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# SPECIAL COMMITTEE TO APPOINT A MERIT COMMISSIONER

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December 2022



LEGISLATIVE ASSEMBLY  
of BRITISH COLUMBIA

Third Session, 42nd Parliament



December 12, 2022

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,

Mike Starchuk, MLA  
Chair

Mike Morris, MLA  
Deputy Chair

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# COMPOSITION OF THE COMMITTEE

## Members

Mike Starchuk, MLA, Chair  
Surrey-Cloverdale

Mike Morris, MLA, Deputy Chair  
Prince George-Mackenzie

Susie Chant, MLA  
North Vancouver-Seymour

Fin Donnelly, MLA  
Coquitlam-Burke Mountain

Teresa Wat, MLA  
Richmond North Centre

## Committee Staff

Kate Ryan-Lloyd, Clerk of the Legislative Assembly

Jennifer Arril, Clerk of Committees

Ron Wall, Manager, Committee Research Services

Natalie Beaton, Committee Research Analyst

Mary Heeg, Committee Researcher

Mary Newell, Administrative Coordinator

# TERMS OF REFERENCE

On June 2, 2022, 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).

That the Special Committee shall have the powers of a Select Standing Committee and in addition be empowered to:

- a. appoint of its number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Special Committee and to delegate to the subcommittees all or any of its powers except the power to report directly to the House;
- b. 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. adjourn from place to place as may be convenient; and retain such personnel as required to assist the Special Committee.

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

# 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 the application of government practices, policies and standards to eligible 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.

Section 5.01 of the Act authorizes the Lieutenant Governor in Council to appoint 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 an unlimited number of additional three-year terms.

Under the Act, remuneration is set by Order in Council. Since 2006, when the 2005 amendments to the Act were implemented, the position of Merit Commissioner has been part-time and remunerated on a per diem basis. An initial per diem rate was set in 2006 at \$525 for each day of work and increased to \$575 in 2016. The rate was increased further to \$610 in 2019, with total annual remuneration capped at the equivalent of 131 full-day per diems, or up to \$79,910.

Like other statutory officers, the Merit Commissioner must submit to the Select Standing Committee on Finance and Government Services an estimate of the budgetary resources required to support the work of the Office for the next

three fiscal years as well as a service plan and performance measures related to the work of the Office.

As noted above, on June 2, 2022, the Special Committee to Appoint a Merit Commissioner was established by the Legislative Assembly to recommend the appointment of a Merit Commissioner. This appointment process was first used in 2006 to appoint Joy Illington as the province's initial Merit Commissioner. Following the conclusion of Ms. Illington's term, in 2010, a special committee recommended the appointment of Fiona Spencer for the position. Subsequent special committees in 2013 and 2016 unanimously recommended Ms. Spencer's reappointment – her third term ended on April 5, 2019, and she was appointed as Acting Commissioner on that day. The 2019 special appointment committee process culminated in a unanimous recommendation that Maureen Baird, K.C., be appointed as Merit Commissioner for a three-year term beginning on January 13, 2020. All of the past special appointment committees made unanimous recommendations to the Legislative Assembly, which subsequently unanimously recommended the nominees to the Lieutenant Governor in Council.

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

On behalf of all Members of the Legislative Assembly, the Committee would like to thank Ms. Baird for her dedication and service to British Columbians as Merit Commissioner over the last three years.

## Meeting Schedule

During the third session of the 42<sup>nd</sup> Parliament, the Committee met on the following dates for the purposes described below.

June 27, 2022	Organizational meeting
July 28, 2022	Deliberations
September 20, 2022	Deliberations
October 18, 2022	Deliberations
November 1, 2022	Deliberations
November 9, 2022	Interviews Deliberations
November 10, 2022	Interviews Deliberations
November 17, 2022	Deliberations
November 28, 2022	Deliberations
December 1, 2022	Deliberations Adoption of report

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



# RECRUITMENT PROCESS

The Committee commenced work on the appointment process for a Merit Commissioner on June 27, 2022, with an organizational and planning meeting. The Committee elected a Chair and Deputy Chair and adopted a motion to hold all meetings and deliberations on a confidential, in-camera basis, in keeping with the usual practice for special appointment committees. Members also reviewed the Committee's terms of reference, the duties and functions of the position of Merit Commissioner and a preliminary draft workplan for the Committee's activities.

In subsequent meetings, the Committee held in-depth discussions of the profile and key competencies for the position of Merit Commissioner and its evolving responsibilities and activities.

Committee Members agreed to launch an open competition process for the position. On September 26, 2022, the Committee issued a call for applications. The advertisement was placed in selected provincial, national, Indigenous and multicultural newspapers, provided to professional organizations and shared on social media.

By the closing date of October 24, 2022, the Committee received 15 applications. Committee Members carefully reviewed the applications for their knowledge, qualifications and suitability and agreed to a shortlist of six strong candidates for interviews.

