







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 2022/23 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,

David McCoy

Merit Commissioner

Victoria, British Columbia

May 2023

The Office of the Merit Commissioner 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

As our Province, communities, and workplaces evolve from several years of pandemic change, the world of work is also ever changing as we readjust to the "new normal" of daily life. The Office of the Merit Commissioner (the Office) has also embraced change over the last year, as I am honoured to present you with my first annual report since being appointed as the Merit Commissioner in March 2023. I am fortunate to have had the opportunity to work for this office during 2021/22 under the leadership of Commissioner Maureen Baird, KC. I would like to express my sincere appreciation for all her leadership and commitment to the work that this Office provides and the legislated mandate that it fulfills under the *Public Service Act*.

My role supports three lines of business that relate to hiring and dismissal processes in the BC Public Service: hiring audits, staffing reviews, and just cause dismissal process reviews.

The audit program provides oversight into a statistically valid random sampling of hiring processes of both bargaining unit and excluded competitions from various public service organizations. This program area offers more than just verification that hiring processes have met the principle of merit and are an example of merit-based hiring. It also allows for potential specific feedback and learning opportunities for hiring managers and for those who support them in the hiring process, to better understand if their hiring processes have opportunities for further refinement. In addition, the audit program provides senior leadership teams with information that allows for celebration or remediation regarding the hiring activities and the people who are designated with hiring responsibilities. Indirectly, this program also provides British Columbians with the assurance that their public service is nonpartisan and employs people with the appropriate competencies, knowledge, skills, and abilities in delivering services to them.

The staffing review program functions as a line of business that is directly driven by employee requests to investigate outcomes of eligible bargaining unit competitions. The staffing review program offers a detailed, transparent, and unbiased analysis of the competitive merit-based process and the results. After this very focused investigation, I either direct a reconsideration of the appointment decision or uphold the initial appointment decision.

The just cause dismissal process review program serves to provide oversight of dismissal processes in the public service for both bargaining unit and excluded positions. It ensures that those processes have adhered to public service practices, policies, and standards. This aspect of my work occurs after all labour relations and legal proceedings are complete and allows me to undertake a detailed and thorough examination of the just cause dismissal process. My analysis informs any recommendations that I may make to ensure a consistent and accountable process is applied as it pertains to the just cause dismissal process.

Like other workplaces, our Office has seen change in 2021/22, with increases in the use of remote working models, in digital-based audit documentation, in audits conducted, in staffing reviews, and in just cause dismissal process reviews, including COVID-19 vaccination-related dismissals. Throughout the last year, we also have seen changes in some of our team, including some of our contracted merit performance auditors.

From the organizations over which I have oversight, I have observed increases in their respective hiring actions as they strive to meet their evolving staffing demands and continue to deliver their services to the citizens of British Columbia.

In 2021/22 my Office conducted 269 audits of randomly selected appointments from 30 organizations who hire under the *Public Service*

Act. The 2021/2022 audits found that while hiring had increased by 36% from 2020/21, merit-based hiring activity had decreased in 2021/22 by 4%. The 2021/22 audit results and hiring activity now very closely align with pre-pandemic (2019/20) levels.

In 2021/22, the staffing review line of business saw 19 reviews from 11 different organizations. This shows an increased when compared to the 11 reviews completed in 2020/21. The grounds most often cited by concerned employees in 2021/22 were in the areas of interviewing and testing. While the number is too low to draw any broad statistical trends, it does provide our office with enough information to embark on designing some meritawareness initiatives in the medium term.

Even though the COVID-19 vaccine policy was recently rescinded in the BC Public Service, we are now beginning to review the just cause dismissal processes associated with this policy and will have more insight into those reviews in the next year and beyond. The just cause dismissal process reviews in 2022/23 saw that all 17 reviews met acceptable practices, policies and standards. In 2023/24, we anticipate a review of this process by the Special Committee of the Legislative Assembly, pursuant to section 25.1 of the *Public Service Act*, to "review the *Act* in relation to dismissal process review by the merit commissioner," and I look forward to supporting the Committee and the review.

