



Office of the
Merit Commissioner

Report on Staffing Reviews

2013/14

UPHOLDING FAIR HIRING IN THE
BC PUBLIC SERVICE



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Executive Summary

In the 2013/14 fiscal year, the Merit Commissioner received twelve staffing review requests, one of which was found to be ineligible for consideration, and one of which was withdrawn. This was a greater number of requests than the Office of the Merit Commissioner received in 2012/13, but fewer than the number of review requests received in the 2011/12 fiscal year.

The Merit Commissioner completed the 10 reviews in 2013/14 with an average response time of 26 days. This marks a drop compared to a 27.5 day average response time in the previous year. In seven of the review decisions, the Merit Commissioner upheld the appointment decision and in three of the decisions, she directed a reconsideration of the appointment.

Over the same time period, deputy ministers or organization heads were reported to have received 40 requests for internal inquiry, of which 31 were eligible for consideration. Appointment decisions were upheld by the deputy minister or organization head in 29 of these cases.

The recurring issues or elements identified in the 10 staffing reviews conducted by the Merit Commissioner in the fiscal year are outlined in this report and are identified as: assessment of experience, assessment tools, past work performance and possible panel bias.



Introduction

The purpose of this Report on Staffing Reviews is to provide an overview of the 10 staffing review requests made to the Office of the Merit Commissioner (the Office) during the fiscal year including a synopsis of the recurring grounds that were identified in several of the reviews. This report will also provide information about the steps in the staffing review process, as well as some information related to internal inquiries.

Background

The *Public Service Act* (the *Act*) states that appointments to and from within the public service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan. Since December 2003, Part 4 of the *Act* has given BC Public Service employees who are unsuccessful applicants in a competition the right to request a review of a hiring decision. The request must be based on the reasons for the employee's belief that either the appointment did not comply with the principle of merit and/or was not a result of a process designed to appraise the knowledge, skills and abilities of applicants.

There are three steps in the staffing review process which an employee may initiate when notified of a competition outcome.



In the first step of the staffing review process, an unsuccessful employee applicant requests feedback or an explanation from the hiring manager as to why he or she was unsuccessful. This request must be made within five calendar days of receiving notice of the staffing decision. The applicant may choose to proceed to the second step if he or she believes the appointment and/or hiring process was not merit-based, and request the deputy minister or organization head conduct an internal inquiry of the staffing decision. This request must be made within five calendar days of receiving the feedback or explanation from the hiring manager. With respect to excluded positions, the second step is the final level of review. For unionized positions, the unsuccessful employee applicant may request a review of the staffing decision by the Merit Commissioner as the third step of the process. A request may only be



based on the grounds submitted at the second step in the process and must be made within five calendar days of receiving the results of the internal inquiry.

The Merit Commissioner is responsible for making an objective determination of whether the proposed appointment was the result of a merit-based process.

A review by the Merit Commissioner is guided by the requirements of legislation, collective agreement provisions, and policy related to hiring. It takes into consideration whether the process is fair and transparent, the assessment is relevant to the job, and the decisions made are reasonable.

In order to make a determination, all related documentation is examined, and the employee requesting the review, as well as the hiring manager and/or others involved in the process, are contacted to clarify issues and establish facts. The standard review approach examines the hiring process in its entirety to ensure that the process was based on the merit principle, including fairness and whether all factors of merit were taken in account. After completing the review, the Merit Commissioner may find that the appointment was merit-based and dismiss the review or may direct that the deputy minister or organization head reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

Step 1 - Feedback

Feedback provides applicants with the opportunity to improve their performance as well as to increase their confidence in the hiring process. Moreover, requesting feedback is the first step in the review of a staffing decision.

In half of the reviews this Office completed in 2013/14, it was evident that feedback contributed to unsuccessful employee applicants' concerns regarding the hiring process, highlighting the value of clear and accurate communication of results.

