



Office of the  
**Merit Commissioner**

## Report on Staffing Reviews

# 2015/16

UPHOLDING FAIR HIRING IN THE  
BC PUBLIC SERVICE



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## Executive Summary

This Staffing Review Report outlines the steps in the staffing review process and provides an overview of the staffing review activity that occurred at Step 2 (internal inquiry) and Step 3 (review) stages during the 2015/16 fiscal year. The report also identifies and summarizes the key grounds identified in the reviews conducted by the Office of the Merit Commissioner (the Office) at the third step in the process.

During the 2015/16 fiscal year, the Merit Commissioner received eight staffing review requests, one of which was found to be ineligible for consideration. In light of the grounds submitted, the Merit Commissioner upheld the appointment decision in the seven reviews conducted and dismissed the reviews.

There were some common issues raised in the requests for review which related to the appropriate consideration of qualifications and the fairness of the assessment process. Also, two new issues arose in 2015/16, one of which related to employees' access to review rights and the other related to credentials.



## Introduction

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 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 they believe the appointment and/or hiring process was not merit-based, and request the deputy minister or organization head to 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, the second step is the final level of review. For unionized positions, an 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 or organization head's internal inquiry.

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



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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 was fair and transparent, the assessment was relevant to the job, and the decisions made were reasonable.

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In order to make a determination, all related documentation is examined and the employee requesting the review, the hiring manager, and others involved in the process may be contacted to explore the issues and establish facts. The standard review approach examines the hiring process to determine whether it was fair and based on the merit principle. 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

Notification of the competition outcome to unsuccessful employee applicants is a critical part of a hiring process. Without timely and relevant notification, unsuccessful employee applicants may be obstructed from fully exercising their rights to request a review. During the 2014/15 Merit Performance Audit, in nine per cent of audited appointments candidates with rights of review did not receive notification of the final hiring decision and their access to recourse may have been obstructed as a result. Audit findings also noted a number of processes in which notification practices could have been improved to increase transparency by including details such as the number of proposed appointments and other details as specified by collective agreements.

With respect to requesting a review, feedback is the first step in the process. Generally, feedback provides applicants with the opportunity to improve their performance as well as to increase their confidence in the hiring process. In responding to a number of reviews brought forward in recent years, the Merit Commissioner has raised concerns to deputy ministers and the BC Public Service Agency regarding the provision of feedback. Again in 2015/16, issues with feedback were identified in a number of reviews conducted. In two cases, the unsuccessful employee applicant requesting the review (the requestor) put forward that they had not been provided with a full explanation as to why they were unsuccessful.

It is common for feedback to be provided verbally and at times there are differing perspectives on what information was exchanged during the feedback session. 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 challenging for hiring managers. Nonetheless, they have a responsibility to ensure that employees are given a complete 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.

## Step 2 - Internal Inquiries

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

Of the 40 internal inquiries requested by unsuccessful employee applicants in the 2015/16 fiscal year, an internal inquiry was conducted in 25 cases. In the other 15 cases, two of the requests were withdrawn and 13 were deemed ineligible. 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; the requestor did not complete the first step of the process; or the process was for a temporary appointment under seven months.

In 22 of the 25 cases where an inquiry was conducted, the deputy minister or head of the organization ultimately upheld (i.e., supported) the appointment decision. In three instances, the deputy minister did not support the hiring panel's appointment decision and the appointment was reconsidered. 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.

Of interest to the Office, is the number of employee applicants who proceed to request a review by the Merit Commissioner following an internal inquiry. Of the 22 internal inquiries where the hiring decision was upheld by the deputy minister or organization head, four involved excluded positions and therefore, were ineligible for the third step of the review process. Of the remaining 18 inquiries, seven were moved forward to the third stage and a review by the Merit Commissioner was requested.

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In nearly 40 per cent of cases eligible for consideration by the Merit Commissioner, applicants requested a review.

