

Special Committee to Appoint a Merit Commissioner



FEBRUARY 2016



February 17, 2016

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Merit Commissioner containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

Marvin Hunt, MLA
Chair

Harry Bains, MLA
Deputy Chair

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Composition of the Committee

Members

Marvin Hunt, MLA	Chair	Surrey-Panorama
Harry Bains, MLA	Deputy Chair	Surrey-Newton
Dr. Doug Bing, MLA		Maple Ridge-Pitt Meadows
Laurie Throness, MLA		Chilliwack-Hope
Claire Trevena, MLA		North Island

Clerk to the Committee

Kate Ryan-Lloyd
Deputy Clerk and Clerk of Committees

Terms of Reference

On May 27, 2015, the Legislative Assembly agreed that a Special Committee be appointed to select and unanimously recommend to the Legislative Assembly the appointment of an individual to hold office as the Merit Commissioner for the Province of British Columbia, pursuant to section 5.01 of the *Public Service Act*, R.S.B.C. 1996, c. 385;

The said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

- a) to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
- b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c) to adjourn from place to place as may be convenient; and
- d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Introduction

The Merit Commissioner is an independent officer of the Legislature appointed under section 5.01 of the *Public Service Act*, R.S.B.C. 1996, c. 385, with responsibility for monitoring the application of the merit principle to provincial public service appointments. While other Canadian jurisdictions have merit-based processes, British Columbia is the only province that has established a Merit Commissioner as an officer of the Legislature to support a professional non-partisan public service.

The Merit Commissioner conducts random audits of public service appointments to ensure that appointment processes are merit-based and that appointed individuals are qualified for their positions. The Merit Commissioner reports annually to the Legislative Assembly on the work of her Office with respect to ensuring the effective application of the merit principle in public service appointments.

The Office of the Merit Commissioner may also undertake special reports, performance reviews, and surveys of the application of the merit principle for recruitment and hiring across the public service.

Since 2006, an all-party Special Committee of the Legislative Assembly has been tasked with recruiting a Merit Commissioner to be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly. Joy Illington was the province's first Merit Commissioner appointed by this method, and she served a three-year term from 2006 to 2009.

An all-party Special Committee conducted a search for Ms. Illington's successor and unanimously recommended the appointment of Fiona Spencer in 2010. A subsequent Special Committee established at the end of her first three-year term recommended Ms. Spencer's reappointment to a second three-year term in 2013.

Meeting Schedule

On May 27, 2015, the all-party Special Committee to Appoint a Merit Commissioner received its terms of reference from the Legislative Assembly.

In addition to informal discussions to plan the selection process, the Committee met on the following dates for the purposes described below:

Thursday, May 28, 2015	Election of Chair and Deputy Chair Review of Terms of Reference
Thursday, July 16, 2015	Review of position and interview planning
Monday, September 14, 2015	Interview with incumbent
Tuesday, September 29, 2015	Deliberations
Wednesday, January 6, 2016	Deliberations
Tuesday, February 9, 2016	Final deliberations Adoption of report

Committee Process

On May 28, 2015, the Special Committee to Appoint a Merit Commissioner held its organizational meeting and reviewed its terms of reference and related briefing materials. After due consideration, the Committee decided to inquire whether the incumbent, Ms. Fiona Spencer, would like to seek a third term in the position and if so, to submit an application and participate in a formal scheduled interview.

The interview took place in Vancouver on September 14, 2015 and confirmed Committee Members' preliminary assessment of the incumbent's qualifications, professionalism and suitability for a third term. The Committee deliberated after the interview took place and additionally conducted several reference checks with selected individual stakeholders who work closely with the Merit Commissioner to discuss her performance in the position thus far and confirm her suitability for continuation in the role.

The Special Committee was impressed by Ms. Spencer's record of achievements and depth of experience as a senior public service executive, her commitment to maintaining a high level of integrity in her role, and knowledge of public service management issues and the principles of merit-based hiring practices. Ms. Spencer's colleagues spoke about the very capable and the professional manner in which she has carried out her responsibilities as Merit Commissioner since 2010. Committee Members also observed that two previous Special Committees and the Legislative Assembly had unanimously agreed to recommend her initial appointment in 2010, and her reappointment in 2013. Members of the Committee noted her leadership and dedication to ensuring a merit-based non-partisan public service, and its importance in providing services to British Columbians.

