

## Report on Staffing Reviews

# 2018/19

UPHOLDING FAIR HIRING IN THE  
BC PUBLIC SERVICE



## **Table of Contents**

<b>Executive Summary</b>	<b>1</b>
<b>Introduction</b>	<b>2</b>
<b>Step 1 – Feedback</b>	<b>3</b>
<b>Step 2 – Internal Inquiry</b>	<b>4</b>
<b>Step 3 – Requests for Review</b>	<b>4</b>
Grounds for Review	6
Grounds Not within the Merit Commissioner’s Authority	11
<b>Conclusion</b>	<b>11</b>



## 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 the Step 2 (internal inquiry) and Step 3 (review) stages during the 2018/19 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 2018/19 fiscal year, the Merit Commissioner received 25 staffing review requests, including one which was subsequently withdrawn and five which were found to be ineligible for consideration. Of the 19 reviews completed, three resulted with the Merit Commissioner directing a reconsideration of the appointment. In the other 16 reviews, the Merit Commissioner upheld the appointment decision.

The most common ground put forward was the incorrect marking of test or interview responses. In two reviews of this nature, a reconsideration was directed because of inconsistencies in the marking of candidates and lack of established marking criteria. Another commonly submitted ground was the general concern that the hiring process did not fairly or reasonably assess all the factors of merit. Concerns were also raised in several cases that the approach used to short-list applicants was unreasonable and, in one such process where the review found inconsistencies and discrepancies in the panel's approach to short-listing, a reconsideration was directed. Other issues raised related to administrative issues, the assessment of past work performance, and bias in the hiring process either from a procedural perspective, or against or towards candidates.



## Introduction

The *Public Service Act* (the *Act*) states that appointments to and within the public service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are non-partisan and based on an assessment of competence and ability to do the job. 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 specify 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. If, after receiving feedback, the employee believes the appointment and/or hiring process was not merit-based he or she may choose to proceed to step two 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, if the employee applicant is dissatisfied with the response he or she received at the second step, he or she may request a review of the staffing decision by the Merit Commissioner, the third step of the process. In accordance with the *Act*, the request at Step 3 may only be based on the grounds submitted



in support of the applicant's request for the internal inquiry, and must be made within five calendar days of receipt of the deputy minister or organization head's Step 2 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*.

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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, the competition file is requested, and key stakeholders—the employee requesting the review, the hiring manager, and others involved in the process—are contacted to explore the issues and gather facts. A thorough examination and analysis of the documentary and verbal evidence is undertaken. Based on this 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. As the precursor to the first step of the staffing review process, it is an important requirement in the process to ensure that employee applicants have full and unobstructed access to their right to recourse. The Office of the Merit Commissioner's 2017/18 Merit Performance Audit found that in four per cent of audited appointments, not all employee applicants were issued notification of the final hiring decision. This is an improvement over the previous year where nine percent of the audits noted issues with notification.

Both the accuracy and completeness of feedback are essential for employee applicants should they choose to pursue an internal inquiry at step two as they must provide detailed, specific grounds in their request. Given that feedback is typically provided verbally, there can often be differing perspectives on what information was exchanged during a feedback session. In 2018/19, requestors of two reviews expressed concern that the feedback they received lacked details or clarity and in another review, the requestor was concerned by what they perceived to be inconsistencies between verbal and written feedback. In all three cases, the requestors and the hiring managers had differing views on the information that had been provided during the feedback session.



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 essential 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

Based on information received from the BC Public Service Agency and other public service organizations subject to oversight by the Merit Commissioner, there were 68 requests for Step 2 internal inquiries in fiscal year 2018/19. This is down from the 101 reported requests in 2017/18, but higher than the number of requests reported in previous years (60 in 2016/17 and 50 in 2015/16).

In 2018/19, of the 68 reported requests for internal inquiry, 52 were deemed eligible for consideration at this step. In 43 of these inquiries, the deputy minister or head of the organization upheld (i.e., supported) the appointment decision. In the remaining nine cases, the hiring panel was directed to reconsider the appointment decision as a result of the findings of the internal inquiry.

## Step 3 – Requests for Review

Of the 52 internal inquiries conducted in 2018/19, a total of 47 were eligible for a Step 3 review by the Merit Commissioner. (The other five were not eligible for a review by the Merit Commissioner as they were for appointments to excluded positions.) In 17 of these 47 cases the unsuccessful employee went on to request a review by the Merit Commissioner. In addition to these 17 requests, the Office received four requests for review based on inquiries completed at the very end of the 2017/18 fiscal year, and four additional requests that were sent directly to the Office. Therefore, in total, the Office received 25 requests for review in 2018/19. Five of these requests were deemed ineligible as Step 2 of the review process had either been bypassed or was not yet complete, and one other was withdrawn; therefore, the Office conducted reviews of 19 appointment decisions in 2018/19.

