



Office of the
Merit Commissioner

Upholding Fair Hiring in the BC Public Service

Service Plan
Fiscal Years

2025/26 – 2027/28

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

December 2024



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Overview

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

In May 2024, the Speaker was presented with the Office's *2023/24 Annual Report*. That report included summaries of the results of the 2022/23 Merit Performance Audit of 268 appointments to and from within the BC Public Service; consideration of 16 requests for staffing reviews in 2023/24; and the results of 40 dismissal process reviews in 2023/24 (including COVID-19 vaccination-related dismissals).

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

Responsibilities

All appointments to and from within the BC Public Service must be made on the principle of merit. Merit means that appointments are made on the basis of an assessment of competence and ability to do the job and are not influenced by patronage. The Merit Commissioner's role is to provide independent oversight of the application of the merit principle under the *Public Service Act* (the *Act*). This oversight role applies to appointments made in accordance with section 8 of the *Act*. A qualified, impartial and professional public service impacts all British Columbians and the services upon which they rely.

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

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

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

The Merit Commissioner may also undertake special audits, studies of systemic issues, or studies of emerging areas related to merit-based hiring.

The Office of the Merit Commissioner (the Office) provides credible and relevant information about hiring upon which employers may act to produce positive hiring practice changes. This supports the long-term goal of building public confidence and a strong consensus that the employees of the BC Public Service are qualified and hired fairly founded on the principle of merit. The Office provides information related to the conduct of just cause dismissals to assure the Legislative Assembly, and ultimately the citizens of British Columbia, that all appropriate and necessary steps have been followed prior to the dismissal of a public servant. The results of these post-termination reviews will also enable the employer to improve practices where necessary.

An overview of the Office's structure is provided in [Appendix A](#).

