

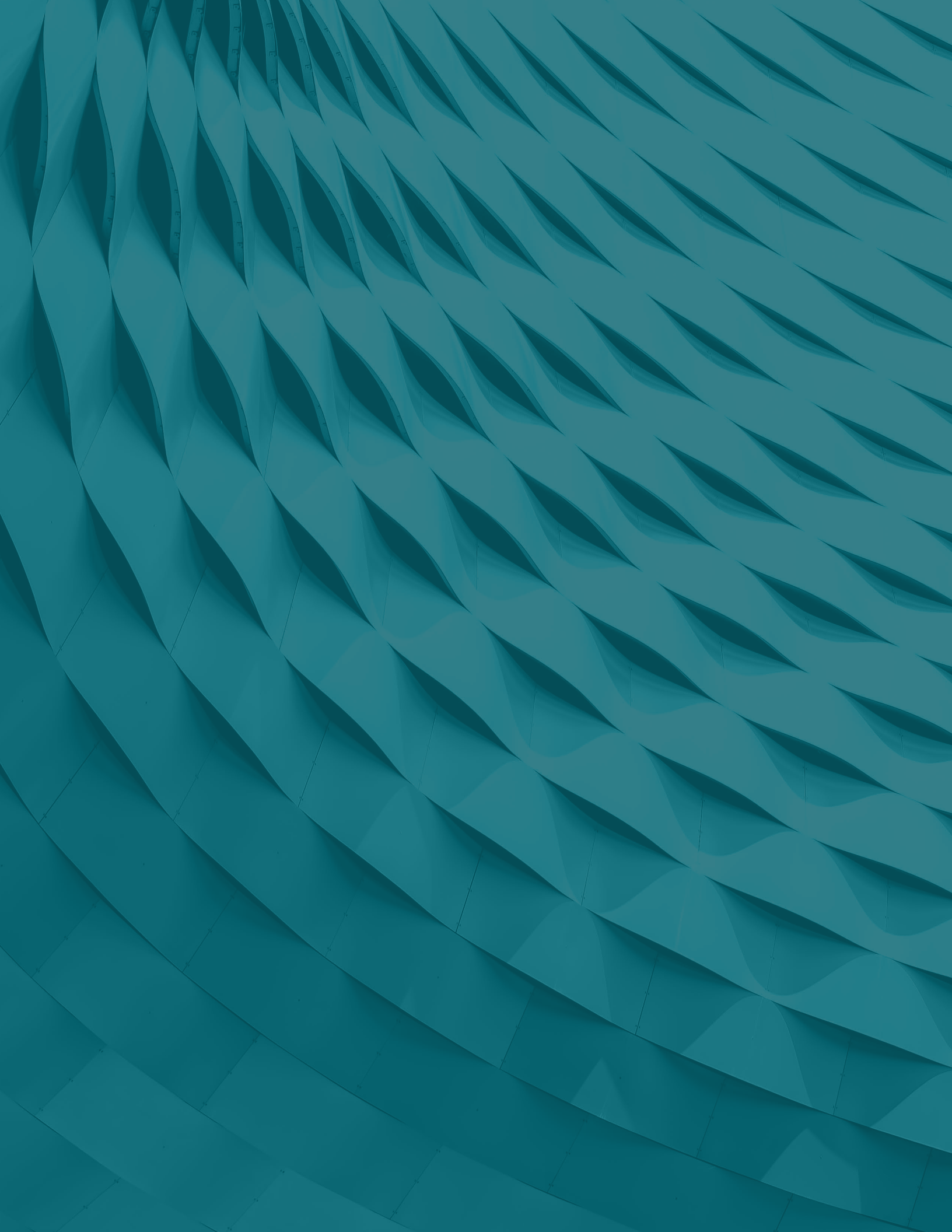


2021–2022  
ANNUAL REPORT



Office of the  
**Merit Commissioner**

Upholding Fair Hiring in the BC Public Service





# Office of the Merit Commissioner

Upholding Fair Hiring in the BC Public Service

The Honourable Raj Chouhan  
Speaker of the Legislative Assembly  
Province of British Columbia  
Parliament Buildings, Room 207  
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker:

It is my honour to present the 2021/22 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

**Maureen Baird**  
Merit Commissioner

Victoria, British Columbia  
May 2022

The Merit Commissioner and her staff would like to acknowledge that we are living and working with gratitude and respect on the traditional territories of the Indigenous peoples of British Columbia.



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# Message from the Merit Commissioner

I am pleased to present my third annual report as the Merit Commissioner.

My report allows me to review how my statutory duties have been performed and how our work contributes to ensuring that hiring decisions in the BC Public Service are fair and dismissal processes are consistent with established policy, practices, and standards.

The role of the Merit Commissioner and the work done by the Office of the Merit Commissioner is established under the *Public Service Act*. A foundation of our Office is its independence, which is a critical element in giving confidence that our work and decisions are fair and impartial.

Our work is an integral element of the accountability, transparency, and fairness of hiring and dismissal processes in the BC Public Service. Our work contributes to high-quality decision making in the hiring and dismissal processes in the BC Public Service, thereby enhancing the professionalism and quality of the public service.

Over the last year, our Office has continued to deliver independent oversight of hiring and dismissal process through its key areas of business as provided in the *Public Service Act*. The first is the independent review of individual appointments as the final step of staffing reviews at the request of unsuccessful employee applicants. The second is the annual Merit Performance Audit by which 280 appointments were randomly selected for detailed analysis and reporting. In addition, since 2018 this Office has been responsible for monitoring the processes by which just cause dismissals are made in the BC Public Service.

This report contains the results of our 2020–21 Merit Performance Audit. This audit function is a cornerstone of our role and occupies a majority of our time and resources. This year there was the highest result for merit-based appointments in the past 10 years. These results are consistent with an overall positive trend we have observed over the last three audit cycles. Whether this was due to an unusual year or sample, or if these improvements are indicative of permanent changes for the better, will be determined by the next few audit cycles. The findings involving the qualifications of the individuals appointed continued to be outstanding. In all but one audit, we found that the individuals whose appointments were selected for audit had the qualifications specified as required for the position. Notwithstanding these positive results, there is room for improvement, and two recommendations were made to deputy ministers and organization heads (for their delegated hiring managers).

Our Report on Staffing Reviews 2020–21 was published last year and included details about the 11 staffing review requests received. This was a decrease from the 20 requests received in the previous fiscal year. These reviews are an important employee right. We are aware that it takes courage for an unsuccessful employee candidate to undertake this process. I am aware of the sensitivity that our staff brings to the review process. Of the 11 reviews completed, I directed the reconsideration of the appointment decision in two cases and upheld the appointment decision in nine cases. The two most common grounds for review related to short-listing, and interviewing and testing. The importance of staffing reviews lies not in the number of reconsideration decisions ordered, but rather, in the reassurance it gives

to unsuccessful employee candidates that the hiring process has been reviewed in detail, whether it is found to have been conducted fairly or directed for reconsideration. The importance to hiring managers and department heads is that they receive detailed feedback from me, through their deputy minister, on their hiring practices. The fact that a hiring process can be subject to independent review reinforces to hiring managers and organization heads that they must have fair and effective selection procedures and practices.

Our third statutory responsibility is to monitor the application of government practices, policies, and standards to eligible just cause dismissals in the BC Public Service. My first report on eligible dismissal processes was in our 2020–21 Annual Report, where 19 dismissal processes were reviewed, individual instances of concern were noted, and recommendations made. This year, 7 eligible dismissal processes were reviewed, and all complied with requirements. This work and the way we do it continues to evolve. We look forward to the review that will commence within the next year as provided for in the legislation.