This year my Office produced a special study on lessened qualifications in merit-based hiring. The purpose of this study was to identify position or competition factors that might relate to the use of lessened qualifications. The study noted both that most audited appointments do not use a lessened qualification approach and that its use has trended downward in recent audits. However, despite these positive indicators, lessened qualifications continue to be observed throughout competitions in the BC Public Service.

While outside of the mandate of merit-based hiring, the Office of the Merit Commissioner will begin to explore a special study on the demonstrable elements of diverse and equitable



hiring practices in the public service environment. While these observable elements and practices would not impact the findings of merit-based hiring processes, they have been clearly highlighted as important fundamentals when attracting, creating, and maintaining a civil service that best represents the citizens they serve.

As we continue to move forward in this changing world, we will look to enhance and develop our small and dedicated team, build on strategic stakeholder relations, and remain resolute in fulfilling our legislated mandate to provide oversight of hiring and dismissal processes in the BC Public Service. I want to express my sincere appreciation to the dedicated staff of this Office. I look forward to the exciting year ahead as we continue to deliver the assurance to employees and citizens alike, that reasonable, fair, and transparent hiring and dismissal practices are being employed in our provincial public service.

David McCoy, 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

Central 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 Merit Commissioner is an independent officer of the Legislature, appointed by the Legislative Assembly on a part-time basis for a three-year term. As set out in the *Public Service Act*, the Merit Commissioner is responsible for:

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

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

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 individuals and organizations are directly involved in these functions, and their roles in fair hiring and dismissal processes are outlined below.

Fair Hiring and Dismissal Process Roles

Merit Commissioner

BC Public Service Agency/ Agency Head

Deputy Ministers/ Organization Heads

Monitors the fairness in hiring through audits and independent staffing reviews

Reviews processes resulting in just cause dismissals for application of government practice, policies, and standards

Makes recommendations that have potential to inform future policy and practices

Sets HR policy and accountability framework for HR management

Provides staffing and labour relations advice, training, and support

Prior to dismissal action, confirms that appropriate due process has been followed Ensure that hiring and labour relations processes within respective ministries/ organizations follow established practice, policy, and standards, as well as collective agreements

Complete internal inquiries for employee applicants who are dissatisfied with feedback following a hiring process

Hiring Managers

Conduct hiring and dismissal processes and make related decisions in a manner consistent with government practice, policies, and standards, as well as collective agreements

Unions and Employee Associations

Represent and advocate for interests of employees

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 these responsibilities and how we do our work.

Performance Audits

The Office monitors the application of the principle of merit in the BC Public Service by conducting random audits of appointments made each year. The focus of the audit is permanent appointments and temporary appointments greater than seven months made in any organization that is subject to section 8 of the *Act*. 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 ask independent experts to review our approach to ensure our

sampling methodology and practice 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 individual, when appointed, possessed the required qualifications for the position 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 credible 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	The overall approach used to recruit and select applicants. The five common stages of a hiring process: 1. Short-listing 2. Interviewing and testing 3. Past work performance 4. Years of continuous service 5. Notification The application of the individual appointed and their performance in the competition.
We consider	Compliance with relevant legislation, policy, and provisions of collective agreements. Application of fair hiring principles: Open and transparent processes Relevant job assessments Reasonable decisions Fair and equitable treatment The qualifications of the individual appointed: Their education and experience according to specified requirements Their marks according to the established assessment standards Their overall ranking in the context of the competition results (offer and eligibility list order)
We make	 Two audit findings: Whether the recruitment and selection process was based on merit. Whether the individual appointed was qualified One determination: Whether there was sufficient and appropriate documentation on file to support the hiring decision

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

Recruitment and Selection **Process Findings**

Merit: The recruitment and selection process was properly designed and applied to result in an appointment based on merit.

Merit with exception: The recruitment and selection process contained one or more errors in design or application; there was no identifiable negative impact on the outcome.

Merit not applied: 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.

A finding of **merit not applied** is also made if there is insufficient evidence to demonstrate that the design or application of a process was based on merit.