Recommendation

The Special Committee unanimously recommends to the Legislative Assembly that Fiona Spencer be reappointed as Merit Commissioner for the Province of British Columbia, pursuant to section 5.01 of the *Public Service Act* R.S.B.C. 1996, c. 385.

Biographical Information



Fiona Spencer

Fiona Spencer was appointed as British Columbia's Merit Commissioner in February 2010, was reappointed in 2013 and recommended for reappointment to a third term in February 2016. As an Independent Officer of the BC Legislature, she provides oversight and insight into hiring practices in the BC public service. Until 2007 when she moved to BC, Fiona's career was with the federal public service in Ottawa where she held a variety of executive positions in the human resources (HR) field in a number of departments and agencies. She served in the Privy Council Office where her responsibilities included providing advice and guidance to the Clerk and Prime Minister on public service-wide HR issues and matters related to the federal government's most senior managers (including Deputy Ministers and CEOs of Crown Corporations). Fiona's last position with the federal government was as Vice-President at the Canadian Food Inspection Agency. Between 2007 and 2010, Fiona worked as an independent management consultant.

Fiona has received a number of awards and honours including the Queen's Diamond Jubilee Medal for public service in British Columbia, the Queen's Golden Jubilee Medal for exemplary public service, the Head of the Public Service Award for Valuing and Supporting People, the Ottawa Citizen Award for HR Professional of the Year, and the Hicks Morley Vision Award for Strategic Goals Champion.

Appendix A:

Public Service Act, R.S.B.C. 1996, c. 385

This Act is current to January 27, 2016

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PART 1 — INTRODUCTORY PROVISIONS

Definitions

1 In this Act:

"agency" means the BC Public Service Agency continued under section 5 (1);

"agency head" means the head of the agency appointed under section 5 (2);

"auxiliary employee" means an auxiliary employee as defined in the regulations;

"deputy minister" means

(a) a person appointed as a deputy minister under section 12, or

(b) subject to section 14, a person who by an Act or by an order in council under that section is declared to have the status of a deputy minister;

"employee" means a person appointed under this Act other than a person appointed under section 15;

"merit commissioner" means the merit commissioner appointed under section 5.01.

Purposes of Act

2 The purposes of this Act are to

(a) facilitate the provision of service to the public in a manner that is responsive to changing public requirements,

(b) recruit and develop a well qualified and efficient public service that is representative of the diversity of the people of British Columbia,

(c) encourage the training and development of employees to foster career development and advancement,

(d) encourage creativity and initiative among employees, and

(e) promote harmonious relations of the government and employees and bargaining agents that represent employees in the public service.

Application of Act

3 Except as otherwise provided in this Act or in another Act, this Act applies

(a) to all ministries of the government, and

(b) to any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares this Act, or a provision of this Act, to apply.

Consultation process

4 (1) In this section, "consult" means seeking advice or an exchange of views or concerns prior to the making of a decision respecting the matters that determine merit under section 8 (2) or the making of regulations under section 25.

(2) The agency must consult with representatives of the employees' bargaining agents certified under the Public Service Labour Relations Act with respect to

- (a) the application of the matters that determine merit under section 8 (2), and
- (b) regulations that may affect the employees represented by the bargaining agents that the minister intends to recommend to the Lieutenant Governor in Council under section 25.

(3) In addition, the agency may consult with employees who are not represented by the bargaining agents referred to in subsection (2) with respect to the matters referred to in that subsection that affect members of those groups.

PART 2 — AGENCY HEAD AND MERIT COMMISSIONER

BC Public Service Agency

5 (1) The division of the government known as the Public Service Employee Relations Commission is continued as the BC Public Service Agency under the administration of the minister.

(2) The Lieutenant Governor in Council must appoint, under section 12, an individual to be the agency head.

(2.1) to (2.5) [Repealed 2005-35-36.]

