

Report on Staffing Reviews 2023/24



Office of the
Merit Commissioner

Upholding Fair Hiring in the BC Public Service

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Executive Summary

The *Report on Staffing Reviews 2023/24* 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 staffing reviews and the Merit Commissioner’s findings.

During the 2023/24 fiscal year, the Merit Commissioner received 25 staffing review requests including one which was subsequently withdrawn and eight which were ineligible.

Of the 16 reviews conducted, the Merit Commissioner:

- directed the reconsideration of the appointment decision in two cases; and
- upheld the appointment decision in the other 14 cases.

Most of the requestors had concerns about the interviewing and testing stage(s) of the hiring process. Some of the concerns included the marking of responses, interview format, and relevancy of the questions asked during the interview or written assessment. Grounds related to years of continuous service and administrative matters were also raised, but less frequently. There were several concerns brought forward that were outside the scope of the Merit Commissioner’s statutory responsibilities. These included concerns relating to the successful candidate being delegated supervisor tasks prior to the competition; the introduction of a new ground that had not been raised with the organizational head during the internal inquiry step of the process; conflicts of interest due to outstanding grievances regarding labour relations issues; past hiring processes; and discrimination related to differing political views.

Of the 16 staffing reviews conducted, the Merit Commissioner directed reconsiderations in two cases. In one competition, the flaws identified related to the **past work performance** process where the panel’s approach to marking the referees’ information across candidates showed **inequitable and inconsistent** interpretation of information. In the other competition, the reconsideration decision found that the written **assessment unfairly advantaged** one candidate as they had received the same assignment in a previous competition. Both reviews highlight the fundamental importance of constructing well-designed assessment processes and providing equitable treatment to candidates.



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.

In the recruitment and selection context of the *Act*, the merit principle means that candidate selection is based on:

- possessing the established qualifications for a role;
- an assessment that includes the six factors of merit listed in the *Act*; and
- non-partisanship and impartiality.

To ensure the merit principle is properly applied, recruitment and selection require:

- a well-conceived process supporting reasonable, consistent, and fair decisions;
- an approach that is open, transparent, and well documented; and
- an equitable implementation of the hiring process.

When the merit principle is correctly implemented, it results in the fair, objective, and non-partisan appointment of a qualified individual to a public service organization.

A process designed to appraise the knowledge, skills, and abilities of eligible applicants means that:

- “Eligibility” conditions of employment and posted restrictions (e.g., Canadian citizenship, legal age to work) are met.
- Mandatory posted requirements (e.g., education, experience) are met.
- Appropriate, consistent, and fair 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) are used.
- The competitive 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 focuses on whether the hiring process was properly designed and conducted, and whether all applicants were treated fairly.

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:

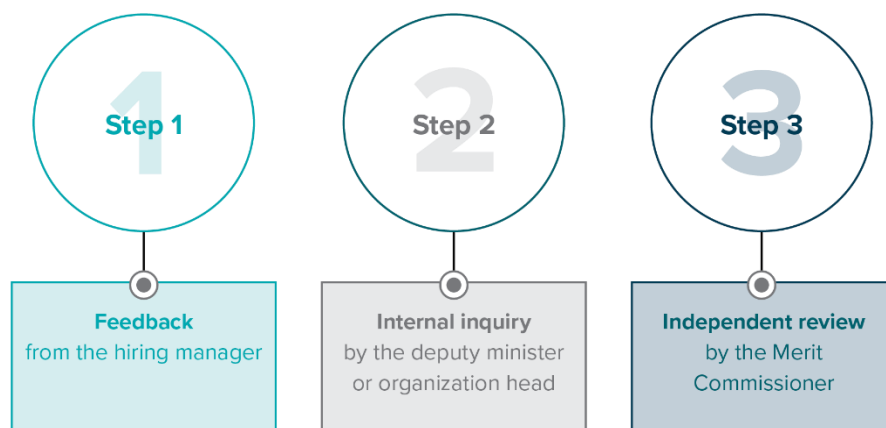
- education
- experience
- knowledge
- skills
- past work performance, and
- years of continuous service in the BC Public Service. The specific requirements for considering and assessing this factor vary based on whether there are any collective agreement provisions that apply to the position.

Eligibility and Process

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 formal 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 that the appointment or hiring process was not merit-based; and
 - the appointment decision is for a **position in a bargaining unit**.

