



Office of the
Merit Commissioner

Service Plan

Fiscal Years

2023/24 – 2025/26

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

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Overview

This Service Plan highlights the work completed by the Office of the Merit Commissioner (the Office) over the past year and progress on key commitments. It also identifies opportunities for the coming years.

In May 2022, the Speaker was presented with the Office's 2021-2022 Annual Report. That report included summaries of the results of the 2020/21 Merit Performance Audit of 269 appointments to and from within the BC Public Service, consideration of 22 requests for staffing reviews, and the results of seven dismissal process reviews.

Priorities will remain the core lines of business including auditing appointments, conducting staffing reviews, and reviewing eligible dismissal processes. To encourage improvement in the system and to uphold fair hiring, the Office will provide relevant and timely feedback on hiring processes to deputy ministers, organization heads, the BC Public Service Agency, managers and employees. 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 the 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 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 post-termination reviews will also enable the employer to improve practice where necessary.

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



Context

Oversight of Merit-based Hiring

BC Public Service Workforce

As of August 6, 2022, there were 41,893 employees in the BC Public Service, which is an increase of 1,013 employees since reporting September 2021 information. These employees work in ministries and other organizations across the public service. A complete list of organizations subject to hiring oversight by the Merit Commissioner appears in Appendix B.

Employees are appointed under the *Act* on a regular (permanent) 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 August 6, 2022)

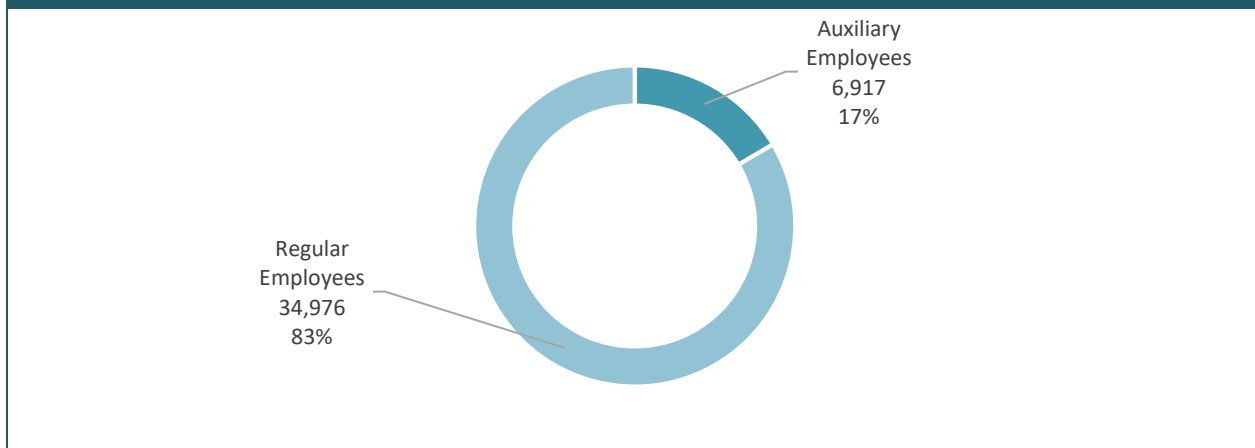
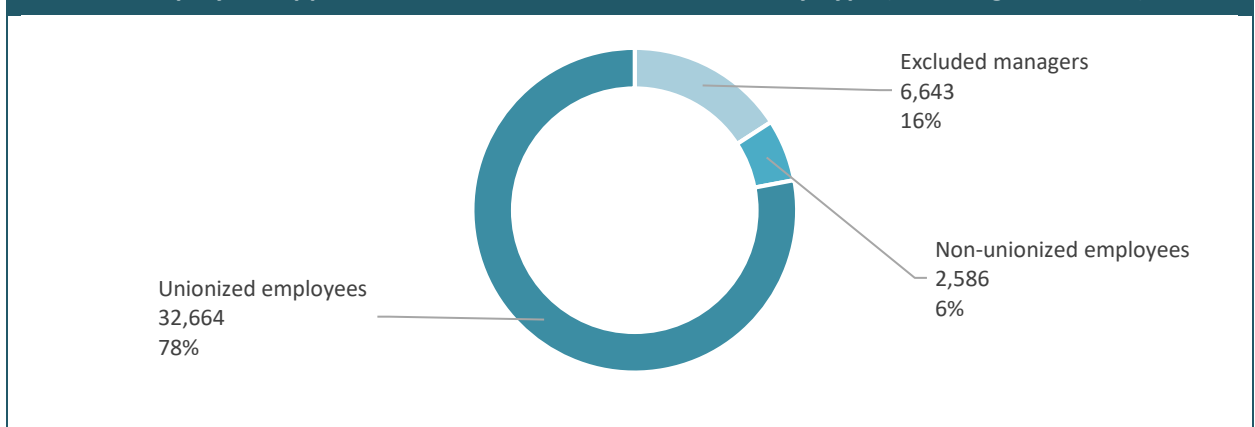


