



Office of the
Merit Commissioner

Report on Staffing Reviews

2022/23

UPHOLDING FAIR HIRING IN THE
BC PUBLIC SERVICE

August 2023



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Executive Summary

The *Report on Staffing Reviews 2022/23* outlines the steps in the staffing review process and provides a brief overview of the staffing review activity that occurred at Step 2 (internal inquiry) and a more detailed examination of the staffing review activity that occurred at Step 3 (review). The report also summarizes the key grounds put forward for a staffing review and the Merit Commissioner's findings.

During the 2022/23 fiscal year, the Merit Commissioner received 20 staffing review requests including two which were ineligible.

Of the 18 reviews conducted, the Merit Commissioner:

- directed the reconsideration of the appointment decision in seven cases; and
- upheld the appointment decision in the other 11 cases.

Most of the requestors had concerns about the interviewing and testing stage of the hiring process. The concerns within this stage included technical difficulties experienced both before and during an interview, the marking of responses, the questions asked during the interview, and the amount of time allocated for the interview. Grounds raised less frequently by the requestors related to years of continuous service and feedback received during a competition process. There were a few concerns brought forward that were outside the scope of the Merit Commissioner's statutory responsibilities. These include concerns related to discrimination, past hiring processes, employee or labour relations issues, and the introduction of a new ground that had not been raised to the organizational head at the internal inquiry step of the process.

Of the 18 staffing reviews conducted, the Merit Commissioner directed reconsiderations in seven cases. Four of these reconsiderations were from the same competition. The flaws that were identified involved technical issues where candidates received the pre-interview materials late, resulting in some candidates having less than the allocated time to prepare their interview responses. In addition, a review of the same competition found a lack of short-listing consistency. The other three reconsideration decisions found that the short-listing approach was not consistent, the interview assessment of candidates was unfair, and the marking approach involved issues of reasonableness and transparency. These reviews highlight the fundamental importance of providing consistent preparation time for interviews, accurately defining short-listing criteria in advance of advertising a competition, and constructing well-designed assessment processes.



Introduction

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

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

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

Although there is no formal definition of the principle of merit, it is understood as:

- Hiring and promoting individuals based on an assessment of competence and ability to do the job, and not on any political or personal connections.

With respect to a process designed to appraise the knowledge, skills, and abilities of eligible applicants:

- Eligibility means:
 - conditions of employment (e.g., Canadian citizenship, legal age to work) are met.
 - mandatory requirements (e.g., restrictions, education, experience) are met.
- There are appropriate method(s) of assessing applicant's knowledge, skills, and abilities relative to each other, including behavioural competencies, which are a form of knowledge and skills.
- The outcome results in the highest-ranked candidate being appointed to the position.

Other terms for such a process include competition, competitive process, hiring process, selection process, and expression of interest.

Our investigation process considers information from all parties and focusses on whether the hiring process was properly designed and conducted, and whether all applicants were treated fairly.

Factors of Merit

Section 8(2) of the *Act* also sets out all the factors that must be considered in determining merit. The specifics of these factors are identified based on the nature of the position's responsibilities and duties.

The factors of merit include:

- education
- experience
- knowledge
- skills
- past work performance, and



- years of continuous service in the BC Public Service. The requirements for considering and assessing this factor vary based on whether there are any collective agreement provisions that apply to the position.

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

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

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



At Step 1, an unsuccessful employee applicant:

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

At Step 2, an unsuccessful employee applicant:

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



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

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

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

The staffing review process for eligible requests is summarized in the box below.

Review Process for Eligible Staffing Review Request	
We examine	Aspects of the hiring process that are related to the employee’s concerns (“grounds”). Facts and evidence obtained from: <ul style="list-style-type: none">• the competition file;• discussions with the employee requesting the review, the panel chair and, where necessary, other relevant individuals, such as hiring panel members.
We consider	Compliance with relevant legislation, policy, and provisions of collective agreements. Application of the fair hiring principles, including: <ul style="list-style-type: none">• open and transparent approach;• objective and job-related assessments;• reasonable decisions; and• fair and equitable treatment
The Merit Commissioner decides	To uphold the appointment decision where the aspects 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 do not comply with the requirements of section 8(1) of the <i>Act</i> .



2022/23 Staffing Reviews

Step 1 – Feedback

Providing unsuccessful applicants with proper notification of the competition outcome is an important part of the hiring process. Final notification is also a critical precursor to Step 1 of the staffing review process for unsuccessful employee applicants to fairly consider and access their rights to a staffing review.