At Step 3, an employee applicant who is unsuccessful in being appointed to a position in a bargaining unit who is dissatisfied with the inquiry decision:

- may request that the Merit Commissioner conduct a staffing review;
- must make 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.

Unsuccessful employee applicants in competitions for roles **outside of a bargaining unit** do **not** have legislated access to the Merit Commissioner for an independent review; step 3 is not available to them.

As an Officer of the Legislature, the Merit Commissioner is independent from ministries and other government organizations (e.g., agencies (BC PSA), boards, commissions). This independence allows the Merit 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 investigative approach 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> .

2023/24 Staffing Reviews - Observations

Step 1 – Feedback

Over the last few years, including the past fiscal year, the annual merit performance audits generally observed that most applicants have been provided with proper final notification. Providing unsuccessful applicants with proper notification of the competition outcome is an important part of the hiring process because it signals to applicants their opportunity to request feedback. Final notification is 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.

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. In 2023/24, four requests for a review expressed concerns with the provision of feedback. One requestor disagreed with the feedback received. In the three other cases,



requestors felt they had received insufficient or conflicting information as to why they were eliminated from consideration.

While the requestor and the hiring manager may have different views of what information was exchanged during feedback, it is important that the hiring manager provides employees with a complete account of their performance in the hiring process and employees must be receptive to hearing the panel's observations of their performance. Feedback given to employees should be thoughtful and constructive to help candidates improve their work performance and it allows them to decide whether to exercise their right to request an internal enquiry at Step 2, and on what grounds to base their request. Specific, thoughtful, honest, and informative feedback can also provide candidates with assurance that the staffing process was fair and objective. Feedback is often provided verbally; however, in some instances, requestors ask for written feedback. This choice is typically at the discretion of the hiring manager.

Step 2 – Internal Inquiry

According to information provided by the BC Public Service Agency and other organizations subject to oversight by the Merit Commissioner, 84 internal inquiry (Step 2) requests were received during the 2023/24 fiscal year.

Of the 84 requests:

- 34 were deemed ineligible.

For the remaining 50 requests, an internal inquiry (Step 2) was conducted.

- In 38 of these cases, the deputy minister or organization head upheld (i.e., supported) the appointment decisions.
- In 12 cases, the deputy minister or organization head directed the hiring panel to reconsider the appointment decisions.

Of the 50 appointments where an internal inquiry was completed:

- 21 involved competitions for **excluded** positions, which are **legislated as ineligible for Step 3** of the staffing review process by the Merit Commissioner.

This left 29 appointment decisions for which a requestor was eligible to seek a further staffing review (Step 3) by the Merit Commissioner.

