



Office of the
Merit Commissioner

Service Plan

Fiscal Years

2022/23 – 2024/25

Submitted to
The Select Standing Committee on Finance and Government Services
Legislative Assembly of British Columbia

November 16, 2021



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Overview

I am pleased to present this Service Plan for the Office of the Merit Commissioner (the Office). This plan highlights the work completed over the past year, progress on key commitments and identifies opportunities for the coming years.

In May 2021 the Speaker was presented with the Office's 2020-2021 Annual Report. That report included summaries of: the results of the 2019/20 Merit Performance Audit which involved audits of 267 appointments to and from within the BC Public Service; consideration of 11 requests for staffing reviews; and the results of 19 dismissal process reviews.

Priorities will remain the core lines of business including auditing appointments, conducting staffing reviews, and reviewing eligible dismissal processes. The Office will provide relevant and timely feedback on hiring processes to managers, deputy ministers, organization heads, the BC Public Service Agency, and to employees, to encourage improvement in the system and to uphold fair hiring. Findings related to dismissal processes will be reported to the Legislative Assembly.



Responsibilities

All appointments to and from within the BC Public Service must be made on the principle of merit. Merit means that appointments are made on the basis of an assessment of competence and ability to do the job, and are not influenced by patronage. The role of the Merit Commissioner is to provide independent oversight of these appointments. This oversight role applies to appointments made in accordance with section 8 of the *Public Service Act* (the *Act*).

The application of the principles of natural justice and procedural fairness to all just cause dismissal decisions are important not only to the individuals affected by the decision, but also to the larger interest in the proper and fair administration of public services. The Merit Commissioner provides independent oversight of these processes related to just cause dismissals from the BC Public Service. This role is defined in section 5.11 of the *Act*.

The Merit Commissioner has four specific responsibilities under the *Act*:

- To monitor the application of merit by conducting random audits of appointments and reporting the audit results to the deputy ministers or heads of the organizations in which the appointments were made;
- To provide a review of the application of merit as the final step in a staffing review process for bargaining unit positions;
- To monitor the application of government practices, policies and standards to just cause dismissals by conducting reviews of eligible dismissal processes; and
- To report annually to the Legislative Assembly on the application of the merit principle and the conduct of dismissal processes.

The Merit Commissioner may also undertake special audits or studies of systemic issues related to areas where there may be potential risk to merit-based hiring.

The Office provides credible and relevant information about hiring on which the employer may act to produce positive changes and that supports the long-term goal of building public confidence and a strong consensus that the BC Public Service is qualified and hired fairly according to the principle of merit. The Office provides information related to the conduct of just cause dismissals from the public service to assure the Legislative Assembly and ultimately the public, that all appropriate and necessary steps have been followed prior to the dismissal of a public servant. The results of these “after the fact” reviews will also enable the employer to improve practice where necessary.

An overview of the Office’s structure is provided in Appendix A.



Context

Merit Performance Audit

BC Public Service Workforce

As of September 24, 2021, there were 40,880 employees in the BC Public Service, which is an increase of 1,801 employees since reporting in February 2021. These employees work in ministries and other organizations across the public service.

Employees are appointed under the *Act* on a regular or auxiliary (temporary) basis. They may be unionized, excluded managers or other non-unionized employees. The distribution of the population by these categories is shown below in Charts 1 and 2.

Chart 1 – Employees Appointed Under the *Public Service Act* – By Status (as of September 24, 2021)

