



Office of the
Merit Commissioner

Report on Staffing Reviews

2020/21

UPHOLDING FAIR HIRING IN THE
BC PUBLIC SERVICE



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Executive Summary

The Report on Staffing Reviews 2020/21 outlines the steps in the staffing review process and provides a brief overview of the staffing review activity that occurred at 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 2020/21 fiscal year, the Merit Commissioner received 11 staffing review requests. The two most common grounds for review related to short-listing, and interviewing and testing. With respect to short-listing, most concerns involved the criteria to assess applicants, typically education and experience. With respect to interviewing and testing, the concerns included the methods of assessment, the marking or scoring of responses, and in one instance, technical difficulties experienced during an interview. Several grounds were related to fairness in the hiring process, bias against or towards individuals, and the inconsistent treatment of candidates. Less frequent grounds were related to past work performance, years of continuous service, and administrative issues regarding a competition process. There were several additional concerns brought forward that were outside the scope of the Merit Commissioner's statutory responsibilities.

Of the 11 reviews completed, the Merit Commissioner:

- directed the reconsideration of the appointment decision in two cases.
- upheld the appointment decision in nine cases.

One reconsideration decision found a lack of technical knowledge and skills, as well as a lack of related assessment for a high-level specialized position. The other reconsideration decision found that the education and experience qualifications were poorly defined resulting in unfair short-listing of applicants. Both reviews highlight the fundamental importance of accurately identifying and clearly describing the relevant job qualifications.



Introduction

Since December 2003, the *Public Service Act* (the *Act*) has given employees the right to request a review of an appointment decision. This right may be exercised by unsuccessful employee applicants who are concerned that the process did not comply with requirements under section 8(1) of the *Act*.

Section 8(1) of the *Act* requires appointments to the BC Public Service be:

- based on the principle of merit; and
- the result of a process designed to appraise the knowledge, skills, and abilities of eligible applicants.

While the *Act* does not define “the principle of merit”, it is commonly accepted to mean that appointments are:

- non-partisan; and
- based on an assessment of competence and ability to do the job.

To be eligible for a review of the appointment decision, employees must be:

- working (or on layoff at the time of requesting feedback);
- appointed to their current position under the *Act* (e.g., Order in Council appointments are not eligible); and
- unsuccessful in a competition for a permanent or long-term appointment (over 7 months).

Following notification of the competition outcome, an employee may start the staffing review process. The process has three steps. For each step, the employee must act within a defined time limit before moving on to the next step.





At Step 1, an employee applicant:

- requests feedback or an explanation from the hiring manager as to why they were unsuccessful;
- makes the request within five calendar days of receiving notice of the staffing decision; and
- may choose to proceed to Step 2 after receiving feedback if they are concerned that the appointment decision or the hiring process was not merit-based.

At Step 2, an unsuccessful employee applicant:

- requests that the organization head conduct an inquiry;
- makes the request within five calendar days of receiving feedback or an explanation as to why they were unsuccessful from the hiring manager; and,
- may choose to proceed to Step 3 after receiving the inquiry decision if:
 - they still believe the appointment or the hiring process was not merit-based; and,
 - the appointment decision is for a position in a bargaining unit.

At Step 3, an unsuccessful employee applicant to a position covered by a union agreement who is dissatisfied with the inquiry decision:

- requests that the Merit Commissioner conduct a staffing review;
- makes the request within five calendar days of receiving the organization head's decision; and
- bases their request on the grounds submitted to the organization head at Step 2.

As an officer of the Legislature, the Merit Commissioner is independent from ministries and other government organizations (e.g., BC Public Service Agency, BC Pension Corporation). This independence allows the Commissioner to conduct a fresh and impartial examination of the process that led to the appointment. The review is conducted through an expedited investigation that does not involve a hearing. The Merit Commissioner's decision is final and binding.



Review Process for Each Eligible Staffing Review Request	
We examine	<p>The aspects of the hiring process that are related to the employee's grounds.</p> <p>The facts and evidence obtained from:</p> <ul style="list-style-type: none">• the competition file.• discussions with the employee requesting the review, the panel chair and, where necessary, other relevant individuals, such as hiring panel members.
We consider	<p>The application of relevant legislation, policy, and provisions of collective agreements.</p> <p>The key principles of merit-based hiring:</p> <ul style="list-style-type: none">• open and transparent processes• objective and job-related assessments• reasonable decisions• fair and equitable treatment
The Merit Commissioner decides	<p>To uphold the appointment decision where the aspects comply with the requirements of section 8(1) of the <i>Act</i>, or</p> <p>To direct a reconsideration of the appointment decision, where the aspects do not comply with the requirements of section 8(1) of the <i>Act</i>.</p>

2020/21 Staffing Review Process

Step 1 – Feedback

Providing both proper notification and feedback is essential for unsuccessful employee applicants to fairly consider and access their rights to the staffing review process.