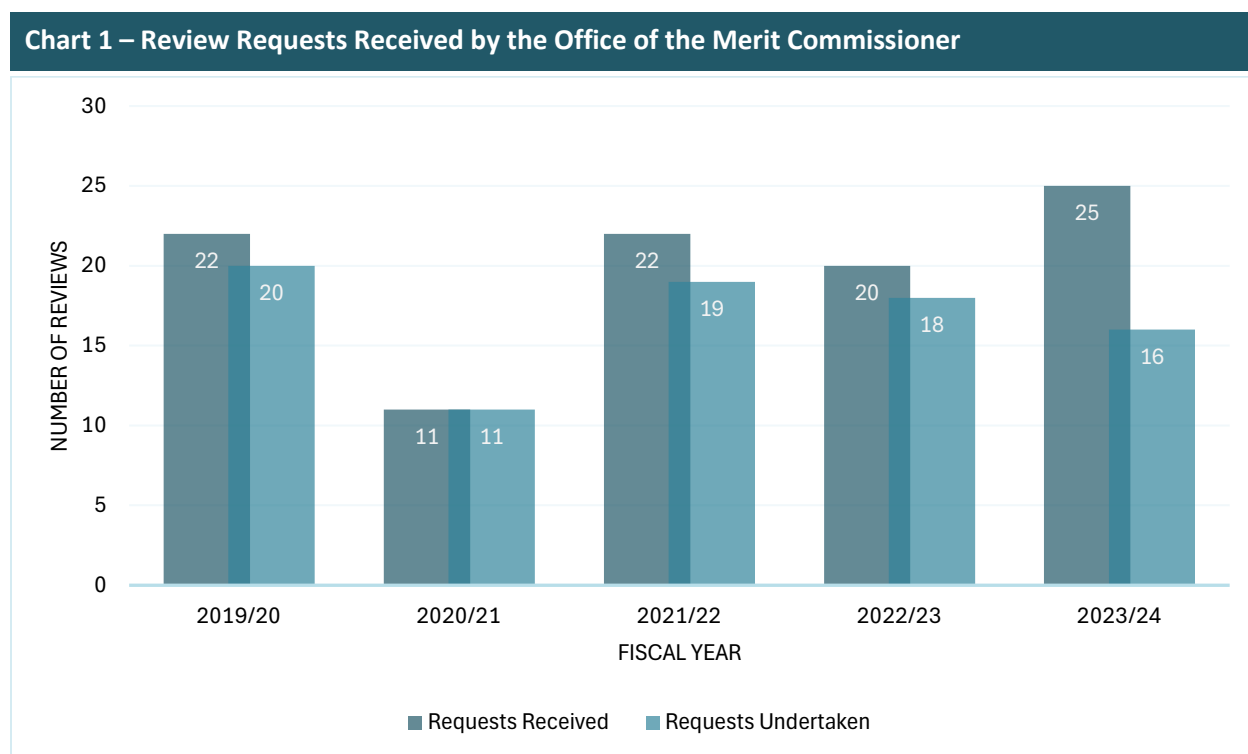


Step 3 – Requests for Review

In 18 of the 29 eligible appointment decisions where a Step 2 review was completed, the unsuccessful employee applicant requested a review by the Merit Commissioner. Of these 18, the Merit Commissioner deemed one to be ineligible and one employee withdrew their request, leaving 16 which were accepted for review. Seven additional staffing review requests that were received by the Merit Commissioner were deemed to be ineligible, as these candidates were either external, applied for a position outside of a bargaining unit, or did not complete a Step 2 request.

This year 62% of requests advanced from Step 2 to Step 3. This was considerably higher than the previous fiscal year of 45% and slightly higher than the 2021/22 fiscal year of 55%.

Chart 1 illustrates the number of review requests submitted to the Merit Commissioner and the number of reviews undertaken since 2019/20.



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 2023/24, the Merit Commissioner issued decisions:

- between 17 and 51 days of receiving the documentation; and
- with an average response time of 30 days.

Of the 25 review requests submitted in 2023/24:

- 16 decisions were issued;
- eight were determined to be ineligible; and
- one was withdrawn.

Of the 16 decisions issued:

- the competitions resulted in permanent appointments in 14 cases, a temporary appointment over 7 months in one case, and a placement on an eligibility list in one case;
- 12 involved external competitions and four involved internal competitions; and
- the competitions were held in nine different ministries/organizations and in various locations around the province.

Other Enquiries

In addition to being contacted by employees requesting staffing reviews, the Office of the Merit Commissioner was contacted by approximately 26 individuals who were excluded employees, members of the public, or ministry employees concerned about general hiring practices, a specific competition, or to request information or advice. Some were willing to identify themselves while others remained anonymous. 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.



Results of the Merit Commissioner's Reviews

In 14 of the 16 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 two 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
14 of the 16 reviews received and conducted for 2023/24.