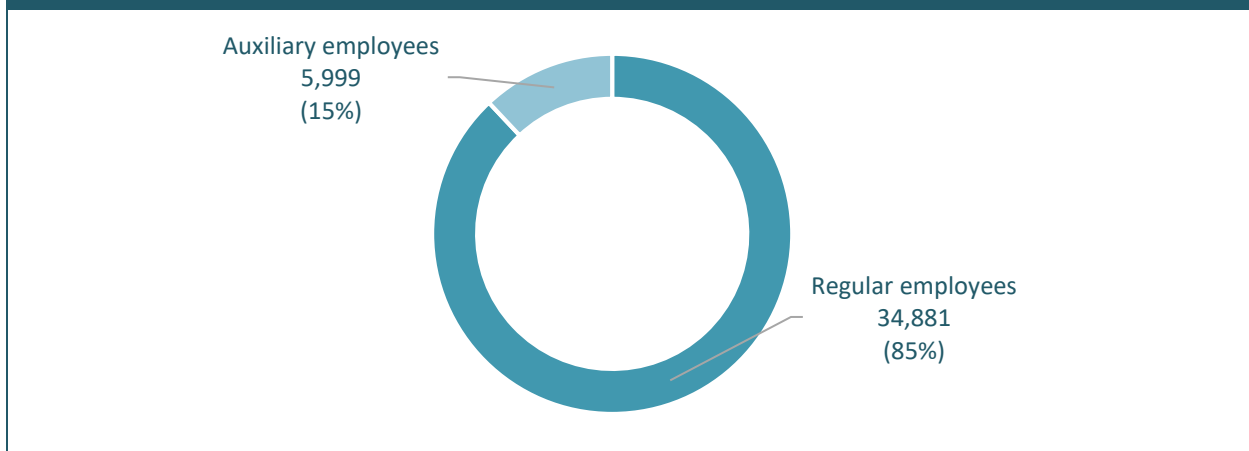
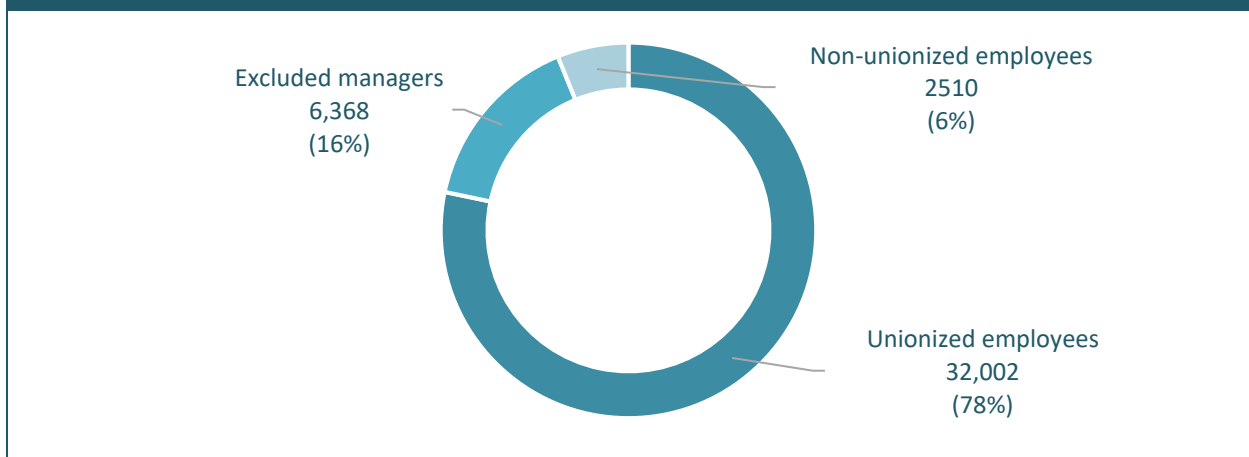