Individual Appointment Findings

Qualified: The individual, when appointed, possessed the qualifications specified as required for the position.

Not qualified: The individual, when appointed, did not possess the qualifications specified as required for the position.

Qualifications not demonstrated:

There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.

Documentation Determinations

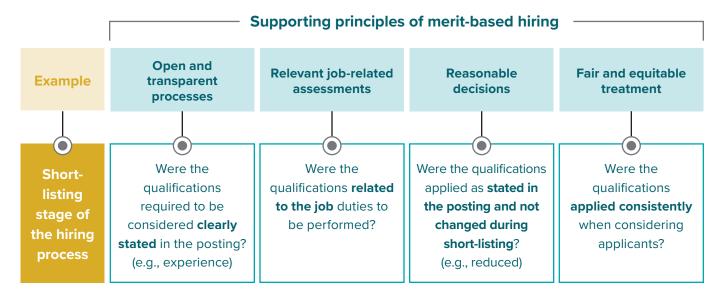
Good: The hiring process was comprehensively documented with minimal or no follow-up required.

Sufficient: The hiring process was partially documented.
Some documents were missing or incomplete and/or some aspects of the process required clarification. There was sufficient information to complete the audit.

Insufficient: The hiring process was insufficiently documented. Key aspects of the process were not documented and/or verbal evidence was required to complete the audit.

The detailed audit program can be viewed at www.meritcomm.bc.ca.

The following example demonstrates how we consider a part of the hiring process in light of fair hiring principles when conducting an audit.

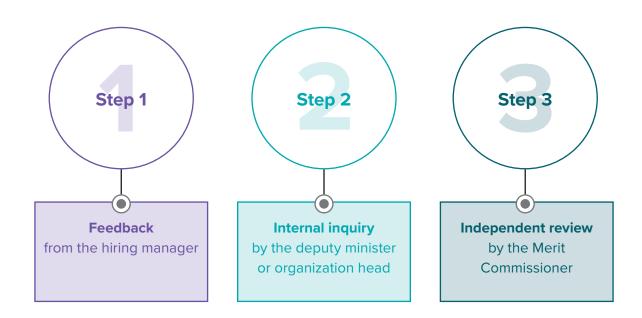


We provide deputy ministers and organization heads with detailed individual audit reports for appointments within their organization so they may share findings with the responsible hiring managers and take any necessary action to improve hiring practices. These individual audit reports are also provided to the Deputy Minister of the BC Public Service Agency (Agency Head) who is responsible for staffing policy, support, and training in the BC Public Service.

The Office also prepares a consolidated report of all audit findings in which we set out the risks to merit-based hiring identified through the audit and make recommendations to improve hiring practices. These recommendations are directed to deputy ministers and organization heads (and the staff to whom they have delegated staffing authority). Additionally, we use this report to acknowledge and support good hiring practices throughout the BC Public Service. The Office submits this report to the Legislative Assembly. It is also shared with the public via our website.

Staffing Reviews

The *Act* provides employee applicants who are unsuccessful in a competition for either a permanent position or a temporary assignment greater than seven months 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.



The third step in the process, a review by the Merit Commissioner, is available only 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	The aspects of the hiring process that are related to the employee's grounds for concern. The relevant evidence contained within the competition file. Information obtained through discussions with the employee requesting the review, the panel chairperson and, where necessary, other relevant individuals such as hiring panel members.			
We consider	The application of relevant legislation, policy, and provisions of collective agreements. Whether the aspects under review meet the principles of merit-based hiring: Open and transparent processes. Relevant job-related assessments. Reasonable decisions. Fair and equitable treatment.			
The Merit Commissioner decides	To uphold the appointment decision where the aspects of the selection process related to the employee's grounds comply with the requirements of section 8(1) of the <i>Act</i> , or To direct a reconsideration of the appointment decision where the aspects of the selection process related to the employee's grounds do not comply with the requirements of section 8(1) of the <i>Act</i> .			