This year we welcomed two new members to our team as a result of a retirement and a staff member taking a new position in the public service. We reviewed and updated our website to improve its accessibility. We have prepared for significant changes to our computer systems, designed to improve our audit efficiency.



Lastly, I want to thank and acknowledge the staff who assist me in discharging my statutory functions. They are a dedicated group who are committed to the important work of the Merit Commissioner. They have worked diligently throughout the year, ensuring that all aspects of our work are completed to the highest standard and in a timely manner. They have demonstrated resilience and spirit throughout the pandemic. It is a tribute to their professionalism that such a small group can achieve the results described in this report.

A handwritten signature in black ink that reads "Maureen Baird". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

**Maureen Baird**, Merit Commissioner

## **Vision**

Merit-based hiring and fair process in just cause dismissals in the BC Public Service.

## **Mission**

To strengthen and support fairness and transparency in the BC Public Service by:

- Monitoring the application of the merit principle to appointments
- Reviewing the application of government practices, policies, and standards to just cause dismissals

## **Responsibilities**

- Conduct random audits of appointments
- Conduct reviews of the application of merit as the final step in the staffing review process
- Conduct reviews of the processes that result in just cause dismissals

# Who We Are

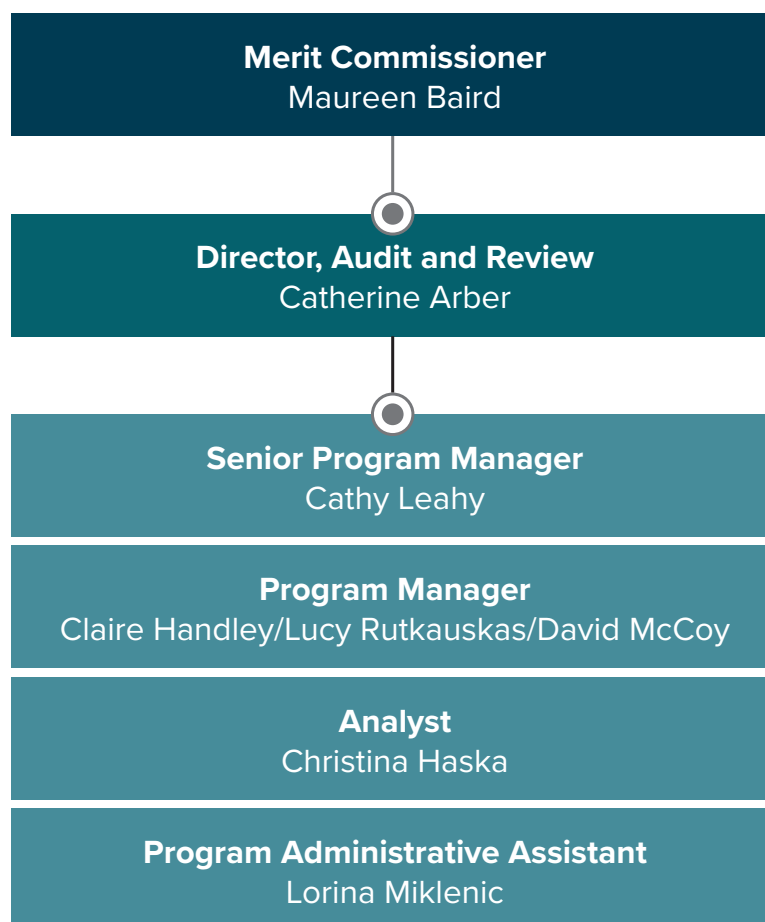
The current Merit Commissioner is Maureen Baird. The role of Merit Commissioner was established in November 2005 in accordance with the *Public Service Act* (the *Act*). The Merit Commissioner is an independent officer of the Legislature, appointed by the Legislative Assembly on a part-time basis for a three-year term.

The Merit Commissioner has two main lines of oversight:

- Monitoring the merit principle in provincial government organizations that have employees appointed under the *Act*
- Reviewing the application of government practices, policies, and standards to just cause dismissals as per the *Act*

The Merit Commissioner is supported by a small team of dedicated staff and contract resources, known collectively as the Office of the Merit Commissioner (the Office).

The Office is **independent** and we are passionate about our work.



All of our work is guided by the principles of **fairness** and **impartiality**. We uphold the same standards of integrity in our performance and accountability that we apply to others. All those who contact the Office are treated with respect.

The actions and decisions concerning hiring and dismissal are varied and complex. A number of other individuals and organizations are directly involved in these functions.

**The roles associated with fair hiring and dismissal processes are outlined in the chart below.**

| Fair Hiring and Dismissal Process Roles   |  |   |
|---|--|---|
| Merit Commissioner  | BC Public Service Agency/<br>Agency Head   | Deputy Ministers/<br>Organization Heads   |
| <p>Monitors the fairness in hiring through audits and independent staffing reviews</p> <p>Reviews processes resulting in just cause dismissals for application of government practice, policies, and standards</p> <p>Makes recommendations that have potential to inform future policy and practices</p> | <p>Sets human resources (HR) policy and accountability framework for HR management</p> <p>Provides staffing and labour relations advice, training, and support</p> <p>Prior to termination action, confirms that appropriate due process has been followed</p> | <p>Ensure that hiring and labour relations processes within respective ministry/ organization follow established practice, policy, and standards, as well as collective agreements</p> <p>Complete internal inquiries for employee applicants who are dissatisfied with feedback following a hiring process</p> |
| Hiring Managers   |  |   |
| <p>Conduct hiring and dismissal processes and make related decisions in a manner consistent with government practice, policies, and standards, as well as collective agreements</p>   |  |   |
| Unions and Employee Associations  |  |   |
| <p>Represent and advocate for interests of employees</p>  |  |   |

# About Our Work

The Office has three central responsibilities:

- Conducting merit performance audits
- Reviewing specific staffing decisions upon request by eligible individuals
- Reviewing processes that have resulted in just cause dismissals

We also conduct relevant special audits and studies.

The following describes our central responsibilities and how we do our work.

## Merit Performance Audits

The Office monitors the application of the principle of merit in the BC Public Service by conducting random audits each year. Permanent appointments and temporary appointments greater than seven months' length are the subject of these audits.

Appointments in any organization that are subject to section 8 of the *Act* may be audited by the Office. Appendix A includes the list of organizations the Merit Commissioner monitors for the application of the merit principle to appointments.

We conduct audits in accordance with generally accepted professional audit standards and methodology. Periodically, we have our audit

approach reviewed by independent experts to ensure our sampling methodology supports our objectives. We also conduct quality assurance reviews of the audits to ensure our results and findings are consistent.

In accordance with section 5.1(a) of the *Act*, the purpose of a merit performance audit is to determine whether:

- (i) the recruitment and selection processes were properly applied to result in appointments based on merit, and
- (ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed.

