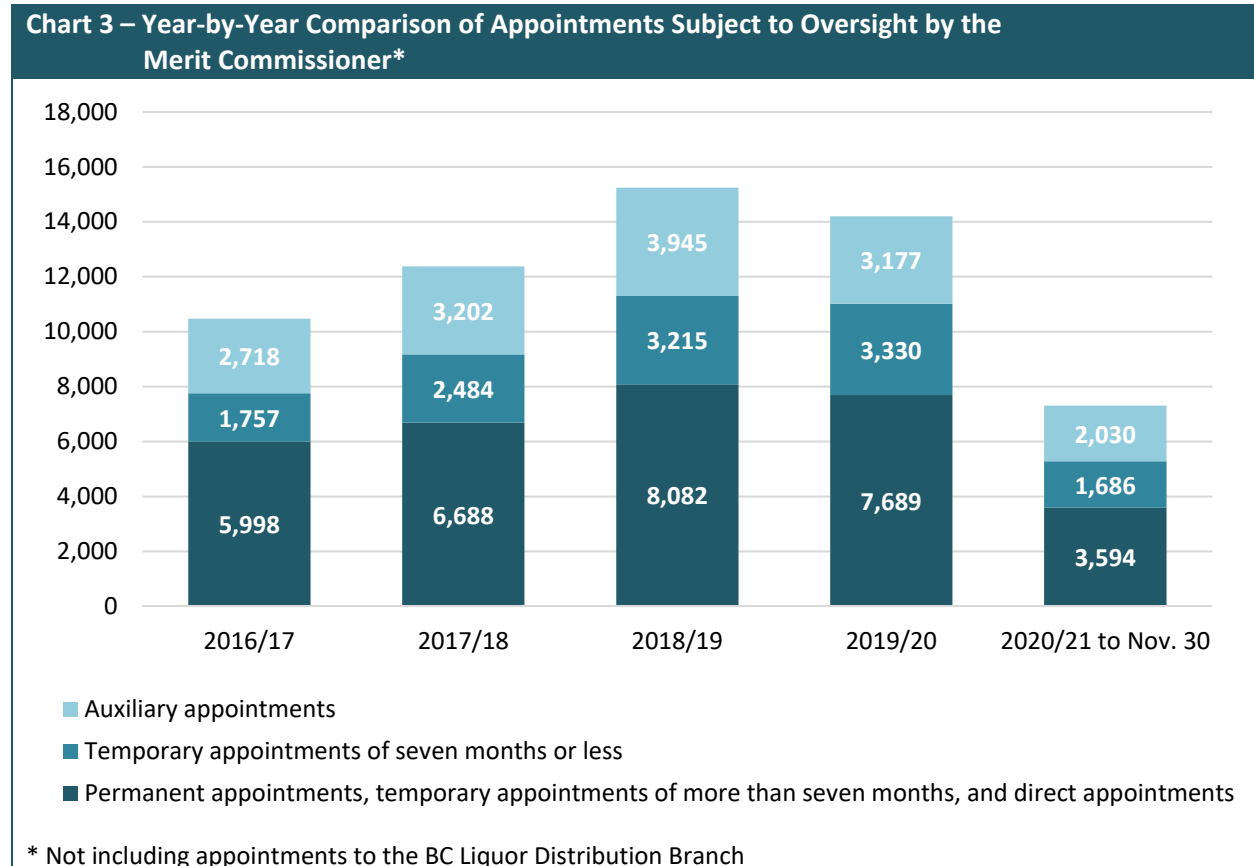
Chart 2 – Employees Appointed Under the *Public Service Act* – By Type (as of December 25, 2020)





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 hiring 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 responsibility conferred upon the Merit Commissioner in April 2018 relates to the review of BC Public Service just cause dismissal processes. 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.

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, at this time, all eligible dismissals 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 reviews 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	2021/22
	Target	Result	Target	Results	Target	Target
Generalizable audit results	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling
Confidence level	95%	95%	95%	95%	95%	95%
Margin of error	6%	6%	6%	6%	6%	6%
Report audit results to organization heads and the BC Public Service Agency within six months of audit period	September 2019	September 2019	September 2020	October 2020	September 2021	September 2022
Publish annual audit findings within four months of reporting individual results	November 2019	March 2020	November 2020	December 2020	November 2021	November 2022

*Due to the early submission of the 2020/21 to 2022/23 Service Plan, results were not yet available for 2018/19 so these are included with this Service Plan.



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	
	2019/20	2020/21 Eligibility Lists
	Target	Target
Report findings of special audits and studies to organization heads and the BC Public Service Agency within 30 days of conclusion, where applicable.	None	March 2021
Publish Information on website within 60 days of conclusion	None	March 2021

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			
	2019/20		2020/21	2021/22
	Target	Results	Target	Target
Complete reviews within an average of 30 days	30 days	30 days*	30 days	30 days

* This average excludes the number of days for the requests for review which were held in abeyance during the four months without a Merit Commissioner.