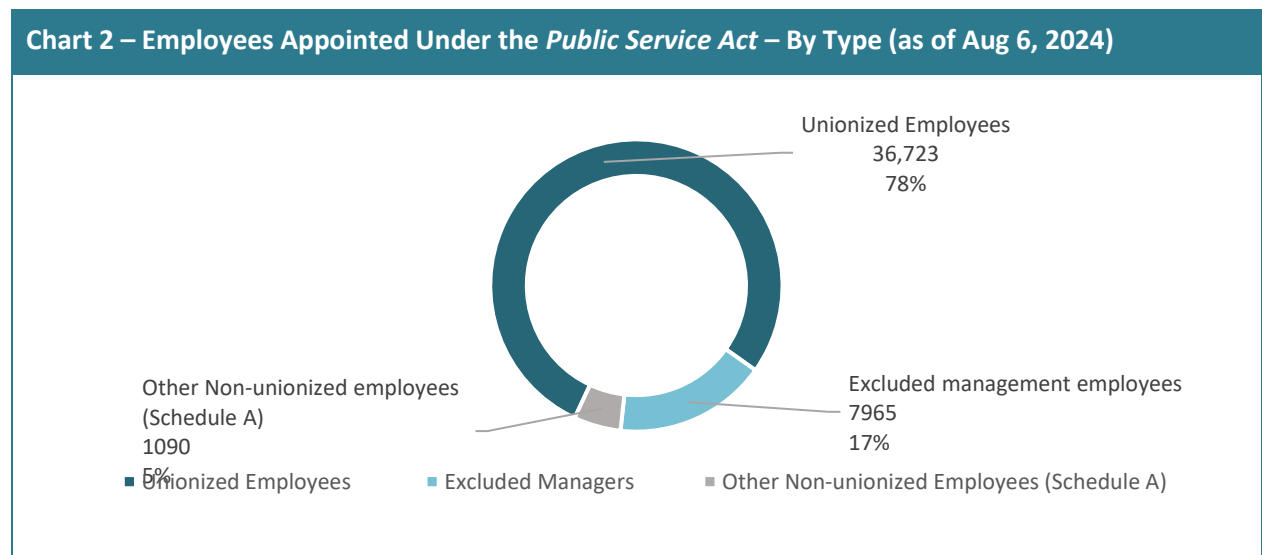
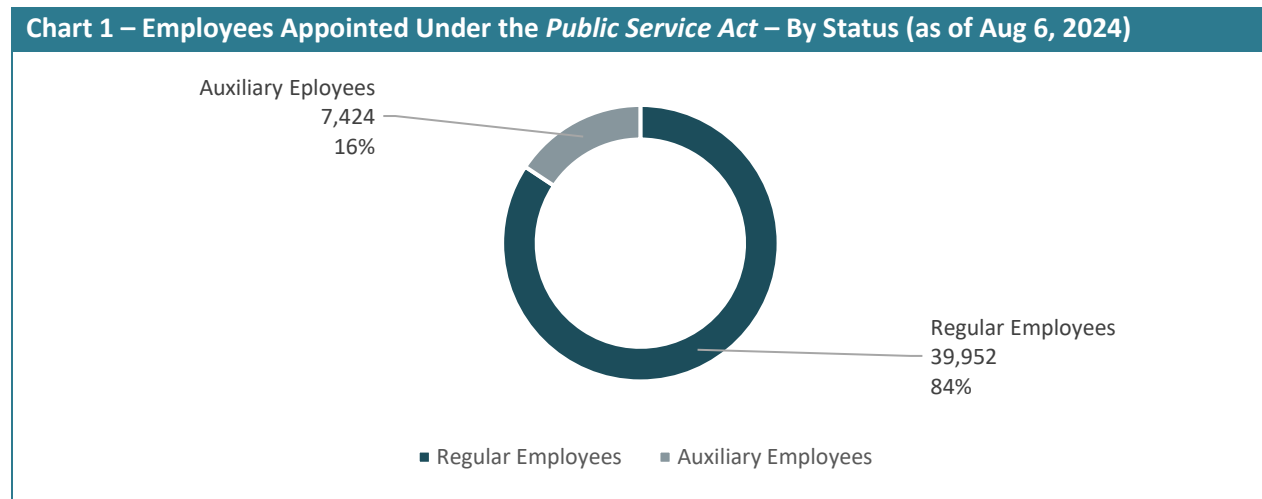
Context

Oversight of Merit-based Hiring

BC Public Service Workforce

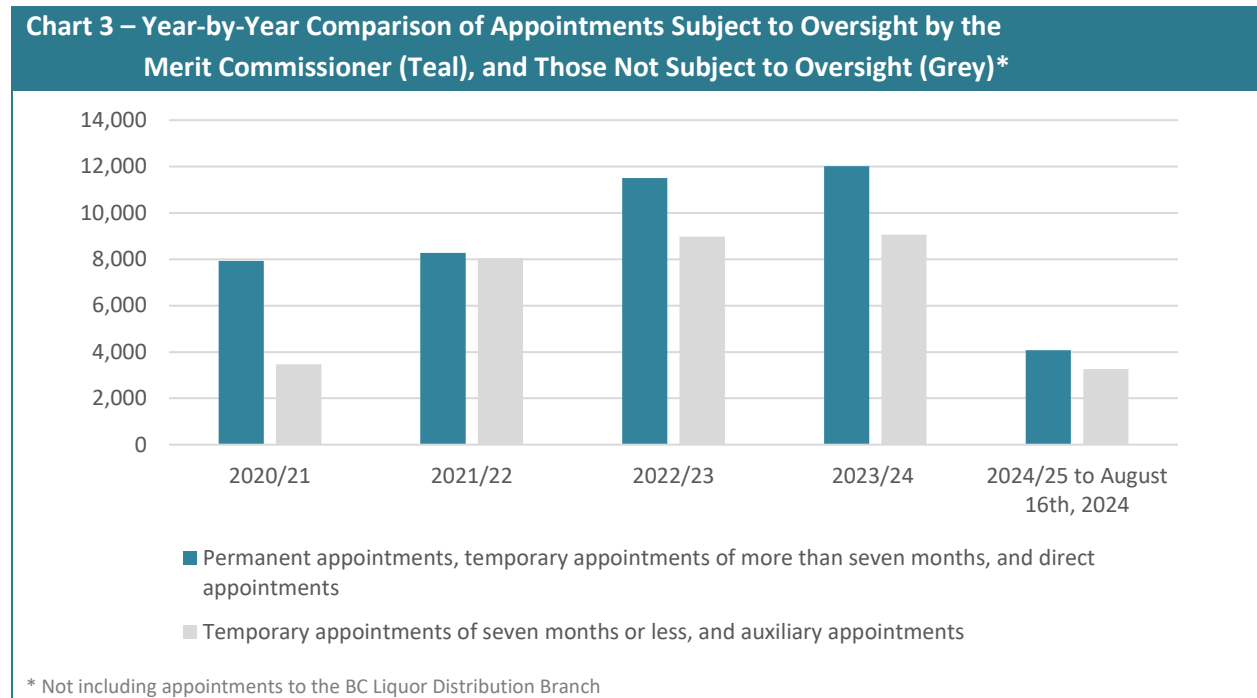
As of August 6, 2024, there were 47,376 employees in the BC Public Service, which is an increase of 2,441 employees since July 2023. These employees work in ministries and other organizations across the public service and are hired under the *Act*. A complete list of organizations subject to hiring oversight by the Merit Commissioner, in whole or in part, appears in [Appendix B](#).