### Merit-based hiring is an important part of:

- Building a qualified and professional public service
- Sustaining an engaged and productive workforce
- Demonstrating trust-based leadership
- Maintaining public trust

## Appointments on Merit

Section 8(1) of the *Act* requires that, other than in some defined exceptions, appointments to and from within the public service must:

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

## The Merit Principle

The *Act* states that all appointments to and from within the BC Public Service must be based on the principle of merit. The merit principle means:

- Hiring and promoting individuals based on their ability to perform a job
- Appointments are not based on political or personal connections

## Factors of Merit

Section 8(2) of the *Act* lists the matters to be considered in determining merit. These must include:

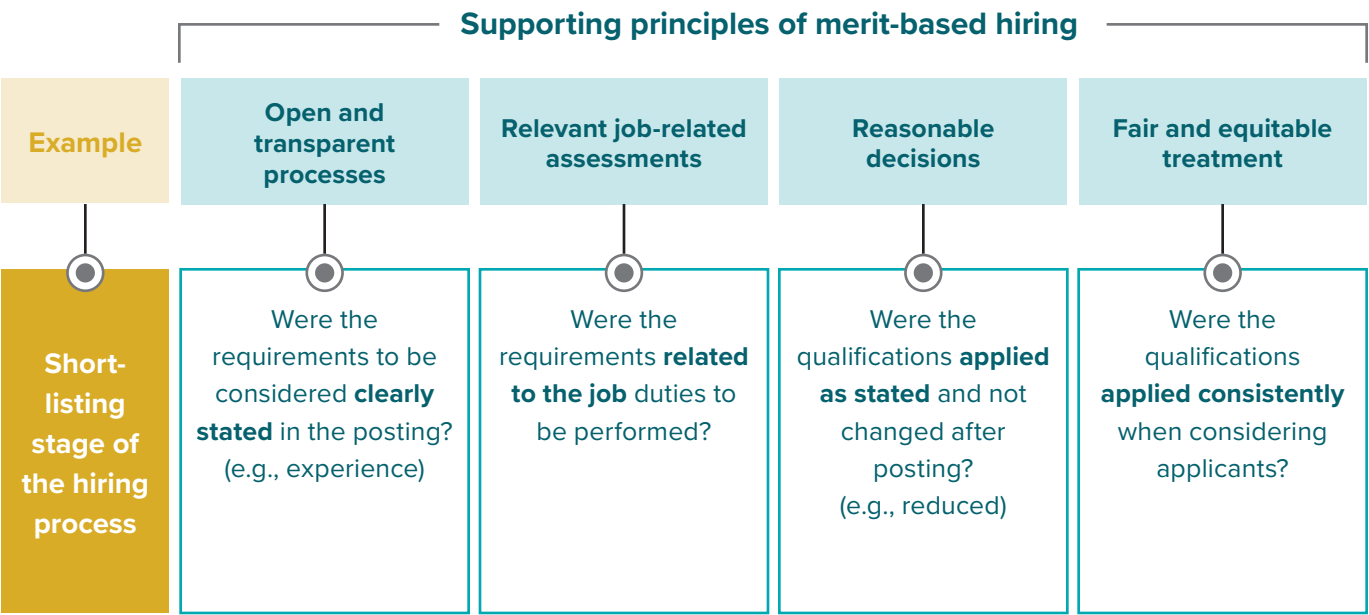
- Education
- Skills
- Knowledge
- Experience
- Past work performance
- Years of continuous service

Our audits follow established practices to determine whether hiring processes have been designed and conducted in a way that leads to merit-based appointments.

| Our Audit Process of an Appointment |   |
|-------------------------------------|---|
| We examine                          | <p>The overall approach used to recruit and select applicants.</p> <p>The five common stages of a hiring process:</p> <ol style="list-style-type: none"><li>1. Short-listing</li><li>2. Interviewing and testing</li><li>3. Past work performance</li><li>4. Years of continuous service</li><li>5. Notification</li></ol> <p>The application of the individual appointed and their performance in the competition.</p>   |
| We consider                         | <p>The qualifications of the individual appointed and their performance in the competition.</p> <p>Compliance with relevant legislation, policy, and the provisions of the collective agreements:</p> <ul style="list-style-type: none"><li>• Open and transparent processes</li><li>• Relevant job assessments</li><li>• Reasonable decisions</li><li>• Fair and equitable treatment</li></ul> <p>The qualifications of the individual appointed:</p> <ul style="list-style-type: none"><li>• Their education and experience according to specified requirements</li><li>• Their marks according to the established assessment standards</li><li>• Their overall ranking aligned with the competition results (offer and eligibility list order)</li></ul> |
| We make                             | <p>Two audit <b>findings</b>:</p> <ul style="list-style-type: none"><li>• Whether the recruitment and selection process was based on merit</li><li>• Whether the individual appointed was qualified</li></ul> <p>One <b>determination</b>:</p> <ul style="list-style-type: none"><li>• Whether there was sufficient and appropriate documentation on file to support the hiring decision</li></ul>  |

The detailed audit program can be viewed at [www.meritcomm.bc.ca](http://www.meritcomm.bc.ca).

Below is an example of how fair hiring principles apply to the short-listing stage.



Below are the definitions for each of the findings and the determination we make for each audited appointment.

| Recruitment and Selection Process Findings  | Individual Appointment Findings  | Documentation Determinations   |
|---|--|--|
| <p><b>Merit:</b> The recruitment and selection process was properly designed and applied to result in an appointment based on merit.</p> <p><b>Merit with exception:</b> The recruitment and selection process contained one or more errors in design of application. The error had no identifiable negative impact on the outcome.</p> <p><b>Merit not applied:</b> The recruitment and selection process contained one or more errors in design or application: the impact on the outcome was known to be negative, and as a result, the appointment was not based on merit.</p> <p>A finding of <b>merit not applied</b> is also made if there is insufficient evidence to demonstrate that the design or application of a process was based on merit.</p> | <p><b>Qualified:</b> The individual, when appointed, possessed the qualifications specified as required for the position.</p> <p><b>Not qualified:</b> The individual, when appointed, did not possess the qualifications specified as required for the position.</p> <p><b>Qualifications not demonstrated:</b> There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.</p> | <p><b>Good:</b> The hiring process was comprehensively documented with minimal or no follow-up required.</p> <p><b>Sufficient:</b> The hiring process was partially documented. Some documents were missing or incomplete and/or some aspects of the process required clarification. There was enough information to complete the audit.</p> <p><b>Insufficient:</b> The hiring process was insufficiently documented. Key aspects of the process were not documented and/or verbal evidence was required to complete the audit.</p> |

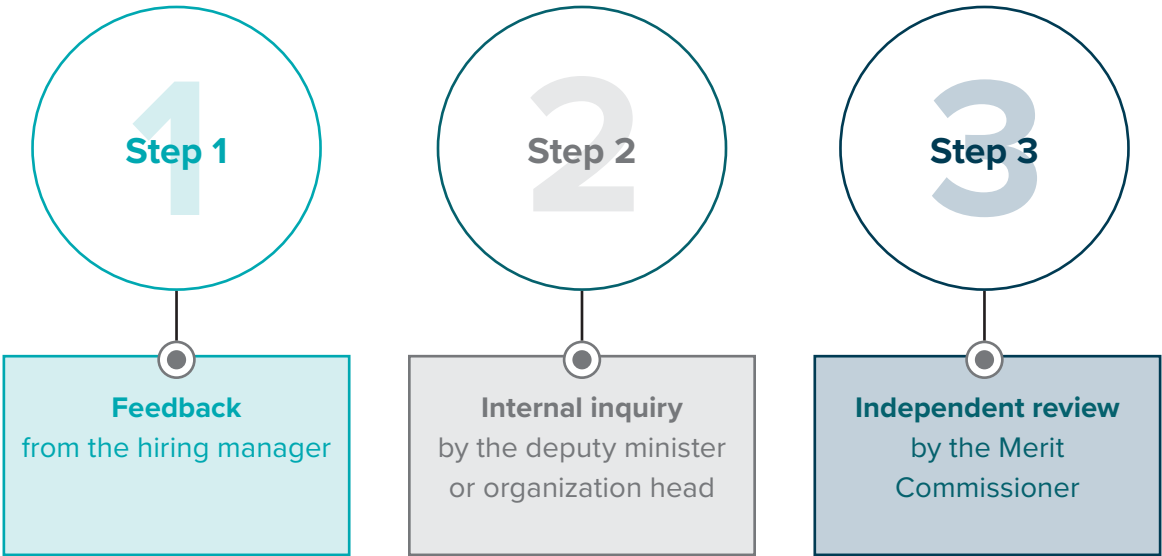
Audit findings and the documentation determination for each appointment are reported to the respective deputy minister or organization head.