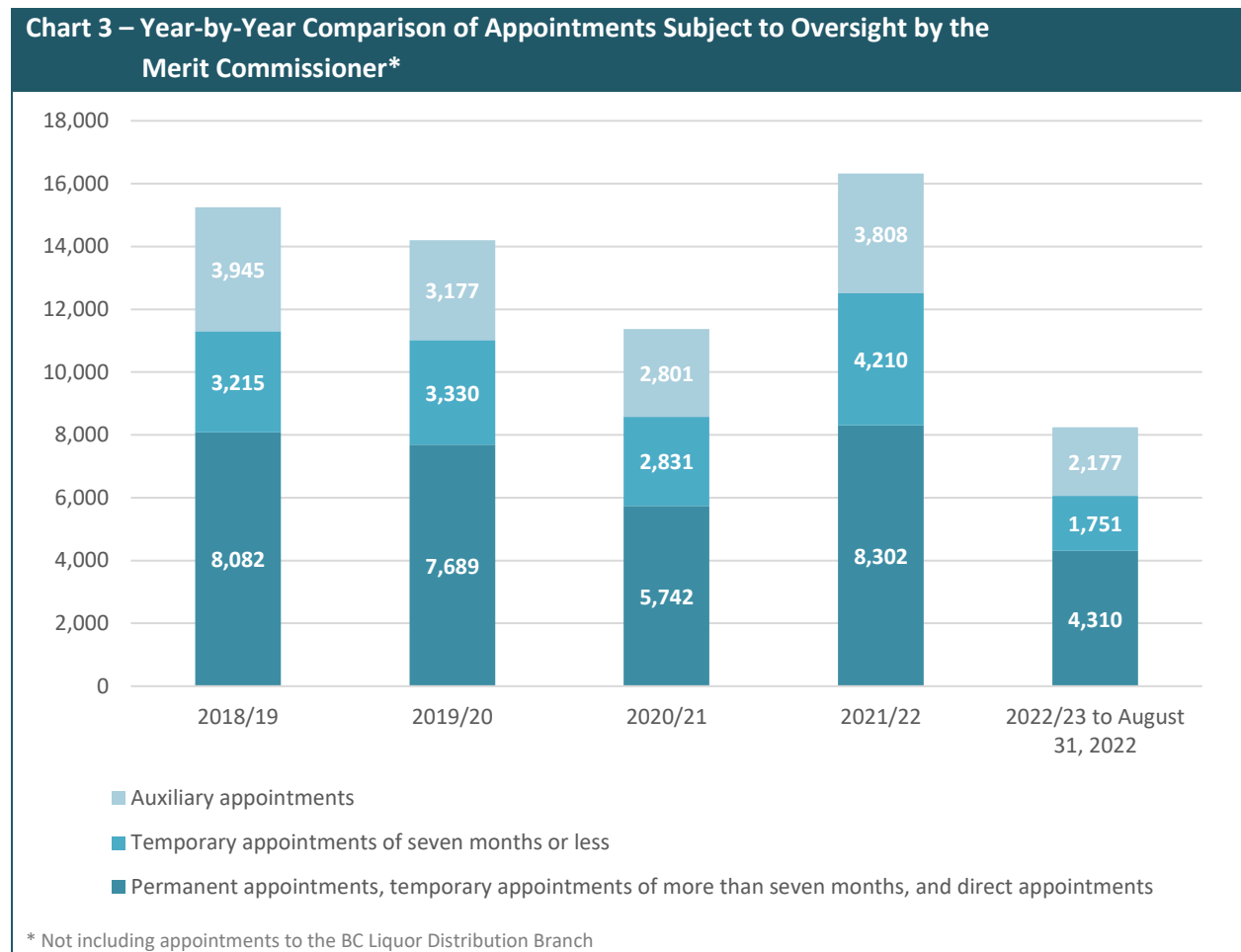
Chart 2 – Employees Appointed Under the *Public Service Act* – By Type (as of August 6, 2022)