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

The responsibility to review processes related to eligible just cause dismissals from the BC Public Service was added to the Merit Commissioner's role in April 2018 through an amendment to the *Public Service Act*. 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.

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.

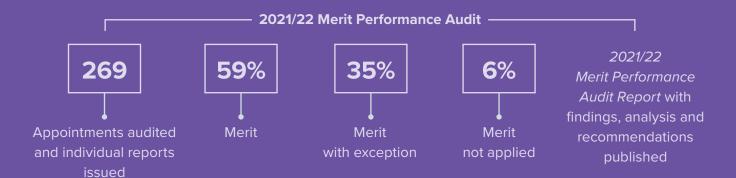
The Office considers all dismissal process documentation and relevant information to conduct a full review. The general process for conducting reviews of dismissal processes is illustrated below.



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



2021/22 Staffing Review Report Requests for internal Common grounds for Described review 2021/22 Report on inquiries and for the **19** staffing reviews findings including Staffing Reviews staffing reviews examined **3** directed published on our reported reconsiderations and website 16 upheld decisions



2022/23 Dismissal Process Reviews



Cases where the reviews concluded that all processes properly applied practices, policies, and standards

The following sections include synopses of work completed during 2022/23. Detailed reports related to the work completed can be found at **www.meritcomm.bc.ca**.

2021/22 Merit Performance Audit Findings

A total of 7,860 permanent appointments and temporary appointments exceeding seven months were made to and within the BC Public Service between April 1, 2021 and March 31, 2022. In order 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 from this population each quarter. This resulted in:

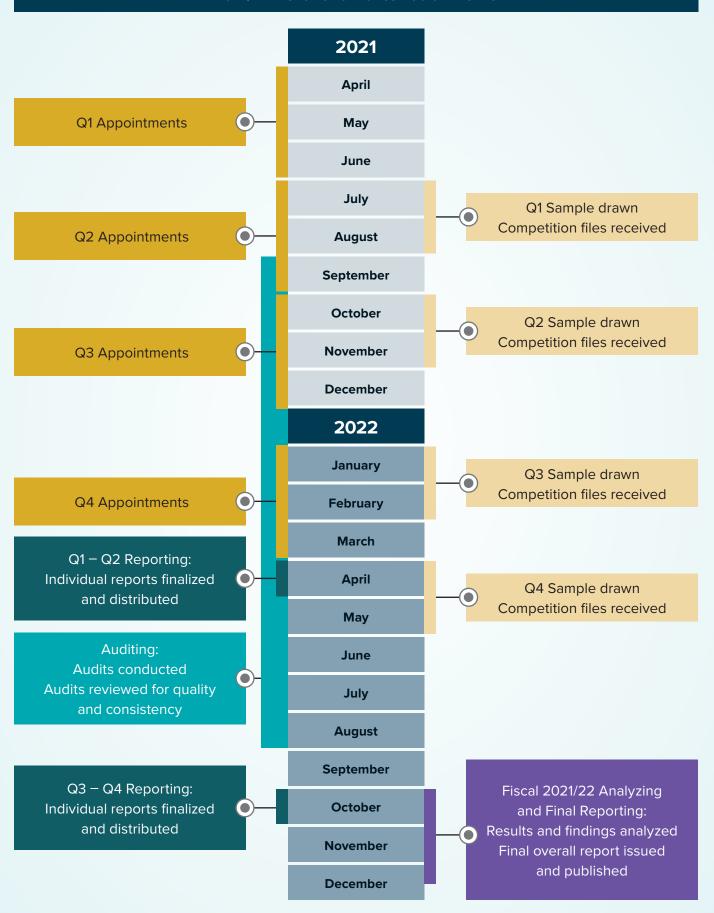
- A sample of 280 appointments selected for audit. Of these, 11 were determined to be outside the scope of the audit. These were removed from consideration.
- The audit of the hiring processes for the remaining 269 appointments.

For each of the 269 appointments, we made findings on the qualifications of the individual appointed and the fairness of the recruitment and selection process. With respect to the process, where we made a preliminary finding of **merit not applied**, the responsible deputy minister or organization head was provided with the opportunity to review the draft report and provide additional or clarifying information.