Over the last few years, including the past fiscal year, the annual merit performance audits generally observed that almost all applicants have been provided with proper final notification. This is a reassuring indicator that unsuccessful employee applicants are offered the opportunity to seek feedback once they are notified of the competition outcome and can exercise their right to begin the review process. In the *Merit Performance Audit 2021/22* report, we observed that one or more employee applicants did not receive proper notification of the hiring decision in four percent of the competitions for which the appointment was selected for audit.

Although the provision of feedback is not within the scope of the Merit Commissioner's mandate, it is an important part of any hiring process. It is worth noting that in 2022/23, requestors did not raise any concerns with the feedback provided to them for the competitions being reviewed.

Step 2 – Internal Inquiry

According to information provided by the BC Public Service Agency and other organizations subject to oversight by the Merit Commissioner, 79 internal inquiry (Step 2) requests were considered during 2022/23.

Of the 79 requests:

- 28 were deemed ineligible.

For the remaining 51 requests, an internal inquiry was conducted.

- In 46 of these cases, the deputy minister or organization head upheld (i.e., supported) the appointment decisions.
- In five cases, the deputy minister or organization head directed the hiring panel to reconsider the appointment decisions.

Of the 51 appointments where an internal inquiry was completed:

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

This left 44 appointment decisions for which a requestor would have been able to seek a further (Step 3) staffing review by the Merit Commissioner.

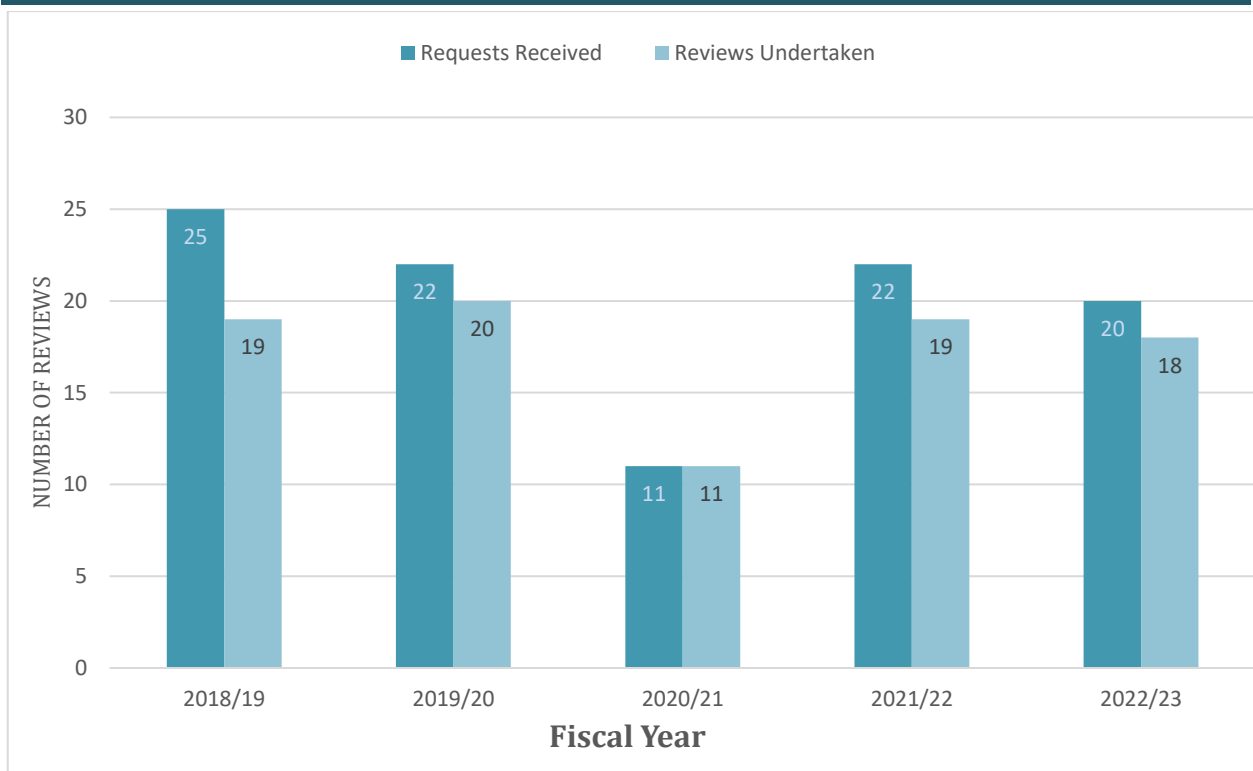


Step 3 – Requests for Review

In 20 of the 44 eligible appointment decisions, the unsuccessful employee applicant requested a review by the Merit Commissioner.