A report of overall results is provided to the Deputy Minister of the BC Public Service Agency (Agency Head) and presented to the Legislative Assembly before being posted on our website.

The merit performance audit is a means of informing the Legislature and public of the status of merit-based hiring in the BC Public Service. It also is a means of informing those accountable for hiring decisions (e.g., the head of the Agency, deputy ministers, organization heads, and hiring managers) of issues and opportunities for improvement. In addition, it is a way to acknowledge and support good hiring practices throughout the BC Public Service.

**Staffing Reviews**

The Act provides employee applicants who are unsuccessful in a competition with the right to request a review of the appointment decision. There is a three-step staffing review process, which an employee may initiate when notified of a competition outcome. Staffing reviews are conducted only for permanent appointments or temporary appointments exceeding seven months. For each step, the employee must act within a defined time limit before moving on to the next step.



The third step in the process, a review by the Merit Commissioner, is available to employees who are applicants for bargaining unit positions. If an employee proceeds to this step, the Merit Commissioner conducts an independent review of the areas of concern in the hiring process. For each review:

| Staffing Request Review Process: |   |
|----------------------------------|---|
| We examine                       | <p>The aspects of the hiring process that are related to the employee’s grounds for concern.</p> <p>The relevant evidence contained within the competition file.</p> <p>Information obtained through discussions with the employee requesting the review, the panel chairperson and, where necessary, other relevant individuals, such as panel members.</p>                          |
| We consider                      | <p>The application of relevant legislation, policy, and provisions of collective agreements.</p> <p>Whether the aspects under review meet the principles of merit-based hiring:</p> <ul style="list-style-type: none"><li>• Open and transparent processes</li><li>• Relevant job-related assessments</li><li>• Reasonable decisions</li><li>• Fair and equitable treatment</li></ul> |
| The Merit Commissioner decides   | <p>To <b>uphold</b> 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 <b>reconsideration</b> of the appointment decision, where the aspects do not comply with the requirements of section 8(1) of the <i>Act</i>.</p>   |

The Merit Commissioner’s decision is final and binding.

The target to issue decisions is within 30 days after the Office receives the documents necessary to conduct the review.

# Dismissal Process Reviews

Amendments to the *Act* in April 2018 conferred upon the Merit Commissioner the responsibility to review processes related to eligible just cause dismissals from the BC Public Service.

For a process to be eligible for review by the Merit Commissioner, all avenues of redress or recourse must be expired or exhausted.

- If there is no challenge to a dismissal, the process becomes eligible for review 12 months following the dismissal.
- If the employee chooses to challenge the dismissal, the process becomes eligible for review six months after all redress or recourse proceedings are complete.

The Office considers all dismissal process documentation and relevant information to conduct a full review.

The purpose of the review is to determine whether the dismissal process adhered to all necessary practices, policies, and standards. The purpose is not to determine whether the action met the legal standard for a just cause dismissal.

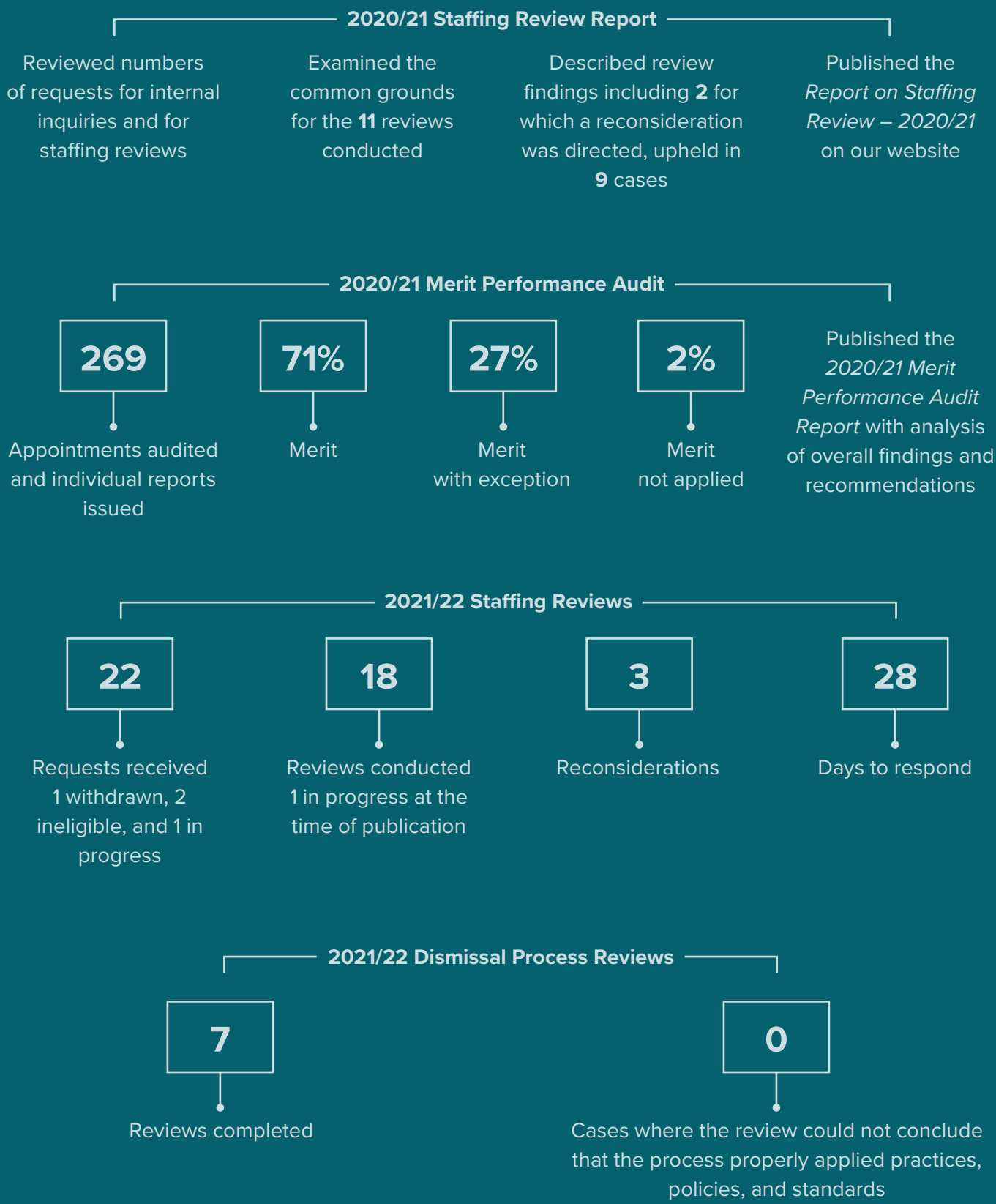
The general process for conducting reviews of dismissal processes is illustrated below.



## Reviews of eligible just cause dismissal processes provide:

- Independent assurance that dismissal processes adhere to all necessary practices, policies, and standards.
- Oversight of government processes and actions.
- Increased accountability.

