



Office of the
Merit Commissioner

Report on Staffing Reviews

2014/15

UPHOLDING FAIR HIRING IN THE
BC PUBLIC SERVICE



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Executive Summary

In the 2014/15 fiscal year, the Merit Commissioner received 19 staffing review requests, three of which were found to be ineligible for consideration, and one which was withdrawn. This was greater than the 12 requests the Office received in 2013/14 and the seven requests in 2012/13, but fewer than the 21 requests received in 2011/12.

In 10 of the 15 reviews conducted, the Merit Commissioner upheld the appointment decision and in the other five, she directed a reconsideration of the appointment.

The recurring issues or elements identified in the staffing reviews conducted are outlined in this report and are identified as: consideration of education and experience, assessment tools, past work performance and consideration of years of continuous service. In addition, a significant area of concern has been identified with respect to the provision of feedback at Step 1 of the review process. It is essential that candidates be provided with timely and complete feedback in order that they may, in an informed manner, exercise their rights to an internal inquiry or an independent review by the Merit Commissioner.



Introduction

This Report on Staffing Reviews provides an overview of the 19 staffing review requests received by the Office of the Merit Commissioner (the Office) during the 2014/15 fiscal year and includes a synopsis of the recurring grounds that were identified in several of the reviews. This report also provides general information about the steps in the staffing review process, as well as some information related to internal inquiries at the deputy minister level.

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 the hiring decision for permanent appointments or temporary appointments of more than seven months. Any request by an employee must be based on their reasons for believing that 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 after being 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 they were 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 they believe the appointment and/or hiring process was not merit-based, and request the deputy minister or organization head conduct an internal inquiry into 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, this 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 if they are dissatisfied with the response they receive at the second step. In accordance with the *Act*, such 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 receipt of the results of the deputy minister's 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, 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 determine whether the process was fair and based on the merit principle, and whether all factors of merit were considered. 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. Issues with the provision of feedback were identified in half of the reviews the Office completed in 2013/14 and a quarter of the reviews completed in 2014/15.

In two of the cases in 2014/15, it was evident that the candidates were not provided with a full explanation as to why they were unsuccessful. Their decisions to proceed and the basis for their requests may have been different, had they been provided with complete and accurate feedback.

It is recognized that some employees may not always be fully willing or able to receive or accept the feedback provided. It is also recognized that providing feedback to unsuccessful candidates can be difficult; nonetheless, hiring managers have a responsibility to ensure that employees are given a comprehensive account of their performance and assessment in the competition process, as well as the opportunity to ask for and receive additional details or clarifying information.



While feedback provides applicants with an opportunity to address weakness and generally improve their performance, it is also the critical first step in the review of a staffing decision. Timely, accurate and complete information is necessary for applicants to understand the process used to reach a hiring determination as well as the decisions which had an impact on the outcome of the competition for them personally. This type of quality information may satisfy unsuccessful applicants' concerns as to why they were unsuccessful; but without it, applicants may be unaware of or left with a misunderstanding of elements of the selection process which may be of concern to them and, consequently, would be unable to formulate relevant and related grounds for any request for internal inquiry or independent review they may choose to put forward. Communication of timely and relevant information is important to the perception of merit-based hiring practices.

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 43 internal inquiries requested by unsuccessful employee applicants for the 2014/15 fiscal year (two of which were requested at the end of 2013/14 and conducted during 2014/15), 33 were found eligible for an internal inquiry.

One request was withdrawn and nine requests were found to be ineligible as they did not meet a requirement or provision of either the *Act* or the related Regulation necessary for an internal inquiry to proceed. The reasons for ineligibility related to one of the following: the request was received outside the timelines for an internal inquiry; the process did not result in an appointment; or the process was for an auxiliary appointment.

In the 33 eligible cases, an inquiry was conducted and the deputy minister or head of the organization ultimately upheld (i.e., supported) the appointment decision in 32 of the cases. In one case, the deputy minister did not support the hiring panel's appointment decision. 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, including the preparation of a report with recommendations.

Nearly 60 per cent of eligible employees who receive an internal inquiry response then request a review by the Merit Commissioner.

