

SPECIAL COMMITTEE TO APPOINT A MERIT COMMISSIONER



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

NOVEMBER 2019

**FOURTH SESSION
OF THE 41ST PARLIAMENT**



November 27, 2019

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,

Doug Routley, MLA
Chair

Dan Davies, MLA
Deputy Chair

Table of Contents

| | |
|---|----|
| Composition of the Committee | i |
| Terms of Reference | ii |
| Introduction | 1 |
| Recruitment Process | 3 |
| Biographical Information | 5 |
| Appendix A: Advertisement | 6 |
| Appendix B: <i>Public Service Act</i> | 7 |

Composition of the Committee

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| Doug Routley, MLA <i>(from January 11, 2019)</i> | Chair | Nanaimo-North Cowichan |
| Dan Davies, MLA | Deputy Chair <i>(Deputy Chair from October 11, 2019)</i> | Peace River North |
| Tracy Redies, MLA <i>(to October 10, 2019)</i> | Deputy Chair | Surrey-White Rock |
| Stephanie Cadieux, MLA <i>(from October 10, 2019)</i> | | Surrey South |
| Mitzi Dean, MLA | | Esquimalt-Metchosin |
| Dr. Andrew Weaver, MLA <i>(to February 12, 2019)</i> | | Oak Bay-Gordon Head |

Committee Staff

Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly

Jennifer Arril, Senior Research Analyst

Karan Riarh, Senior Research Analyst

Terms of Reference

On November 26, 2018 and February 21, 2019, 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* (RSBC 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 and to delegate to the subcommittee all or any of its powers except the power to report directly to the House;
- 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 responsible for monitoring the application of the merit principle to public service appointments, and for monitoring the application of government practices, policies and standards to dismissals. The position was first established in 2001 as part of the public service and performed two roles: that of Merit Commissioner and that of Deputy Minister of the Public Service Agency. In November 2005, the *Public Service Act* was amended to separate the two roles and establish the Merit Commissioner as an independent officer of the Legislature.

Pursuant to section 5.01 of the Act, the Lieutenant Governor in Council appoints an individual to hold office as Merit Commissioner on the recommendation of the Legislative Assembly following the unanimous recommendation of a special committee of the Legislative Assembly. The Commissioner holds office for a term of three years and may be appointed for further three year terms.

This appointment mechanism was first used in 2006 to appoint Joy Illington as the province's first independent Merit Commissioner. Following the conclusion of Ms. Illington's term, in 2010, a special committee of the Legislative Assembly recommended the appointment of Fiona Spencer as Merit Commissioner. Subsequent special committees in 2013 and 2016 unanimously recommended Ms. Spencer's reappointment.

On behalf of all Members of the Legislative Assembly, the Special Committee would like to thank Ms. Spencer for her dedicated service to the province as Merit Commissioner over the last nine years.

This report contains the Special Committee's unanimous recommendation to the Legislative Assembly regarding the appointment of the province's next Merit Commissioner.

Meeting Schedule

During the third and fourth sessions of the 41st Parliament, the Committee met on the following dates for the purposes described below.

Third Session

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|--------------------------|------------------------|
| Monday, February 4, 2019 | Organizational meeting |
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Fourth Session

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| Thursday, February 28, 2019 | Organizational meeting |
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| Thursday, March 7, 2019 | Deliberations |
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| Tuesday, March 19, 2019 | Deliberations |
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| Tuesday, April 2, 2019 | Deliberations |
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|-------------------------|-------------------------------------|
| Thursday, April 4, 2019 | Deliberations |
| Tuesday, April 30, 2019 | Deliberations |
| September 18, 2019 | Deliberations |
| October 11, 2019 | Interviews Deliberations |
| October 22, 2019 | Deliberations |
| November 25, 2019 | Deliberations Adoption of Report |

Further information on the work of the Special Committee is available at: <https://www.leg.bc.ca/cmt/merit>

Recruitment Process

The Special Committee was established in the third session of the 41st Parliament on November 27, 2018 and again in the fourth session of 41st Parliament on February 21, 2019 to select and unanimously recommend the appointment of an individual to hold the office of Merit Commissioner for the province of British Columbia, pursuant to the *Public Service Act*. On February 4, 2019 and February 28, 2019, the Committee held organizational meetings to elect a Chair and Deputy Chair and adopt motions to hold all committee meetings and deliberations on a confidential, in-camera basis, as is the usual practice of statutory officer appointment committees.