Appointment Activity

The Office audits appointments to and from within the BC Public Service that are made under section 8 of the Act. 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 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 a review of the process resulting in a dismissal for just cause occurs 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, up to this point, all eligible dismissals have been reviewed. Reviews are based on an established protocol which considers 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 of the annual merit performance audits is to have a sufficiently robust sample size that allows 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. Analyses and a final report are also made available on the website.

Performance Measures	Target and Results					
	2020/21		2021/22		2022/23	2023/24
	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 2021	October 2021	September 2022	Expected October 2022	September 2023	September 2024
Publish annual audit findings within four months of reporting individual results	November 2021	December 2021	November 2022	Expected November 2022	November 2023	November 2024



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	
	2021/22 Lessened Qualifications	
	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 2022	Expected October 2022
Publish Information on website within 60 days of conclusion	March 2022	Expected October 2022

Staffing Reviews

It is important to both the employer and the employee who requests 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	2023/24
	Target	Results	Target	Results	Target	Target
Complete reviews within an average of 30 days	30 days	31 days	30 days	28 days	30 days	30 days



Dismissal Process Reviews

The results of the dismissal process reviews are reported annually. This year, the performance measure was changed from “all” to “selected” eligible dismissal processes to prepare for the upcoming volume related to vaccine mandate dismissals.

Performance Measures	Target and Results					
	2020/21		2021/22		2022/23	2023/24
	Target	Results	Target	Results	Target	Target
Conduct reviews of selected eligible dismissal processes	100%	100%	100%	100%	100%	100%
Report activities annually to Legislative Assembly	May 2021	May 2021	May 2022	May 2022	May 2023	May 2024



