



Office of the  
**Merit Commissioner**

## Report on Staffing Reviews

# 2019/20

UPHOLDING FAIR HIRING IN THE  
BC PUBLIC SERVICE



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## Executive Summary

The Report on Staffing Reviews 2019/20 outlines the steps in the staffing review process and provides a brief overview of the staffing review activity that occurred at the Step 2 (internal inquiry) and a more detailed examination of the staffing review activity that occurred at Step 3 (review). The report also summarizes the key issues identified in the reviews conducted by the Merit Commissioner at Step 3 of the process.

During the 2019/20 fiscal year, the Merit Commissioner received 22 staffing review requests, including two which were subsequently withdrawn. Of the 20 reviews completed, the Merit Commissioner directed the appointment be reconsidered in two cases. In the other 18 reviews, the Merit Commissioner upheld the appointment decision.

The most common ground for review related to the interviewing and testing stage of a competition which included the methods of assessment, the criteria used to assess candidates, and some administrative issues. Another common ground was the general concern that the hiring process did not assess or improperly assessed all the factors of merit. Often in these cases, requestors were concerned that the approach used to short-list applicants was unfair, unreasonable or inconsistently applied to applicants. Several other grounds involved the assessment of past work performance or years of continuous service. In 2019/20, more requestors than the previous year cited concerns related to bias in the hiring process from a procedural perspective, or against or towards candidates.

The Merit Commissioner directed a reconsideration of one appointment that involved short-listing and in another that involved past work performance. In the former appointment, the panel used a preferred education qualification that was not reasonable given the nature of the position and the duties to be performed. In the latter appointment, the panel relied on the referees to rate candidates' performance which does not provide for an objective or consistent basis of consideration given the variation between job contexts and the individual referee's perspectives.



## 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 Step 1, an 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. If, after receiving feedback, the employee believes the appointment and/or hiring process was not merit-based, the employee may choose to proceed to Step 2 which is to 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, Step 2 is the final level of review. For unionized positions, if the employee applicant is dissatisfied with the response they receive at the second step, the employee 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 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 hiring 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 undertake a review, 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 aspects of the hiring process related to the employee's grounds complied with the requirements of section 8(1) of the *Act* and dismiss the review; or, she may find these aspects did not comply with the *Act*, and 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

Informing unsuccessful applicants of the competition outcome is an important part of the hiring process. Final notification is also a critical precursor to Step 1 of the staffing review process as it ensures unsuccessful employee applicants are provided with proper access to their right to recourse. In the last completed Merit Performance Audit 2018/19, one or more employee applicants did not receive notification of the hiring decision in three percent of the competitions for which the appointment was selected for audit. This is a slight improvement over the previous year in which a lack of notification was identified in four percent of the appointments audited.

With respect to feedback, it is essential that it be both accurate and complete so if an employee applicant chooses to pursue an internal inquiry, they are able to form specific grounds in their request. Given that feedback is typically provided verbally, there can be differing perspectives on what information was exchanged during a feedback session.



In 2019/20, requestors of five reviews expressed concern regarding the feedback they received. In three cases, requestors felt the feedback they received was insufficient, vague or unhelpful. Of the remaining two cases, one requestor was concerned that they had received written instead of verbal feedback, and the other believed that during feedback the hiring manager had agreed that they should have received higher marks than were awarded. In most cases, the requestors and the hiring managers had differing views on the discussions and information that had been provided during the feedback session and in one case, the requestor did not accept the offer for a feedback meeting.

The *Act* grants unsuccessful employee applicants in a competition the right to request a review of the hiring decision and the decision to exercise this statutory right must be without fear of reprisals or repercussions. Although the provision of feedback is not within the scope of the Merit Commissioner's mandate, concerns raised highlight the need for both parties to engage fully in the feedback process. Hiring panels are accountable for their decisions and must be prepared to provide a comprehensive, objective and constructive account of employee candidates' performance in the hiring process; and employees must be willing to engage in and be receptive to the information provided with the intention of using that information to improve their performance in future competitions. 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 88 requests for internal inquiries concluded within fiscal year 2019/20. Of these 88 requests, 27 were deemed ineligible and not considered further and one request was withdrawn. For the remaining 60, an internal inquiry was conducted. In 52 of these cases, the appointment decisions were upheld (i.e., supported) by the deputy minister or head of the organization. In the remaining eight cases, the hiring panel was directed to reconsider the appointment decision as a result of the findings of the internal inquiry.