The percentage of requests that advanced from Step 2 to Step 3 this year (45%) was slightly lower compared to the previous fiscal year of 55% and considerably higher than the 2020/21 fiscal year of 25%. Chart 1 illustrates the number of review requests submitted to the Merit Commissioner and the number of reviews undertaken since 2018/19.

Chart 1 – Review Requests Received by the Office of the Merit Commissioner



The number of requests for review received in relation to the total number of permanent and long-term temporary appointments made in the BC Public Service continues to remain very low.

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

The Office of the Merit Commissioner has an internally-established 30-day service target to issue decisions following receipt of the competition documents.



For the review requests received in 2022/23, the Merit Commissioner issued decisions:

- between 22 and 49 days of receiving the documentation; and
- with an average response time of 34 days.

Of the 20 reviews requests submitted in 2022/23:

- 18 decisions were issued, 16 in 2022/23 and two at the start of 2023/24; and
- two were determined to be ineligible.

Of the 18 decisions issued:

- all were for permanent appointments;
- nine involved external competitions and nine involved internal competitions; and
- the competitions were held in eight different ministries/organizations and in various locations around the province.

Results of the Merit Commissioner's Reviews

In 11 of the 18 reviews conducted, the Merit Commissioner:

- determined that the aspects of the selection process related to the employee's grounds complied with the requirements of section 8(1) of the *Act*; and
- upheld the hiring decision.

In the other seven reviews, the Merit Commissioner:

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

The Merit Commissioner upheld the proposed appointment in
11 of the 18 reviews received and conducted for 2022/23.

In addition to being contacted by employees requesting staffing reviews, the Office of the Merit Commissioner was contacted by approximately 35 individuals who were excluded employees, members of the public, or ministry employees concerned about hiring practices or a specific competition within their ministries or organizations. All individuals who contacted the Office of the Merit Commissioner received a response by phone or email. Some of the concerns received were outside the jurisdiction of the Merit Commissioner. Those individuals were advised that the Merit Commissioner did not have the legislated mandate to investigate their concerns; suggestions about other avenues for redress were then made. For example, the Office of the Ombudsperson deals with concerns involving the administrative fairness of government decisions and the BC Human Rights Tribunal deals with issues concerning discrimination.