Of interest is the number of employee applicants who proceed to request a review by the Merit Commissioner following the internal inquiry stage (second step) of the process. Based on the



information provided to the Office, as outlined above, 32 internal inquiries resulted in the hiring decision being upheld by the deputy minister or organization head. Of these, three were related to non-bargaining unit positions and therefore ineligible for the third step of the review process. Of the 29 internal inquiries related to bargaining unit positions where decisions were upheld at the second step, 17 continued to the next stage and a review by the Merit Commissioner was requested.

Step 3 - Requests for Review

In addition to the 17 requests for the review noted above, the Merit Commissioner received two additional requests where an internal inquiry had not been conducted. In total, these 19 requests for review related to appointments made in seven different ministries in various geographic locations during 2014/15.

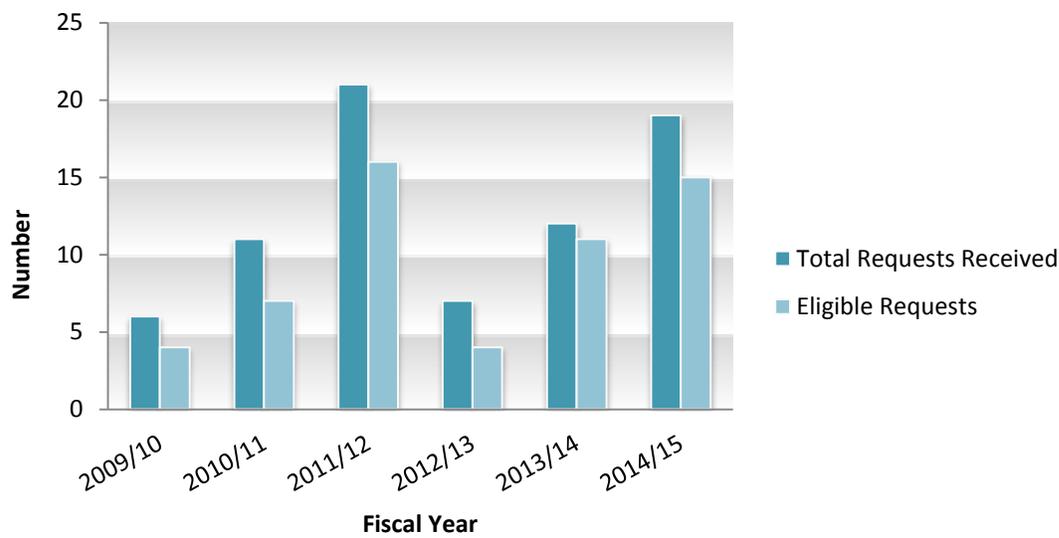
A review by the Merit Commissioner was requested for less than one per cent of applicable appointments in the BC Public Service in 2014/15.

As the two requests, which were sent directly to the Merit Commissioner without consideration at the deputy minister level, were outside of the process established in legislation, they were deemed ineligible for a review. (One of these requests related to the employee's failure to pass the security screening. As security screening is a condition of employment which the Merit Commissioner's jurisdiction does not encompass, this would also have been a reason for ineligibility.) A third request was also deemed ineligible as the timelines required to submit a review request had not been met. A fourth request was withdrawn by the employee prior to the commencement of the review.



Chart 1 illustrates the number of review requests made to the Merit Commissioner and the number determined to be eligible, since 2009/10.

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



While more requests were received by the Office in 2014/15 than in each of the two prior fiscal years, the number of requests as a proportion of the total number of permanent and long-term temporary appointments made in the BC Public Service over the same time period remained steady, at less than 1% of total appointments.

Of the 15 reviews conducted in 2014/15, 13 decisions were issued during the same fiscal year and two were issued early in the 2015/16 fiscal year. Of these 15 reviews:

- 12 were for permanent appointments, two were for long-term temporary appointments, and one was for an appointment to an eligibility list;
- 12 involved in-service competitions and three were out-of-service competitions; and
- 12 were for positions covered by the BC Government and Service Employees' Union (BCGEU) and three were covered by the Professional Employees Association (PEA).

In 10 of the reviews, the Merit Commissioner found the appointment was the result of a merit-based process and upheld the ministry's appointment decision. In the remaining five reviews, the Merit Commissioner found a serious flaw in the competition that impacted the outcome and, therefore, directed a reconsideration of the appointments.