The percentage of requests advancing to Step 3 (34 per cent) this year is similar to that in fiscal year 2016/17 (36 per cent) and higher than the rate in 2017/18 (30 per cent).



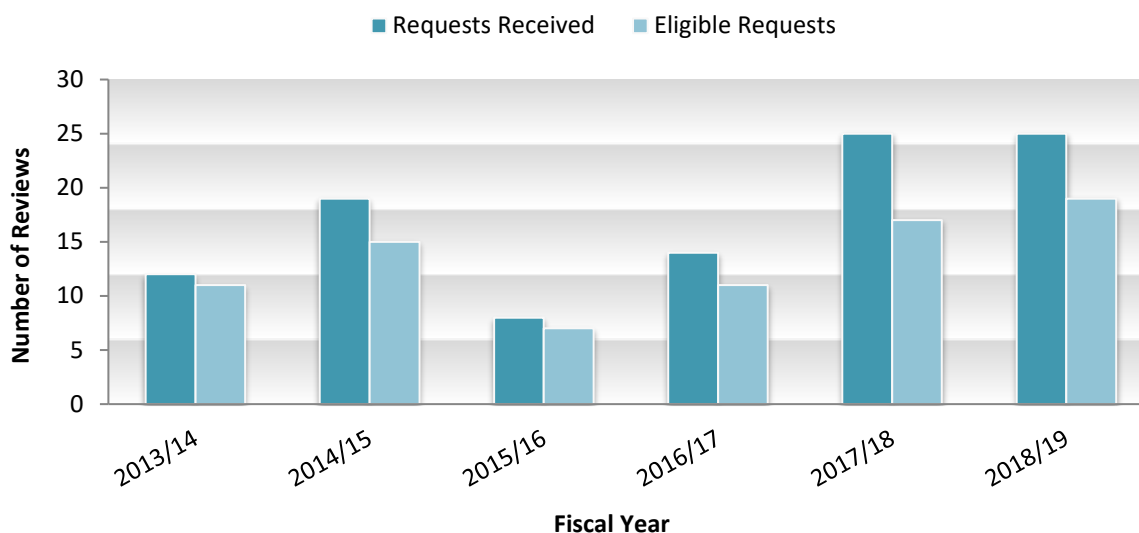
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In 2018/19, approximately one-third of the individuals eligible to request a review by the Merit Commissioner did so.

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Chart 1 illustrates the number of review requests submitted to the Merit Commissioner and the number determined to be eligible since 2013/14.

**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.

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

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The Office of the Merit Commissioner has established for itself a 30-day timeframe in which to issue decisions following receipt of the documents necessary to conduct a review. In 2018/19, the Merit Commissioner's decisions were issued between 9 and 55 days from receipt of the appointment documentation, with an average response time of 29.8 days.

Of the 19 reviews conducted in 2018/19, 17 decisions were issued during the same fiscal year and two were issued early in the 2019/20 fiscal year. Of these 19 reviews:

- all were for permanent appointments;
- four related to in-service competitions and 15 to out-of-service competitions;



- the competitions were held in seven different ministries or organizations, and in various locations around the province; and,
- 17 were for positions covered by the BC Government and Service Employees' Union (BCGEU) collective agreement, one by the BC Professional Employees' Association (PEA), and one by both the BCGEU and the PEA.

In 16 of the 19 reviews conducted, the Merit Commissioner found that the aspects of the selection process related to the employee's grounds complied with the requirements of section 8(1) of the *Public Service Act* and, consequently, upheld the hiring decision. In three reviews, the Merit Commissioner directed a reconsideration of the appointment because the review determined that one or more aspects of the selection process related to the employee's grounds failed to meet those requirements.

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The Merit Commissioner upheld the proposed appointment in  
16 of the 19 reviews completed in 2018/19.

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## Grounds for Review

The following section discusses the common elements or themes that were identified in requestors' grounds and summarizes the situations in which the Merit Commissioner directed a reconsideration. In 2018/19, over 60 per cent of requests for review involved two or more grounds and the remaining 40 per cent focussed on one specific concern.

### Assessment of Education and Experience

Competitions are required to properly consider the factors of merit as required by the *Public Service Act*. Section 8 of the *Act* sets out several factors that are to be considered in determining merit including education, experience, knowledge, skills, past work performance and years of continuous service. One of the most frequently cited grounds for review was that the panel did not adequately or appropriately assess the requestors' education and experience. In particular, requestors were concerned that they had not been given sufficient credit for their education and/or experience or that short-listing was not conducted in a consistent, fair or transparent manner. There were additional concerns that the panel did not consider the applicant's background when determining if they were capable of performing the position, or did not take into account the panel's knowledge about the applicant in making their decisions.

