



Office of the
Merit Commissioner

Report on Staffing Reviews

2017/18

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 2017/18 fiscal year. The report also summarizes the key issues identified in the reviews conducted by the Merit Commissioner at the third step in the process.

During the 2017/18 fiscal year, the Merit Commissioner received 25 staffing review requests, eight of which were found to be ineligible for consideration. In four of the 17 reviews conducted, the Merit Commissioner directed a reconsideration of the appointment. In the other 13 reviews conducted, the Merit Commissioner upheld the appointment decision.

The most common ground put forward related to insufficient or inappropriate consideration of education and/or experience. In two reviews, a reconsideration was directed because an unreasonable approach was used to short-list applicants. The second most common ground was related to concerns of unfair marking of test or interview responses. In one case, the review found that the integrity of a written test had been compromised, and as such, a reconsideration was ordered. Another frequently cited ground was related to the assessment of past work performance. In one review this factor of merit had not been assessed prior to the completion of the competition and issuance of an offer; a reconsideration was therefore directed. Finally, other concerns raised involved bias in the hiring process either against or towards candidates.



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 considering 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. After receiving feedback, the employee 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 to conduct an internal inquiry into the staffing decision. This request must be made within five calendar days of receiving feedback or an 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, the third step of the process, if the applicant is dissatisfied with the response he or she received at the second step. In accordance with the *Act*, such a request may only be based on the grounds submitted in



support of the applicant's request for an internal inquiry, and must be made within five calendar days of receipt of the deputy minister or organization head's decision.

The Merit Commissioner is responsible for making an objective determination as to whether the aspects of the selection process related to the employee's grounds complied with the requirements of section 8(1) of the *Act*.

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.

In order to make a determination, all related documentation is examined, and key stakeholders in the review—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 review 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 employee's grounds had no impact on the merit of the process and dismiss the review, or she 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 to unsuccessful employee applicants of the competition outcome is an important part of a hiring process and a precursor to step one of the staffing review process, and therefore an important indicator that employee applicants' access to recourse may have been obstructed. The Office of the Merit Commissioner's 2016/17 Merit Performance Audit found that in nine per cent of audited appointments, not all employee applicants were issued notification of the final hiring decision. This represents an increase of one per cent over the findings for notification in the Office's 2015/16 Merit Performance Audit. The audit also noted a number of appointment processes where notification could have been improved to increase transparency. Most commonly, information was missing such as, that there were multiple initial appointments, that an eligibility list was established, or the name and classification of the successful employee candidate, as required by collective agreements.

Both the accuracy and completeness of feedback are essential for candidates should they choose to pursue an internal inquiry as they must detail the specific grounds for the request.

Generally, feedback provides applicants with the opportunity to improve their performance as well as to increase their confidence in the hiring process. Feedback also creates the opportunity to help unsuccessful applicants understand the competition process and their performance within it. 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 about the provision of feedback. In 2017/18, requestors in three staffing reviews expressed concern that the feedback they received lacked specific details regarding interview scores or was inaccurate. Also, requestors and the hiring managers had differing views regarding what information had been provided during the relevant feedback session.

Given that feedback is typically provided verbally, there can be differing perspectives on what information was exchanged during a feedback session, as was evident in one of the reviews. While some employees may not be open to receiving feedback or accepting of the feedback provided, it can also be challenging for hiring managers to be forthcoming and candid with their comments. Nonetheless, hiring managers have a responsibility to ensure that employees have a clear 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. Both the provision of proper notification and sufficient feedback are necessary if unsuccessful employee applicants are to make an informed decision about whether to exercise their right to request a staffing review, and on what grounds a request might be based.

Step 2 – Internal Inquiry

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

The 2017/18 fiscal year saw a significant increase in the number of requests for internal inquiries which were reported as submitted to deputy ministers and organization heads. There were 101 internal inquiries requested by unsuccessful employee applicants compared to 60 requests in 2016/17, representing an increase of over 60 per cent. Internal inquiries were conducted for 71 of the 101 requests.

In all of the 71 internal inquiries conducted, the deputy minister or head of the organization upheld (i.e., supported) the appointment decision.