(3) The agency head is responsible for personnel management in the public service including but not limited to the following:

- (a) advising the minister respecting personnel policies, standards, regulations and procedures;
- (b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;
- (c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;
- (d) developing, providing, assisting in or coordinating staff training, educational and career development programs;
- (e) developing, establishing and maintaining job evaluation and classification plans;
- (f) acting as bargaining agent for the government in accordance with section 3 of the Public Service Labour Relations Act;
- (g) developing, establishing and maintaining occupational health and safety programs;
- (h) developing and implementing employment equity policies and programs;
- (i) conducting studies and investigations respecting staff utilization;
- (j) carrying out research on compensation and working conditions;
- (k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;
- (l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;
- (m) establishing and maintaining a personnel management information system;

- (n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.
- (4) Subject to this Act and the regulations and on the recommendation of the agency head, the minister may issue policies respecting the matters referred to in subsection (3).

Appointment of merit commissioner

- 5.01 (1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an individual to hold office as the merit commissioner under this Act.
- (2) The merit commissioner is an officer of the Legislature and must
 - (a) faithfully, honestly and impartially exercise the powers and perform the duties of the office, and
 - (b) not divulge any information received under this Act, except if permitted by this Act.
 - (3) The Legislative Assembly must not recommend an individual to be appointed under subsection (1) unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.
 - (4) The merit commissioner is to be appointed for a term of 3 years and may be reappointed in the manner provided in this section for further 3 year terms.
 - (5) The merit commissioner is entitled
 - (a) to be paid, out of the consolidated revenue fund, compensation as may be fixed by the Lieutenant Governor in Council, and
 - (b) to be reimbursed for reasonable travelling and out of pocket expenses personally incurred in performing the duties of the office.
 - (6) The Lieutenant Governor in Council may appoint an acting commissioner if
 - (a) the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting,
 - (b) the commissioner is suspended when the Legislative Assembly is not sitting,
 - (c) the commissioner is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection (1) before the end of the session, or
 - (d) the commissioner is temporarily absent because of illness or for another reason.
 - (7) An acting commissioner holds office until
 - (a) a person is appointed under subsection (1),
 - (b) the suspension of the commissioner ends,
 - (c) the Legislative Assembly has sat for 30 days after the date of the acting commissioner's appointment, or
 - (d) the commissioner returns to office after a temporary absence, whichever is the case and whichever occurs first.

Merit commissioner

- 5.1 (1) The merit commissioner is responsible for monitoring the application of the merit principle under this Act by
- (a) conducting random audits of appointments to and from within the public service to assess whether
 - (i) the recruitment and selection processes were properly applied to result in appointments based on merit, and

- (ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed, and
 - (b) reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made.
- (2) In carrying out his or her responsibilities as merit commissioner under this section he or she must not conduct audits or issue reports in respect of the period before June 5, 2001.
- (3) [Repealed 2005-35-38.]

Annual report of merit commissioner

- 5.2 (1) The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made under this section.
- (2) The Speaker must lay each annual report before the Legislative Assembly as soon as practicable, if it is in session.
- (3) If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.
- (4) The report of the merit commissioner under this section must not disclose
- (a) personal information, as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act, relating to individuals who applied for or were appointed to positions in the public service, or
 - (b) the identity of persons who participated on behalf of the ministries, boards, commissions, agencies or organizations, as the case may be, in the selection of the individuals appointed to positions in the public service.

Expenses of merit commissioner

5.3 The merit commissioner may make a special report to the Legislative Assembly if the merit commissioner believes that the amounts and establishment provided for the office of merit commissioner in the estimates are inadequate for fulfilling the duties of the office.

Delegation

- 6 Subject to the regulations, the agency head may
- (a) delegate any of his or her powers, duties or functions under this Act to an employee of the agency,
 - (b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act to
 - (i) a deputy minister or other employee of the ministry, or
 - (ii) a member, officer or employee of the board, commission, agency or organization,
 - (c) delegate dismissal authority under section 22 (2)
 - (i) to an assistant deputy minister or an employee who has an equivalent classification level to an assistant deputy minister, and
 - (ii) to a member or officer of a board, commission, agency or organization to which this Act applies,
 - (d) establish conditions, standards or requirements for any delegation, and
 - (e) amend, replace or revoke any delegation made under this section.