In all cases, the review determined that candidates had been assessed through a tiered process in which the factors of merit were considered at different stages and candidates were eliminated from further consideration if they did not meet the minimum requirements established for each stage in the process.





This assessment approach is a common hiring practice and considered a reasonable and efficient way to conduct a competition that aligns with the principle of merit.

With respect to the requirements for education and experience, these factors are typically considered to be the minimum requirements or prerequisites for advancement in a hiring process in the BC Public Service. This approach places the emphasis on subsequent assessments, such as interviews and tests, where there is a common basis (e.g., level playing field) to differentiate among candidates. In these subsequent assessments, individuals have the opportunity to demonstrate the knowledge, skills and abilities they have acquired through their education and experience in a structured, consistent process that uses the same assessment tools, marking criteria and evaluators. While crediting candidates for experience, point scoring or weighting any factor of merit is always an option, it is not common practice.

The majority of reviews found that education and experience were given sufficient, fair consideration that was consistent with the principle of merit; however, one review found that, with respect to the requestor's grounds for review, this was not the case.

In this competition, the requestor was eliminated at the short-listing stage for not having the required education and for not providing sufficient details and evidence of the required years of experience. However, the review identified that the panel had short-listed other candidates who did not meet the education requirement and who, despite providing limited details regarding their experience, were considered to have met the experience requirements. As a result, the review found that the panel applied a broad interpretation of the criteria and accepted a brief or general description of education and experience for some applicants, but applied a narrow interpretation of the criteria to the requestor's education and experience. Because applicants were inconsistently assessed against the stated education and experience requirements, a reconsideration was directed.

There was also a review in 2018/19 in which the requestor identified a concern that the panel did not consider the position's requirement for a professional designation and, as such, violated the principle of merit. In this case, evidence was provided and substantiated that while the professional association determines the functions that constitute professional practice, the ministry determines the qualifications required for appointment to the position. It is not the role of the Merit Commissioner to determine if a professional designation is required; instead, the Commissioner's role is to consider whether the qualifications are appropriate given the provisions of the *Public Service Act*. In this case, therefore, the review found that the qualifications had been thoughtfully established and that they included the appropriate factors of merit.

### **Interviewing and Testing**

The foundation of a fair assessment process is the establishment of current, relevant and accurately defined knowledge, skills, and/or competencies required for the position, and the use of fair, objective standards against which to assess the candidates for these factors.



## **Marking**

The most common ground put forward related to the marking of tests or interview responses was requestors expressing concerns as to how written tests were marked or how one or more of their behavioural competency responses were assessed. Others indicated concerns that: the assessed requirements were not valid for the position; the panel did not properly record or understand their responses; interview instructions lacked clarity or were misleading; and, competencies were inappropriately chosen.

Within a specific staffing process, it is the panel's prerogative to establish the requirements to be assessed and the associated minimum standards, as long as they are relevant and fairly applied. In all but two cases, the reviews conducted in 2018/19 found that panels used marking guidelines that laid out the criteria or elements required in an acceptable response, as well as standardized scoring schemes with pre-determined target levels or pass marks. In the reviews considered, it was also evident that candidate responses were marked in accordance with the established marking criteria and that there was a reasonable basis for the points awarded. Further, when panel notes, rationales and scores were compared, the reviews found that the marking was reasonably consistent across candidates within each competitive process.

In one case, however, the review found issues with both the written and the interview design and marking. For the written assignment, it was determined that the marking criteria used by a panel had limited relevance to the questions posed and that it was unreasonable for the panel to assess candidates' responses on this basis. For the interview, the panel tried to connect the interview questions to those behavioural competencies listed in the job profile after the interviews were completed. Further, the marking was problematic as two of the questions were designed to assess a specific competency. However, there were no associated behavioural competencies of that nature in the job profile nor were candidates provided with any indication that different or additional behavioural competencies other than those stated in the job profile may be assessed. It was unreasonable to both select which behavioural competency was being assessed until after the interviews were conducted, and to select competencies that did not align with the question posed. A reconsideration was directed.

In another competition, candidates were given a package of material at the start of their interview which included the three interview questions that would be asked, information from the job profile and a list of eight job-related competencies, including the corresponding definitions. The panel's approach was to consider each candidate's entire interview to score all eight competencies and not to award points for each of the three questions. Given this method, it was unlikely that a candidate would have the opportunity to demonstrate their qualifications in all eight competencies being assessed in any meaningful way. Further, while the panel referenced a five-point rating scale and the competency definitions to score responses, they did not use any other marking criteria, interpretive guides or record their rationale for awarding points.