Grounds for Review

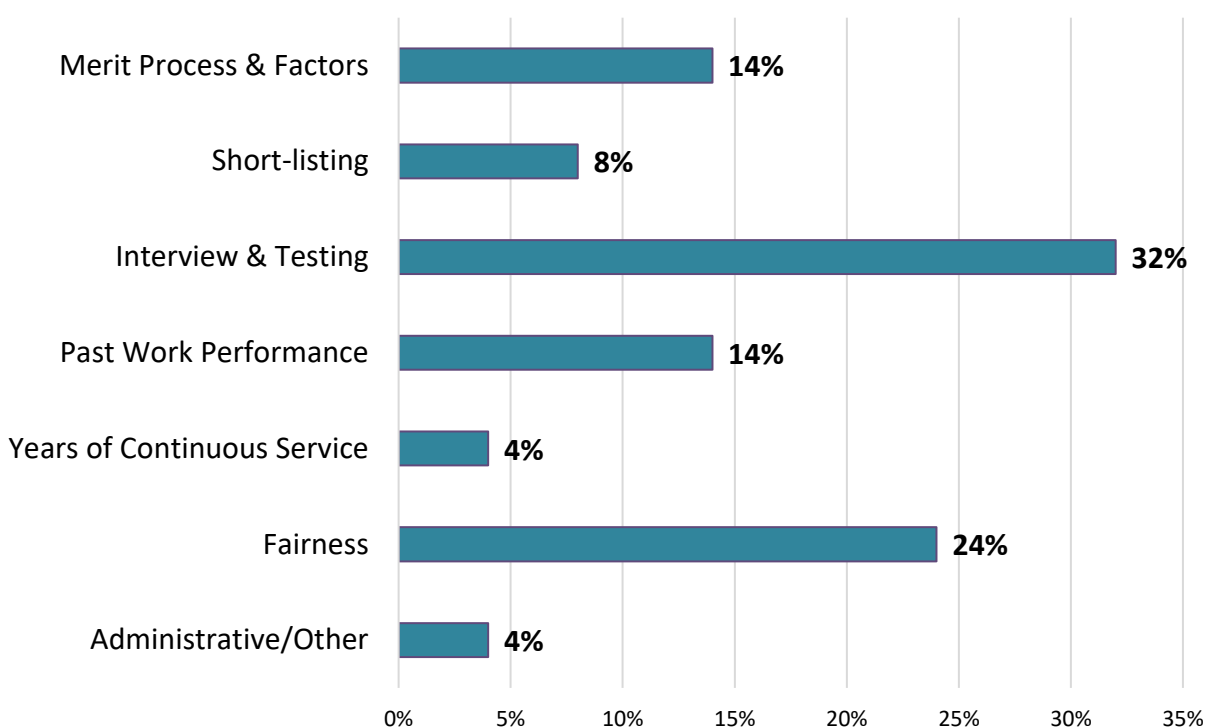
Requests for a staffing review must be based on the ground(s) that the appointment decision did not comply with section 8(1) of the *Act*. The grounds considered by the Merit Commissioner in a staffing review are **restricted by legislation** to those raised to the organization head at Step 2.

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 16 reviews conducted in 2023/24, we identified more than one ground, and in two cases, we identified **six or more grounds** for the reviews. Only two of the reviews had a single ground. The following chart categorizes the grounds and the number of each type.



Grounds for Review 2023/24



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

Merit Process and Factors

A frequently cited ground for review was that the hiring process did not adequately assess one or more factors of merit. One requestor felt their directly related experience working in a similar position and having acted in the supervisor position should have been taken into consideration. Another requestor believed the depth of their experience had not been considered appropriately. The *Act* lays out the factors of merit which must be considered, and it requires appointments to be the result of a process designed to appraise education, experience, knowledge, skills, past work performance, and years of continuous service. The design of assessments used to measure these factors is determined by the hiring panel, who must ensure they are measured consistently and fairly. While directly related or lengthy experience may provide candidates an opportunity to be more competitive, there is nothing in the *Act* that requires greater consideration of this type of experience.

Two requestors from the same competition believed the appointment was not based on the principle of merit, specifically asserting that an incorrect job profile was used for the posting. The requestors believed this resulted in the qualifications and assessments not being relevant for the position. The review confirmed the job profile was appropriate given the nature of the position.



One requestor believed the overall process to identify qualified candidates was flawed and requested a review of the process and weight the panel assigned to the different stages. Another requestor believed the appointment was not based on the principle of merit and that the competition results were unfair. In both processes, candidates were evaluated through a tiered process in which the factors of merit were considered at different stages. Education and experience were assessed through short-listing, and knowledge and skills were assessed in the subsequent written assessment and/or interview. Past work performance was assessed, and points were added to candidates scores for years of continuous service. While the *Act* does not prescribe how factors are to be considered or weighted, it does emphasize that candidates should demonstrate their competency for the appointment through a process designed to appraise knowledge, skills, and abilities, and it is up to the panel to choose how these factors are considered and weighted, as long as they do so consistently and reasonably. Both reviews confirmed the appointments were made based on the principle of merit.

Another requestor believed they were the most qualified candidate and that the position was not awarded on the principle of merit. The review concluded that appropriate assessments were conducted for all applicants who applied and that all candidates who were advanced in the competition met the mandatory education and experience requirements for the position. The review further found the hiring actions and decisions made by the panel were objective, and that all candidates had been assessed consistently, equitably and fairly.