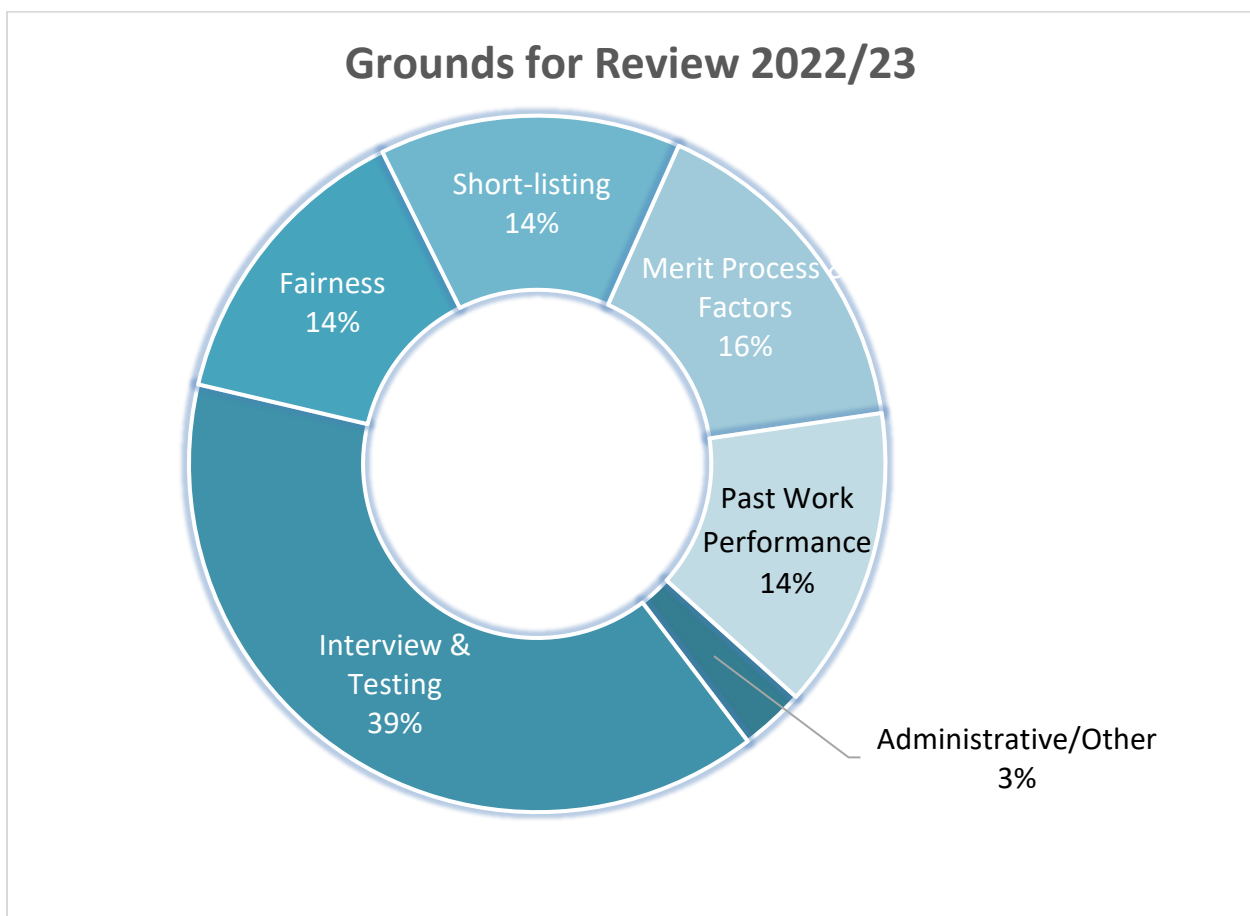


Grounds for Review

Requests for a staffing review must be based on the ground(s) that the appointment decision did not comply with section 8(1) of the *Act*. The grounds considered by the Merit Commissioner in a staffing review are restricted to those raised to the organization head at Step 2.

There is no limit to the number of grounds an individual may put forward in their request. As there is no prescribed format in which a review request must be submitted, often the requestor's written narrative of interwoven concerns is translated into clear and concrete grounds for review. These grounds are then shared with the requestor by the Office of the Merit Commissioner and either confirmed or revised, if required.

In 14 of the 18 reviews conducted in 2022/23, we identified more than one ground, and in three cases, we identified four grounds for the reviews. Only four of the reviews had a single ground. The following chart categorizes the grounds and the number of each type.



The following section examines notable elements or themes that were identified in requestors' grounds.



Merit Process and Factors

Several grounds that were cited for review related to the panel not adequately assessing one or more of the factors of merit, particularly experience. Several requestors believed this factor was not given sufficient consideration in determining their ability to perform the position under competition. Others believed the weight given to the interview as part of the overall approach was inadequate, resulting in the hiring process not properly assessing all factors of merit.

The *Act* lays out the factors of merit which must be considered: education, experience, knowledge, skills, past work performance, and years of continuous service. However, the design of assessments measuring these factors is up to the hiring manager to ensure they are measured consistently and fairly. To differentiate candidates, assessment tools were used to assess individuals' knowledge, skills, abilities, education, and experience, and determine the most qualified candidates. Candidates who did not meet the minimum requirements for these assessments were eliminated from the competition at that stage.

One requestor believed their direct relevant qualifications were not fairly assessed, and the panel should have awarded points for their direct experience in the position. There is no legislative requirement to weigh employees' direct experience in a specific role more heavily than the experiences of other candidates. The review found that the panel fairly assessed the applicant's job-related qualifications; while some applicants had more experience than others, if the minimum requirements were met, they all advanced to the next stage. This placed emphasis on subsequent processes where candidates who met the mandatory requirements had the opportunity to demonstrate their relevant knowledge and skills on a common basis (e.g., level playing field) through structured assessments like written tests and interviews.

Another requestor believed that an insufficient assessment was completed for a merit-based hiring process. Only two questions were asked during the interview process; the qualifications listed in the job profile focused on skills and behavioural competencies, with minimal experience and knowledge requirements, and no educational requirements. The *Act* requires appointments be based on merit and be the result of a process designed to assess the knowledge, skills, and abilities of eligible applicants. It is up to the panel to identify the specific qualifications within these factors, ensuring that they are relevant to the position and fairly assessed. The review found that the panel used an approach where experience was assessed on a pass or fail basis at the short-listing stage. The candidates' general knowledge and skills were assessed through an interview and verified through references (past work performance checks). The review found that the appointment process was based on merit and a process designed to consider eligible applicants' knowledge, skills, and abilities.