All deputy ministers and organization heads received a final report for each appointment audited within their organization. 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 overall findings were reported to the Legislative Assembly in December 2022 and were published on our website. The timeline for the 2021/22 Merit Performance Audit is shown below.

2021/22 Merit Performance Audit Timeline



Individual Appointed

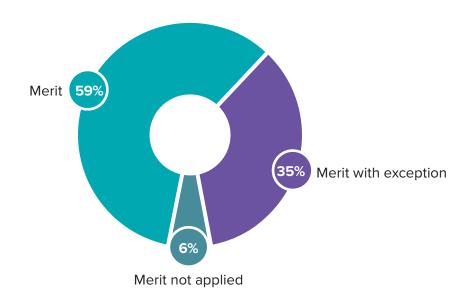
In all but three cases, the individual appointed met the qualifications specified as required for the position at the time of appointment.

For two of these exceptions, we made a finding of **qualifications not demonstrated** based on insufficient evidence to show that the appointees were qualified. We also made a finding of **not qualified** for one appointee, as they did not achieve a sufficient score to pass either the written exercise or the interview but were advanced in error.

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

Recruitment and Selection Process

2021/22 Overall Recruitment and Selection Process Findings



Over the past four years, the proportion of audited appointments with a **merit not applied** finding has varied between 2% and 6%. This year's **merit not applied** findings were at the high end of the range at 6%.

Merit with exception findings increased from last year's rate of 27% to 35%, a rate similar to those found in 2018/19 and 2019/20.

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

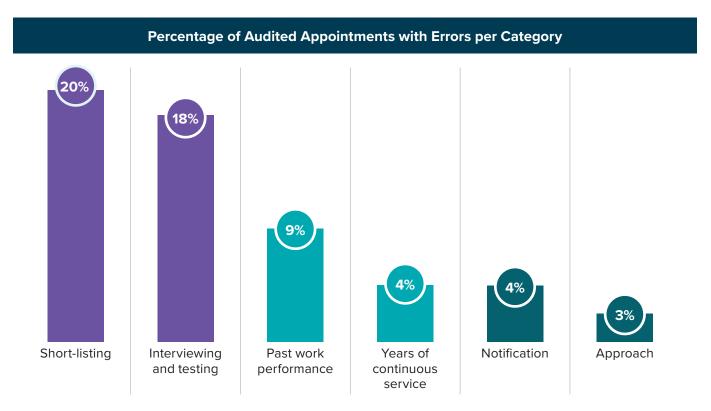
- 4,474 appointments were error free (merit).
- 2,630 appointments had errors with no identifiable negative impact (merit with exception).
- 430 appointments had errors with a known negative identifiable impact (merit not applied).

The errors are identified and reported out by the category or stage of the process in which they occurred. The categories are defined below.

Description of the Categories					
Approach	The overall structure of the hiring process and the key elements necessary to support merit-based hiring. Includes: The initial notice The scope and type of hiring process The final rank order of qualified candidates Offers of appointment				
Short-listing	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 involve education and experience.				
Interviewing and testing	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).				
Past work performance	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.				
Years of continuous service	continuous Employees' Union (BCGEU) and the Professional Employees Association (PEA) collective agreements. This credit is calculated at the end of the biring process using				
Notification	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> .				

While each audit results in a single recruitment and selection process finding, some appointments had only one error, whereas others had multiple errors in one or more categories.

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



Overall, these findings were similar to and consistent with previous years, with the exception of last year, when we observed a significant decrease in appointments with errors in the key assessment stages of short-listing, interviewing and testing, and past work performance.

With respect to fair hiring principles, we observed that open and transparent processes continue to be a cornerstone of BC Public Service hiring, as are the use of objective and relevant means of assessment. It is reasonable decision-making and the equitable treatment of applicants that continue to pose the greatest risk to merit-based hiring. The errors that were most frequent and had the greatest negative implications for applicants resulted from either simple administrative mistakes or panel errors in judgment.