Access to facilities and records

7 For the purposes of carrying out their duties under this Act, the agency head and merit commissioner are entitled to access to

- (a) ministries,
- (b) boards, commissions, agencies and organizations that are declared to be subject to this section under section 3, and
- (c) records, of ministries or of those boards, commissions, agencies and organizations, containing information pertinent to those duties or to personnel matters.

PART 3 — APPOINTMENTS TO THE PUBLIC SERVICE

Appointments on merit

8 (1) Subject to section 10, appointments to and from within the public service must

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

(2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.

(3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate

- (a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and
- (b) the long term career development and advancement of employees appointed under this Act.

(4) Subject to the regulations, the agency head may direct in respect of a vacancy or class of vacancies in the public service, that applicants be

- (a) limited or given preference in a manner intended to achieve employment equity objectives,
- (b) limited to employees to encourage career development and advancement,
- (c) limited to employees of a stated occupational group, position level or organizational unit, or
- (d) limited to a stated geographical area or locale.

Probation

9 (1) If a person who is not an employee is appointed to a position in the public service, the person is on probation until he or she has worked the equivalent of 6 months' full time employment.

(2) If the appointment is made from within the public service, a probation period in the new position not exceeding the equivalent of 6 months' full time employment may be imposed.

(3) A deputy minister or the agency head may reject an employee during the probation period if the deputy minister or agency head considers that the employee is unsuitable for employment in the position to which he or she was appointed.

Exceptions to section 8

10 Subject to the regulations

- (a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and
- (b) section 8 (1) (b) does not apply to the following:
 - (i) a temporary appointment of not more than 7 months in duration;

- (ii) an appointment of an auxiliary employee;
- (iii) a direct appointment by the agency head in unusual or exceptional circumstances.

Repealed

11 [Repealed 2003-88-10.]

Deputy ministers

- 12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.
- (2) An associate deputy minister has all the powers of a deputy minister.
- (3) Sections 5.1, 8 and 18 do not apply to appointments under this section.

Deputy ministers' pensions

- 13 (1) Subject to subsection (2), when calculating the amount of a pension under the Public Service Pension Plan, continued under the Public Sector Pension Plans Act, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.
- (2) Subsection (1) does not apply
- (a) to a person appointed as a deputy minister on or after September 1, 2001, or
 - (b) to a person holding the position of acting deputy minister.
- (2.1) Despite subsection (2) (a), subsection (1) continues to apply to a person who is a deputy minister before September 1, 2001 and is reappointed as a deputy minister on or after that date as long as there is no break in service as a deputy minister.
- (3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Declaration of deputy minister status

14 The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

Appointment by Lieutenant Governor in Council

- 15 (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers
- (a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or
 - (b) will be appointed to a position that requires special professional, technical or administrative qualifications.
- (2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.
- (3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

PART 4 — REVIEW OF STAFFING DECISIONS

Definitions

- 16 In this Part, "deputy minister" means,
- (a) with respect to a position in a ministry, the deputy minister of that ministry, and
 - (b) with respect to a position with a board, commission, agency or organization, the person having overall responsibility for the board, commission, agency or organization.

Request for feedback on staffing decision

- 17 (1) An employee who is an unsuccessful applicant for an appointment to the public service may, within the prescribed time, request from the individual responsible for the appointment an explanation of the reasons why he or she was not appointed.
- (2) The responsible individual must provide an explanation as soon as practicable after receiving a request under subsection (1).

Inquiry into staffing decision

- 18 (1) An employee who has made a request under section 17 may request an inquiry into the application of section 8 (1) with respect to the appointment.
- (2) A request under subsection (1) must be made within the prescribed period to the deputy minister responsible for the position and must include a detailed statement specifying the grounds on which the request is made.
- (3) The deputy minister who receives an application under subsection (1), or a person designated by the deputy minister, must inquire into the appointment and confirm the appointment or proposed appointment or direct that the appointment or proposed appointment be reconsidered.