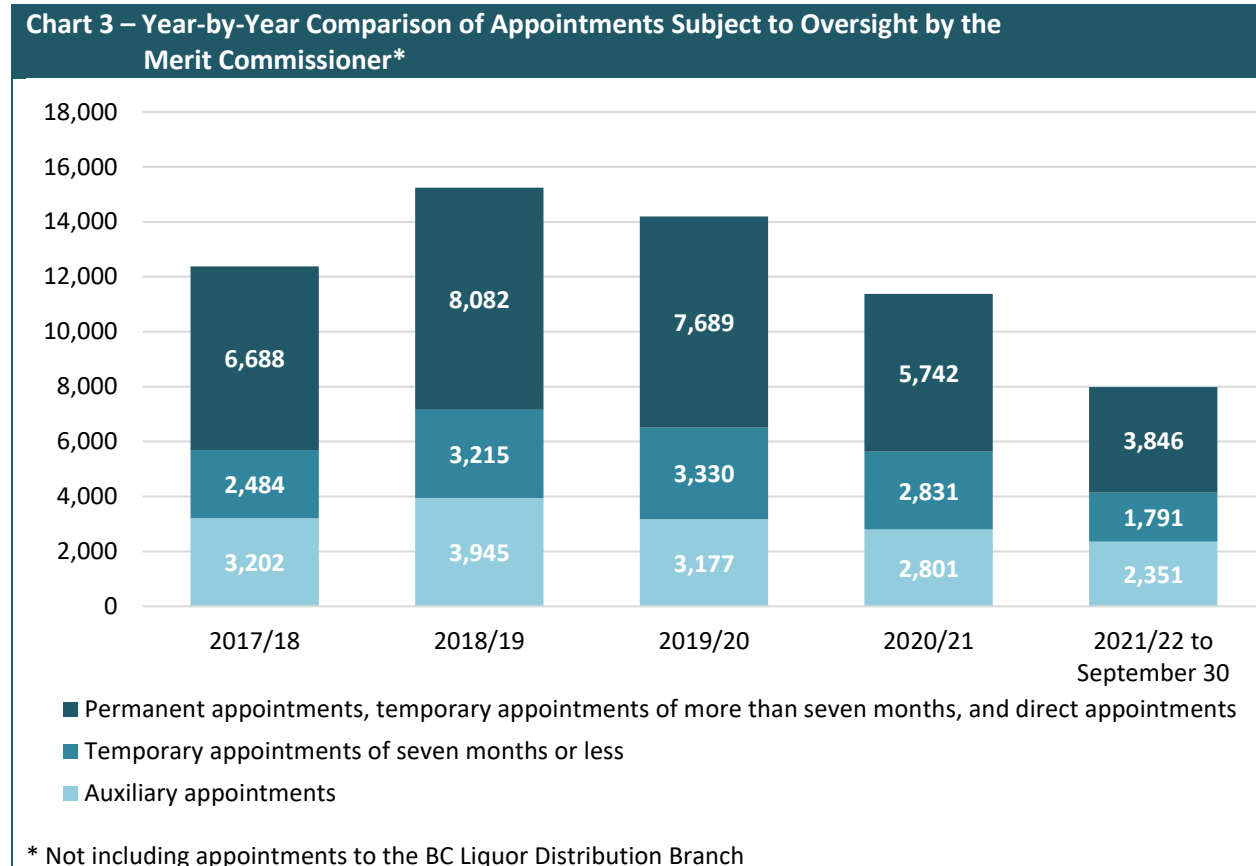
Chart 2 – Employees Appointed Under the *Public Service Act* – By Type (as of September 24, 2021)





Appointment Activity

The Office audits appointments to and from within the public service that are made under section 8 of the Act. A complete list of organizations subject to hiring oversight by the Merit Commissioner appears in Appendix B. Chart 3 shows the total numbers of these appointments, by appointment type, for the last five years.





Indicators of Merit-based Hiring

Merit-based hiring requires the commitment of all public servants. The framework shown in Chart 4 provides an overview of indicators of merit-based hiring.