On November 9 and 10, 2022, Committee Members conducted interviews. Members carefully considered each shortlisted applicant's leadership and administrative management abilities; knowledge of the roles, responsibilities and policies of the Office of the Merit Commissioner and its relationship with the Legislative Assembly, public sector

organizations and British Columbians; understanding of the principles of administrative and procedural fairness and the wider community within which the Merit Commissioner operates; and personal suitability including a high degree of integrity and the ability to work in a non-partisan and effective manner as an independent, non-partisan officer of the Legislature. Members also engaged the applicants on their ability to build public confidence in the work of the Office and citizen services; communication and relationship-building skills; support for Indigenous reconciliation and the engagement of the province's diverse populations; and analytical and decision-making capabilities.

Committee Members were particularly impressed by David McCoy's extensive experience in BC public sector human resources and processes and his in-depth familiarity with the mandate of the Office of the Merit Commissioner. Members recognized his detailed knowledge and understanding of the operations of the Office, his passion for good systems and processes of professional conduct and administrative fairness, his high ethical standards and his commitment to reconciliation and diversity, inclusion, accessibility and equity. Committee Members concluded that Mr. McCoy's strong public sector experience, skills and knowledge would bring effective leadership and continuity to this important independent position.



# RECOMMENDATION

The Committee unanimously recommends to the Legislative Assembly that the Lieutenant Governor appoint David McCoy as Merit Commissioner for a term of three years, pursuant to section 5.01 of the *Public Service Act*.

# BIOGRAPHICAL INFORMATION

David McCoy has worked in various roles and levels with the civil and civic services for the last 30 years. He has worked in Alberta and British Columbia with a focus on both operations and human resource management. His work experiences in leadership roles include the BC Ministry of Health, the BC Public Service Agency, BC Assessment, BC Transit, as well as at the municipal level with the City of Edmonton.

Throughout his career, David has specialized in recruitment, training, and safety within a public body context. He has offered counsel, advice, education, and coached leaders at all levels of organizations in terms of recruitment, onboarding, labour relations, collective agreement interpretations and application. David has restructured organizational recruitment processes, implemented technology tools into the hiring process, and advanced competency-based hiring throughout his career. He has worked closely with senior leadership recommending strategy, reporting on metrics, and providing counsel for recruitment related direction and policy.



His most recent role is in the Office of the Merit Commissioner, where he is well practiced at working within the Office's mandate, the principle of merit, the processes for staffing audits, reviews, and just cause dismissal reviews within the existing legislative framework of the *Public Service Act* in British Columbia. David brings to the Commissioner role expertise in advancing and upholding the principles of fairness, transparency, and accountability in the field of government and public service.

David is a graduate of the University of Alberta (B.Ed.) and a nationally certified professional in human resources (CPHR BC & Yukon) since 2012. David's community involvement has included voluntary service at local organizations such as Scouts Canada, the Victoria Children's Choir, Parent Advisory Committees, and with several post-secondary institutions in the Victoria region with student interview preparation and practice. As he continues his association with the CPHR BC & Yukon, he continues to offer his experience to new people in the human resources field through his 10 years of participation in the professional mentorship program.

David has a passion for traveling and experiencing new cultures. He has been fortunate enough to travel to several continents over the years with his family as well as appreciating the natural beauty of our own province.

# APPENDIX A: ADVERTISEMENT

## LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

### Special Committee to Appoint a Merit Commissioner

Mike Starchuk, MLA, Surrey-Cloverdale, Chair; Mike Morris, MLA, Prince George-Mackenzie, 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 provincial public service appointments by conducting audits of appointments and reporting results. The position also monitors the application of government practices, policies and standards to eligible dismissals. The Commissioner's mandate and responsibilities 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 their professional community with demonstrated leadership in human resource management or labour relations and the proven ability to effectively collaborate with clients and interested parties. 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. Individuals may be considered for additional three-year terms. The Commissioner will be compensated at a per diem rate of up to \$610, to a maximum of 131 days annually or \$79,910 per calendar year.

Applications should be received by email at the address below no later than October 24, 2022. 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](http://www.leg.bc.ca/cmt/merit) or contact:

Parliamentary Committees Office  
Room 224, Parliament Buildings  
Victoria, BC V8V 1X4  
Toll Free in BC 1.877.428.8337  
T 250.356.2933  
[MeritComm2022@leg.bc.ca](mailto:MeritComm2022@leg.bc.ca)



LEGISLATIVE ASSEMBLY  
of BRITISH COLUMBIA

# APPENDIX B:

# PUBLIC SERVICE ACT

This Act is current to November 23, 2022

## **PUBLIC SERVICE ACT**

### **[RSBC 1996] CHAPTER 385**

### **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).

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