# The Year in Review



The following sections include a summary of work completed during 2021/22. Detailed reports related to the work completed can be found at [www.meritcomm.bc.ca](http://www.meritcomm.bc.ca).

## 2020/21 Merit Performance Audit Findings

A total of 5,681 permanent appointments and temporary appointments (those exceeding seven months) to and within the public service between April 1, 2020 and March 31, 2021 were identified for sampling. To be able to generalize the results of the audit to all of these appointments, a simple random sample, based on a predetermined sample size, was chosen each quarter from this population of appointments. This resulted in:

- A sample of 280 appointments selected for audit. Of these, 11 were determined to be outside the scope of the audit. These were removed from consideration.
- The remaining 269 appointments were audited.

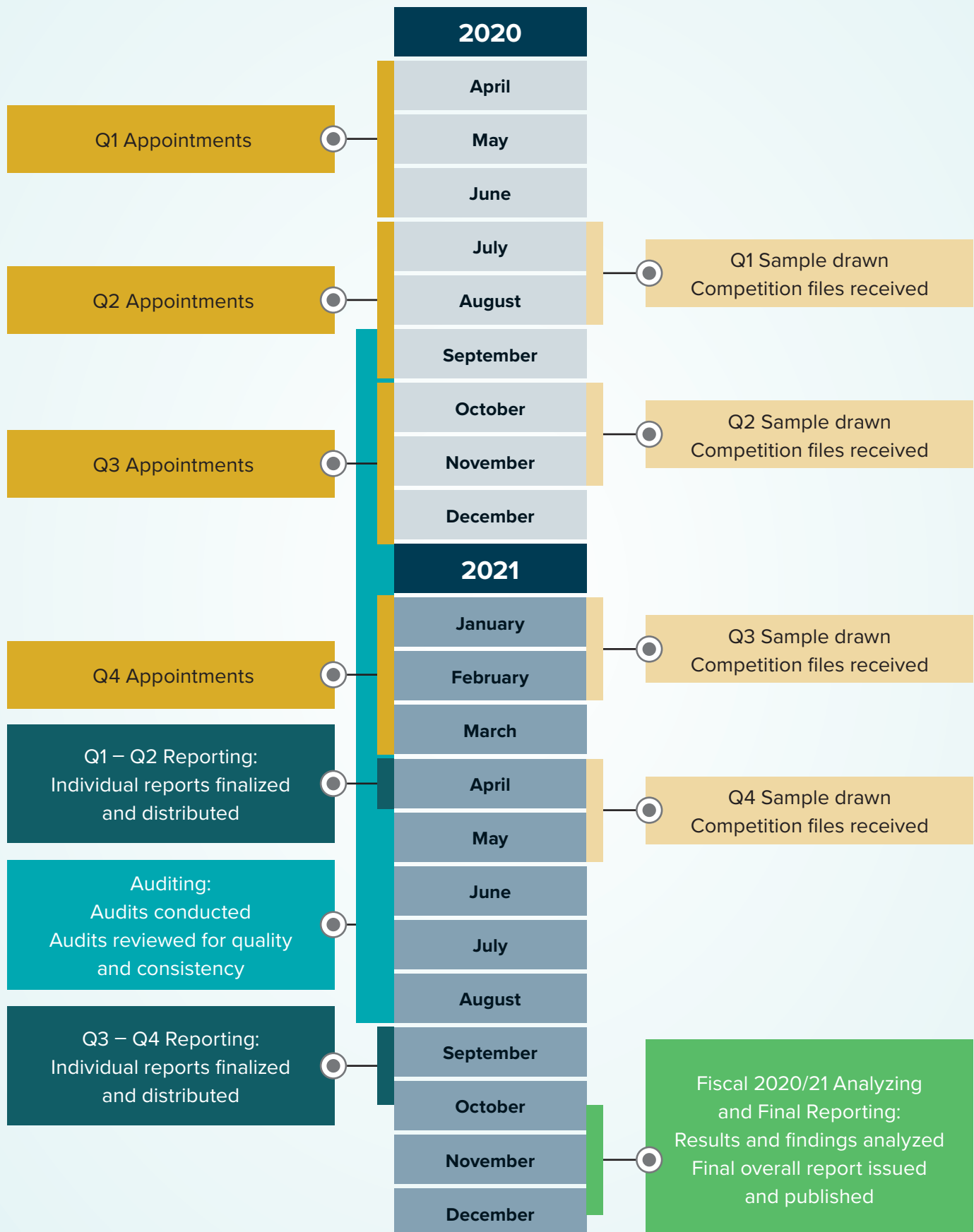
Because of the COVID-19 pandemic, we modified how we collect documentation. The timeframe to provide information was flexible, rather than fixed. We received all materials in time to meet the end-of-year final reporting.

In cases where preliminary findings of merit not applied were made, we provided the responsible deputy minister or organization head with the opportunity to review the draft results and provide additional or clarifying information.

All deputy ministers and organization heads received a final report for each appointment audited within their organization, regardless of the audit finding. They were encouraged to share the results with the responsible hiring managers.

At the conclusion of the audit, we completed a comprehensive analysis and made recommendations. These findings were reported to the Legislative Assembly and the Agency Head in December 2021 and were published on our website. The timeline for the 2020/21 Merit Performance Audit is shown on the next page.

## 2020/21 Merit Performance Audit Timeline



## Individual Appointed

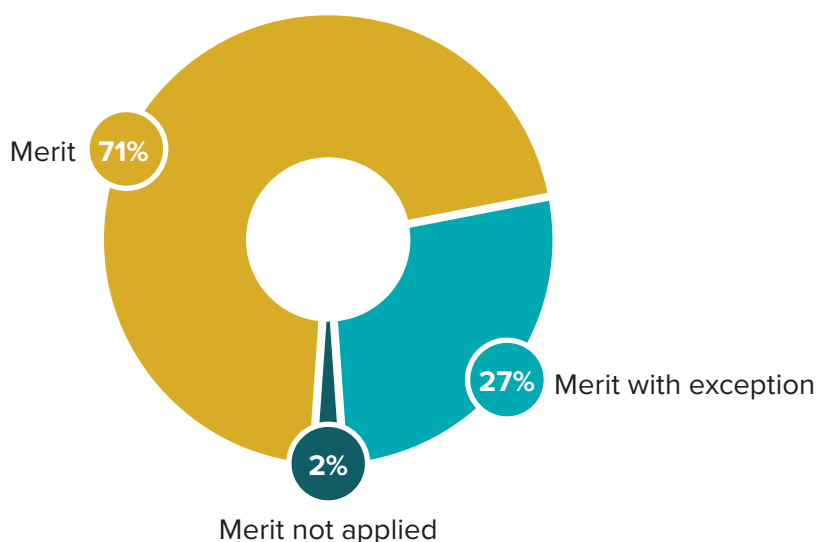
In all cases except one, the individual appointed met the qualifications specified as required for the position at the time of appointment.

For this exception, we made a finding of “**qualifications not demonstrated**” based on insufficient evidence to show that past work performance, a factor of merit, had been assessed for the individual appointed.

There was no evidence that any of the 269 appointments audited were the result of patronage.

## Recruitment and Selection Process

### 2020/21 Overall Recruitment and Selection Process Findings



When compared with the past four years, the proportion of audited appointments with a “merit not applied” finding has varied between 2% and 6%. Of interest is the steady decline in “merit with exception” findings – from 51% in 2017/18 to almost half that number, 27%, in this year. The merit findings showed a corresponding increase over this timeframe.