The review concluded the interview process in this competition was neither fair nor reasonable and the Merit Commissioner directed a reconsideration. An effective behavioural interview is one that assesses a reasonable number of competencies and uses a single, appropriate question for each competency to be assessed. This approach provides candidates with the clear opportunity to present an example that speaks expressly to that competency within the context of their past performance and experience. Further, responses should be assessed in accordance with a pre-determined, behaviourally-anchored rating scale in one of two ways: only the behaviours described in direct response to the question posed are considered or, in addition to the behaviours described in direct response to the question, any relevant behaviours demonstrated in other responses are also considered (pattern scoring).

### ***Panel***

There were several grounds that involved concerns about both panel composition and qualifications. In one request, the candidate believed that the panel was not familiar with the work performed by the candidate and that this had a negative impact on their assessment and scoring of the competency examples provided. The review found that panel members do not need to have direct or detailed knowledge of a candidate's work situation or nature of the work performed in order to mark interview responses in a fair and consistent manner. The onus is on the candidate to provide a sufficiently descriptive overview of the referenced situation that enables the panel to assess the response.

Another request raised questions as to whether changes in the panel composition during the interview had negative implications for the marking of the responses. The panel chose to conduct a "round robin" method of interviewing where panel members rotate in and out of the interview to ask and mark specific questions. The panel chair remained constant to ensure consistency and the panels debriefed together to compare examples and marking. The "round robin" interview method is a recognized interview method, and does not lead to inconsistencies if appropriate measures are taken. The actions taken in this process ensured the necessary consistency and fair treatment of candidates.

### ***Administrative Issues***

One candidate expressed a concern that interview information sent in advance advised candidates to expect different types of interview questions and based on this information, the candidate prepared responses for a variety of questions. The candidate felt misled when only behavioural competency questions were asked and believed that their performance in the interview would have been better if different types of questions had been asked. The review affirmed that there is no legislative or policy requirement regarding the provision of materials in advance of an interview or the quality of these materials, rather this is the prerogative of the panel. However, if a panel decides to provide materials, it is essential that all candidates receive the same information with the same amount of time for review and preparation.



Two requests expressed issues with interview scheduling. One requestor stated it was unfair and unreasonable for the panel to schedule interviews on days they were not available. In the other case, the requestor asserted there was insufficient notification of an upcoming exam and the decision not to offer any alternatives was unfair. In these reviews, the Office recognized the challenges of scheduling panel members and candidates for interviews on mutually convenient days within a set period of time and at specific locations and reaffirmed that it is the panel's prerogative to determine how and when any assessments are to be conducted, as long as it is done reasonably.

### **Past Work Performance**

Grounds involving the assessment of past work performance were cited in three of the review requests. In one request, the requestor was concerned that past work performance for the successful candidate was insufficient and potentially biased. In another case, the requestor stated that the supervisory past work performance assessment contained inaccurate information. In the third case, the requestor was concerned that the referee which had been provided was not contacted.

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. Typically, current employees accept and agree that information concerning past work performance might be collected from any public body within the BC Public Service for consideration in assessing an application for an employment opportunity at time they submit their application.

In these three cases, the review found that past work performance had been appropriately assessed in accordance with both policy and legislation. The panels' decisions took into account relevant information provided by supervisory referees who are best positioned to speak to work performance and the references contained sufficient and credible performance observations.

### **Bias in the Selection Process**

A number of requestors raised concerns regarding bias in the selection process. One requestor stated that having untrained members on a panel introduced a procedural bias as they were unable to appropriately apply behavioural interviewing and marking techniques. Others expressed concerns related to bias either in favour of the successful candidate(s) or against the requestor. In one such case, the requestor concluded the outcome was predetermined as this individual believed senior regional management had mandated that the position would be filled by a candidate from outside the district. In another case, the requestor suggested that past work performance was assessed with the intention of finding reasons to eliminate them from consideration.

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 which is objective, reasonable and transparent. The reviews confirmed that in all cases examined, panels were properly established to function independently and were sufficiently experienced in using good staffing practices to ensure an objective, transparent and fair assessment process, free from any manipulation or bias.

## 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.

Commonly, candidates expressed concern when they had previously participated in a separate competition for either an identical or similar position, where the results differed from the competition under review. They questioned how they could be successful or placed on an eligibility list in one process, whereas in another they were not. In conducting reviews, consideration is given to whether consistency has been preserved within the specific competition under review, and not whether consistency has been maintained across different competitions. It is reasonable that the staffing process for the same type and level of position might 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 a process has been unfair.

In one case, it was clear that the requestor was unaware of a supervisor's concerns regarding job performance prior to the competition; however, performance management issues are outside the scope of a staffing review.

Other grounds not within the scope of the Merit Commissioner's review were associated with Section 8(3)(b) of the *Public Service Act*, which is related to diversity and career development in the public service. In accordance with the *Act*, the Merit Commissioner may only conduct reviews based on grounds related to Section 8(1).

## Conclusion

During 2018/19, the Office conducted 19 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.