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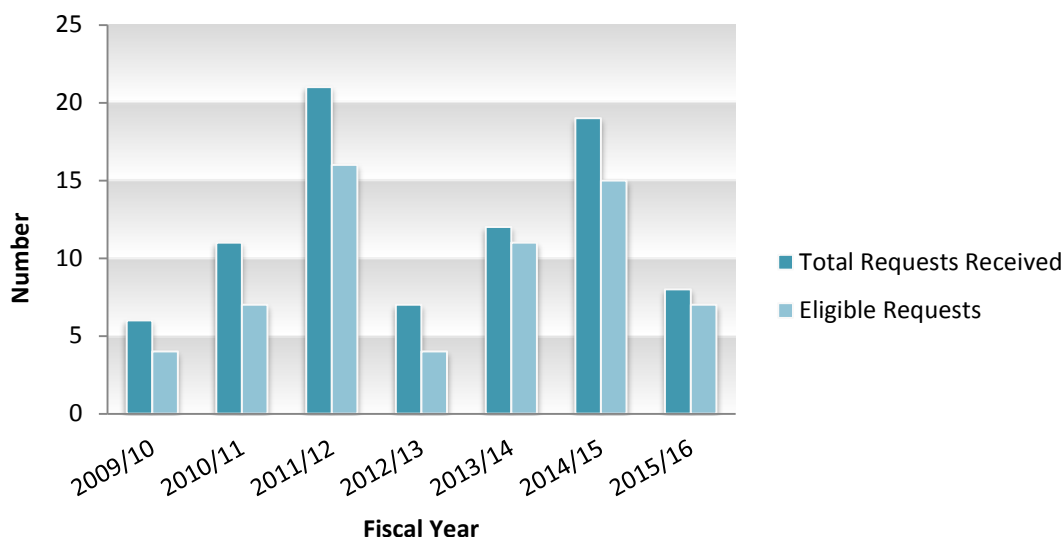


### Step 3 - Requests for Review

The seven requests for review noted above were found eligible for consideration. The Merit Commissioner also received an eighth request where an internal inquiry had not been conducted. As an internal inquiry is a required step established in legislation, the Merit Commissioner was precluded from accepting this request and as a result it was deemed ineligible for consideration.

Chart 1 illustrates the number of review requests submitted 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**



In 2015/16 there were fewer requests received than in each of the two prior fiscal years, and the number of requests in relation to the total number of permanent and long-term temporary appointments made in the BC Public Service over the same time period continued to remain low.

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Less than one per cent of applicable appointments in the BC Public Service resulted in a request for review

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Of the seven reviews conducted in 2015/16:

- seven were for permanent appointments;
- six involved in-service competitions and one was an out-of-service competition;
- proposed appointments were in five different ministries and from various locations; and
- six were for positions covered by the BC Government and Service Employees' Union (BCGEU) and one was covered by the Professional Employees Association (PEA).



In all seven of the reviews, the Merit Commissioner found the appointment was the result of a merit-based process and upheld the ministry's appointment decision. The Merit Commissioner's decisions related to these requests were issued between 14 and 36 days from receipt of the appointment documentation, with an average response time of 28.7 days.

## **Grounds for Review**

There were few common grounds raised in the small number of review requests in 2015/16, making it difficult to draw conclusions or comparisons. The following section identifies those elements or themes that were recurring as well as outlines two unique issues that arose out of 2015/16 reviews. It should be noted that several of the requests for review were based on two or more grounds.

### **Common Grounds**

#### ***Appropriate Consideration of Qualifications***

Several review requests contained grounds related to the appropriate consideration of training, experience, skills or knowledge. In particular, requestors were concerned that their years of related experience had not been given sufficient credit or that candidates with less experience, seniority or training were advanced. According to the *Act*, experience is one of the factors that must be considered in determining merit in a hiring process. The examination of the hiring processes under review found that in all cases, experience was directly considered at the short-listing stage where applicants were consistently assessed for the minimum education and experience requirements (e.g., a diploma and three years related experience) on a pass/fail basis. Those who met the requirements were advanced and subsequently assessed through tests, interviews and references. These further assessments indirectly assessed experience by requiring candidates to demonstrate the knowledge, skills and competencies that they acquired through training and work. All reviews concluded that the experience factor was given sufficient and fair consideration.

#### ***Interview Administration***

A few of the requestors also raised concerns about the administration of the interview process including the rescheduling of an ill candidate, and the lack of probing questions. While there are no legislative or policy provisions prescribing how a panel should conduct an interview, the Merit Commissioner gave consideration to whether the approach taken was logical based on the competition circumstances and if the approach was fairly applied to all candidates. Following an examination of the facts in each case, the reviews concluded that the panels made reasonable decisions and that candidates were consistently and objectively treated.