Over the last few years, the annual merit performance audits have observed that almost all applicants have been provided with proper final notification. This is a reassuring indicator that unsuccessful employee applicants are offered the opportunity to seek feedback once they are informed of the competition outcome.

In 2020/21, three requests for a review expressed concerns with the provision of feedback. One requestor was concerned that they had received verbal instead of written feedback and the hiring



manager refused to name which referees were contacted. In the two other cases, requestors felt they had received insufficient information as to why they were eliminated from consideration. In both cases, the feedback provided was general, and in one case, it was provided by an individual who was not part of the panel.

There is no legal requirement in the *Act* or the associated regulation that requires feedback to be provided in writing and, in the BC Public Service, it is usually provided verbally. As this method can result in differing views on the information provided, caution must be taken to ensure employee applicants are given a clear and accurate explanation as to why they were unsuccessful. It is also best if feedback is provided by an individual who was directly involved in the selection process (i.e., the hiring manager or a panel member) as they can offer specific information as to why the candidate did not advance. The quality and sufficiency of information is important as it allows an employee to make an informed decision whether to exercise their right to request a staffing review, and on what grounds to base their request.

Step 2 – Internal Inquiry

According to information provided by the BC Public Service Agency and other public service organizations subject to oversight by the Merit Commissioner, during 2020/21, 88 internal inquiry requests were considered.

Of the 88 requests:

- four were withdrawn; and,
- 28 were deemed ineligible

For the remaining 56 requests, an internal inquiry was conducted.

- In 49 of these cases, the appointment decisions were upheld (i.e., supported) by the deputy minister or head of the organization.
- In seven cases, the hiring panel was directed to reconsider the appointment decision as a result of the findings of the internal inquiry.

Of the 56 appointments where an internal inquiry was completed:

- 12 involved competitions for excluded positions which are ineligible for Step 3 of the staffing review process.

This left 44 appointment decisions for which a requestor may have sought a further staffing review by the Merit Commissioner.

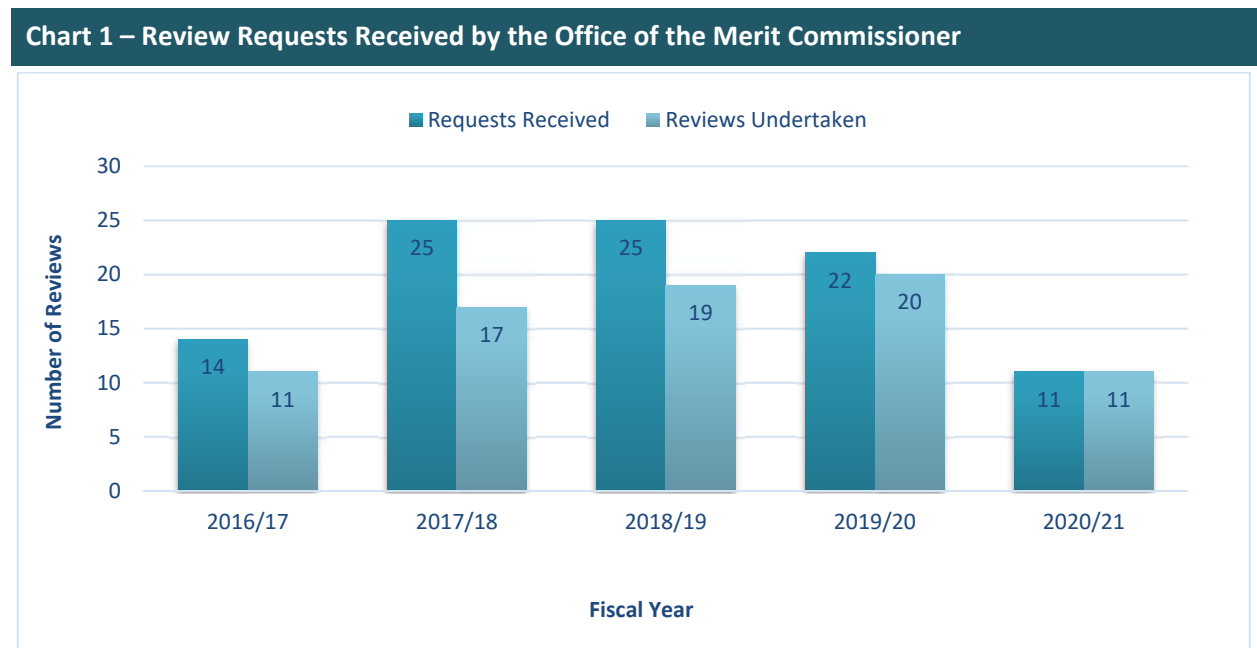


Step 3 – Requests for Review

In 11 of the 44 eligible appointment decisions, the unsuccessful employee applicant came forward to request a review by the Merit Commissioner.