Note that only one overall recruitment and selection process finding was reported for each audit. However, some appointments had more than one error, and a few had multiple errors.

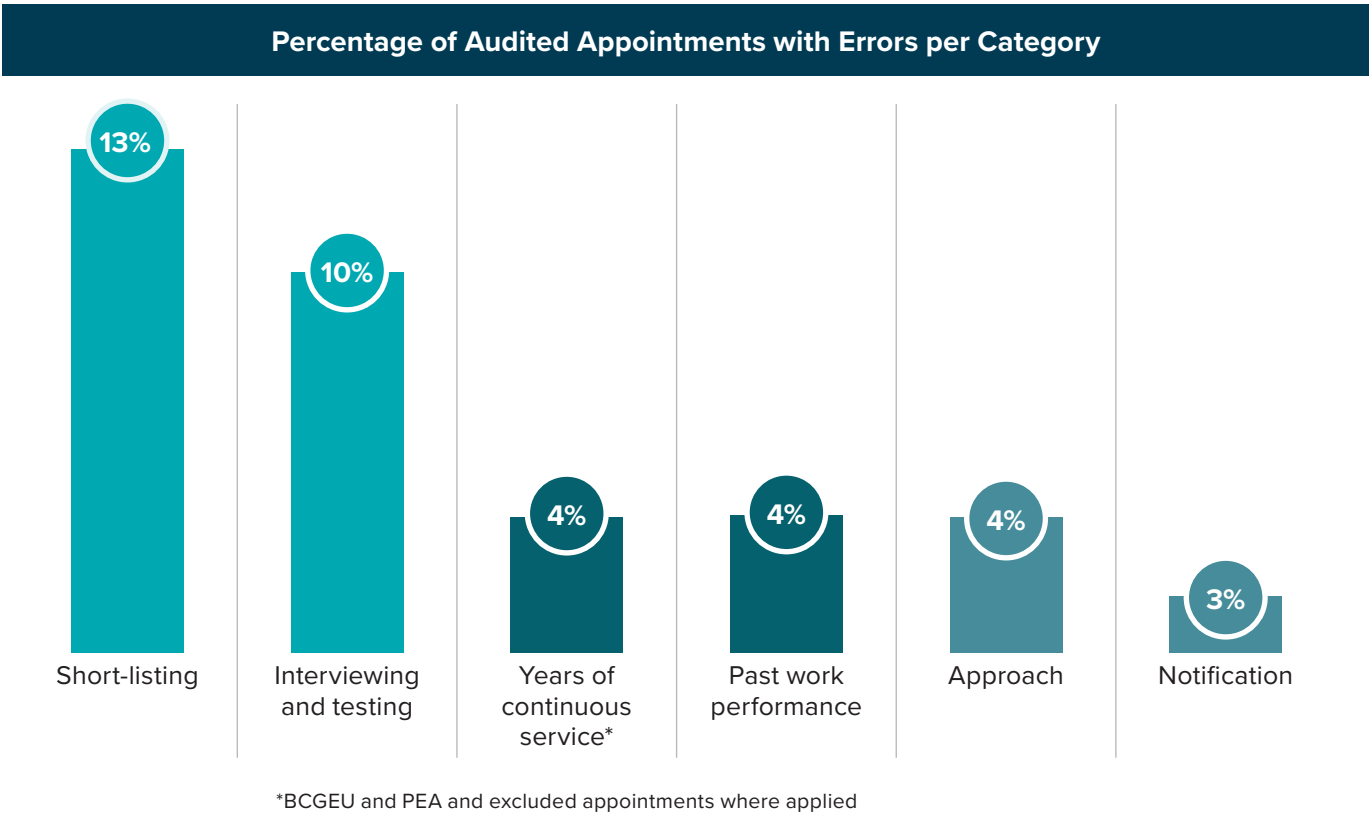
When the above findings are extrapolated to the adjusted total population of BC Public Service appointments for the 2020/21 fiscal year, it is estimated that:

- **3,919** appointments were error free (**merit**)
- **1,405** appointments had errors with no identifiable negative impact (**merit with exception**)
- **120** appointments had errors with a known negative identifiable impact (**merit not applied**)

For each category or stage of the process, errors in design or application are identified and reported. These categories (the overall approach and the five common stages of hiring) are defined below.

| Description of the Categories      |  |
|------------------------------------|--|
| <b>Approach</b>                    | <p>The overall structure of the hiring process and the key elements necessary to support merit-based hiring. Includes:</p> <ul style="list-style-type: none"> <li>• The initial notice</li> <li>• The scope and type of hiring process</li> <li>• The final rank order of qualified candidates</li> <li>• Offers of appointment</li> </ul>   |
| <b>Short-listing</b>               | <p>The initial review of applications (e.g., cover letters, resumes, application forms, and questionnaires) that determines which individuals possess the necessary requirements for further consideration. These requirements typically are education and experience.</p>   |
| <b>Interviewing and testing</b>    | <p>The assessment of qualitative aspects required for the role (e.g., knowledge, skills, and behavioural competencies) through a variety of methods (e.g., interviews, tests, practical exercises, presentations, and role plays).</p>   |
| <b>Past work performance</b>       | <p>The evaluation and/or verification of the requirements (qualifications, standards of conduct, etc.) necessary for the role. At a minimum, a reference from a supervisor or equivalent is required.</p>  |
| <b>Years of continuous service</b> | <p>Credit given for the amount of time an employee has been continuously employed by the BC Public Service. This is required for positions covered by British Columbia General Employees' Union (BCGEU) and the Professional Employees Association (PEA) collective agreements. This credit is calculated at the end of the process using a prescribed formula. While some form of credit may also be given to positions not covered by a union agreement, there is no requirement to do so.</p> |
| <b>Notification</b>                | <p>Unsuccessful employee applicants must be properly informed of the competition's final outcome in order to have access to their recourse rights in accordance with the <i>Act</i>.</p>   |

Illustrated below are the number of appointments with errors in each of the categories as a percentage of all appointments audited.



In comparison with findings over the previous four years, the percentages of appointments with errors decreased or remained fairly consistent for each category. The greatest reductions were in the number of appointments with errors in short-listing and in interviewing and testing.

The majority of competitions used open and transparent processes, and had objective and relevant means of assessment. While there was observable improvement in reasonable decisions and equitable treatment of candidates, these areas were also where most errors were found. It was administrative mistakes combined with panel errors in judgment that posed the greatest risk to fair hiring in 2020/21.

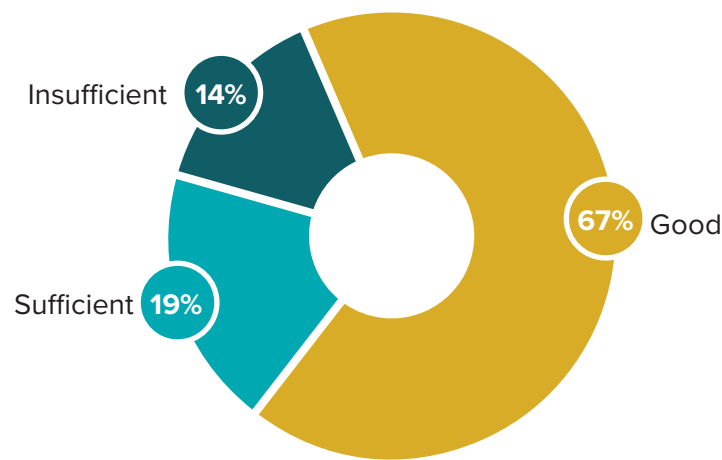
**Of note:**

- The short-listing category had the greatest number of appointments with errors. Most occurred because of decisions to change, lower, or waive mandatory qualifications or requirements.
- The most frequent and serious errors identified across categories were mistakes in either calculating scores, or incorrectly advancing or not advancing candidates. These errors tended to be the ones most likely to have observable negative impacts for competition outcomes.
- An increasingly-observed error was a lack of rationale for the assessment of applicants. This was found in both the short-listing and interviewing and testing categories. In these processes, there were established qualifications or marking criteria and a final assessment result for applicants; however, there was nothing to demonstrate how individual qualifications or responses had been assessed in accordance with these standards. For instance, only a yes or no short-listing decision with no evaluation by qualifications or a supporting rationale; or only a final score for a candidate’s written exercise, with no breakdown by the elements required.