Of the 52 appointment decisions that were upheld, seven involved competitions for excluded positions which are ineligible for Step 3 of the staffing review process. This left 45 appointment decisions for which a requestor may have sought a further staffing review by the Merit Commissioner.



### Step 3 – Requests for Review

In 22 of the 45 upheld appointment decisions involving a position covered by a union agreement, the unsuccessful employee applicant came forward to request a review by the Merit Commissioner. Two of the 22 requests were withdrawn; therefore, the office conducted reviews of 20 appointment decisions in 2019/20.

The percentage of requests that advanced from Step 2 to Step 3 this year (48 percent) was higher compared to the previous three fiscal years, where the percentage ranged from 30 to 36 percent.

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In 2019/20, almost 50 percent 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 2015/16.

**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 percent of eligible appointments in the BC Public Service.

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The Office of the Merit Commissioner has established a 30-day target in which to issue decisions following receipt of the competition documents necessary to conduct a review. In 2019/20, the Merit Commissioner's decisions were issued between 14 and 42 days from receipt of the appointment documentation, with an average response time of 29.5 days. This average excludes the number of days (ranging from three to 102) that five requests for review were held in abeyance while the position of Merit Commissioner was vacant for a period of approximately four months.

Of the 20 reviews conducted in 2019/20, 17 decisions were issued during the same fiscal year and three were issued early in the 2020/21 fiscal year. Of these 20 reviews:

- all were for permanent appointments;
- all were for positions covered by the BC Government and Service Employees' Union (BCGEU) collective agreement;
- ten involved in-service competitions and ten involved out-of-service competitions; and,
- the competitions were held in nine different ministries or organizations, and in various locations around the province.

In 18 of the 20 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 Act and, consequently, upheld the hiring decision. In two 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  
18 of the 20 reviews completed in 2019/20.

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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 2019/20, 70 percent of requests for review involved two to five grounds and the remaining 30 percent focussed on one specific concern.

### Factors of Merit

The most frequently cited ground for review was that the panel did not adequately assess one or more of the factors of merit – in particular, the requestor's education and experience were not taken into consideration or given sufficient credit in determining if they were capable of performing the position. In



several of these cases, the requestor had either acted in the position or a similar position, and/or believed they were more qualified than the successful candidate.

The *Act* lays out the factors of merit which must be considered, including: education, experience, knowledge, skills, past work performance and years of continuous service. The *Act* also requires public service appointments be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants, placing an additional emphasis on the assessments of these factors. All of the competitions connected to these grounds involved a tiered process in which the factors of merit were considered at different stages and in which candidates who did not meet the minimum requirements established for a stage were eliminated from further consideration. While some requestors had greater or more relevant education and experience than others, the panels considered these qualifications on a pass/fail basis where those applicants who met the minimum requirements advanced. This approach placed the weight of assessment on subsequent tests and interviews where there was a common basis (e.g., level playing field) to evaluate and differentiate among candidates. In these subsequent assessments, individuals were required to demonstrate the knowledge, skills and abilities they had acquired through their education and experience relative to other candidates in a structured process that used the same assessment tools, marking criteria and evaluators.

In a unique case, a requestor questioned the fairness of the decision to consider a preferred education requirement at the end of the hiring process. In this case, the panel had rank-ordered qualifying candidates with the preferred education ahead of those who did not have it, irrespective of their competition score. While the standard approach in the BC Public Service is to assess preferred education and experience requirements at the short-listing stage, there is nothing to prohibit the application of preference for these factors at a different stage as long as it is done so fairly.

The reviews found that education and experience were given sufficient and fair consideration that was consistent with the principle of merit.

### **Short-listing**

A few grounds submitted by employees requesting a review specifically questioned the fairness of the short-listing process. At this stage, applicants are assessed for mandatory qualifications and, in some instances, preferred qualifications. The qualifications assessed are usually education and experience (two factors of merit in the *Act*) and other readily identifiable requirements (e.g., certifications, licenses, training courses) that do not require a qualitative or relative assessment.