Chart 4 – Indicators of Merit-based Hiring		
	Indicator	Office of the Merit Commissioner Related Responsibilities
Regulatory Framework	BC Public Service hiring complies with hiring policy, legislation and relevant collective agreement provisions	<ul style="list-style-type: none"> Report annually on the status of BC Public Service hiring to the Legislative Assembly and the BC Public Service Agency
	Organization heads and hiring managers are aware of hiring policy, legislation and relevant collective agreement provisions	<ul style="list-style-type: none"> Public annual report of merit performance audit, special audits and studies, and staffing review findings and recommendations
Hiring Practices	Hiring practices are transparent, fair, and decisions are reasonable and job related	<ul style="list-style-type: none"> Conduct merit performance audits, special audits and studies, and report results Available for and carry out staffing reviews Increase awareness of merit-based hiring practices by reporting out to organizations and to the public by publishing on the Office of the Merit Commissioner’s website Provide comment and/or recommendations on hiring practices
Workplace Culture	Organization heads are seen and believed to be committed to merit-based hiring	<ul style="list-style-type: none"> Report audit findings to organizations Monitor organizational responses to audit and review findings
	Managers and supervisors uphold merit in hiring	<ul style="list-style-type: none"> Perform individual audits and report findings Conduct individual staffing review investigations and report findings
	Use of the staffing review process	<ul style="list-style-type: none"> Provide clear and easily accessible information for employees Monitor and report review process usage
	Employee responses to staffing related questions on work environment surveys	<ul style="list-style-type: none"> Analyze related responses Carry out special studies



Dismissal Process Review

The responsibility conferred upon the Merit Commissioner in April 2018 relates to the review of BC Public Service just cause dismissal processes. The legislation requires that this review of the process resulting in a dismissal for just cause occur only after all avenues to challenge that decision have been exhausted, and a set time period has elapsed. Given these parameters, the workload associated with actual process reviews is variable as the number of dismissals that may occur cannot be predicted, just as it cannot be predicted what, if any, avenue of redress may be pursued and, if so, when such action might be completed.

The legislation does not specify how the Merit Commissioner should conduct the reviews or the number of dismissal processes that must be reviewed; however, in order to provide a robust baseline for comparison going forward, at this time, all eligible dismissals will be reviewed. These reviews will be based on an established protocol based on best practice, relevant legislation and policy guidelines.

Indicators of Proper Process related to Just Cause Dismissals

Chart 5 – Indicators of Proper Process related to Just Cause Dismissals		
	Indicator	Office of the Merit Commissioner Related Responsibilities
Regulatory Framework	Dismissal policies are consistent with government processes and standards	<ul style="list-style-type: none"> Report annually on the results of monitoring the application of government practices, policies and standards respecting eligible dismissals to the Legislative Assembly
Dismissal Processes	Dismissal processes adhere to government practices, policies and standards, and follow established protocol	<ul style="list-style-type: none"> Conduct reviews of eligible dismissal files to assess compliance Identify any gaps in compliance and any systemic issues Report annually to the Legislative Assembly on overall results of these reviews and make broad recommendations as appropriate
Workplace Culture	Organization heads and the BC Public Service Agency apply good practice in the conduct of just cause dismissals	<ul style="list-style-type: none"> Make broad recommendations to the BC Public Service Agency where it is identified that improvements to practice could be made



Performance Measures and Targets

The Office establishes and publishes performance measures and targets in a number of areas; holds itself accountable for respecting and achieving these targets; and examines practices and procedures regularly with a view to continuous improvement.

Merit Performance Audit

The goal in the annual merit performance audits is to have a sample size that is sufficiently robust to allow the audit results to be confidently generalized to the population of all appointments made within the same time period.

Detailed audit results are reported to deputy ministers, heads of organizations, and the Agency Head. Summary results are contained in the Merit Commissioner’s annual report to the Legislative Assembly which is publicly available on the Office’s website. Detailed analyses and a final report are also made available on the website.

Performance Measures	Target and Results					
	2019/20		2020/21		2021/22	2022/23
	Target	Result	Target	Results	Target	Target
Generalizable audit results	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling	Simple random sampling
Confidence level	95%	95%	95%	95%	95%	95%
Margin of error	6%	6%	6%	6%	6%	6%
Report audit results to organization heads and the BC Public Service Agency within six months of audit period	September 2020	October 2020	September 2021	October 2021	September 2022	September 2023
Publish annual audit findings within four months of reporting individual results	November 2020	December 2020	November 2021	expected December 2021	November 2022	November 2023



Special Audits and Studies

Results of special audits and studies are reported as soon as possible so that follow-up action may be taken as required and appropriate. Information is made public through the Office’s website.