In some cases, candidates reported that they were not provided with a full explanation as to why they were unsuccessful and in other cases, there were discrepancies between the information the panel chair considered had been conveyed and the unsuccessful candidate's understanding of what had been provided. It is recognized that some employees may not always be fully willing or able to receive the feedback provided. Nonetheless, hiring managers have a responsibility to ensure to the extent possible that employees are given: constructive feedback, a comprehensive account of their performance in the competition process, and the opportunity to ask for additional details or clarifying information.



Step 2 - Internal Inquiries

The BC Public Service Agency provides the Office with data on the number of requests received by deputy ministers for internal inquiries, which is Step 2 of the review process. The Office collects the same type of data directly from independent public service organizations subject to the Merit Commissioner's oversight.

Of the 40 requests for internal inquiries reported for the 2013/14 fiscal year, 31 were found eligible for an internal inquiry. The deputy minister or head of the organization ultimately upheld the hiring panel's appointment decision in 29 of these cases and in two cases, decided to reconsider the appointment process. It was noted that in almost all cases, the BC Public Service Agency provided the deputy minister or organization head with support in the conduct of the internal inquiry.

A timely decision at each stage of the review process is important; both for the organization's operational requirements and for the employees involved who may be affected by the outcome. As well, a provision of the BC Government and Service Employees' Union (BCGEU) collective agreement states that deputy ministers will provide a response to a request for an internal inquiry within 30 days. In 2013/14, a number of the internal inquiry decisions for BCGEU positions exceeded the 30 days specified in the collective agreement, with an average response time of 46 days.

Step 3 - Requests for Review

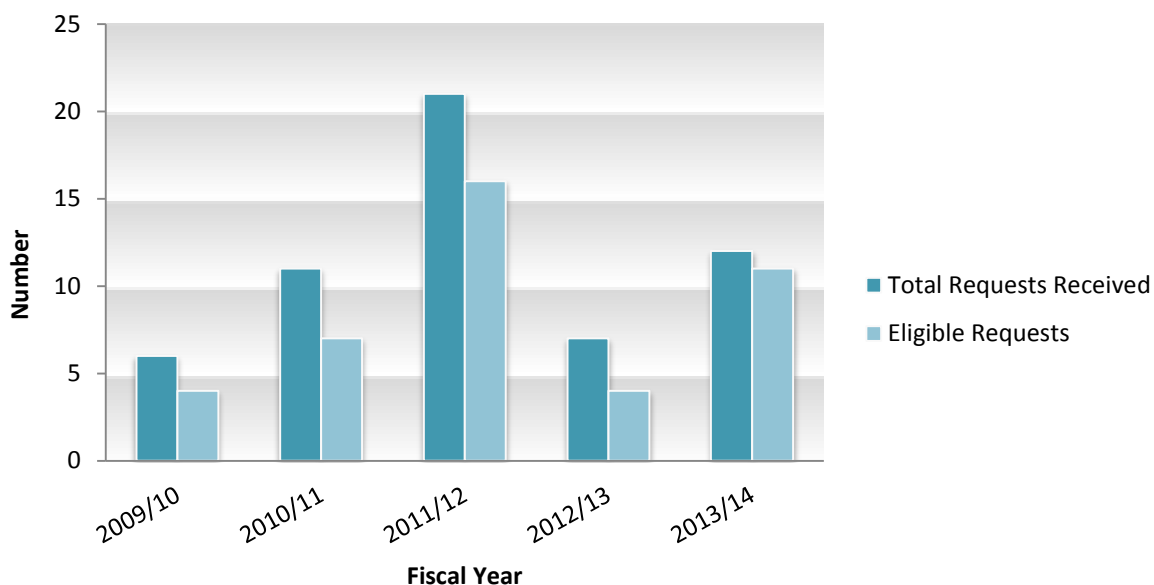
During the 2013/14 fiscal year, the Merit Commissioner received 12 requests for review of appointments, made in five different ministries in various geographic locations. Of the 12 requests, one was withdrawn by the employee and one was not eligible as the request at the second step was deemed ineligible for being outside of the time limit and as such, an internal inquiry was not conducted.