Dismissal Process Review

The results of the dismissal process reviews are reported annually.

Performance Measures	Target and Results					
	2018/19		2019/20		2020/21	2021/22
	Target	Results	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%	0%	100%	0%	100%	100%
Report activities annually to Legislative Assembly	May 2020	May 2020	May 2020	May 2020	May 2021	May 2022

Progress on Key Commitments

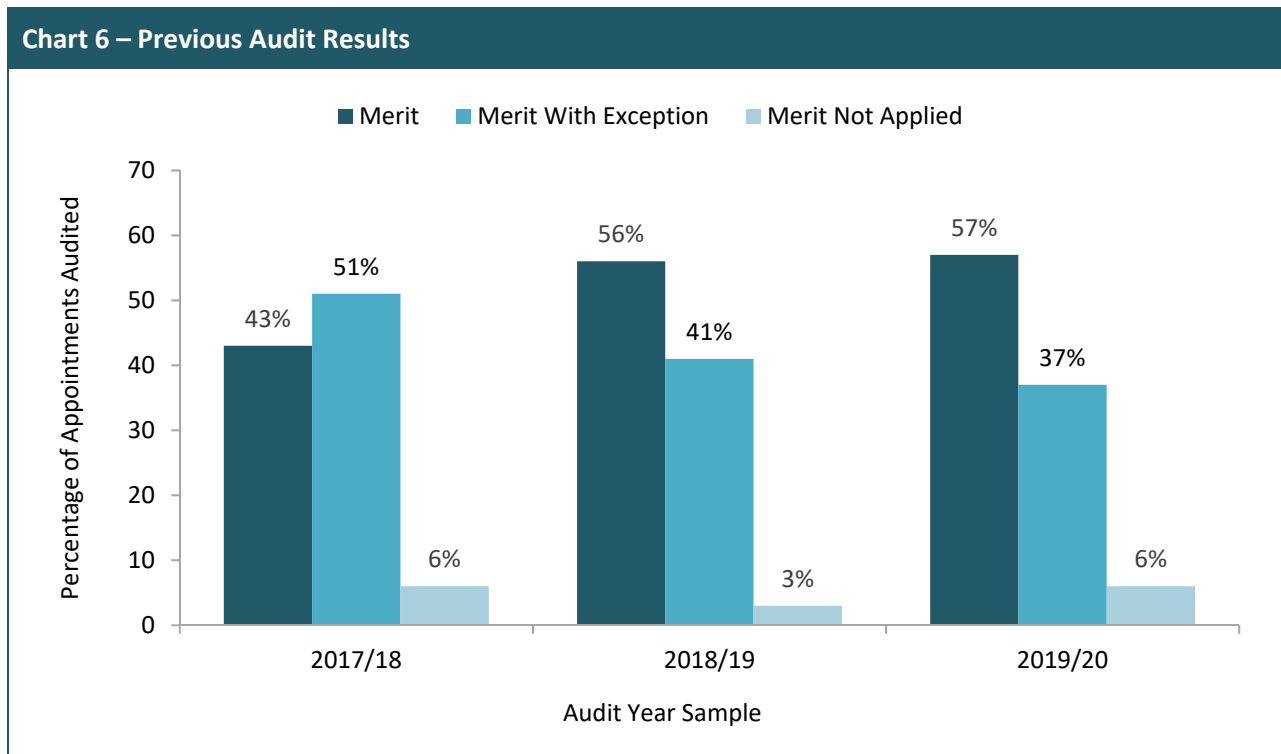
Merit Performance Audit

This year, an audit was undertaken of 267 appointments, where findings can be generalized to all appointments of the same type across the BC Public Service in the 2019/20 fiscal year. The appointments were selected randomly from organizations across the public service and from all employee groups and levels.

Organization heads received detailed reports and the Agency Head received the overall results of the audit in October 2020. The overall report of the analyses of audit results and recommendations to address identified areas of weakness or concern was provided to the Legislative Assembly and released publicly December 2020.



Chart 6 reflects the merit performance audit results for the past three completed audit cycles.



Staffing Reviews

During the 2019/20 fiscal year, the Office received 22 staffing review requests, including two which were subsequently withdrawn. Of the 20 reviews completed, two resulted in a directed reconsideration of the appointment. In the other 18 reviews, the appointment decision was upheld.

The most common ground for review was related to the interviewing and testing stage of a competition, which included the methods of assessment, the criteria used to assess candidates, and some administrative issues. Another common ground was the general concern that the hiring process did not assess or improperly assessed all the factors of merit. Often in these cases, requestors were concerned that the approach used to short-list applicants was unfair, unreasonable or inconsistently applied to applicants. Several other grounds involved the assessment of past work performance or years of continuous service. In 2019/20, more requestors than in the previous year cited concerns related to bias in the hiring process 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, however, individual decisions were rendered between 14 and 42 days from receipt of the appointment documentation. This average excludes the number of days (ranging



from three to 102) that five requests for review were held in abeyance by the Office while the position of Merit Commissioner was vacant for a period of approximately four months. There is no way of predicting the number or complexity of staffing reviews received in a year; as of mid-January 2021, the Office had received eight requests.