Performance Measures	Target and Results	
	2020/21 Eligibility Lists	
	Target	Results
Report findings of special audits and studies to organization heads and the BC Public Service Agency within 30 days of conclusion, where applicable.	March 2021	March 2021
Publish Information on website within 60 days of conclusion	March 2021	March 2021

Staffing Reviews

It is important to the employer, and to the employee who may request the Merit Commissioner to undertake a review of an appointment decision, that a thorough review takes place and a timely decision is rendered.

Performance Measures	Target and Results			
	2020/21		2021/22	2022/23
	Target	Results	Target	Target
Complete reviews within an average of 30 days	30 days	31 days	30 days	30 days



Dismissal Process Reviews

The results of the dismissal process reviews are reported annually.

Performance Measures	Target and Results					
	2019/20		2020/21		2021/22	2022/23
	Target	Results	Target	Results	Target	Target
Conduct reviews of all eligible dismissal processes	100%	0%	100%	100%	100%	100%
Report activities annually to Legislative Assembly	May 2020	May 2020	May 2021	May 2021	May 2022	May 2023

Progress on Key Commitments

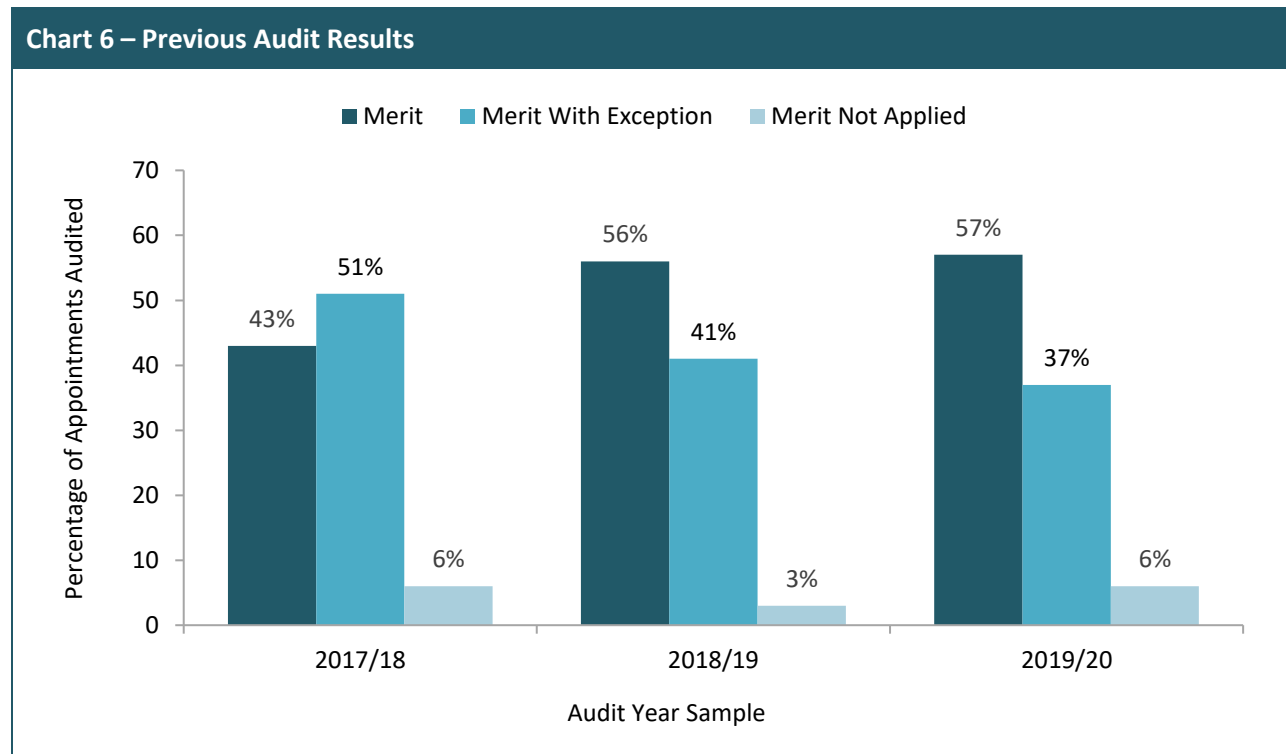
Merit Performance Audit

For 2020/21, an audit was undertaken of 269 appointments, where findings can be generalized to all appointments of the same type across the BC Public Service for that fiscal year. The appointments were selected randomly from organizations across the public service and from all employee groups and levels.

Organization heads received detailed reports and the Agency Head received the overall results of the audit in October 2021. The overall report of the analyses of audit results and recommendations to address identified areas of weakness or concern is planned to be provided to the Legislative Assembly and released publicly in December 2021.



Chart 6 reflects the merit performance audit results for the past three reported audit cycles.



Staffing Reviews

During the 2020/21 fiscal year, the Office received 11 staffing review requests. Of the 11 reviews completed, two resulted in a directed reconsideration of the appointment. In the other nine reviews, the appointment decision was upheld.

The most common grounds for review involved two stages of the competition process and bias. At the short-listing stage, requestors' grounds questioned the relevancy of the criteria used to short-list or the consistency of its application to applicants. At the interviewing and testing stage, grounds concerned the fairness of the types of qualifications assessed, the marking of responses and some administrative issues. Another common ground involved bias – most of these concerns were about whether other candidates had been advantaged by a perceived flaw in the process. In addition, grounds were raised about whether the hiring process had properly assessed the necessary factors of merit (knowledge, skill, and experience) and the assessment of past work performance and years of continuous service.