In one review, the requestor raised their concern that the panel incorrectly determined the requestor did not possess requirements, whereas in a different review, the requestor was concerned that the panel had incorrectly determined that another candidate possessed a requirement. Both reviews found



the panel determinations as to whether candidates met or did not meet the requirement was based on the evidence and was reasonable. Two other requestors asserted that a preferred qualification used by the panel was arbitrary. One review found that the preferred experience was relevant to the nature of the duties based on the panel's explanation of the importance of that requirement in light of the level and responsibilities of the position. The other review found that the preference for a science-based degree or diploma was arbitrary. The panel's explanation for preferring this type of education was that it would enable the long-term development of individuals for other ministry positions, most of which require higher education. In this instance, the Merit Commissioner determined that the preferred education used to short-list was not related to duties of the clerical position under competition and, as such, directed a reconsideration.

### **Interviewing and Testing**

Concerns with interviewing and/or testing were other frequently cited grounds. The foundation of a fair assessment process is the establishment of relevant and accurately defined knowledge, skills, and/or competencies required for the position, and the use of objective assessment methods and standards against which to assess the candidates for these factors.

#### ***Assessment tools and marking***

With respect to this stage of the competition, most grounds concerned either the appropriateness of interview questions or the fairness of marking. Generally, the reviews found that the panels had developed structured assessment processes focused on knowledge, skills and competencies that were clearly relevant to the duties and that used established marking guides (e.g., ideal answers, key elements) or standardized behavioural competency interpretative guides to assess responses. Further, the reviews determined that the point scores awarded to candidate responses were reasonable based on the expected responses and that the panel had consistently marked candidates.

One employee requesting a review listed several specific grounds related to behavioural interviews. One of these grounds cited an over-reliance on behavioural interviews to the exclusion of assessing knowledge and skills. However, the review reconfirmed that behavioural interviewing is considered a reliable method of assessing candidates' general knowledge and skills (e.g., problem solving, teamwork and cooperation, expertise) as demonstrated through past experience. Further, behavioural interviews, in conjunction with short-listing and the assessment of past work performance, may be entirely appropriate for certain jobs (e.g., where the nature of the position is administrative or supervisory) or when there is a rigorous short-listing process that assesses education and experience indicative of technical knowledge and skill requirements. The other concerns put forth by this requestor involved not following established behavioural interviewing practices such as providing the competencies or interview questions in advance and, not probing candidate responses. While both of these practices may



improve the effectiveness of the interview, neither are mandatory requirements for a merit-based process.

One ground put forth by another requestor was that the presence of a co-worker on the panel negatively impacted their interview performance as the requestor felt uncomfortable answering some questions. In this case, the review found that the inclusion of the co-worker as part of a three-person panel was a rational choice given that individual's knowledge of the job. Interview panels often consist of hiring managers and colleagues known to candidates.

### **Past Work Performance**

Several requests for review had one or more grounds involving past work performance. In accordance with the *Act*, past work performance is a factor 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.

Most requestors were concerned that a referee had provided inaccurate information about their performance. An examination of these references found that the referees were supervisors who were best positioned to speak to the candidates' work, and that the performance observations provided were balanced and credible. There were also grounds regarding the appropriateness of a referee. One requestor believed the referee was not objective; however, the requestor had, in fact, provided the individual as one of three referees and the observations of the requestor's performance were factual and even-handed. In another instance, the requestor had not provided the name of one of the referees contacted; however, they had given permission via the application questionnaire for the panel to collect past work performance information from others in the BC Public Service.

It is not uncommon for employees to have a different view of their performance than that of their supervisor, or than that of the panel who assesses candidates' performance in the context of the vacant position.

One of reviews that cited grounds related to past work performance resulted in the Merit Commissioner directing a reconsideration. In this case, the requestor asserted that the referees had point scored candidate performance instead of the panel, and this practice lacked objectivity and consistency. An examination of past work performance found that a different supervisory referee for each candidate had described and point rated the individual's performance and that these points were worth 60 percent of the overall competition score. The review concurred that the approach used to assess this factor, particularly in the context of the relative importance of the factor based on its weighting when determining the overall competition score, lacked objectivity and consistency. Having individual referees rate performance based on the position the candidate performed when they supervised them and in



accordance with their own approach to performance grading introduces elements of subjectivity and inconsistency. Whereas, having the panel assess and rate performance based on the referees' observations or descriptions ensures the candidate will be assessed in accordance with the requirements of the position under competition and on a consistent basis across candidates.