Compensation for the position of Merit Commissioner is determined by Order in Council. Since 2006, the position had been remunerated on a per diem basis. The rate was initially set in 2006 at a rate of \$525 for each full day or part day of work. The rate was raised to \$575 in 2016. Following initial deliberations, the Committee was advised of a significant change to the compensation model for the position of Merit Commissioner. Upon appointment or reappointment to the position, a new per diem rate was to be set as up to \$610 per day, with the possibility of pro-rating that amount. In addition, the total annual remuneration will be capped at the equivalent of 131 full-day per diems.

Given the Committee's commitment to ensuring a thorough, transparent and robust recruitment process, and the forthcoming changes to the compensation model for the position, Members agreed to proceed to an open competition process. On July 8, 2019, the Committee issued a call for applications. The advertisement was placed in selected provincial, Indigenous and multi-cultural newspapers. Notice of the opportunity was also provided to a number of professional organizations for distribution through their networks and shared on social media.

The former Merit Commissioner, Ms. Fiona Spencer, who had been serving as Acting Merit Commissioner since April 5, 2019, initially participated in the process but subsequently withdrew her candidacy and accepted a position with the Public Service Commission of Canada. On behalf of the Legislative Assembly, Committee Members thank Ms. Spencer for her dedicated public service over the past nine years and wish her well in all future endeavours.

By the application closing date of September 13, 2019, the Committee received 17 applications. The Committee short-listed four applicants for an interview based on their knowledge and experience with administrative and procedural fairness, the principles of merit-based hiring practices as well as leadership in human resource management or labour relations.

On October 11, 2019, due to a change in membership, the Committee elected a new Deputy Chair and then proceeded to interview the four short-listed applicants. During the interviews, the Committee learned more about each applicant's knowledge of the mandate of the Merit Commissioner as well as their leadership, organizational management, communication and decision-making skills, and experience and suitability for appointment. In-depth reference checks were also conducted as part of the final selection process.

Committee Members carefully deliberated on the knowledge, experience and qualifications of the shortlisted applicants. They were particularly impressed by Ms. Maureen Baird's 25 years of experience in administrative

law, including her extensive work in the area of labour relations. The Committee appreciated her background in leading investigations on behalf of professional regulatory bodies with respect to professional conduct and discipline matters, and managing multiple stakeholders with competing interests. Committee Members also noted Ms. Baird's knowledge of the work of the Office of the Merit Commissioner, conceptual understanding of systems and processes, and her perspective on diversity and inclusion in the workplace as important assets. They concluded that she would serve the office well, and agreed to recommend her appointment as Merit Commissioner.

Recommendation

The Committee unanimously recommends to the Legislative Assembly that Maureen Baird, Q.C. be appointed as Merit Commissioner for a term of three years, commencing on January 13, 2020, pursuant to section 5.01 of the *Public Service Act*.

Biographical Information

Maureen has practiced law in British Columbia for over 35 years. Her legal practice has focused on the field of administrative law, advising tribunals, regulators and their boards on all aspects of regulatory governance. In this regard, she has gained a wealth of experience in advancing and upholding the principles of fairness, transparency and accountability in the field of government and public service.

Beginning her legal career with a prestigious appointment as law clerk to the Honourable Chief Justice of the Court of Appeal of BC, Maureen thereafter became a partner in a major firm in Vancouver and then a founding partner of a medium size firm. Maureen's well-earned reputation for excellence, professionalism and integrity was recognized by her appointment as Queen's Counsel in 2011.

Maureen's expertise in administrative law has been recognized by appointments to the Environmental Appeal Board, the Civil Resolution Tribunal, the Property Assessment Appeal Board, the Safety Standards Appeal Board, the Discipline Committees of the College of Physicians and Surgeons of BC and the College of Veterinarians of BC and to arbitration panels of the Pipeline Arbitration Secretariat where she mediates and adjudicates disputes. She is frequently asked to act as independent counsel to adjudicative tribunals to guide them in areas of procedure and fairness.

Maureen is the author of several published articles and a contributor to the Administrative Law Practice Manual and has lectured and presented on all aspects of administrative law, investigations and decision writing to many professional bodies. She is the past Chair of the Administrative Law Section of the Canadian Bar Association and Vice-Chair of the Privacy Law Section.

In addition to tribunal and administrative hearings, Maureen is experienced as trial and appellate counsel having conducted court proceedings at every level of court including the Supreme Court of Canada.

She is a graduate of the University of Toronto – B.Comm and LL.B – and was trained in mediation at Harvard Law School (Cert.).

Maureen's community involvement has included voluntary service as general counsel to the Canadian Red Cross (BC/Yukon Division), director of Access Pro-Bono and President and Secretary of the St. Andrews and Caledonian Society of Vancouver. She continues as a member of the Canadian Bar Association. She also served as a member of the Law Society Task Force on Information and Privacy.