The percentage of requests that advanced from Step 2 to Step 3 this year (25 percent) was lower compared to the previous two fiscal years, where the percentages were 36 percent and 42 percent.

Chart 1 illustrates the number of review requests submitted to the Merit Commissioner and the number of reviews undertaken since 2016/17.



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 very low.

Requests for review were submitted for less than one percent of eligible appointments in the BC Public Service.

The Office of the Merit Commissioner (the Office) has established a 30-day target in which to issue decisions following receipt of the competition documents necessary to conduct a review. In 2020/21, the Merit Commissioner issued decisions:

- between 23 and 43 days of receiving the documentation; and
- with an average response time of 31.4 days.



Of the 11 reviews conducted in 2020/21:

- nine decisions were issued during the same fiscal year; and
- two were issued early in the 2021/22 fiscal year.

Of the 11 requests for review:

- All were for permanent appointments.
- Three involved in-service competitions and eight involved out-of-service competitions.
- The competitions in question were held in seven different ministries or organizations and in various locations around the province.

Results of Merit Commissioner's Reviews

In nine of the 11 reviews conducted, the Merit Commissioner:

- determined 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
- upheld the hiring decision.

In the other two reviews, the Merit Commissioner:

- determined that one or more aspects of the hiring process related to the employee's grounds failed to meet the requirements of section 8(1) of the *Act*; and
- directed a reconsideration of the appointment.

The Merit Commissioner upheld the proposed appointment in
nine of the 11 reviews completed in 2020/21.

While the staffing review process is only available to BC Public Service employees, there are individuals who contact the Office to either express their concerns with the hiring process, or request information or advice. The Office was contacted by approximately 30 individuals who were excluded employees, members of the public or ministry employees concerned about hiring practices within their ministries or organizations. Some were willing to identify themselves while others wanted to remain anonymous. All individuals who contacted the Office received a response either by phone, email or mail. Given the Merit Commissioner's mandate, it was not possible to investigate these concerns. However, the Office takes these concerns seriously and makes efforts to explain the scope of the mandate and to suggest other avenues for redress where possible. For example, the Office of the Ombudsperson deals with concerns involving the administrative fairness of government decisions and the BC Human Rights Tribunal deals with issues concerning discrimination.



Grounds for Review

Requests for a staffing review must be based on the ground(s) that the appointment decision did not comply with section 8(1) of the *Act*. This section requires public service appointments to be based on the principle of merit, and be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. Integral to the principle of merit are: open and transparent processes; objective and relevant means of assessment; equitable treatment of applicants; and reasonable decisions.

There is no limit to the number of grounds an individual may bring forward as part of their review. In 2020/21, of the requests for review received, approximately 80 percent had multiple grounds and 20 percent had only one ground. The following section identifies and discusses the common grounds and those that were noteworthy with respect to the application of merit. This section is organized according to the applicable principles of merit-based hiring.

Approach

A fair hiring approach is open and transparent with the inclusion of key elements to ensure it is merit based. The key elements to be considered are the factors of merit as laid out in the *Act*: the applicants' education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service. Several requests for review had grounds involving the inadequate consideration of one or more factors of merit. These factors must be specified in accordance with the nature of the duties to be performed.

One requestor put forth a ground which has been examined in detail in previous staffing review reports. The requestor was concerned that their experience acting in the position and their years of continuous service were not taken into consideration. In this competition, the panel used a tiered process where 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. Job-related experience was assessed at the short-listing stage on a pass or fail basis. While applicants had to demonstrate relevant experience to advance, no greater weight was given to experience acting in the position. Years of continuous service were assessed at the end of the process and only for candidates who passed all of the previous stages. This is a reasonable and accepted approach to assessing the factors of merit in the BC Public Service.

Of note were two other requests related to the qualifications identified as required for the position. In one, the requestor was concerned that an administrative position had no stated requirements for specific BC Public Service knowledge, or skills in areas such as human resources or records management. The posting and job profile listed qualifications involving administrative, financial, leadership and supervision experience. While there were no technical knowledge or skills stated in these documents, the job profile had several behavioural competencies which are a broad form of knowledge and skills.