### **Years of Continuous Service**

A few grounds submitted by employees requesting a review questioned whether years of continuous service were appropriately considered or calculated. Years of continuous is a factor of merit that must be considered and for those employees applying for positions subject to the collective agreement provisions with the BC Government Employees' Union and the Professional Employees Association, it must be assessed in accordance with the provisions laid out in the agreements.

One requestor thought they should have been awarded points for their years of supervisory experience, which exceeded those of the successful candidate; however, this factor does not differentiate between the type of service as long as it is continuous. In another case, the internal inquiry resulted in the reconvening of the panel, with the oversight of the BC Public Service Agency, to re-evaluate interview responses. As a result, the points awarded to some candidate responses increased but years of continuous service was not reassessed accordingly. The review recalculated years of continuous service based on the new final point scores and determined that the final rank order of candidates, and therefore the outcome of the competition, did not change.

In a third case, the requestor, who did not pass the interview and testing stage, stated that according to the *Act* and the union agreements, years of continuous service is a factor that must be assessed for all applicants regardless if they pass or fail a stage. A fundamental tenet of any hiring process is that in order to be considered qualified, candidates must meet the standards set at each stage. Where a candidate fails to meet the standards to pass a stage, they have demonstrated they are not qualified for the job and there is no purpose served in continuing to assess subsequent factors.

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

A number of grounds cited potential bias in the selection process. 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.

Some requestors asserted that a particular candidate had been favoured for various reasons (e.g., acted in role, lived in the same location as the job) or that the panel could not be impartial given a perceived friendship between a member and a candidate. It is not uncommon for panel members to have a working relationship with a candidate(s) and it does not necessarily mean the panel cannot conduct an



objective process where these circumstances exist. It is by adhering to good staffing practices such as convening a multiple person panel, asking the same questions of all candidates, and having established marking criteria, that potential bias is mitigated. All the competitions had these safeguards in place and the examinations of the marking of candidate responses found no evidence that any candidate had received special treatment.

There were also grounds involving bias. One requestor claimed the panel had selectively approached staff with a personal invitation to apply on a restricted opportunity. However, the review determined that all staff in the work unit, including the requestor, were sent an email invitation to apply and that the panel members had alerted and encouraged staff to consider the new opportunity when they encountered employees in the work place. It was another requestor's view that a candidate was advantaged due to an inadvertent error – in this case, a candidate was given the panel's copy of interview questions, which included the marking scheme, and reviewed the document for approximately 30 minutes before the panel realized the mistake and stopped the interview. The panel immediately developed a new set of questions based on the same competencies for this candidate which addressed and removed the potential advantage.

Lastly, a requestor put forth that an interview question favoured a candidate with experience with the subject matter. Assessments are based on the needs of the position as opposed to the experience of the applicants, which can vary significantly. What is of consequence is whether the question is related to the duties to be performed and in this case, the question was relevant.

### Other Issues

There were a few other issues cited in reviews received by the Merit Commissioner. Of interest was one where the requestor considered it unfair to restrict an opportunity to employees of a work unit. However, section 8(4) of the *Act* clearly allows applicants for vacancies to be limited for different reasons, and to different groups including the geographic location or an organizational group. The review found the work unit in this competition had ample potential applicants within the area of restriction.

In another process, the requester was troubled to receive information informally from co-workers about an offer made prior to receiving formal notification of the outcome. The hiring manager advised that the panel members and successful candidates had been asked to keep initial verbal offers confidential; however, someone shared the information. While this was a regrettable situation, the sharing of the outcome of the competition, even if it is still confidential, does not constitute a contravention of merit. Instead hiring managers are encouraged to take all possible precautions to limit the sharing of information which includes issuing the final results as soon as possible.



## Grounds Out of Scope

In several of the requests for review, concerns were raised that were outside the Merit Commissioner's authority and, as such, were not considered. A few of these grounds involved other legislation or investigative processes such as a claim of discrimination based on grounds under the BC Human Rights Code, and the potential for a conflict of interest which falls under the Ethics Framework. Also, a couple of grounds involved a performance management concern and a grievance. These are labour relations issues, outside of the scope of the staffing review process and the Merit Commissioner's mandate.

One other ground involved the *Act*, section 8(3)(b), which is related to diversity and career development in the public service; however, in accordance with the *Act*, the Merit Commissioner is limited to conducting reviews related to Section 8(1).

## Conclusion

During 2019/20, the Office conducted 20 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.