A review by the Merit Commissioner was requested for less than 1 per cent of appointments in the BC Public Service.

Chart 1 illustrates the number of review requests received at the third step and the number determined to be eligible, since 2009/10.



Chart 1 – Review Requests Received by the Office of the Merit Commissioner



Also of interest is the number of employee applicants who proceed to request a review by the Merit Commissioner following the internal inquiry stage of the process. Based on the information provided to the Office, 29 internal inquiries resulted in the hiring decision being upheld (or supported) by the deputy minister or organization head. Of these, five internal inquiries were for non-bargaining unit positions and therefore ineligible for the third step of the review process. Of the 24 internal inquiries completed for bargaining unit positions which were upheld at the second stage, 11 came forward for a review by the Merit Commissioner. One of these requests was subsequently withdrawn.

The Merit Commissioner completed 10 reviews in the 2013/14 fiscal year. Two of the review decisions related to out-of-service competitions. Nine of the decisions related to permanent appointments and one related to a long-term temporary appointment. In seven cases, the reviews were dismissed as the Merit Commissioner found the appointments were the result of merit-based processes. In three cases, the Merit Commissioner directed a reconsideration of the appointment.

In seven out of 10 reviews the appointment decision was upheld by the Merit Commissioner.

The Merit Commissioner's decisions related to these requests were issued between 13 and 30 days from receipt of the appointment documentation, with an average response time of 26 days.



Grounds for Review

The recurring issues or elements that were identified in the 10 reviews completed in 2013/14 are outlined and discussed in the following sections. It should be noted that several of the requests for review were based on two or more grounds.

Assessment of Experience

A merit-based hiring process considers and assesses a variety of job-related factors. The *Act* identifies education, experience, knowledge, skills, past work performance and years of continuous service as the minimum factors to be considered in determining merit. It is common practice to assess candidates through a tiered selection process that may involve short-listing, testing, interviewing and reference checking. This approach provides all applicants, known and unknown, with a fair opportunity to present their qualifications for consideration.

Five of the reviews conducted included grounds involving the consideration or weight that was given to one or more factors of merit, in particular, experience. In four of the cases, unsuccessful candidates thought their extensive experience in a directly related position (and the knowledge and skills demonstrated within that role) had not been sufficiently considered and by inference, had the process been merit-based it would not have resulted in the appointment of an individual with less related experience.

The reviews examined the consideration of experience in these competitions, and in each case found that experience was assessed directly and indirectly throughout the process in a reasonable and fair manner. This factor was taken into consideration primarily at the short-listing stage where candidates had to demonstrate the minimum education and experience requirements on a pass/fail basis in order to advance.

In the fifth case, the adequate consideration of related experience during short-listing was at issue. In this process, candidates were required to submit a cover letter with their application; however, the panel did not consider any of the information provided in the letter during the short-listing assessment. In addition, the panel took what was considered to be an unreasonable position with respect to the requirement for applicants to demonstrate that their experience was relevant to the position. While it is recognized that the onus is on applicants to plainly show in their applications how they meet the requirements of the position, there is also an expectation that the panel will apply reasonable judgement in reviewing applications. In this case, the review found the panel's narrow consideration of demonstrated experience was neither transparent nor reasonable and as a result, the Merit Commissioner directed a reconsideration of the appointment decision.



Assessment Tools

In five of the reviews, applicants raised issues with respect to the transparency, relevance and/or objectivity of practical assessments such as written tests and role plays. These concerns included:

- the assessment tool and/or subject matter were not representative of real job requirements;
- there was no provision of advance information on the subject matter of the test;
- there was no indication of the marks allocated on the test; and,
- the marking was subjective or inappropriate.