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



Appointment Activity

The Office audits appointments to and from within the BC Public Service that are made under section 8 of the *Act*. Chart 3 shows the total numbers of these appointments, by appointment type, for the last five years.



Indicators of Merit-based Hiring

A merit-based hiring process requires the commitment of all public servants. The framework shown in Chart 4 provides an overview of indicators of merit-based hiring and the Office’s related responsibilities.

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

Oversight of Just Case Dismissal Processes

In April 2018, responsibilities were given to the Merit Commissioner relating to the review of BC Public Service just cause dismissal processes. Reviews are based on an established protocol which considers best practice, relevant legislation, and policy guidelines. The *2023/24 Annual Report* includes summaries of the analysis of all eligible dismissal processes received, except for those related to COVID-19 vaccination compliance.

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

2023-24 5-year review process

The *Act* (under section 25.1) states that within five years after the date the Merit Commissioner received the dismissal process review role, a special committee of the Legislative Assembly must begin a review of the *Act* in relation to dismissal process reviews and submit a report to the Legislative Assembly with its findings within one year. Upon the five-year anniversary of this legislated mandate being assigned to the Merit Commissioner, a review of those responsibilities was undertaken by a special committee of the Legislature.

On May 11, 2023, the Special Committee to Review Provisions of the Public Service Act (the “Committee”) was appointed to review the *Act* as it relates to dismissal process reviews. The Merit Commissioner was pleased to participate in the review process established by the Committee, which invited the Merit Commissioner and other parties to present to the Committee on their experience with dismissal process reviews and any recommendations for how to improve them. The Merit Commissioner made four recommendations: to maintain existing provisions in the *Public Service Act*, and three recommendations for legislative amendments, to support the Merit Commissioner in conducting fair and timely reviews.

The Committee’s findings in its report tabled in November 2023 reinforced the importance of the Merit Commissioner’s dismissal process review work and supported its continuation. The Committee recommended to the Legislative Assembly that

1. The *Act* be amended to enable the Merit Commissioner to compel unions, courts, judicial tribunals, and quasi-judicial tribunals to confirm whether there is an active case in an individual’s name for the sole purpose of determining a reviewable dismissal’s eligibility for review.
2. The *Act* be amended to clarify that employees appointed under section 27 (1) of the *Administrative Tribunals Act* are eligible for dismissal process reviews.
3. The *Act* be amended to clarify that it is not a waiver of legal advice privilege to share dismissal files, including legal material, with the Merit Commissioner.