#### ***Marking of Tests and Interviews***

A number of grounds submitted related to the marking of tests or interview responses with candidates questioning the assessment of one or more of their answers. Within a specific staffing process, it is the





panel's prerogative to establish the requirements to be assessed and the associated standards, as long as they are relevant, reasonable and fairly applied. In each of the cases in question, the review found that there were established marking guidelines which laid out in sufficient detail the criteria or elements required in an acceptable response, and that there were standardized scoring schemes with target levels or pass marks. A comparison of candidates' test and interview responses with the associated marking guides and scoring schemes found there was a rational basis for the marks awarded. Further, marking was found to be consistent across candidates within each competitive process.

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The most common review grounds in 2015/16 involved the marking of test and interview responses.

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Two requestors believed their responses were not accurately recorded by the panel. In both of these cases, the examination of panel notes found some variation in the amount of information captured across panel members, but that each panel member was consistent in the level of detail they recorded for all candidates. With respect to the requestors' responses, similar information was captured by the panel members with no evidence of incorrectly or partially recorded answers.

Some of the requestors noted that they had received higher scores for their responses to similar questions in previous competitions than they received in the competition under review. While this may be frustrating for candidates, it is not unreasonable that staffing processes for the same type and level of position differ from one competition to another for a variety of reasons such as: the hiring manager and panel involved, the requirements of the position, assessment tools chosen, or unique circumstances in a particular organizational unit. It is the perspective of the panel convened to evaluate the information provided by the candidates that is relevant as it is these panel members who understand the specific job requirements, establish the criteria for assessment and observe the information provided by candidates.

## Unique Issues

### ***Right to Review***

The request for review which was deemed ineligible for consideration at Step 3 raised important issues for the Merit Commissioner. In this situation, an employee candidate who was placed on an eligibility list subject to an acceptable assessment of past work performance, was some time later advised that they had not passed the reference check and as such were no longer under consideration for an appointment. The individual requested an internal inquiry which was denied by the organization on the basis that the request was outside of the prescribed timeline which the organization considered to have commenced with the letter regarding provisional placement on the eligibility list. As no internal inquiry had taken place, the Merit Commissioner was unable to conduct a review.



This case revealed the questionable practice of provisionally placing employees on eligibility lists, which in effect may deprive employee candidates of their right to proper notification and recourse. Under such circumstances, employees can be unaware that they were unsuccessful in a selection process until the deadlines for submission of a request for feedback and internal inquiry have passed. This case also highlighted the limitations on the Merit Commissioner's authority to conduct a review only after completion of Step 2 in the review process, which in this instance was not completed but was considered to be warranted.

### ***Credentials or Professional Designations***

The grounds of one review request involved the fairness of using a credential (e.g., professional designation) as a mandatory qualification to be short-listed. The requestor questioned, given the position to be filled, whether the specified credential was required to perform the job given the requirements of the related legislation and professional body. In addition, the requestor questioned the belief that possession of the specified credential denoted a certain level of competence. The Merit Commissioner, in accordance with her legislated authority, considered whether the credential was a suitable requirement for the position being filled in the context of the *Public Service Act* as opposed to any other legislation or requirements. While the *Public Service Act* does not specifically identify a professional designation or credential as a factor of merit to be considered, the factors that are stated have been designed to cover a variety of qualifications, including professional qualifications and designations. Further, there is nothing in the *Public Service Act* that prohibits consideration of additional factors as long as they are reasonable and relevant to the job.

Based on an examination of the duties to be performed in relationship to the meaning of the particular credential in question, the review concluded that it was a relevant job requirement. The review also concluded that as professional designations are commonly understood to represent a certain level of education and experience, their use as a short-listing requirement, similar to other objective qualifications like degrees, training certificates, or years of related experience, was appropriate and reasonable.

## **Conclusion**

During 2015/16, the Office conducted seven staffing reviews. Given this relatively small number of reviews, it is not reasonable to draw broad conclusions. However, some of the relevant 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.

**July 2016**

**Office of the Merit Commissioner**