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 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 request for review, the requestor believed they had demonstrated the qualifications necessary to be short-listed. However, the review concluded the panel's determination that the requestor had not met the required qualifications was reasonable. In this case, it was evident that the requestors' application did not contain the mandatory information stated as required in the notice. While the panel's responsibility is to clearly state the mandatory qualifications and application requirements necessary to be considered, the onus is on the applicant to clearly demonstrate how they met each of the qualifications.

In the same review as above, the requestor and another requestor both believed that a specific preferred qualification in the notice should have been applied, as it was an important requirement for the role. With respect to using preferred qualifications, it is an accepted practice to post both



mandatory and preferred qualifications and invoke the preferred qualifications (in whole or in part) only when the response to a posting reasonably requires it. These preferred qualifications may also be invoked after the short-listing stage of a competition at the hiring panel's reasonable discretion (e.g., tie breaker). In this case, there were two preferred qualifications, and the opportunity attracted a low number of applicants. Therefore, the panel made a reasonable decision to apply only one of the preferred qualifications at the short-listing stage.

In another review, the requestor believed that a specific preferred qualification was not applied as it would have benefited the internal applicants and limited external candidates to apply. It is up to the hiring panel to identify prior to short-listing, the specific preferred qualifications to be used, so long as they are relevant to the nature of the work and consistently and fairly assessed. In this instance, as the opportunity was initially intended for nine positions, the panel made a reasonable decision to not apply the preferred qualification.

Interviewing and Testing

Consistent with previous years, the most cited ground was concerns with interviewing and/or testing, in particular the relevancy of the assessment in relation to the position and the marking of interview responses and written assessments. Typically, knowledge, skills and behavioural competences required for the position are assessed through various means such as interviews, written assessments, standardized tests, and presentations. For each means of assessment, there must be some form of substantive marking criteria (e.g., behavioural interpretive guides, answer keys or expected elements of a response).

Two requestors on the same competition believed the written assessment was tailored to the successful candidate's extensive background and expertise and should have incorporated other elements from the job requirements. Additionally, one of these candidates expressed concern that the interview questions did not allow candidates to properly demonstrate their experience as outlined in the job profile. While the *Act* identifies the factors of merit, it does not prescribe when or how these are to be assessed. Instead, the hiring panels determine the means of assessment so long as they are fair and relevant to the job. Further, assessments are designed based on the needs of the position as opposed to the experience of the applicants, which can vary significantly. The review concluded that the assessments were relevant to the position and that candidates were treated fairly.

In one request for review, the requestor stated the overall interview approach was unfair. The requestor believed the process was not genuine, nor structured to adequately assess candidates for important characteristics necessary for the position. The panel selected three relevant behavioural competencies from the role profile and used the BC Public Service's standardized interpretive guides to set target levels and assign marks. It is up to the hiring panel to determine the process so long as it is objective, and candidates are treated equitably. Behavioural interviewing is a widely accepted method of assessment that requires candidates to provide examples of their past behaviours in real situations for the panel to determine if the levels of their demonstrated competencies align with the requirements of



the position being filled. In this competition, the review found the interview was objective, fair, and that candidates were treated equitably.

A few requestors expressed concerns about how the panel assessed their interview responses and believed they were unfairly marked. To address these grounds, each review examined the marking process, not to re-score responses, but to determine if the panel was fair in their assessment of each candidate's responses. It was apparent in each competition that panel members used reasonable, comprehensive marking guides, and that candidate responses were scored in a fair and consistent manner. In one of these cases, the requestor also disagreed with the panel's approach to not carry forward scores from one assessment to another to form the basis of their final interview mark. The review concluded that the interview process, including the scoring, was properly designed and that the panel's approach to determining the basis for the final interview score was reasonable and fair.

Two requestors raised concerns that some candidates were advantaged over others in the hiring process. In one case, the requestor believed they were treated unfairly as the written assessment was sent late. The evidence showed that while there was a delay, due to a technical issue, the requestor was afforded additional time to complete the written assessment, thereby mitigating any disadvantage. In the other case, the requestor indicated the successful candidate had received the same written assessment in a previous competition, thereby advantaging this candidate. Although re-using assessment tools from previous competitions is an acceptable and common practice, in a merit-based process, it is incumbent upon the panel to ensure that assessment tools are fair and equitable for all candidates. In this case, one candidate was unfairly advantaged over another at the written assessment stage.