The Merit Commissioner has communicated with the Minister of Finance and the BC Public Service Agency (PSA) deputy minister in support of these amendments and their implementation.

In addition, the Committee made six recommendations to the PSA to address issues related to investigations of just cause dismissals. The Merit Commissioner has met with the PSA to discuss these recommendations.

Indicators of Proper Process Related to Just Cause Dismissals

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

Performance Measures and Targets

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

Merit Performance Audit

The goal of the annual merit performance audits is to have a sufficiently robust sample size that allows the audit results to be confidently generalized to the population of all appointments made within the same time period. This methodology is designed with Statistics Canada to ensure proper representation and proportionality is achieved.

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

| Performance Measures | Target and Results | | | | | |
|---|------------------------|------------------------|------------------------|-------------------------|----------------------------|----------------------------|
| | 2022/23 | | 2023/24 | | 2024/25 | 2025/26 |
| | Target | Results | Target | Results | Target | Target |
| Generalizable audit results | Simple random sampling | Simple random sampling | Simple random sampling | Simple random sampling | Stratified random sampling | Stratified random sampling |
| Confidence level | 95% | 95% | 95% | 95% | 95% | 95% |
| Margin of error | 6% | 6% | 6% | 6% | 6% | 6% |
| Report audit results to organization heads and the BC Public Service Agency within six months of audit period | September 2023 | October 2023 | September 2024 | Expected September 2024 | September 2025 | September 2026 |
| Publish annual audit findings within four months of reporting individual results | November 2023 | December 2023 | November 2023 | Expected December 2024 | December 2025 | December 2026 |

Staffing Reviews

It is important to both the public service employee who requests the Merit Commissioner to undertake a review of an appointment decision and the employer that a thorough review takes place with a timely decision rendered.

| Performance Measures | Target and Results | | | | | |
|---|--------------------|---------|---------|---------|---------|---------|
| | 2022/23 | | 2023/24 | | 2024/25 | 2025/26 |
| | Target | Results | Target | Results | Target | Target |
| Complete reviews within an average of 30 days | 30 days | 34 days | 30 days | 30 days | 30 days | 30 days |

Dismissal Process Reviews

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

| Performance Measures | Target and Results | | | | | |
|--|--------------------|----------|----------|----------|----------|----------|
| | 2022/23 | | 2023/24 | | 2024/25 | 2025/26 |
| | Target | Results | Target | Results | Target | Target |
| Conduct reviews of selected eligible dismissal processes | 100% | 100% | 100% | 100% | 100% | 100% |
| Report activities annually to Legislative Assembly | May 2023 | May 2023 | May 2024 | May 2024 | May 2025 | May 2026 |

For dismissals arising from BC Public Service COVID-19 vaccination policy requirements, a sample of the total is being assessed over a three-year period. There are currently 252 COVID-19 vaccination-related dismissals that are eligible for review, with more forthcoming.