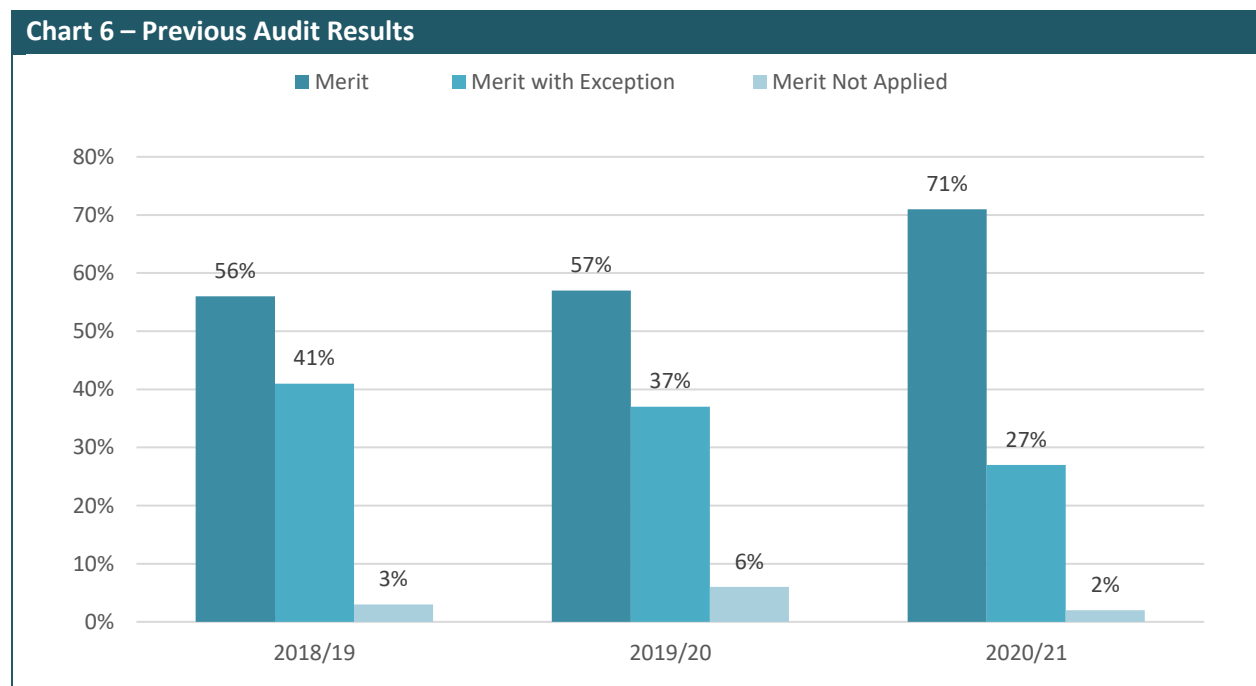
Progress on Key Commitments

Merit Performance Audit

For 2021/22, an audit was undertaken of 269 appointments, where findings could 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 will receive detailed reports and the Agency Head will receive the overall results of the audit in October 2022. 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 November 2022.

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



Staffing Reviews

During the 2021/22 fiscal year, the Merit Commissioner received 22 staffing review requests. Two requests were ineligible, and one was withdrawn. Of the 19 reviews completed, three resulted in a directed reconsideration of the appointment. In the other 16 reviews, the appointment decision was upheld.



The most frequent grounds for review involved the interviewing and testing stage of the hiring process. In addition to a common concern about the marking of responses, the grounds were varied covering testing administration, design of interview and test questions, and the reading of responses. There were also several grounds that have been raised consistently over the years, concerning the proper consideration and weighting of one or more of the factors of merit, in particular the requestor's experience. A few concerns questioned the fairness of the short-listing process or the panel's objectivity. There were also several grounds outside the scope of the Merit Commissioner's statutory responsibilities such as perceived harassment or the introduction of a new ground that had not been raised to the deputy minister at the internal inquiry step of the process.

Two of the three reconsiderations directed by the Merit Commissioner involved unclear qualifications and unreasonable judgement at the short-listing stage. The third reconsideration related to the inconsistent treatment of candidates resulting from a problem with the administration of a test.

The average time taken to complete the reviews and respond to the requests was 28 days following receipt of the required documentation. Individual decisions were rendered between 19 and 36 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, the Office had received 12 requests for review as of September 15, 2022.

Dismissal Process Reviews

A report to the Legislative Assembly on the files reviewed was included in the 2021-2022 Annual Report released in May 2022.

In 2021/22, a total of seven dismissal process reviews were conducted. Overall, processes complied with the application of government practices, policies, and standards. There were some circumstances which were considered to be outside of best practices; however, in these cases, the fairness of the process was not compromised.

Special Study of Lessened Qualifications

The Merit Commissioner has observed a number of lessened qualification errors in our Office's annual merit performance audit reports. Lessening or "relaxing" of qualifications occurs when posted mandatory job requirements were changed during the panel's assessment to a lower standard. The identified issues associated with the reduction of qualifications can either compromise the merit of the selection process in a direct and observable way, or create a potential risk to merit-based hiring.