The reviews found that the approaches taken in these competitions allowed for the factors of merit to be sufficiently and fairly considered.



Short-listing

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

In one review where candidates were short-listed based on their responses to a questionnaire, the requestor raised a concern that the assessment of one qualification was not reasonable. One of the screening questions required the applicant to answer a question about supervisory duties in a specific way to be credited with the experience required, but applicants were provided with limited information on how to respond. The review found that the instructions for applicants regarding this question were confusing and that the shortlisting approach was unfair. The review was unable to ascertain if applicants were consistently assessed in the short-listing stage.

In another review, the requestor, who met the minimum required qualifications, was not short-listed, and did not advance to the next stage of the competition process. However, at least one candidate without the required qualifications was short-listed and did advance to the next stage. The panel explained that the requestor did not clearly include the full dates of their employment on their resume and as such, the panel was unable to validate the number of years for one of the required job qualifications. The review concluded the requestor's application was not fairly evaluated. As for the individual who advanced in the process without meeting the required qualifications, the panel advised an error had been made but had no impact on the competition as the candidate did not pass the interview.

In another example, the requestor disagreed with being screened out of the competition because of safety incidents that the panel considered in short-listing. The job description identified several accountabilities that involved the need for a high degree of safety as well as a mandatory requirement to have a clean safety record over the year prior. An assessment of safety incidents was relevant to the competition and the panel's decision to assess it at the short-listing stage was reasonable as a determining factor of whether an applicant should advance or not. In addition, the requestor believed other applicants were less qualified than them regarding one of the mandatory qualifications. The panel had a broader view of that qualification than did the requestor. The broader criteria for meeting the requirement was relevant to the role, consistently described, and consistently applied. From an examination of the evidence, the requestor had more experience in some fields than the other applicants who proceeded in the competition, but the review found that the panel had not identified those type of experiences as a mandatory requirement for consideration.



Interviewing and Testing

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

A few requestors from the same competition received their interview preparation materials seven and a half to 31.5 hours late. The panel chair and the human resources assistant provided evidence that a problem with the email application's automatic send function caused 19 candidates to receive their preparation materials late. While inadvertent, the error resulted in these candidates having less available time to prepare than the panel intended them to have. The review concludes that some candidates were not treated fairly.

Five requestors from the same competition cited grounds about the appropriateness of interview questions and/or the fairness of how point-scores were assigned to candidate responses. To address these grounds, the reviews examined the marking processes, not to re-score responses, but to determine if the panel was fair in their assessment. It was apparent that the panels used structured means of assessing knowledge, skills and competencies that were clearly relevant to the duties and, in most cases, stated in the job profiles. Further, the point scores awarded to candidate responses were reasonable based on comprehensive marking guides outlining expected responses, and the reviews confirmed candidate responses were consistently marked. One exception to this was where the panel had not adequately marked one requestor's responses to two situational questions. The panel indicated the requestor had not used the STAR method (situation-task-action-result) during the interview, and, while the hiring manager provided a clear explanation on the marking approach, it was not clear that the panel had applied this approach nor was it reasonable to expect that candidates were required to respond using the STAR method.

In another case, the requestor expressed concerns that the panel made an error in identifying the competency for an interview question. As a result, the requestor prepared an example to demonstrate a different competency than the one the panel assessed. The review found that this error was unfair based on the preparation materials provided by the panel to the candidates. The panel then decided to eliminate the points for this question; however, simply eliminating 30% of the assessment of knowledge and skills may not have left a sound basis upon which to make an informed hiring decision.



Past Work Performance

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

A few requestors believed that one or more of their referees had provided inaccurate information about their work performance. An examination of the reference materials confirmed that the panel members spoke only to referees put forward by the candidates and the onus was on the candidates to select individuals who had supervised them in the variety of situations relevant to the position under consideration. It is not uncommon for employees to have a different view of their performance than that of their supervisor.