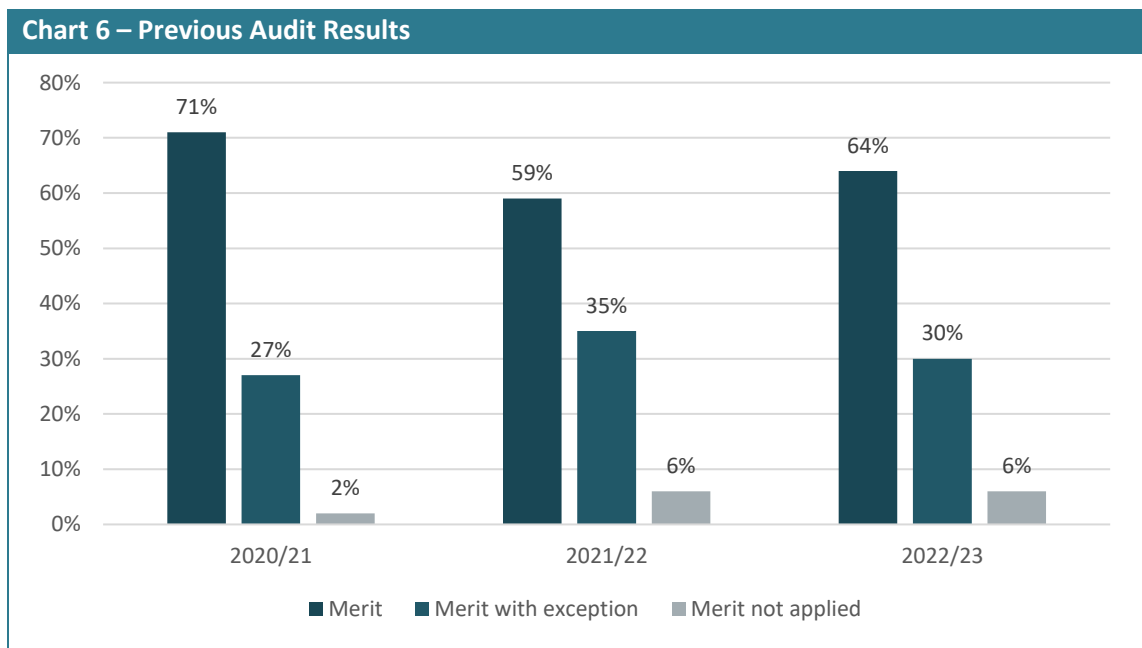
Progress on Key Commitments

Merit Performance Audit

For 2023/24, an audit was undertaken of 272 appointments, where findings could be generalized to represent all appointments of the same type across the BC Public Service for that fiscal year. The appointments were selected randomly from organizations across the public service and from all employee groups and levels.

Organization heads receive detailed reports and the Agency Head receives the overall results of the audit in September 2024. The overall report of the analyses of audit results and recommendations to address identified areas of weakness or concern is planned to be provided to the Legislative Assembly and released publicly in December 2024.

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



Staffing Reviews

During the 2023/24 fiscal year, the Merit Commissioner received 25 staffing review requests. One review was subsequently withdrawn and eight were ineligible. Upon completion of 16 thorough investigations, two resulted in the Merit Commissioner directing a reconsideration of the appointment by the deputy minister or organizational head. In the other 14 reviews, the requests for review were dismissed and the appointment decisions were upheld.

The most frequent grounds for review involved the interviewing and testing stage of the hiring process. The concerns regarding this stage 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 also 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.

The Merit Commissioner directed reconsiderations in two cases. In one reconsideration decision, the Merit Commissioner found flaws 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. The other reconsideration decision found that the written assessment unfairly advantaged one candidate as they had received the same assessment in a previous competition.

The average time taken to complete the reviews and respond to the requests was 30 days following receipt of the required documentation. Individual decisions were rendered between 17 and 51 days from receipt of the appointment documentation.

There is no way of predicting the number or complexity of staffing reviews received in a year. For the current fiscal year, the Office has received six requests for review as of September 12, 2024.

Dismissal Process Reviews

A report to the Legislative Assembly on the files reviewed was included in the *2023/24 Annual Report* released in May 2024.

In 2023/24, a total of 40 dismissal process reviews were conducted. Of the 40 process reviews, 21 were COVID-19 vaccination-related dismissal processes. In the spirit of the *Act* and to maintain the integrity of the intended legislated process, the Merit Commissioner will not report publicly on the results of the analysis of the COVID-19 vaccination-related dismissal processes until all potential litigation has been concluded as per s.5.12 of the *Act*. Overall, the other 19 processes complied with the application of government practices, policies, and standards. There were some circumstances where there were opportunities for improvement, but which were not sufficient to result in the fairness of the process being compromised.