The purpose of this study was to identify any factors (e.g., classification, sector) that might be connected with the use of lessened qualifications. The study will be released before the end of October.



Priorities for Fiscal 2023/24

The following sections detail the 2023/24 priorities for the Office. In addition, the Office will be dedicating resources to the implementation of the new database system.

Merit Performance Audit 2022/23

An audit of appointments made in 2022/23 has commenced. A random sample of appointments made throughout the province will be audited. The sample will be drawn from appointments made in all organizations and across all occupational groups including bargaining unit and excluded management positions. 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 2022/23 audit will be composed of a fixed sample size of 280 (70 appointments per quarter). The results from this audit are targeted to be reported in the early fall of 2023.

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's past practice has been to review all eligible dismissal processes. However, given the large number of dismissals in 2022 related to the vaccination policy, the Office is considering options to review a limited number of these processes. The Office will continue to review the available selected dismissal process files which are provided by the BC Public Service Agency on a regular and efficient schedule dependent on eligibility of the file. The 2022-23 Annual Report will include the findings and any recommendations for reviewed files.

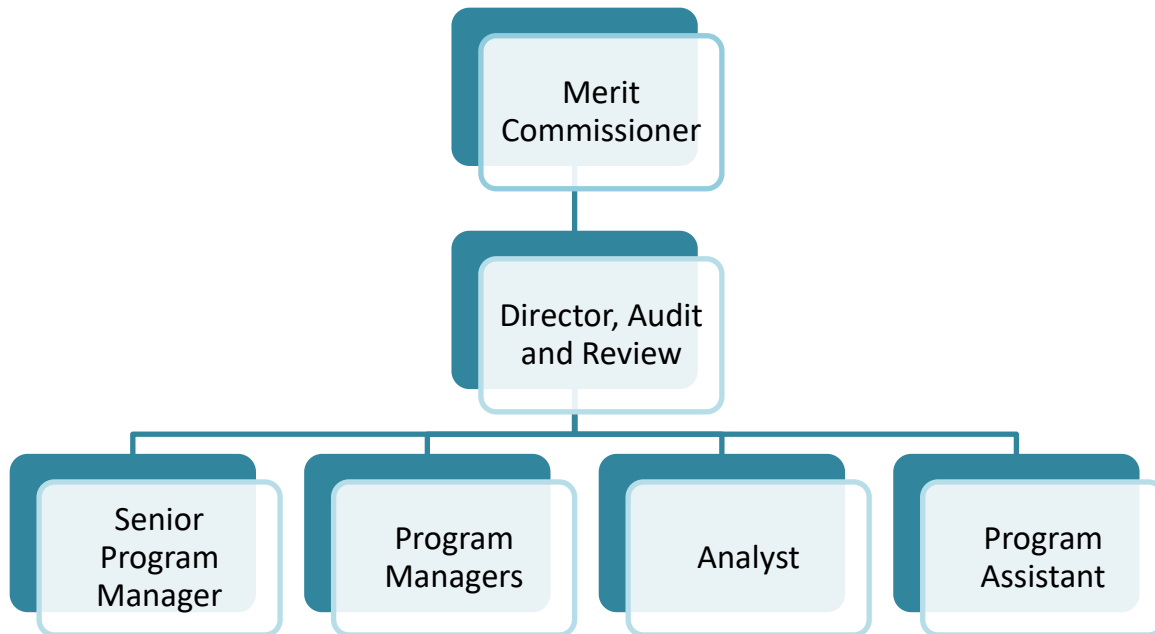
Special Audits and Studies for Fiscal 2023/24 and Beyond

The Office will continue to focus its resources on its mandated responsibilities of conducting merit performance audits, staffing reviews, and reviews of dismissal processes. The results of the core activities will 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, 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
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

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
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

Independent Offices

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