Of interest to the Office, is the number of applicants who proceeded to request a review by the Merit Commissioner following an internal inquiry. Of the 71 inquiries where the hiring decision was upheld by the deputy minister or organization head, 13 involved excluded positions and therefore, the applicants were not eligible to proceed to the third step of the review process. Of the remaining 58 applicants who were eligible to request the Merit Commissioner conduct a review, 17 did so.

In nearly 30 per cent of cases eligible for consideration by the Merit Commissioner, applicants requested a review.



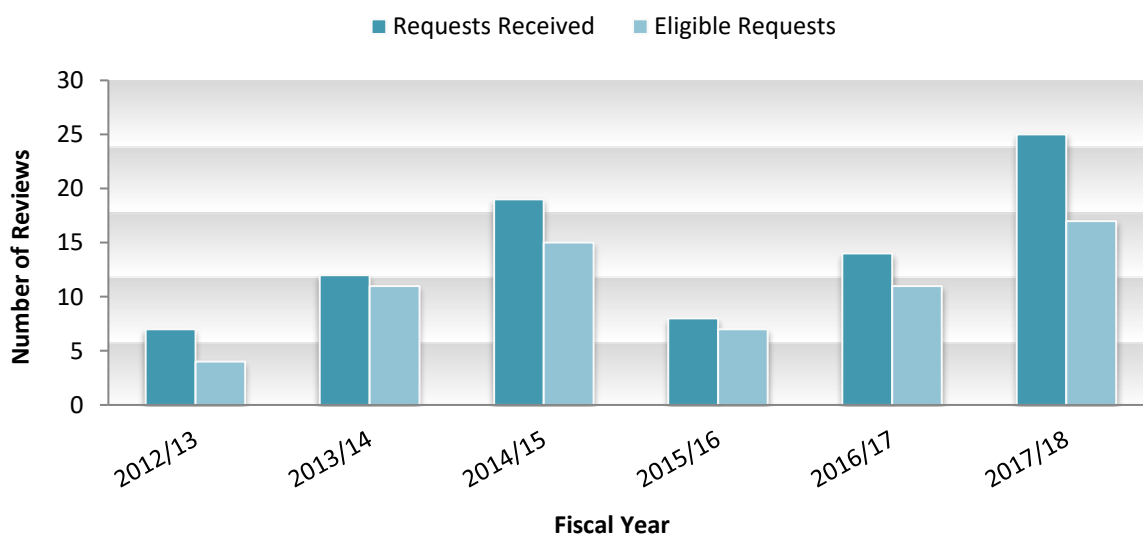
Step 3 – Requests for Review

The 2017/18 year saw the highest number of requests for staffing reviews since the Office was established. Reasons for this are not evident and cannot be attributed to any particular event or ministry as requests were spread throughout the year and across the public service.

In total, the Merit Commissioner received 25 requests for review, including the 17 noted above from applicants who requested a review following an internal inquiry. The additional eight requests were deemed ineligible: one related to an excluded position following an internal inquiry, four had not requested an internal inquiry, two involved competitions that were cancelled and no appointment had been made, and one was received outside of the statutory timeline. Overall, the Merit Commissioner conducted 17 requested reviews.

Chart 1 illustrates the number of review requests submitted to the Merit Commissioner and the number determined to be eligible, since 2012/13.

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



The number of requests for review received in relation to the total number of permanent and long-term temporary appointments made in the BC Public Service continues to remain low.

Requests for review were submitted for less than one per cent of applicable appointments in the BC Public Service.



Of the 17 reviews conducted in 2017/18:

- 16 were for permanent appointments and one was for a temporary appointment over seven months;
- eight involved in-service competitions and nine involved out-of-service competitions;
- the competitions were held by six different ministries or organizations and for various locations around the province; and
- 16 were for positions covered by the BC Government and Service Employees' Union (BCGEU) collective agreement and one by the BC Professional Employees' Association.

In 13 of the 17 reviews conducted, the Merit Commissioner upheld the deputy minister or organization head's appointment decision on the basis that the aspects of the selection process related to the employee's grounds were in compliance with the requirements of section 8(1) of the *Public Service Act*. In four reviews, the Merit Commissioner directed a reconsideration of the appointment because one or more aspects of the selection process related to the employee's grounds failed to meet those requirements.