The Merit Commissioner's decisions related to these requests were issued between 18 and 58 days from receipt of the appointment documentation, with an average response time of 29 days. This represents an increase in the average time taken to complete a review which was 26 days in 2013/14 and 27.5 days in 2012/13.

In 33 per cent of the reviews completed in 2014/15, the Merit Commissioner directed the appointment be reconsidered.

Grounds for Review

The recurring issues or elements that were identified in the 15 reviews conducted during 2014/15 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.

Inappropriate Consideration of Qualifications

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 in a BC Public Service hiring process.

Six of the review requests included grounds related to the appropriate consideration of education or experience. Most commonly, applicants were concerned that their experience in a directly-related position or area had not been sufficiently considered and by inference, the proposed appointment of an individual who had less related experience was not based on merit.

An examination of these processes showed that experience was taken into consideration directly at the short-listing stage where applicants had to demonstrate the minimum education and experience requirements on a pass/fail basis in order to advance. It was also considered indirectly through the other elements of the assessment process such as interviews and past work performance. The reviews concluded that experience, a factor of merit, was assessed directly and indirectly throughout each of the processes in a reasonable and fair manner.

Two of the requests for review involved the same hiring process and focused on perceived discrepancies between the education and experience qualifications that were advertised and those used to short-list applicants. The Merit Commissioner directed this appointment be reconsidered on the basis that had the qualifications been advertised and applied correctly, a different pool of applicants may have presented themselves for consideration, different candidates may have advanced, and a different outcome may have resulted.



The foundation of all recruitment and selection activities is the determination of the qualifications required to do the job. Ensuring the required education and experience criteria are accurate, well-designed and clearly communicated to potential applicants is important to a fair and transparent process: it enables these individuals to understand what is required to do the job and to determine if they are eligible to apply for consideration.

Assessment Tools

Behavioural Interviewing

Behavioural interviewing is a widely accepted method of assessment that requires candidates to provide examples of their past behaviour in real situations in order for the selection panel to determine if the levels of their demonstrated competencies align with the requirements of the position being filled.

In eight of the review requests, the grounds involved the fairness of the behavioural interview tool and/or the marking of behavioural competencies. A few requestors expressed a general concern as to whether this was an appropriate interview approach to assess internal candidates or appropriate to use given the type of position being filled. Several other requestors presented concerns about whether the panel correctly utilized this approach (e.g., probed consistently and sufficiently, and verified responses). There is nothing inherent in the behavioural interviewing approach that restricts its use to specific types of applicants or positions, or that prescribes the approach to be taken by the panel. The reviews found that behavioural interviewing was appropriate in each of the circumstances examined and that the interviews were conducted in a consistent and reasonable manner.

The majority of these eight requests included grounds related to the marking of behavioural competencies, with several applicants questioning the assessment of one or more of their behavioural competency responses. In each of these cases the review found that responses were marked consistently and reasonably across candidates. The panel determined that a candidate's response did not meet the level required for reasons that included: the example did not demonstrate the depth and breadth required for the competency; the answer focused on the competency level descriptors but did not address the specific question posed; and the scenario described did not show that the candidate had demonstrated more than a fundamental level of the competency.

It is the panel who determines the level of competency a candidate is considered to have demonstrated, as long as that determination is reasonable and applied consistently. The standard BC Public Service behavioural competency definitions and interpretation guides identify behavioural indicators at each level of competency which provide benchmarks to be used by the panel to assess candidate responses. These indicators are representative behaviours; they are not expected responses to the questions. Instead, the panel uses these representative behaviours to determine the level of competency a candidate's answer demonstrates.



One request questioned the fairness of a process where candidates failed the interview on the basis that they had not met the requirement set for one behavioural competency. The review found that the panel had predetermined that candidates were required to pass each competency in order to pass the interview. This is an accepted approach to marking behavioural interviews that is based on the premise that each behavioural competency is a mandatory requirement of the position and that if a candidate does not demonstrate any one competency, then an essential job requirement is not met.

In 2014/15 the most common grounds identified for reviews were concerning behavioural interviewing.