Two candidates indicated the qualifications assessed in the interview and/or written assessment were either outside the scope of the position or beyond the minimum education and experience requirement. In one case, the requestor indicated the ideal responses that the panel was expecting were beyond that of the position; however, the evidence showed that the interview question and ideal responses were suitably represented in the responsibilities in the job description. In the other case, the requestor indicated that one of the knowledge-based questions was beyond the minimum education and experience requirements for the position. The review found that candidates who met the minimum education and experience requirements would be sufficiently capable of passing this knowledge-based question.

Lastly, in two reviews, the requestors indicated that the written assessment instructions and/or questions were unclear, and the reference materials provided were insufficient. In both cases, the reviews found that the background material and instructions were clear and appropriate; the written assignments were properly designed to assess the required knowledge, skills and abilities in a reasonable manner; and the written assessment process was fair and reasonable.



Past Work Performance

Several requests included grounds involving past work performance. 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.

In two reviews, both requestors believed that the past work performance process was flawed. Some of the reasons cited were: the panel member who conducted the past work performance assessment had a work conflict with the requestor; the requestor had conflicts with their current supervisors who provided reference checks; successful reference checks should outweigh unsuccessful reference checks; there were flaws in the panel composition; and references that were checked were not individuals whose names the requestor had provided to the panel. The main concern was that one or more of the requestors referees had provided inaccurate information about their work performance and that the references provided by these individuals should have been disregarded. Both reviews found the hiring panel used a common and acceptable approach to consider past work performance that met both legislative and policy requirements. The reviews show that references that were contacted in the process and used to make the final hiring decision were provided by the requestors. Also, the reviews conclude that the panel composition was not out of the ordinary. An examination of both reviews' references found that the referees were supervisors who were best positioned to speak to the candidates' past work performance, and that the performance observations provided were balanced and credible. It is not uncommon for employees to have a different view of their performance than that of their supervisor, or than that of the panel who assessed candidates' performance in the context of the vacant position.

In one review, two requestors questioned whether the successful candidate's past work performance was assessed during the competition. The evidence was clear that a past work performance assessment had been completed with the successful candidate's supervisor.

In another competition, one requestor believed the past work performance assessment did not assess or appropriately weigh relevant qualities. The panel used the standardized BC Public Service reference check template to collect information on several performance areas. While these areas were general in nature, they were related to the particular job to be performed. It was also clear that the panel chose to contact several referees for each candidate to obtain a holistic picture of their performance. Further, the reference information for each candidate was comprehensive, balanced, and consistent with respect to candidate's strengths and areas for development.

In one review, the requestor believed they were unfairly and unreasonably eliminated at the past work performance stage due to previous disciplinary action. Past work performance is one of the factors that must be considered in the hiring process; however, the *Act* does not specify how this factor is to be considered. It is an organization's prerogative to determine the approach as long as it is fair. In this case, the past work performance approach was consistent across all candidates and fairly applied.



In another case, the requestor believed that the panel was not objective in assessing one of their referee's statements provided during the past work performance assessment. The requestor was noted by the panel as failing a specific competency despite the referee's overall characterization of the candidate's high performance in that particular area. While it was evident the panel had given the evaluation of the past work performance assessment careful consideration, the review determined that the referees' statements were not objectively and consistently assessed according to the job requirements in the job profile.

Years of Continuous Services

Two grounds submitted by employees requesting a review questioned whether years of continuous service had been appropriately considered or calculated. Years of continuous service is a factor of merit that must be considered. For those employees applying for positions subject to the collective agreement provisions with the BC Government Employees' Union and the Professional Employees Association, it must be assessed in accordance with the provisions laid out in the agreements.

In one review, two requestors questioned if the successful candidate's years of continuous service had been assessed during the competition. An examination of the candidate's service showed that the points had been correctly calculated and incorporated to form total competition scores.

Fairness

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

In seven different reviews, seven requestors asserted that a particular candidate had received favourable treatment due to an existing working relationship between that candidate and one or more of the panel members. The requestors indicated that the candidates and panel members had either previously worked in the same ministry together or had a previous supervisory relationship. In one case, one requestor cited that they themselves were disadvantaged due to a negative supervisory relationship that existed between themselves and one of the panel members. All six requestors believed that the hiring panel could not be impartial or that a conflict of interest existed given the previous, or current, working relationship between panel members and candidates. In addition, one of the six requestors above also indicated they believed the panel may not be impartial given the panel member(s) may not have understood the positions the requestor had held previously. It is common for panel members to have a working relationship or familiarity with one or more of the candidates in the competition. There are only rare circumstances that would preclude a panel member from participating in a hiring process; instead, it is by adhering to good staffing practices that panel members are able to ensure an objective assessment of both known and unknown candidates. These safeguards include appointing a multi-person panel responsible for hiring decisions, clearly defining qualifications, pre-establishing an assessment methodology and specifying standards for assessment against which all candidates are



consistently assessed. The competitions had these measures in place and the reviews did not find evidence that any candidate had received special treatment.