The average time taken to complete the reviews and respond to the requests was 31.4 days following receipt of the required documentation. Therefore, on average, the 30-day timeframe the Office has established for itself was slightly exceeded: individual decisions were rendered between 23 and 43 days from receipt of the appointment documentation. There is no way of predicting the number or



complexity of staffing reviews received in a year; for the current fiscal year, as of October 31, 2021, the Office had received 20 requests for review.

Reviews of Dismissal Processes

A report to the Legislative Assembly on actions taken to establish the review program and the number of files reviewed was included in the 2020-2021 Annual Report released in May 2021.

In 2020/21, a total of 19 dismissal process reviews were conducted. Overall, 17 files complied with the application of government practices, policies, and standards. There were some circumstances which were considered to be outside of best practices but in which the fairness of the process was not compromised. For two reviews, there was insufficient evidence to confirm that the process properly applied government practices, policies and standards. There were some circumstances which did not compromise the fairness of the process but were considered to be outside of best practice. For the other two reviews, there was insufficient evidence to confirm that the processes properly applied practices, policies and standards.

Special Study of Eligibility Lists

Over the last several merit performance audits, the Office has observed consistent use of eligibility lists as well as a number of recurring issues associated with the use and establishment of eligibility lists that either compromise the merit of the selection process in a direct and observable way or create a potential risk to merit-based hiring. The Office has reviewed the last three years' audit results to assess the frequency, type and severity of issues or errors attributable to the establishment and use of these lists. This study was reported in March 2021.

Priorities for Fiscal 2022/23

The following sections detail the 2022/23 priorities for the Office. In addition, the Office will be dedicating resources to transition to a new database system.

Merit Performance Audit 2021/22

An audit of appointments made in 2021/22 has commenced. A random sample of appointments made throughout the province, in all organizations, in bargaining unit and excluded management positions, and all occupational groups will be audited. The sample size is fixed to a robust value to not only ensure results are valid and generalizable, but also to enable efficient management of the audit activity and associated costs. The 2021/22 audit will be composed of a fixed sample size of 280 (70 appointments



per quarter). The results from this merit performance audit are targeted to be reported in the early fall of 2022.