Of interest was a situation where the panel had completed the requestor's past work performance, but had to reassess all past work performance for the competition due to a delay in the competition, which then led to the requestor failing at this stage. The panel chair decided to reassess past work performance for all candidates as it had been six weeks from the initial completion of the past work performance. During the reassessment of the requestor's past work performance, the referee shared that they could no longer recommend the candidate as subsequent workplace events had called into question their suitability for the position. The review concluded that the panel had an inherent obligation to ensure all candidates were qualified for the role.

Fairness

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

Two requestors believed there was bias against them from the hiring manager as they had requested a previous staffing review with the Office of the Merit Commissioner. The *Act* has given employees the right to request a review of an appointment decision, if eligible, without being penalized. A hiring panel can conduct an objective process where this circumstance exists by adhering to good staffing practices. These practices include convening a multiple person panel, asking the same questions of all candidates, and having established marking criteria, to mitigate bias. An examination of the reference materials confirmed the competitions had these safeguards in place and found no evidence that any of the requestors had been treated unfairly.

In one notable competition, the requestor had received final notification stating that the position under competition was finalized and that they had been placed on an eligibility list where they ranked number one. Two weeks later, the requestor received a phone call from the recruitment team stating there had been an administrative error and advising that the requestor had not passed their past work performance assessment. As such, they were being removed from the eligibility list. The requestor questioned the administrative fairness of the process. The review found that miscommunication



amongst the hiring team had resulted in the requestor incorrectly being placed on the eligibility list. It was evident that the error was a misunderstanding as opposed to a breach of administrative fairness. The review concluded that while an administrative error occurred, it did not impact the fairness and objectivity of the process used to assess past work performance. While there were no implications for the fairness or objectivity of the past work performance process itself, the review found that the requestor was justifiably confused and disappointed by the final outcome.

In another competition, two requestors questioned the fairness of the panel marking, as the panel members had previously worked or were currently working on day shifts with some of the candidates. The requestors believed this gave the day shift candidates an advantage as panel members would favour them. The competition resulted in six successful candidates, four having worked the day shift. It is common for panel members to have a working relationship or familiarity with one or more of the candidates in the competition. It is up to the panel to use an objective means of assessment and ensure candidates are treated equitably. The documentation showed the panel used the same objective assessment approach and marked candidates in a consistent manner. Further, the examination of panel notes and marking confirmed that candidates were treated equitably, with no evidence that the candidates received more or fewer marks than justified by their responses.

Out of Scope Grounds

The Merit Commissioner may only consider grounds based on those submitted to the organization head at the internal inquiry stage. On occasion, a ground or part of a ground submitted by the requestor may not fall within the parameters of this section and we refer to these grounds as “out-of-scope.”

One requestor had concerns with systemic discrimination and hiring process appeals from previous competitions. Concerns involving discrimination are outside of the Merit Commissioner’s jurisdiction. As for previous competitions, the Merit Commissioner’s statutory responsibility is to review the grounds involving the specific appointment(s) at issue and not to consider concerns involving past hiring processes.

Another requestor had concerns that they were unfairly targeted by their current supervisor. It is important to understand that the Merit Commissioner may examine whether there was bias in the hiring process but does not examine employee or labour relations issues as these are outside of his statutory authority.

Lastly, one requestor expressed concern that being provided with the interview questions 24 hours in advance of the interview did not provide sufficient time to prepare answers and find supervisors to be referees. The *Act* limits the Merit Commissioner’s review to the internal inquiry grounds, and as this issue was not part of the requestor’s original grounds, it was not considered in their review.



Observations

This fiscal year, the Office of the Merit Commissioner observed that most of the grounds in staffing reviews involved the interviewing and testing stage. Requestors' concerns included unfairly marked assessments, inconsistent preparation of assessment materials, inconsistent timeframes for interviews, and inconsistent interview questions.

Of note this year for hiring managers, the reviews point to the need for hiring managers to be more aware of potential technical issues when using technology for testing and interviewing. Hiring managers may increasingly depend on technology to provide candidates with preparation materials for interviews; to conduct interviews; or to ask candidates to send materials for testing purposes. Technical issues can result in candidates not receiving the same information or having the same amount of time to prepare for and complete testing and interviewing. It is important for hiring managers to test the technology used to assess applicants and have a back up plan if the technology fails, to provide equitable treatment to all applicants.

Conclusion

During 2022/23, the Merit Commissioner received 20 requests for staffing reviews. This is a small number in comparison to the appointments made to and within the BC Public Service. Nevertheless, the concerns we receive are similar in nature year over year. As such, the information in this report will provide insight into areas of concerns for employees and provide hiring managers with potential opportunities to improve their hiring practices.