Appendix A: Advertisement

The advertisement was placed in the Vancouver Sun, Victoria Times-Colonist, Ming Pao Daily News, Sing Tao, Indo Canadian Times, Asian Star, First Nations Drum and NationTalk. Notice of the opportunity was also provided to a number of professional organizations for distribution through their networks and shared on social media.

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

Special Committee to Appoint a Merit Commissioner

Doug Routley, MLA, Nanaimo-North Cowichan, Chair Tracy Redies, MLA, Surrey-White Rock, Deputy Chair

MERIT COMMISSIONER

The Merit Commissioner is a non-partisan, independent officer of the Legislature responsible for monitoring the application of the merit principle to public service appointments and for monitoring the application of government practices, policies and standards to dismissals. The Commissioner's mandate and job description are provided by the *Public Service Act*.

The candidate must possess extensive knowledge of and experience with administrative and procedural fairness and the principles of merit-based hiring practices. The successful candidate must be a person of integrity and good standing within his or her professional community with demonstrated leadership in human resource management or labour relations and the proven ability to effectively collaborate with stakeholders. In addition, the successful candidate must also be capable of serving as an impartial, effective public voice for the administrative fairness provisions of the *Public Service Act*. The successful applicant should also have a good understanding of the roles, responsibilities and activities of the Office of the Merit Commissioner and its relationship to the Legislative Assembly of British Columbia.

This is a part-time position with an appointment term of three years, and may be renewed for additional three-year terms. The Commissioner will be compensated via a per diem rate of up to \$610 up to a maximum of 131 days annually.

Applications should be received by email, fax or mail at the address below no later than **Friday, September 13**. Although the Committee appreciates the interest of all applicants, only those who are invited for an interview will be contacted. All applications received will be held in confidence.

For further information, please visit our website at www.leg.bc.ca/cmt/merit or contact:

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Parliamentary Committees Office
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LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

Appendix B: *Public Service Act*

PUBLIC SERVICE ACT [RSBC 1996] CHAPTER 385

(This Act is current to October 30, 2019)

Contents

Part 1 — Introductory Provisions

- 1 Definitions
- 2 Purposes of Act
- 3 Application of Act
- 4 Consultation process

Part 2 — Agency Head and Merit Commissioner

- 5 BC Public Service Agency
- 5.01 Appointment of merit commissioner
- 5.1 Merit commissioner — merit principle
- 5.11 Merit commissioner — dismissal process review
- 5.12 Dismissals eligible for review
- 5.13 Information for merit commissioner
- 5.14 Scope of reviews by merit commissioner
- 5.2 Annual report of merit commissioner
- 5.3 Expenses of merit commissioner
- 6 Delegation
- 7 Access to facilities and records

Part 3 — Appointments to the Public Service

- 8 Appointments on merit
- 9 Probation
- 10 Exceptions to section 8
- 11 Repealed
- 12 Deputy ministers
- 13 Deputy ministers' pensions
- 14 Declaration of deputy minister status
- 15 Appointment by Lieutenant Governor in Council

Part 4 — Review of Staffing Decisions

- 16 Definitions
- 17 Request for feedback on staffing decision

| | |
|-------|--|
| 18 | Inquiry into staffing decision |
| 19 | Review by merit commissioner |
| 20 | Power to compel persons to answer questions and order disclosure |
| 20.01 | Contempt proceeding for uncooperative person |
| 20.02 | Repealed |
| 20.1 | Decision final |

Part 5 — Miscellaneous

| | |
|------|---|
| 21 | Oaths |
| 22 | Dismissal and suspension of employees |
| 22.1 | Immunity protection |
| 22.2 | Inadmissibility |
| 22.3 | Merit commissioner not to be compelled |
| 23 | Repealed |
| 24 | Annual report |
| 25 | Power to make regulations |
| 25.1 | Review of dismissal review process |
| 26 | Transitional — deputy ministers' pensions |

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;

“**dismissal file**” means the records of a ministry or a board, commission, agency or organization of the government to which this Act applies that are relevant in relation to a reviewable dismissal;

“**eligible dismissal**” means a reviewable dismissal that is eligible for review under section 5.12 (1);

“**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;

“**reviewable dismissal**” means a dismissal that

(a) takes place on or after April 1, 2018, and

(b) is, or was initially, a dismissal under section 22 (2).

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 — merit principle

- 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.]

Merit commissioner — dismissal process review

5.11 The merit commissioner is responsible for monitoring the application of government practices, policies and standards to eligible dismissals by the following by conducting reviews of eligible dismissals in accordance with sections 5.12 to 5.14:

(a) the agency;

(b) ministries;

(c) boards, commissions, agencies and organizations of the government to which this Act applies.