The short-listing stage assessed applications for the experience requirements. The interview stage primarily assessed behavioural competencies with one question designed to assess human resources knowledge. The review concluded that while it would have been clearer if the job profile identified the mandatory technical knowledge, skills and abilities required for the position, these requirements were evident through the stated experience qualifications. Also given the nature of the position, the panel's decision to focus on broader knowledge and skills was found to be reasonable.

In the other case, the requestor was concerned that a senior technical position had no stated requirements for related knowledge and skills, nor was there any assessment of these types of qualifications. The mandatory experience requirements stated in the posting and job profile involved project management, and "technical and business" experience. While neither document identified technical knowledge or skills, the job profile listed several behavioural competencies. Following a broad approach to short-listing, candidates underwent a behavioural interview with template questions and a general assessment of past work performance. The only assessment of technical expertise occurred at the short-listing stage, where applicants with a limited or unrelated technical background could advance and ultimately be successful. The review concluded there had been no informative method of evaluating the necessary expertise essential for a senior technical position and as such, the Merit Commissioner directed a reconsideration.

Assessment Methods

Essential to a merit-based hiring process are objective and relevant means of assessing applicants. Each method of assessment must have set standards to ensure individuals are fairly and consistently assessed.

Short-listing

A few requestors questioned the fairness of aspects of the short-listing process. It is regular practice in the BC Public Service to determine which applicants meet the basic requirements through checking applications for mandatory qualifications and, sometimes, preferred qualifications. The qualifications reviewed at this stage are usually education and experience (two factors of merit in the *Act*) and other easily identifiable requirements (e.g., certifications, licenses, training courses).

Of note was a requestor who believed that they met the education requirement and should have been short-listed. In this case, a ministry committee had been established to assess equivalent education. They compared the requestor's degree with the job duties and existing acceptable degrees, and determined that the requestor's degree was not sufficiently aligned. The review found that having subject matter experts use a standardized process to evaluate the relevancy of education, based on the nature of the work, provided a greater level of objectivity and consistency than is generally observed in a competitive process. The Merit Commissioner upheld the ministry's decision.



In another notable example, the requestor asserted that despite submitting an application that demonstrated all the relevant experience necessary for the position, they were not advanced. They were also concerned about the way in which an equivalency was applied. The position required a relevant degree or diploma “or an equivalent combination of education and experience”, and one year of related experience. The way in which the equivalency was stated and the way in which it was applied during short-listing were inconsistent. Further, it was apparent that “related experience” had not been defined prior to short-listing and that what was considered related varied from the time of short-listing through to the staffing review process. For example, administrative functions such as finance were accepted in some cases and not in others. The review concluded that the short-listing process was neither fair nor consistently applied, and the Merit Commissioner directed a reconsideration.

Interviewing and Testing

Concerns with interviewing and/or testing, in particular the marking of candidate responses, were other frequently cited grounds. Typically, knowledge, skills and behavioural competencies required for the position are assessed through various means such as interviews, written exercises, standardized tests, and presentations. For each means of assessment, there must be some form of substantive marking criteria (e.g., behavioural interpretative guides, answer keys, or expected elements of a response).

To address these grounds, the reviews examined the marking processes, not to re-score responses, but to determine if the panel was fair in their assessment. It was apparent in these processes that the panels used structured means of assessing knowledge, skills and competencies that were clearly relevant to the duties and, in most cases, stated in the job profile. Further, the point scores awarded to candidate responses were reasonable based on the expected responses, and answers were consistently marked.

There were two unusual grounds involving marking. In one process, the requestor thought a delay in marking interview responses may have disadvantaged candidates interviewed earlier in the process. The interviews were held over six days with two days of interviews followed by a dedicated marking day. Prior to each marking meeting, each panel member reviewed their notes of candidate responses individually, and then met to award marks through consensus. At the end of the second meeting, the panel reviewed all of their marking to ensure the accurate relative standing of candidates. While panels typically mark immediately after an interview, there is no requirement to do so.

In the other process, a panel member was briefly disconnected from the requestor’s virtual interview due to a technical problem. As a result, the panel member missed hearing the answer to one question. The requestor believed it was unfair for that panel member to be involved in marking a response that they had not heard. The examination of the competition showed that the panel had discussed the problem and decided the best way to proceed was to provide the panel member with the other two panel members’ notes in order that they all could be fully involved in the marking.



For both of these cases, the review concluded that the marking approach was reasonable and that there was no evidence of negative impacts. These competitions also demonstrated the value of a multi-person panel with each member recording their own notes.