## Documentation

As illustrated below, there were three determinations related to documentation. Compared to the two previous audit cycles, we noted that the overall quality of documentation has improved.

2020/21 Overall Documentation Determinations



## Recommendations

Based on the findings and the most significant issues identified through the 2020/21 Merit Performance Audit, the Merit Commissioner made two recommendations to deputy ministers and organization heads. These recommendations are intended to guide their delegated hiring managers to strengthen merit-based hiring. We recognize that assistance from the BC Public Service Agency may be necessary to support implementation.

Recommendations:

1. Review education and experience qualifications prior to posting to accurately identify which are mandatory and which are preferred for short-listing purposes, and state where alternatives may be acceptable.
2. Verify the accuracy of candidate standing at each stage of the hiring process prior to progressing to the next stage.

## 2021/22 Merit Performance Audit

The 2021/22 audit of appointments made from April 1, 2021 through March 31, 2022 is currently underway.

- Random samples of appointments were drawn for each quarter.
- We are continuing our modified approach to the collection of documentation in response to the COVID-19 pandemic (the timeframe to provide information is flexible rather than fixed).
- Audit reports for 140 appointments audited in the first two quarters were provided to deputy ministers and organization heads in early April 2022.
- We expect to distribute the audit reports for appointments audited in the last two quarters of the fiscal year in the fall of 2022.
- We are targeting publishing the final comprehensive report, including the analysis and summary of the overall audit results, in November 2022.

## 2020/21 Staffing Review Report

In July 2021, we published our *Report on Staffing Reviews 2020/21* on our website.

The report examined the 11 requests for review received over the fiscal year and the Merit Commissioner's findings. A consistently low number of reviews were requested in comparison with the number of appointments made within the BC Public Service – less than 1% of eligible appointments. Further, this fiscal year the percentage of requests that advanced from Step 2 to Step 3 was 25%, which was lower than the previous two fiscal years, where the percentages were 36% and 42%, respectively.

With a small number of reviews, it is not possible to identify any systemic issues; however, the report discusses the common grounds and noteworthy issues. There is no limit to the number of grounds a requestor may raise, and in 2020/21, approximately 80% of requests raised multiple grounds. The following have been identified as general concerns.

- Factors of merit (e.g., education, experience) were given inadequate consideration.
- Essential job-related qualifications were not identified and/or assessed.
- Applicants' relevant qualifications were not recognized during short-listing.
- Candidates' responses in the interviewing or testing stage were not fairly marked.
- Referees provided inaccurate past work performance information.
- One or more panel member was biased either in favour of or against a candidate.
- An administrative procedure was flawed.

Understanding these concerns may help those involved in hiring to ensure fairness and transparency.

In nine of the reviews, the Merit Commissioner upheld the original appointment decision. In the other two reviews, the Merit Commissioner identified serious flaws: one review found that essential job-related qualifications had not been considered; and the other found that an unfair short-listing process had been conducted. In both of these cases, the Merit Commissioner directed a reconsideration of the appointment decisions.

A few additional concerns were raised by candidates. These involved variations between competitions, a third-party assessment of an applicant, performance management issues, and favouritism in providing development opportunities. As these types of issues are outside of the Merit Commissioner’s authority, they were recognized but not considered.

On average, we took 31.4 days to complete each review after we received the required documentation.

## 2021/22 Staffing Reviews

In 2021/22, the Merit Commissioner received 22 requests for review of appointments. The requests came from within 11 different ministries or organizations. One of the requests was withdrawn and two were ineligible as they were received outside the prescribed timeline to request a review. As a result, the Merit Commissioner undertook 19 reviews.

The Merit Commissioner issued 18 decisions in 2021/22.

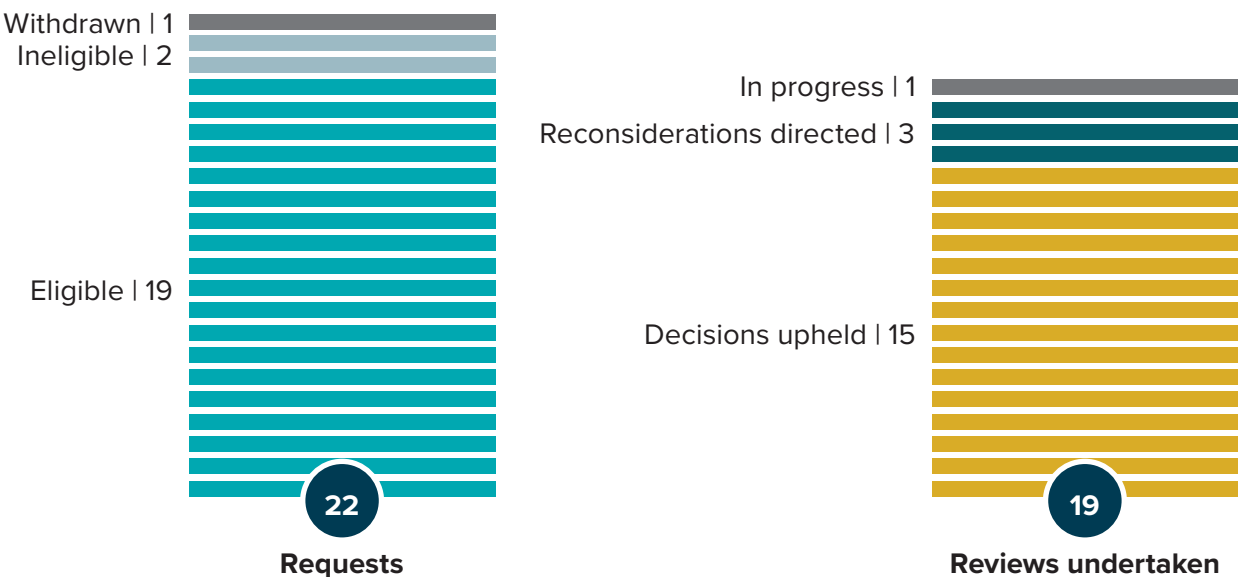
- In 15 cases, the ministry decision was upheld.
- In three cases, an aspect of the selection process related to the employee’s grounds did not comply with section 8(1) of the Act. In these cases, the responsible deputy minister was directed to reconsider the appointments.

At the end of fiscal 2021/22, one staffing review was in progress.

The average time to conclude staffing review requests, from the date the Office received the required competition documentation, was 28 days.

Detailed reports were shared with the employee submitting the request and the responsible deputy minister or organization head.

An analysis of the staffing reviews conducted in 2021/22 will be undertaken and a report published in the summer of 2022.