Review by merit commissioner

- 19 (1) An employee who is an unsuccessful applicant for an appointment to a position in a bargaining unit under the Public Service Labour Relations Act who has made a request under section 18 and disagrees with the decision of the deputy minister or designate under that section may request a review of the appointment by the merit commissioner on the ground that section 8 (1) has not been complied with.
- (2) A request under subsection (1) must be made in writing within the prescribed period to the merit commissioner and may only be based upon the grounds submitted to the deputy minister under section 18 (2).
- (3) Subject to the regulations, the merit commissioner must establish the procedure for the expeditious consideration of requests for reviews under subsection (1).
- (4) If an applicant requests a review under subsection (1), the merit commissioner must, before undertaking the review, inform the deputy minister of the review.
- (5) The merit commissioner may summarily dismiss a request for a review under subsection (1) if
- (a) the request for review is not made within the time limit prescribed under subsection (2),
 - (b) the merit commissioner considers that the request for review is frivolous, vexatious or trivial or is not made in good faith,
 - (c) the request for review does not contain sufficient information to determine whether section 8 (1) has been complied with, or

- (d) the grounds, even if proven, are not sufficient to establish that section 8 (1) has not been complied with.
- (6) After conducting a review, the merit commissioner may
 - (a) dismiss the review, or
 - (b) direct that the appointment or the proposed appointment be reconsidered.
- (7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

Power to compel persons to answer questions and order disclosure

- 20 (1) For the purposes of a review under section 19, the merit commissioner may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the merit commissioner to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the merit commissioner a record or thing in the person's possession or control.
- (2) The merit commissioner may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (1), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Contempt proceeding for uncooperative person

- 20.01 The failure or refusal of a person subject to an order under section 20 to do any of the following makes the person, on application to the Supreme Court by the merit commissioner, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:
- (a) attend before the merit commissioner;
 - (b) take an oath or make an affirmation;
 - (c) answer questions;
 - (d) produce records or things in the person's possession or control.

Immunity protection

- 20.02 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the merit commissioner, or a person acting on behalf of or under the direction of the merit commissioner, because of anything done or omitted
- (a) in the performance or intended performance of any duty under section 19, or
 - (b) in the exercise or intended exercise of any power under sections 19 to 20.01.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Decision final

- 20.1 A decision of the merit commissioner under section 19 is final and binding.

PART 5 — MISCELLANEOUS

Oaths

21 A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

Dismissal and suspension of employees

22 (1) The agency head, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.

(2) The agency head, a deputy minister or an individual delegated authority under section 6 (c) may dismiss an employee for just cause.

Repealed

23 [Repealed 2007-21-6.]

Annual report

24 The minister must lay before the Legislative Assembly as soon as practicable, a report for the fiscal year ending March 31 respecting the work of the agency.

Power to make regulations

25 (1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations respecting government personnel management, including regulations respecting the following:

- (a) the definition of "auxiliary employee" in section 1;
- (b) recruitment, selection and appointment of staff including standards and procedures respecting advertising vacancies and who may apply for those vacancies;
- (c) probation periods for employees who are appointed to positions in the public service;
- (d) health and safety of employees;
- (e) terms and conditions of employment;
- (f) job evaluation and classification;
- (g) standards of employee conduct;
- (h) all matters respecting discipline, suspension and dismissal of employees;
- (i) monitoring and auditing of all personnel functions.

(2) Regulations under subsection (1)

- (a) may be different for different categories of employees, and
- (b) may be made retroactive to a date not earlier than the date this section comes into force, and if made retroactive are deemed to have come into force on that date.

(3) The Lieutenant Governor in Council may make regulations respecting the terms and conditions of employment of persons appointed under section 15.

(4) The Lieutenant Governor in Council may make regulations respecting inquiries and reviews under Part 4 including regulations respecting the manner of applying for an inquiry under section 18 or a review under section 19 and the time limits for those applications.

(5) [Repealed 2003-88-12.]

Transitional — deputy ministers' pensions

26 (1) Despite section 13, section 4.1 of the Public Service Act, S.B.C. 1985, c. 15, continues to apply with respect to a person who became a deputy minister before November 5, 1991 and to whom the section would otherwise have applied.

(2) For greater certainty, a deputy minister appointed on or after September 1, 2001 has no claim for payment of compensation because he or she is ineligible for the benefit provided under section 13 (1).