Priorities for Fiscal 2025/26

The following sections detail the 2025/26 priorities for the Office. In addition, the Office will be dedicating resources to the continuous improvement of the new database system.

Merit Performance Audit 2024/25

An audit of appointments made in 2024/25 has commenced and a random sample of appointments made throughout the province is being audited. The sample will be drawn from appointments made in all organizations and across all occupational groups, including bargaining unit and excluded management positions. The sample size is fixed to a robust value to not only ensure results are valid and generalizable, but also to enable efficient management of the audit activity and associated costs. The 2024/25 audit will be composed of a fixed sample size of 284 (71 appointments per quarter). The results from this audit are targeted to be reported in the fall of 2025.

The Office engaged again this year with Statistics Canada to review and refresh the previous random sampling methodology. Beginning with this audit year the Office has adopted a new method of random sampling, moving to a stratified sampling approach. Enhancing the Office's current sampling method developed with Statistics Canada in past years, a stratified sample breaks the Office's larger sample into characteristics that of particular interest for additional assessment, for example, "excluded management" or "included" (bargaining unit) appointments, and samples from within those groups. A stratified sample is beneficial as it can prevent against a "bad sample" (selecting too many of one type).

Another factor in the new sampling model that Statistics Canada helped the Office devise is a random sample of appointments from organizations that typically are not selected as they are very small. By selecting from within this group the Office is assured a statistically relevant sampling of these organizations and are guaranteed to select an appropriate number of audits from these organizations every quarter. Once an organization is sampled, it is weighted so it is less likely to be chosen again in that audit cycle.

In addition, the Office is currently exploring options for an alternative merit rating system to reflect our findings. It is a common misconception that a “merit with exception” finding is analogous to a “merit” finding, when in fact it is more aligned with a “merit not applied” finding.

Dismissal Process Reviews

The Office’s past practice has been to review all eligible dismissal processes. However, given the large number of dismissals related to the COVID-19 vaccination policy, the Office implemented a strategic sampling approach. This approach, determined by the Merit Commissioner and implemented by the PSA, will allow for commenting on the overall processes within the group of dismissals, and for noting any irregularities observed from file to file. The Office will continue to review the available selected dismissal process files which are provided by the BC Public Service Agency on a regular and efficient schedule dependent on file eligibility. The 2024/25 annual report will include the findings and any recommendations for reviewed files.

Staffing Reviews

The Office gives priority to conducting staffing reviews when requested. Only unsuccessful employee applicants for positions within bargaining units are eligible to request a review by the Merit Commissioner. As the appointments of the successful candidates to the positions in question are normally not confirmed until the Merit Commissioner’s decision has been received, the Office makes every effort to complete reviews and issue a report within a 30-day timeframe. The Merit Commissioner is legislatively unable to support excluded employees who request a review.

Special Audits and Studies for Fiscal 2025/26 and Beyond

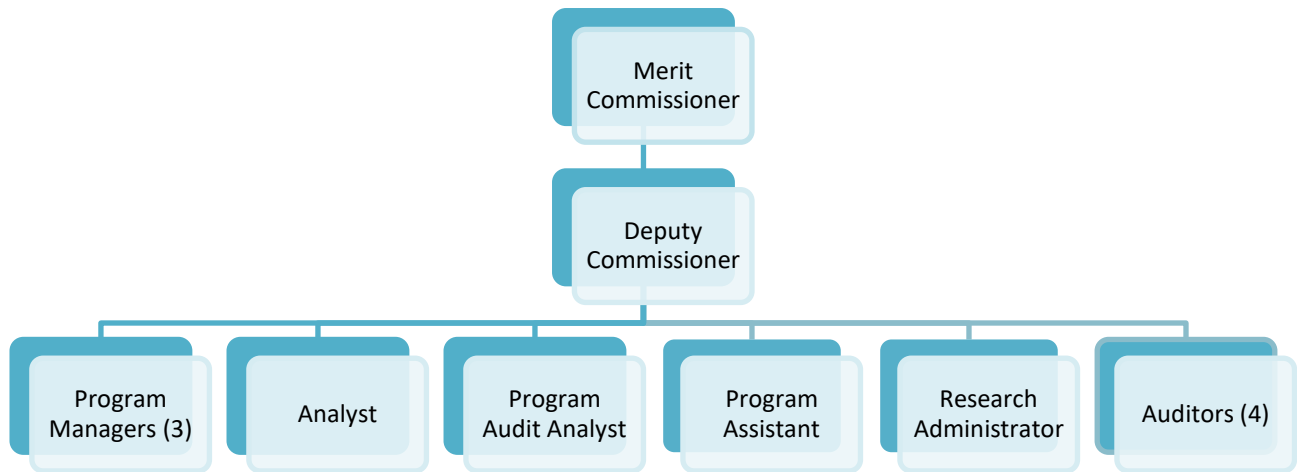
The Office will continue to focus its resources on its mandated responsibilities of conducting merit performance audits, staffing reviews, and reviews of dismissal processes. The results of these core activities will guide the Office in determining where special audits or studies may be appropriate to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