Staffing Reviews

The Office gives priority to conducting staffing reviews when requested. Only unsuccessful employee applicants for bargaining unit positions are eligible to request a review by the Merit Commissioner. As the appointments of the successful candidates to the positions in question are normally not confirmed until the Merit Commissioner's decision has been received, the Office makes every effort to respond to requests for review within a 30-day timeframe.

Dismissal Process Reviews

The Office will continue to review the available complete dismissal review files which are provided by the BC Public Service Agency on a regular and efficient schedule dependent on eligibility of the file. The 2021/22 annual report will include the findings and any recommendations for reviewed files. Efforts continue to finalize the protocol with the Ministry of the Attorney General.

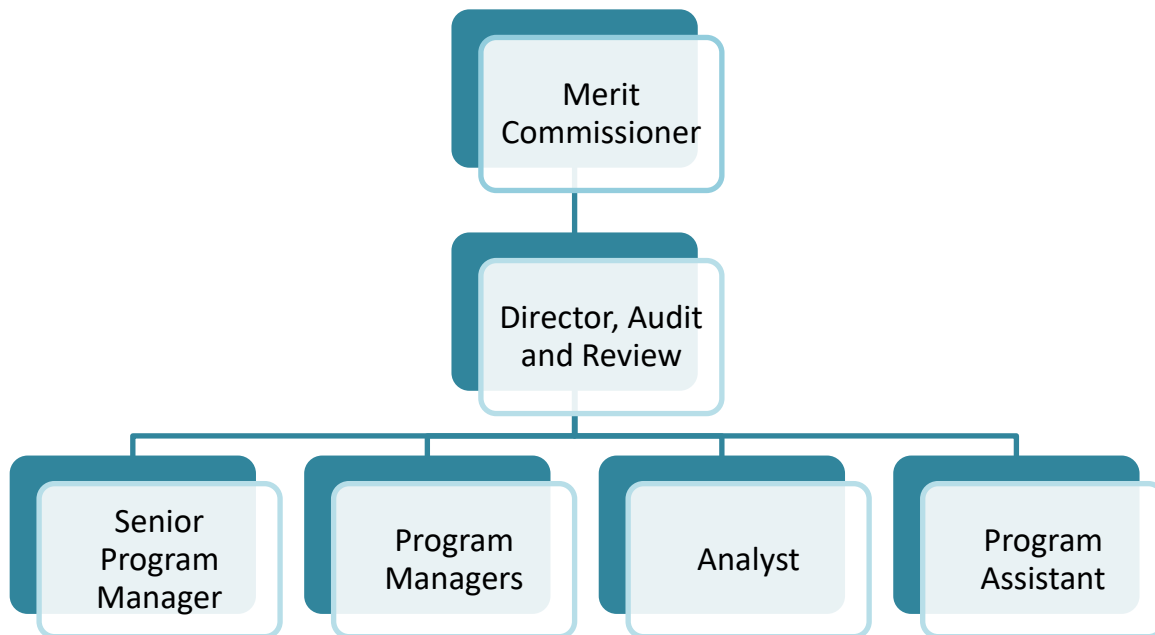
Special Audits and Studies for Fiscal 2021/22 and Beyond

The Office will continue to focus its resources on its mandated responsibilities of conducting merit performance audits, conducting staffing reviews, and conducting reviews of dismissal processes. The results of the core activities guide the Office in determining where special audits or studies may be appropriate to address potential areas of risk to merit-based hiring or dismissal processes.



Appendix A

Office Structure





Appendix B

Organizations Subject to the Merit Commissioner's Oversight of Appointments

(As of March 31, 2021)

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 Development and Innovation
Labour
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
Auditor General for Local Government
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
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