Reviews of Dismissal Processes

A report to the Legislative Assembly on actions taken to establish the review program and the number of files reviewed was included in the 2019-2020 Annual Report released in May 2020.

In July 2018, the former Merit Commissioner initiated the process to establish a formal protocol with the Ministry of the Attorney General to access legally privileged information on relevant dismissal files. A draft protocol was in place by March 31, 2020, which allowed the office to conduct meaningful reviews of the files. Between March 31, 2020, and January 20, 2021, an additional 14 files have been received and work is underway to review the proper application of government practices, policies and standards to the processes which resulted in just cause dismissals.

Special Study of Eligibility Lists

Over the last several merit performance audits, the Office has observed consistent use of eligibility lists as well as a number of recurring issues associated with the use and establishment 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. The Office has reviewed the last three years' audit results to assess the frequency, type and severity of issues or errors attributable to the establishment and use of these lists. This study is currently underway and the results are targeted to be reported in March 2021.

Priorities for Fiscal 2021/22

Merit Performance Audit 2020/21

An audit of appointments made in 2020/21 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 2020/21 audit will be composed of a fixed sample size of 280 (70 appointments per quarter). The results from this merit performance audit are targeted to be reported in the early fall of 2021.



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 the appointments of the successful candidates to the positions in question are normally not confirmed until the Merit Commissioner's decision has been received, the Office makes every effort to respond to requests for review within a 30-day timeframe.

Dismissal Process Reviews

The Office will continue to review the available complete dismissal review files which are provided by the BC Public Service Agency on a regular and efficient schedule dependent on eligibility of the file. The 2020/21 annual report will include the findings and any recommendations for reviewed files. Steps to finalize the protocol with the Ministry of the Attorney General are underway and a formal agreement is expected in the near future.

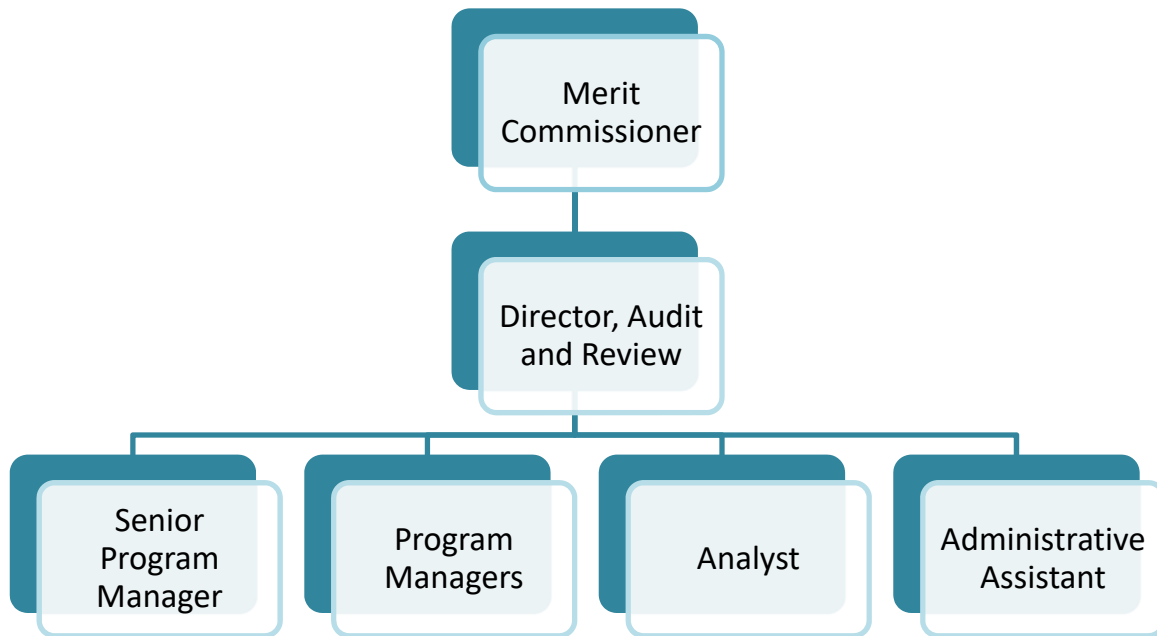
Special Audits and Studies for Fiscal 2021/22 and Beyond

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.



Appendix A

Office Structure





Appendix B

Organizations Subject to the Merit Commissioner's Oversight of Appointments

(As of March 31, 2020)

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, Economic Development and
Competitiveness
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
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