In two reviews, both requestors believed the panel was biased due to an ongoing workplace dispute. The Merit Commissioner's statutory responsibility is limited to considering whether, in accordance with the grounds raised, the hiring process related to the review was merit-based. As such, both reviews only examined whether there was evidence of bias within the hiring process. Staffing processes have elements of subjectivity and therefore the possibility of bias. However, the effect of this inherent subjectivity can be largely minimized by taking measures at the outset of the competition to safeguard against it as cited above. With respect to the panel members' relationship with the requestors, it is not uncommon for one or more members to have a working relationship with a candidate(s). There is nothing in legislation or policy that excludes an individual from participating in a selection process under this circumstance; instead, it is by adhering to good staffing practices that a fair hiring process is ensured. Both reviews found that the hiring actions and decisions were objective and that all candidates were assessed consistently, equitably, and fairly.

Lastly, one of the above requestors also expressed concern that sufficient documentary evidence from the competition file to demonstrate the hiring process was fair had not been provided to them. Candidates are not provided with documents related to other candidates within a competition as those materials are considered personal and confidential. Candidates are, however, eligible to receive specific feedback regarding their own performance in relation to the established evaluation criteria to understand to the extent practicable, why they were unsuccessful in the competition process. Through the review process, fairness principles that support merit-based hiring were examined and the review concluded that the process was open, transparent, objective, that relevant means of assessments were conducted, that reasonable decisions were made, and that candidates had been treated equitably and fairly.

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; these grounds are out-of-scope.

In two cases, requestors introduced new grounds and as a result, in both cases, under the current legislation, these additional grounds were unable to be considered as part of the Merit Commissioner's review.

A few other grounds that were cited, or background information that was provided, were related to issues with conflicts of interest due to outstanding grievances regarding labour relations issues, past hiring processes, and discrimination related to differing political views. These issues, while very serious,



are not within the Merit Commissioner's mandate and candidates were advised of other avenues should they wish to seek redress.

Two requestors in the same competition cited fairness concerns regarding the successful candidate having been delegated supervisory tasks prior to the competition. This concern was not considered as the Merit Commissioner may only examine fairness issues related to the appointment under review.

Observations

This fiscal year, as with previous years, the Office of the Merit Commissioner observed that most of the grounds in staffing reviews involved interviewing and testing. The concerns raised by requestors included unfairly marked assessments, insufficient reference materials and confusing questions and/or instructions as well as candidates being unfairly advantaged, out of scope assessments, questions beyond the education and experience requirements, and the relevancy of an assessment in relation to the position.

Of note this year, the reviews point to the continued need for hiring managers to have well designed interview and written assessments that are relevant to the job requirements, along with comprehensive marking guides and criteria to ensure candidate responses are scored in a fair and consistent manner. Additionally, it is incumbent on hiring managers to ensure when re-using an assessment, that no one candidate is advantaged over another.

Additionally, this fiscal year, the Office of the Merit Commissioner broadened the interpretation of what constitutes a "request for a staffing review" for this report to better reflect the desire of prospective and current public service employees to access Step 3 staffing reviews. The count of "requests for a staffing review" now includes requests made by external candidates; candidates who applied on positions excluded from the bargaining unit; and candidates from hiring processes not within the jurisdiction of this office. This altered approach is reflected in the increase in the overall number of staffing review requests, which corresponds to the ineligible requests reflected in the statistics for this fiscal year.

Conclusion

During 2023/24, the Merit Commissioner received 25 requests for staffing reviews. This number remains relatively small in comparison to the overall number of appointments that are made to and within all 64 organizations who hire for roles in accordance with the *Act*. The concerns we receive continue to be similar in nature from those of previous years. The information in this report is intended to provide insight into areas of concerns for employees and to assist hiring panels in identifying the good hiring practices they have in place already, as well as identifying potential opportunities for improvements.