Past Work Performance

A few requests included grounds involving past work performance. In accordance with the *Act*, past work performance is one of the factors of merit to be considered in a selection process. Also, the BC Public Service hiring policy requires an assessment of past work performance be conducted with a supervisor or equivalent.

Generally, requestors believed that one or more of their referees had provided inaccurate information about their work 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. 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 assessed candidates' performance in the context of the vacant position.

Of interest was a situation where the requestor understood that if they told the hiring manager they had a complaint in progress about a current supervisor then that individual should not be contacted as a referee. The review found that while it was a good idea to forewarn the hiring manager, it did not mean that the referee would not be contacted. In situations where there are unresolved concerns (such as complaints or grievances), it is important for the hiring manager to take the circumstances into account when making their own informed decision regarding the candidate's performance.

Equitable Treatment

Several grounds cited potential unfairness or bias. A fair competition is one where applicants are treated equitably and reasonably throughout the process.

In one competition, candidates were interviewed in person by the full panel with the exception of one candidate. In the exception situation, one of the three panel members attended virtually because of a scheduling challenge. The requestor believed that the candidate in that instance may have been advantaged, as an interview where not all of the panel members were present in person would be less stressful. Virtual participation of candidates and/or panel members is now a standard practice and considered a reasonable alternative to in-person interviews. In another competition, the requestor was concerned that based on strong comments made by the hiring manager during feedback, there may have been bias in the marking of one of their interview responses. In both competitions, several safeguards were in place to prevent potential bias. These safeguards included the convening of a multiple-person panel, the use of structured interview questions, and the establishment of objective



marking criteria. Further, there was no evidence of bias or unfairness in the assessment of candidate responses.

In a third competition, a requestor's opinion was that it was unfair to post a position out-of-service when there were qualified internal employees. The requestor also questioned how an external candidate without government experience could out-perform an employee in the process. The review found that the *Act* presumes positions are open to the public unless there is a valid reason to limit who can apply in accordance with section 8(4). The review also found that the assessment process was fairly designed to allow all candidates, internal and external, the same opportunity to present their qualifications, and that the successful external candidate had clearly provided stronger responses than other candidates.

Out of Scope Grounds

Several of the requests for review raised concerns that were not within the Merit Commissioner's legislative authority and, as such, were not considered. The following describe some examples.

- In a few cases, employees had issues related to performance management by their current supervisor. These are employee/labour relations matters and do not fall within the scope of a review.
- Another requestor challenged the fairness of the hiring process where the successful candidate had previously been temporarily appointed to the position and was therefore unfairly advantaged. According to the *Act*, temporary appointments of less than seven months do not require a competitive process nor are they within the scope of the staffing review process.
- A requestor had concerns because the competition varied from previous competitions for the same position. There is no requirement in either the *Act* or hiring policy that competitions for the same or similar positions use the same process.
- A requestor included the opinion of a third-party individual as evidence of the requestor's qualifications. The staffing review does not consider the opinions of individuals not connected to the hiring process.

Observations

Over the last few years, the Office has observed increasing issues in staffing reviews involving qualifications required for positions. These concerns have also been observed during audits of appointments.

As factors of merit, the *Act* requires that education, experience, knowledge, skills, and abilities necessary to perform the duties, be considered. Recent observations have found qualifications that were not relevant for the type of position or the opposite, a lack of qualifications necessary for the job.



For example, a review in 2019/20 found that an unrelated degree was used to short-list applicants for an entry-level clerical position, which resulted in a reconsideration of the appointment. In 2020/21, on the other end of the spectrum, a review concluded that there had been no real assessment of the technical expertise required for a senior specialist position, which also resulted in a reconsideration of the appointment. While the Office recognizes that the hiring manager is in the best position to identify the qualifications necessary, these are examples of instances where the required qualifications or the lack thereof, have been clearly unreasonable and inconsistent with the intent of the *Act*.

The factors of education, experience, knowledge, skills, and abilities form the foundation of a merit-based hiring process and must be identified and clearly stated. In addition, with respect to assessment, where a factor is critical to the performance of duties, some form of focused consideration is necessary. This consideration can take a variety of forms such as a rigorous short-listing process, a written test, knowledge or skill-based interview questions, tailored behavioural interview questions, or a specific assessment of past work performance.

Conclusion

During 2020/21, the Office conducted 11 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.

In this report, common grounds and qualification issues, have been highlighted to provide insight into areas of concern for employees, and to provide hiring managers with potential opportunities to improve their hiring practices and communication with applicants.