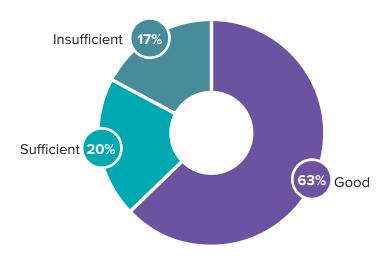
Of note:

- After the 2020/21 audit year, which had a high rate (71%) of merit findings for recruitment and selection processes, merit findings dropped to a rate of 59% a rate similar to previous years.
- Consistent with previous years, the short-listing category had the highest rate of errors, closely followed by interviewing and testing.
- Nearly one-third of the short-listing errors identified were the result of the panel's decision to modify
 one or more of the requirements identified as essential in the posting. Also, inadvertent but serious
 short-listing errors were made when panels mistakenly advanced an unqualified candidate or eliminated
 a qualified candidate.
- While the most frequently identified error at the interviewing and testing stage was the absence of marking criteria, mistakes made when calculating scores were the errors more likely to result in a negative impact for candidates.

Documentation

As illustrated below, the overall quality of documentation remained high, with 83% of audits receiving a determination of either "good" or "sufficient" documentation. There was a small increase in the rate of audited competitions with "insufficient" findings over the last two fiscal years.





Recommendations

Based on the findings and the most significant issues identified through the 2021/22 Merit Performance Audit, the Merit Commissioner made three 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 by the BC Public Service Agency may be necessary to support implementation.

Recommendations:

- 1. Review the mandatory and preferred education and experience qualifications prior to posting for accuracy, completeness, and any alternatives, and apply these qualifications accordingly at the short-listing stage.
- 2. Establish and use some form of substantive marking criteria (behavioural interpretive guides, necessary elements, key points) for a common and relevant basis for evaluation.
- 3. Ensure accuracy of the calculation and transcription of scores in all areas of assessment prior to releasing competition results.

2022/23 Merit Performance Audit

The 2022/23 audit of appointments made from April 1, 2022 to March 31, 2023 is currently underway.

- Random samples of appointments were drawn for each quarter.
- Audits of 140 appointments were completed for the first two quarters, and the respective reports were provided to deputy ministers and organization heads in April 2023.
- Audits of the remaining appointments drawn from the last two quarters of this fiscal year will be completed over the summer and the respective reports provided to the deputy ministers and organization heads in the fall of 2023.
- We intend to publish a comprehensive report, including the analysis and summary of the overall audit results, in **December 2023**.

Related Work

Our database is the foundation of our audit tool and is used to collect, store, and run reports on statistical data on the audits our office undertakes. This fiscal year we have been working on the design and implementation of a new database system, which is expected to replace our current system in the summer of 2023. The data from the old system will be stored and accessible for review purposes.

Special Audits and Studies

Lessened Qualifications – Special Study 2023

An error is found when education and experience qualifications are posted as mandatory but are later waived or lowered to a lesser requirement during the short-listing process. This approach may disadvantage potential applicants who might have applied had they known the qualifications would be less than those posted, and advantage those applicants who did apply without the initially required level of qualifications.

To determine if any specific conditions increase the likelihood of this type of error, we studied data captured from 1,561 appointments audited between 2015/16 and 2020/21. Almost 14% of these audited appointments had a lessened qualification error. The data from these appointments was evaluated for several factors to determine if there was any correlation with probability of this error. The factors evaluated assessed were: the number of applicants in a competition; union status (included or excluded); job classification; sector of government; applicant status (employee or external); and area of competition (i.e., restrictions on applications).

We found that the factors evaluated did not have an association or connection with lessened qualification findings. Instead, this type of error was identified in competitions regardless of applicant numbers, union status, job classification, sector of government, applicant status, or area of competition. As lessened qualifications continue to present a commonly identified risk to merit-based hiring, the report recommended that hiring managers carefully determine mandatory qualifications prior to the posting of an opportunity and apply these as stated.

2021/22 Staffing Review Report

In June 2022, we published our Report on Staffing Reviews 2021/22 on our website.