The Merit Commissioner's decisions were issued between 18 and 50 days from receipt of the appointment documentation, with an average response time of 36.2 days. Delays beyond the Office's targeted response time of 30 days were due to the workload associated with the unusually high number of review requests received, as well as the complexity of some of the issues raised.

The Merit Commissioner upheld the proposed appointment in
13 of the 17 reviews conducted.

Grounds for Review

The following section discusses the common elements or themes that were identified in requestors' grounds. It should be noted that the majority of requests for review were based on two or more grounds.

Common Grounds

Assessment of Qualifications

According to the *Act*, there are several factors that must be considered in determining merit in a hiring process. The most common ground put forward was that one or more of these factors had not been appropriately considered. In particular, requestors were concerned that their education or years of experience had not been given sufficient credit, or that candidates with less experience, seniority or training were advanced in the competition.



The examination of the related hiring processes found that education and experience were directly considered at the short-listing stage where applicants were assessed for the minimum requirements, typically on a pass/fail basis, and indirectly considered at other stages of the assessment process. Candidates who advanced in the process were subsequently evaluated through testing, interviewing, and an assessment of past work performance. These further evaluations required candidates to demonstrate their knowledge, skills, and competencies. While the majority of reviews found that education and experience were given sufficient and fair consideration, two reviews found that with respect to the requestors, this was not the case.

In one case, the requestor was eliminated at the short-listing stage for only providing brief responses to a self-assessment questionnaire. The review found that other candidates who had provided similarly brief responses were advanced; several candidates with less than the stated qualifications were advanced; and some other candidates who did not have sufficient experience were given credit for related coursework as equivalencies which were unstated as acceptable. Consequently, the review concluded that the short-listing process was neither fair nor transparent, and the Merit Commissioner directed a reconsideration of the appointment.

In another competition which was reviewed, the panel required applicants to use a specific format in a self-assessment questionnaire to demonstrate the duration and currency of their experience. The review found that the instructions were not clear in this respect and the panel was inconsistent with respect to the rigour they applied in determining whether sufficient detail had been included in all of the questionnaires. In some cases, the panel applied a broad interpretation, and in another case overlooked the omission of required information. While applicants are responsible for ensuring the information they submit is in the required format and demonstrates their qualifications, the review concluded that the panel was unreasonable and inconsistent in how they found that the requestor had provided insufficient information. A reconsideration was, therefore, directed.

Interview and Test Marking

Several requestors' grounds related to the marking of tests or interview responses, with requestors questioning the scoring of one or more of their answers and asserting that the panel had subjectively marked responses. Others expressed concerns with how behavioural interviews were conducted, including that the panel had not probed candidates for more information in their responses, did not verify details of competency examples provided by candidates, and did not properly record candidate responses.

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 all but one case, the reviews found there were established marking guidelines that laid out the criteria or elements required in an acceptable response, as well as standardized scoring schemes with target levels or pass marks. It was evident from comparisons of candidate responses to the associated marking



criteria that there was a rational basis for the points awarded. Further, marking was found to be consistent across candidates within each competitive process.

The conduct of behavioural interviews allows for the use of probing questions as a way to draw out information; however, there is no mandatory requirement for a panel to ask probing or clarifying questions. Probing is at the discretion of the panel, generally depending on the clarity of the response provided. In one request for review, interview materials showed that the panel had pre-determined several follow-up questions and these were asked only when it was unclear how information provided by a candidate was connected to the example. In another case, candidates were asked the questions exactly as they were provided in the interview information package and the panel purposely chose not to probe any of the candidates for further information or details. The reviews found both approaches taken were fair and consistently applied across candidates in each competition.

In two cases, unsuccessful employee candidates questioned whether the panel had appropriately verified the details of either the successful candidate's responses to a behavioural question, or their own responses. The behavioural interviewing approach may include verifying the panel's observed level of a candidate's competency. This verification may vary from contacting individuals who would have witnessed the candidate's behaviour, to conducting a more general assessment of past work performance with supervisors who would have observed the candidate's behaviour on an ongoing basis in a variety of situations. In these two cases, the panel chose the latter method of verification. Both reviews found that while it is good practice to verify competency examples, it is neither essential to a fair assessment process nor a requirement of the legislation to do so.