In 2024, the Office began work on a special study regarding inclusive hiring practices: strategies used by hiring managers and organizations to create hiring processes that are more likely to encourage qualified applicants from diverse backgrounds to apply and to be able to equitably participate in a hiring process. This study describes emerging practices, outlines the foundations of fairness in merit-based competitions that are important to inclusive hiring, and reports on the elements of inclusive hiring practices in the public service environment that can be observed in the randomly-selected appointments audited by the Office. This special study is targeted to be released by the end of 2024.

The Merit Commissioner has taken on a role to support the Ombudsperson to oversee his fourth recommendation in the *Public Interest Disclosure Act* investigation report, *Hire Power*, dated March 27, 2024.

Appendix A

Office Structure



Appendix B

Organizations Subject to Oversight by the Merit Commissioner¹

(As of November 29, 2024)

Ministries*

Agriculture and Food
Attorney General
Children and Family Development
Citizens' Services
Education and Child Care
Emergency Management and Climate Readiness
Energy and Climate Solutions
Environment and Parks
Finance
Forests
Health
Housing and Municipal Affairs
Indigenous Relations and Reconciliation
Infrastructure
Jobs, Economic Development and Innovation
Labour
Mining and Critical Minerals
Post-Secondary Education and Future Skills
Public Safety and Solicitor General
Social Development and Poverty Reduction
Tourism, Arts, Culture and Sport
Transportation and Transit
Water, Land and Resource Stewardship

Statutory Offices

Auditor General
Elections BC
Human Rights Commissioner
Information and Privacy 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 Athletic Commissioner
BC Container Trucking Commissioner
BC Farm Industry Review Board
BC Human Rights Tribunal
BC Pension Corporation
BC Public Service Agency
BC Review Board
Building Code Appeal Board
Civil Resolution Tribunal
Commission of Public Inquiry
Commissioner for Teacher Regulation
Community Care and Assisted Living Appeal Board
Creston Valley Wildlife Management Authority
Destination BC
Employment and Assistance Appeal Tribunal
Energy Resource Appeal Tribunal
Environmental Appeal Board
Financial Services Tribunal
Forest Appeals Commission
Forest Practices Board
Health Professions Review Board

¹ Only roles that are hired under the *Public Service Act* are subject to Merit Commissioner oversight.

Hospital Appeal Board
Independent Investigations Office
Industry Training Appeal Board
Islands Trust
Legislative Library
Mental Health Review Board
Motor Vehicle Sales Authority of BC
Office of the Premier
Passenger Transportation Board
Property Assessment Appeal Board

Public Guardian and Trustee
Public Sector Employers' Council Secretariat
Royal BC Museum
Safety Standards Appeal Board
Seniors Advocate
Surface Rights Board
Workers' Compensation Appeal Tribunal

****Ministry names are current as of publication.***