The report outlined the steps in the staffing review process and provided 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). Of the 22 requests submitted, two were determined to be ineligible, one was withdrawn, and the remaining 19 were found eligible for a review.

Most of the requestors had concerns about the interviewing and testing stage of the hiring process. Their grounds were varied and included concerns about the interview format, question design, and marking of responses. In other grounds, requestors questioned whether one or more factors of merit, in particular experience, were given proper consideration and weighting. Several requestors put forth grounds involving the short-listing process or the panel's objectivity. Less frequent were grounds related to past work performance or process administration.

Several of the grounds were found to be 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.

Of the 19 staffing reviews conducted, the Merit Commissioner upheld the appointment decision in 16 of the competitions and directed reconsiderations for the other three:

- The flaws found in two competitions involved unreasonable short-listing processes.
- The flaw found in the remaining competition was the inconsistent treatment of candidates resulting from a technical problem with the administration of a test.

These reviews highlight the fundamental importance of a well-designed assessment process to avoid or mitigate errors.

On average, it took 28 days to complete each the 19 reviews once the competition file was received.

The number of reviews requested was less than 1% of the eligible appointments made within the BC Public Service over the same fiscal year – which, although low, is consistent with previous years. With a small number of reviews, it is not possible to identify any systemic problems; however, our report discussed the common grounds and noteworthy issues. Understanding these concerns may help those involved in hiring to ensure fairness and transparency.

2022/23 Staffing Reviews

In 2022/23, the Merit Commissioner received 20 requests for review of appointments. The requests were for competitions within eight different ministries or organizations. Two requests were ineligible, as one requestor was no longer an employee and the other had not received an internal inquiry decision. As a result, the Merit Commissioner undertook 18 reviews.

Grounds for review in the fiscal year included:

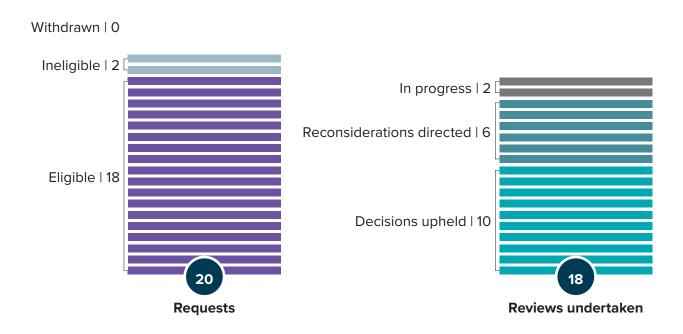
- The factors of merit were not properly considered, specifically experience.
- Application qualifications (e.g., education) were not accepted in short-listing.
- Interview questions or a written test were not relevant.
- Interview or written test responses were not fairly marked.
- Past work performance was not properly or objectively assessed.
- One or more panel members were biased either in favour of or against a candidate.

By the end of the fiscal year 2022/23, two staffing reviews were in progress and the Merit Commissioner had issued decisions for the other 16. These two reviews have since been completed.

- In 10 cases, the ministry's decision was upheld.
- In six cases, the responsible deputy minister or organization head was directed to reconsider on the basis that an aspect of the selection process related to the employee's grounds did not comply with section 8(1) of the *Act*.

Detailed reports with reasons were provided to the employee who submitted the request and the responsible deputy minister or organizational head.

An analysis of the staffing reviews conducted in 2022/23 will be undertaken, and a summary report is expected to be published in the summer of 2023.



2022/23 Dismissal Process Reviews

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, "Termination for just cause" 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. The policy also includes an investigation best-practice protocols checklist. 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 will observe and report on any aspect that is considered non-compliant, as well as make related recommendations on best-practice issues to improve future dismissal processes. Reviews commenced in 2020/2021, and over the previous two fiscal years, 26 eligible dismissal processes were reviewed.