Dismissals eligible for review

5.12 (1) A reviewable dismissal becomes eligible for review as follows:

(a) if no grievance procedure under a collective agreement or proceeding before a court or a judicial or quasi-judicial tribunal in relation to the reviewable dismissal has been commenced, 12 months after the date of the dismissal;

(b) if a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal in relation to the reviewable dismissal has been commenced, 6 months after the date on which the grievance procedure or the proceeding and all related proceedings are complete.

(2) The agency head must notify the merit commissioner as soon as practicable after the agency head becomes aware that a dismissal about which information was provided to the merit commissioner under section 5.13 (1) is the subject of a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal.

(3) If the merit commissioner

(a) receives a notification under subsection (2) and is conducting a review of the dismissal that is referred to in the notification, or

(b) otherwise becomes aware that he or she is conducting a review of a dismissal that is the subject of a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal,

the merit commissioner must defer the review until the date that is 6 months after the date on which the grievance procedure or the proceeding and all related proceedings are complete.

Information for merit commissioner

- 5.13 (1) The agency head must, at least once every 6 months, provide the merit commissioner with information about reviewable dismissals and eligible dismissals, including, without limitation,
- (a) the name of the employee who was dismissed,
 - (b) the position or title of the employee who was dismissed,
 - (c) the name of the ministry, board, commission, agency or organization that employed the employee who was dismissed,
 - (d) the date of the dismissal, and
 - (e) any other prescribed information.
- (2) The agency head must provide the merit commissioner with the dismissal file for a reviewable dismissal as soon as practicable after the dismissal becomes eligible for review under section 5.12 (1).

Scope of reviews by merit commissioner

- 5.14 (1) The merit commissioner may review only dismissals eligible for review under section 5.12 (1).
- (2) The merit commissioner may determine which eligible dismissals to review.
- (3) For the purposes of a review, the merit commissioner may review the dismissal file and any other information the merit commissioner considers relevant.
- (4) When conducting a review of an eligible dismissal, the merit commissioner must not make a determination whether the dismissal met the legal standard for a just cause dismissal.

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,
- (a) in relation to monitoring the application of the merit principle, must not disclose
 - (i) 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
 - (ii) 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, and

(b) in relation to monitoring the application of government practices, policies and standards respecting eligible dismissals,

(i) may include

(A) references to particular instances of non-compliance with government practices, policies and standards,

(B) identification of persistent patterns of non-compliance with government practices, policies and standards, and

(C) recommendations in relation to dismissals, including recommendations for changes to government practices, policies and standards and how to eliminate patterns of non-compliance with government practices, policies and standards, and

(ii) must not disclose

(A) personal information, as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act, in relation to a particular instance or a persistent pattern of non-compliance with government practices, policies and standards respecting eligible dismissals, or

(B) the identity of a ministry, board, commission, agency or organization in relation to a particular instance or a persistent pattern of non-compliance with government practices, policies and standards respecting eligible dismissals.

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 of the government to which this Act applies, 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.

Repealed

20.02 [Repealed 2018-9-5.]

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.

Immunity protection

- 22.1 (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 sections 5.11, 5.12, 5.14 and 19, or
 - (b) in the exercise or intended exercise of any power under sections 5.11, 5.12, 5.14 and 19 to 20.1.

(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.

Inadmissibility

22.2 The following are inadmissible in evidence in any grievance procedure under a collective agreement or proceeding before a court or a judicial or quasi-judicial tribunal in relation to a dismissal that is, or was initially, a dismissal under section 22 (2):

(a) an annual report under section 5.2;

(b) any findings or records of the merit commissioner, or a person acting on behalf of or under the direction of the merit commissioner, respecting reviews of eligible dismissals or the preparation of an annual report under section 5.2.

Merit commissioner not to be compelled

22.3 The merit commissioner, and a person acting on behalf of or under the direction of the merit commissioner, must not be compelled to give evidence in a grievance procedure under a collective agreement or proceeding before a court or a judicial or quasi-judicial tribunal in relation to a dismissal that is, or was initially, a dismissal under section 22 (2).

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 (0.1) The Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

(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.]

Review of dismissal review process

- 25.1 A special committee of the Legislative Assembly must,
- (a) within 5 years after the date this section comes into force, begin a review of this Act in relation to dismissal process reviews by the merit commissioner, and
 - (b) within one year after the date of the appointment of the special committee, submit a report to the Legislative Assembly respecting this Act in relation to dismissal process reviews by the merit commissioner.

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).