Although practical tests and tools are often based on simulated or artificial situations, where reasonable, they are accepted and valid assessment techniques. It is recognized that the use of a variety of assessment techniques if related to the job improves the overall credibility and validity of a hiring process. In 2013/14 requests, the reviews found the practical assessment tools were reasonable and the subject matter relevant to the responsibilities and requirements of the positions. In addition, all candidates were provided with consistent and sufficient information during the assessment and, although there is no requirement to do so, they were also given information in advance to allow them to prepare. Marking was conducted by one or more individuals with knowledge of the subject matter, was consistent across candidates, and was based on reasonable standards or criteria.

Past Work Performance

Four reviews considered issues with the assessment of past work performance, which is one of the factors of merit that must be considered in a selection process. BC Public Service staffing policy requires that the assessment of past work performance include a reference from a candidate's supervisor or equivalent. Most of the concerns raised with the assessment of past work performance related to the choice and use of the individuals contacted to provide a reference.

In two cases, unsuccessful candidates expressed concerns that only one referee was contacted and that as the referee contacted had supervised them for a short period of time, he or she could not speak fully about their qualifications. In both cases, the reference provided by the supervisor contained sufficient information about the candidate's past work performance to enable the hiring panel to make an informed assessment of past work performance. While it is considered good practice to contact more than one referee in order to have a broader basis for assessment, there is no requirement to do so.

In a third case, the panel had obtained a general assessment of past work performance from individuals whom the candidates had identified to validate the examples they had cited during their interview as evidence of their competency. In addition, the candidate requesting the review noted that the panel had obtained a general reference from an individual who they believed was the employee's supervisor, but in fact that was not the case. The review concluded that it is the responsibility of the panel to ensure that references are obtained from individuals positioned to provide an informed assessment of a candidate's past work performance. In addition, at the time, hiring managers were advised by the BC



Public Service Agency to contact candidates regarding referees prior to conducting a past work performance check. In this competition, it was found that not all of the individuals identified by the panel were suitable and past work performance was not considered through a fair process. As a result, the Merit Commissioner directed the appointment be reconsidered.

In other cases, the unsuccessful candidates expressed concern that the panel determined their past work performance did not meet the standard required for the appointment. They asserted that as their work performance was previously assessed as acceptable for other positions, there should have been no issue with their performance in relation to the position under consideration. On this basis, they had come to the conclusion that the assessment of past work performance in the process must have been flawed.

In addressing these concerns, the Merit Commissioner considered if the hiring manager had conducted an objective and consistent assessment of past work performance as related to the job. The reviews found that in each case, the panel's determination that a candidate's past work performance was not a match for the position under competition was both supportable and reasonable. Previous references and appraisals, provided under different circumstances for different positions or for panels who may have had different standards, should not be assumed to be directly transferable to all positions to which a candidate applies. Each competition has its own required qualifications and expected standards of performance and it is the panel conducting that process that determines whether a candidate's past work performance meets those standards.

Possible Bias

In three of the reviews, concerns were raised regarding the possibility that one or more panel members were biased in favour of the successful candidate due to a work relationship (e.g., supervisor or mentor) and/or friendship. In a fourth review, it was contended that the hiring manager was biased against the requestor due to a previous difficult work encounter between them. In all cases, the reviews examined whether there was any evidence of actual bias for or against a candidate and concluded that all candidates had been treated objectively and consistently through fair assessment processes.

It is not uncommon for hiring managers and/or other panel members to have a working relationship, or in some cases a friendship, with one or more of the candidates in a competition. There is nothing that necessarily excludes an individual from participating on a hiring panel under these circumstances; instead, it is by adhering to good staffing practice that the panel is able to ensure an objective and transparent assessment of candidates, free from bias.



Conclusions

During 2013/14, the Office conducted 10 staffing reviews. Given this relatively small number of reviews it is not reasonable to draw broad conclusions; however, some of the recurring issues or elements identified in review requests have been highlighted in this report to provide some insight into areas of concern for employees and to provide hiring managers with potential opportunities to improve hiring practices. Through the conduct of these staffing reviews, the Office did not identify any significant or concerning shifts in merit-based hiring practices.

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Office of the Merit Commissioner