There is flexibility in the legislation concerning the number of dismissal processes that are selected for review. In 2022/23, the Merit Commissioner continued to review all eligible dismissals. This past year, the Merit Commissioner received 17 dismissal files. Two additional files were also eligible; however, they were still being prepared for review as of March 31, 2023. The quality of the documentation supplied by the BC Public Service Agency continued to be excellent.

There were a few dismissal processes, related to the mandatory vaccination policy, which became eligible for review this year. Given the number of dismissals under this policy, the Merit Commissioner intends to review a limited number of these processes and therefore moved the reviews eligible this year to 2023/24 to be considered with the larger group.

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

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

First, there were gaps noted where a medical issue was raised either by the former employee or their representative, or where the dismissal file contents raised the possibility that the former employee might have a medical issue. In such cases, it was not always clear that consideration was given to the question of whether the medical issue was a mitigating factor in the misconduct. Consideration of this factor ensures all relevant information is taken into account in the decision to terminate employment.

Second, the documentation did not reflect a practice of advising employees of their right to challenge dismissal decisions. Bargaining unit employees or excluded employees who have representation during the dismissal process would typically receive this information from their union or representative. However, for unrepresented excluded employees, it is unclear whether this information is provided or if it is left to the employee to research their legal options. This is noted as a matter of transparency.

Third, it was unclear in several files whether there was any consultation, review, or recommendation, including with an employee relations specialist, concerning the suspension that preceded the termination. Our review did not conclude that the appropriate professional advice had not been sought; rather, we could not find sufficient file information to confirm that this consultation occurred.

Finally, the reviews identified a concern with respect to transparency regarding timeliness and delays in the dismissal process. Specifically, unexplained delays were observed in several files in the labour relations investigations/analysis phase of the process, and additional unexplained delays were observed between the time of the legal opinion provided to the employer and the actual date of dismissal. There are many legitimate reasons that investigations and decision-making may be delayed; however, in many of the files where such delays were noted, no clear explanation was provided in the file for the delay. Lengthy delays in this process not caused by the employee under investigation may create unfairness for that employee under investigation, in particular where the employee is suspended without pay during the investigation. In the 2022/23 reviews, only one of the 12 files where delays were noted, had a reasonable, albeit unwritten, observable explanation for the delay. It is possible that there were reasonable explanations for delays in the other files, but these were not evident in the file documentation. While the individual nature and complexity of most dismissal cases do not necessarily lend themselves to a pre-determined time standard for natural justice and due process, explanations for any delays in the investigation process, and between the conclusion of the investigation and the organization head's decision, should be transparent to the former employee (to the extent possible) and in the file review.

Budget

The Office's budget and expenditures for the **2022/23** fiscal year are shown below by expenditure type. In October 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, and 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 \$1,641,000** for fiscal **2022/23**. Details of this budget allocation are shown below.

Budget and Expenditures					
Туре	Approved budget 2022/23	Actual expenditures 2021/22	Approved budget 2023/24		
Salaries & benefits	\$ 856,000	699,226	716,000		
Travel expenses	\$ 17,000	8,759	17,000		
Operating expenses	\$ 587,000	393,762	488,000		
Professional services	\$ 181,000	143,350	221,000		
Total	\$ 1,641,000	1,245,099	1,442,000		

Appendix A

Organizations Subject to the Merit Commissioner's Oversight of Appointments

(as of March 31, 2023)

Ministries

Agriculture and Food Attorney General

Children and Family Development

Citizens' Services

Education and Child Care

Emergency Management and Climate Readiness

Energy, Mines and Low-Carbon Innovation Environment and Climate Change Strategy

Finance Forests

Health

Housing

Indigenous Relations and Reconciliation

Jobs, Economic Development and Innovation

Labour

Mental Health and Addictions

Municipal Affairs

Post-Secondary Education and Future Skills

Public Safety and Solicitor General

Social Development and Poverty Reduction

Tourism, Arts, Culture and Sport Transportation and Infrastructure

Water, Land and Resource Stewardship

Independent Offices

Auditor General

BC Container Trucking Commissioner

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

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 Skilled Trades BC Appeal Board

Surface Rights Board

Workers Compensation Appeal Tribunal



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