## Grounds for Review 2020/21

Grounds for review in the fiscal year included:

- Insufficient consideration was given to one or more factors of merit (e.g., experience).
- Short-listing that required application information to be provided in a specific format was unreasonable.
- Interview or testing questions were not appropriate for the position.
- Interview or testing responses were incorrectly marked.
- Interview format or approach was unfair (e.g., not advised prior to the interview of the competencies to be assessed or the questions to be asked, required to attend an interview virtually as opposed to in person).
- One or more panel members was biased either in favour of or against a candidate.

There were several grounds identified by requestors that they had not raised at Step 2 of the process. As a result, these could not be considered. Other requestors cited perceived harassment and bullying, which are outside of the Merit Commissioner's mandate to review.

## 2021/22 Dismissal Process Reviews

The Ombudsperson's report *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters* recommended that the Merit Commissioner be provided with oversight authority of dismissal review processes.

### Recommendation 27

*Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*

By March 31, 2018, government introduce legislation for consideration by the Legislative Assembly to amend the *Public Service Act* to provide the Merit Commissioner with the authority to:

- a. Conduct reviews of all public service dismissals for just cause, to ensure adherence to public service standards and legal requirements. Such reviews are to take place following the completion of all labour relations or litigation proceedings related to the termination.
- b. Publicly report the results of these reviews, along with whatever recommendations the Merit Commissioner considers appropriate in the circumstances.

## Work Completed

The *Public Service Act* states that the Merit Commissioner “is responsible for monitoring the application of government practices, policies and standards to eligible dismissals” and may note particular instances or identify persistent patterns of related non-compliance as well as make recommendations in relation to dismissals.

The current human resources policy, “Just Cause for Terminations”, embodies the related practices and standards for dismissals in the BC Public Service. This policy includes two administrative due process checklists for included and excluded employees, as well as procedural steps for review and approval. As this is the standard to which the BC Public Service holds itself accountable, it also forms the basis of the Merit Commissioner's review of dismissal processes.

The reviews undertaken are done carefully and thoughtfully against each aspect of the dismissal process. The Merit Commissioner observes and reports on any aspect which is considered non-compliant, as well as makes related recommendations on best-practice issues in order to improve future dismissal processes.

Last year provided the first opportunity to receive files and conduct comprehensive reviews. In the 2020–2021 Annual Report, the Office of the Merit Commissioner reported on the reviews conducted for the 19 eligible dismissal processes made since April 1, 2018. Since that time, our internal processes were reviewed and amended and information was shared with the BC Public Service Agency about related observations.

There is flexibility in the legislation concerning the number of dismissal processes which are selected for review. As the process is relatively new, the Merit Commissioner continues to review all eligible dismissals.

In 2021–2022, the Merit Commissioner received seven dismissal files. Documentation supplied by the BC

Public Service Agency continued to be provided in a timely and comprehensive manner.

It is apparent from the review of these dismissal files that, in general, a thorough analysis was undertaken by the responsible parties before a recommendation to terminate the employee was made to the Deputy Minister or equivalent. In relation to monitoring the application of government practices, policies, and standards respecting eligible dismissals, there were no issues of non-compliance and no recommendations made this year.

The review found circumstances where there were opportunities for improvement but which were not sufficient to compromise the fairness of the dismissal process. Two of these situations are detailed below to provide guidance in future cases.

First, one circumstance highlighted the need for co-workers as well as external parties to be aware of the investigation and to be instructed at an earlier opportunity of the importance of confidentiality and to remove the potential for conflicts of interest arising, especially where the subject of the investigation remains in the workplace during the investigation. This practice ensures the integrity of the investigation.

Second, in more than one case, the file documentation was unclear whether the employee's manager contacted the BC Public Service Agency for advice prior to commencing the investigation. Timely expert advice is important given the complexities of investigations and the potential for serious outcomes. Our review did not conclude that the professional advice had not been sought; rather, we could not find sufficient file information to confirm that this consultation occurred.

Practical issues with the administration of the process previously identified were observed again this year. For example, a continuing concern was noted with the level of detail supporting the responses reported to complete the checklist for administrative due process for just cause terminations and investigation best-practice protocols. It is recognized that these practical issues may be addressed over time as, given the lag between the conduct of a dismissal process and the review, any practice changes would not happen immediately.

Although there were considerably fewer dismissal processes reviewed this year, the Office continues to evolve and develop the dismissal review process.

# Budget

The Office's budget and expenditures for the **2021/22** fiscal year are shown below by expenditure type. In February 2022, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to:

- Review results of the Office's work over the previous year
- Establish priorities for the year ahead
- Review budget requirements for the next three fiscal years

The Committee acknowledged the work of the Office and endorsed the Service Plan as it was presented. Subsequently, the Office was allocated a budget of **\$1,377,000 for fiscal 2021/22**. Details of this budget allocation are shown below.

| Budget and Expenditures |                            |                                |                            |
|-------------------------|----------------------------|--------------------------------|----------------------------|
| Type                    | Approved budget<br>2021/22 | Actual expenditures<br>2021/22 | Approved budget<br>2022/23 |
| Salaries & benefits     | \$ 674,000                 | \$ 660,484                     | \$ 856,000                 |
| Travel expenses         | \$ 17,000                  | \$ 4,490                       | \$ 17,000                  |
| Operating expenses      | \$ 414,000                 | \$ 385,212                     | \$ 587,000                 |
| Professional services   | \$ 272,000                 | \$ 161,995                     | \$ 181,000                 |
| <b>Total</b>            | <b>\$ 1,377,000</b>        | <b>\$ 1,212,181</b>            | <b>\$ 1,641,000</b>        |

# Appendix A

## Organizations Subject to the Merit Commissioner's Oversight of Appointments

(as of March 31, 2022)

### Ministries

Advanced Education and Skills Training  
Agriculture, Food and Fisheries  
Attorney General  
Children and Family Development  
Citizens' Services  
Education  
Energy, Mines and Low-Carbon Innovation  
Environment and Climate Change Strategy  
Finance  
Forests, Lands, Natural Resource Operations and Rural Development  
Health  
Indigenous Relations and Reconciliation  
Jobs, Economic Recovery and Innovation  
Labour  
Land, Water and Resource Stewardship  
Mental Health and Addictions  
Municipal Affairs  
Public Safety and Solicitor General  
Social Development and Poverty Reduction  
Tourism, Arts, Culture and Sport  
Transportation and Infrastructure

### Independent Offices

Auditor General  
Elections BC  
Human Rights Commissioner  
Information and Privacy Commissioner  
Merit Commissioner  
Ombudsperson  
Police Complaint Commissioner  
Representative for Children and Youth

### Courts of British Columbia

BC Court of Appeal  
Provincial Court of BC  
Supreme Court of BC

### Other Public Sector Organizations

Agricultural Land Commission  
BC Farm Industry Review Board  
BC Human Rights Tribunal  
BC Pension Corporation  
BC Public Service Agency  
BC Review Board  
Civil Resolution Tribunal  
Community Care and Assisted Living Appeal Board  
Destination BC  
Employment and Assistance Appeal Tribunal  
Environmental Appeal Board  
Financial Services Tribunal  
Forest Appeals Commission  
Forest Practices Board  
Health Professions Review Board  
Hospital Appeal Board  
Independent Investigations Office  
Industry Training Appeal Board  
Islands Trust  
Mental Health Review Board  
Office of the Premier  
Oil and Gas Appeal Tribunal  
Passenger Transportation Board  
Property Assessment Appeal Board  
Public Guardian and Trustee  
Public Sector Employers' Council Secretariat  
Royal BC Museum  
Safety Standards Appeal Board  
Surface Rights Board  
Workers' Compensation Appeal Tribunal



Office of the  
**Merit Commissioner**

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