Written Tests

Two reviews contained grounds that questioned the fairness and transparency of a written test or assignment. In one case it was evident that all candidates were provided with consistent and sufficient information to complete the assignment. However, in the other case a key requirement of the assignment was neither self-evident nor referred to in the instructions, consequently the review found it was unreasonable to expect candidates to complete that element of the assignment, and unfair to assign marks based on its completion.

In a third review, critical errors with the marking of the test were discovered during the review. The incorrect calculation of test scores resulted in the wrongful exclusion of one candidate and advancement of another. In that case, the Merit Commissioner directed a reconsideration of the appointment given the unfair treatment of candidates.

Past Work Performance

Past work performance 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.

Grounds involving the assessment of past work performance were cited in four of the review requests. Several unsuccessful candidates put forward that a referee contacted by the panel was not in a position to provide a reference, either because the individual had supervised them for only a short period of time or not at all. Further, two of these candidates also questioned the panel's decision to contact only one referee.

In these reviews, the referees in question were found to be appropriately positioned to provide work-related references. All reference information was found to contain sufficient work-related information about the candidates' past work performance to enable the hiring panel to make informed assessments. While it is considered good practice to contact more than one referee in order to have a broader basis for the assessment of past work performance, there is no requirement to do so.



Another issue that candidates raised in these requests concerned perceived discrepancies between their positive work performance history and the panels' assessment of their performance in relation to the position under consideration. In each of these cases, the review found that the panel's determination that the 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 which determines whether a candidate's past work performance meets those standards.

Years of Continuous Service

Years of continuous service is a factor of merit that must be considered and for those employees applying for positions subject to the collective agreement with the BCGEU, it must be assessed in accordance with the provisions laid out in the agreement. Four requests for review questioned whether years of continuous service were appropriately considered or calculated.

Review grounds in two instances related to the new method for assessing years of continuous service introduced in the BCGEU 17th Master Agreement, which replaced the previous calculation known as "relatively equal." The transition to the new formula caused candidates to question whether the right calculation was used and applied correctly.

One review found that the new formula had been correctly applied. In the other case, the panel used the former "relatively equal" formula to calculate years of continuous service despite the new formula being in effect. Had the correct method been applied, the qualifying candidates would have been ranked differently and the appointment offers issued in a different order. The Merit Commissioner directed a reconsideration of the appointment on the basis that the miscalculation of years of continuous service unfairly disadvantaged some candidates.

The other two requests advanced grounds relating to the consideration of years of continuous service for positions covered by the Professional Employees Association (PEA) collective agreement. In contrast to the BCGEU, the PEA's agreement has no provisions related to how years of continuous service will be assessed in a competitive process. As such, it is up to the panel to consider years of continuous service, a factor of merit, and determine whether or not continuous service will form part of the assessment process. In one review where the unsuccessful candidate's view was that seniority was not sufficiently credited in the hiring process, the review found that the panel considered years of continuous service and decided no points or credit would be awarded based on this factor. This is a reasonable and accepted practice for positions subject to the PEA collective agreement.



The other review involved a position that was advertised in two separate postings as it had a dual classification: one of which was subject to the PEA collective agreement; and another of which was subject to the BCGEU collective agreement. The unsuccessful candidate asserted it was unfair for the panel to use the BCGEU provision to calculate years of continuous service for those candidates who applied to the position covered by the PEA agreement. The review concluded that where each classification and its associated collective agreement have their own requirements, it is important that the process is respectful of those requirements. In this case, a BCGEU provision had been inappropriately applied to a candidate who had applied to a PEA position. A reconsideration was directed based on the specific details of this situation.

Conclusion

During 2014/15, the Office conducted 15 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 insight into areas of concern for employees and to provide hiring managers with potential opportunities to improve their hiring practices and their communications with applicants.

A significant area of concern which requires the attention of hiring managers is their responsibility with respect to the provision of feedback at Step 1 of the review of staffing decisions process. In several reviews over the last few years, it was evident that at the feedback stage unsuccessful candidates were not provided with a full explanation of the reasons why they were not successful. It is essential that candidates be provided with timely and complete feedback, not only so that they may understand their strengths and weaknesses, but as importantly, so that they may exercise their rights to an internal inquiry or an independent review by the Merit Commissioner without impediment.

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Office of the Merit Commissioner