Interview and Test Administration

A number of requestors raised concerns involving the reasonableness of the panel's decisions with regard to scheduling interview dates and conducting virtual interviews. In one request, the unsuccessful employee candidate believed he was given less time to complete the written assignment than other candidates.

While there are no legislative or policy provisions prescribing how a panel should administer interviews and tests, in all cases, the Merit Commissioner gave consideration to whether the approach taken was reasonable based on the competition circumstances and 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, with one exception.

With respect to the exception, the panel intended to administer a written exercise to all short-listed candidates at the same time; however, due to a system error, several applicants were not short-listed until after the exercise had been completed. This later set of short-listed candidates completed the same test as was administered to the first group. Although the panel attempted to manage this unusual situation in a fair manner, it was possible that the second group of candidates may have had access to



the test prior to completing it and, therefore, potentially had an advantage in the process. The review concluded that the integrity and fairness of the competition had been compromised, and a reconsideration was directed.

Past Work Performance Assessment

In accordance with the *Act*, past work performance is one of the factors of merit that must be considered in a selection process. BC Public Service staffing policy also requires an assessment of past work performance be conducted with the inclusion of a supervisor or equivalent as a referee.

Grounds involving the assessment of past work performance were cited in four of the review requests. In two cases, the requestors were concerned their past work performance was not properly considered and in the other two, the requestors were concerned that a referee was unduly influenced by other issues (e.g., medical issues). In all cases, the review found that the panels' decisions were substantiated by sufficient and relevant observations provided by supervisory referees best positioned to speak to work performance. Further, the references contained detailed and balanced information.

During the course of conducting one review, it was found that the final outcome of the competition was determined prior to the consideration and assessment of all the factors of merit, specifically past work performance. While the organization had adopted this approach as a hiring practice, a fair assessment process requires that all factors of merit be considered and assessed prior to determining the outcome and notifying candidates. If the outcome of a selection process may be subject to change after employee candidates are notified of their standing in that process, their review rights may be negatively affected and their access to recourse denied. As the assessment process was found to be flawed and in contravention of the requirements of the *Act*, a reconsideration was directed.

Bias in the Selection Process

In 2017/18 a number of requestors raised concerns regarding bias in the selection process. Some of the concerns expressed were related to bias in favour of the successful candidate(s) such as in two cases where the requestors believed a requirement was reduced or not considered in order to favour a successful candidate. In another request, the grounds submitted asserted that the panel composition favoured certain candidates and that the process had disadvantaged candidates for whom English is a second language. In another instance, a requestor felt the panel was prejudiced against him and did not want him in the position.

The Merit Commissioner takes seriously the allegation of bias in staffing actions. A merit-based staffing process that is free of bias includes an assessment that is based only on the factors relevant to the work to be performed, and a process that is fair, reasonable, objective, consistent and transparent. The reviews confirmed that in all cases examined, all applicants were treated and assessed fairly, in accordance with policy requirements and relevant provisions of the collective agreement, and there was no evidence of bias.



The most common review grounds in 2017/18 involved: short-listing, and the administration and marking of interviews and tests.

Grounds Not Within the Merit Commissioner's Authority

In several of the requests for review, concerns were raised that are outside the Merit Commissioner's authority and could not be considered.

The most commonly expressed concern related to the results of previous competitions that candidates considered were similar and where they were either successful or placed on an eligibility list. In conducting a review, consideration is given to whether consistency has been preserved within the specific competition under review, but not if consistency has been maintained across different competitions. It is reasonable that a staffing process for the same type and level of position may change from one competition to the next for a variety of reasons, such as: the composition of the applicant pool or panel, the qualifications specific to the position at the time of hire, or the unique requirements of a particular organizational unit. Variations across staffing processes do not necessarily indicate that the process has been unfair.

Other cases raised concerns involving labour relations issues, such as the right to have a union observer attend an interview or the rescinding of a verbal offer. Where appropriate, these matters were raised to the deputy minister or head of the organization for consideration.

Conclusion

During 2017/18, the Office conducted 17 staffing reviews. Given this relatively small number of cases in relation to the overall number of appointments made to and within the BC Public Service, it is not reasonable to draw broad conclusions. Nevertheless, the predominant issues or elements identified in the 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 communications with applicants.

Office of the Merit Commissioner
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