



Special Committee to Review Provisions  
of the Public Service Act

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# REPORT ON DISMISSAL PROCESS REVIEWS BY THE MERIT COMMISSIONER

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November 2023



LEGISLATIVE ASSEMBLY  
of BRITISH COLUMBIA

Fourth Session, 42nd Parliament



November 30, 2023

To the Honourable  
Legislative Assembly of the  
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Report of the Special Committee to Review Provisions of the Public Service Act.

Respectfully submitted on behalf of the Committee,

George Chow, MLA  
Chair

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# COMPOSITION OF THE COMMITTEE

## Members

George Chow, MLA, Chair  
Vancouver-Fraserview

Mike Morris, MLA, Deputy Chair  
Prince George-Mackenzie

Michael de Jong, K.C., MLA  
Abbotsford West

Roly Russell, MLA  
Boundary-Similkameen

Harwinder Sandhu, MLA  
Vernon-Monashee

Nicholas Simons, MLA  
Powell River-Sunshine Coast

## Committee Staff

Darryl Hol, Clerk to the Committee

Danielle Migeon, Committee Researcher

Sean Morgado, Committee Coordinator

Mary Newell, Parliamentary Committees Officer

# TERMS OF REFERENCE

On May 11, 2023, the Legislative Assembly agreed that a Special Committee to Review Provisions of the Public Service Act be appointed, pursuant to section 25.1 of the *Public Service Act* (R.S.B.C. 1996, c. 385) to review that Act in relation to dismissal process reviews by the Merit Commissioner.

That the Special Committee 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. conduct consultations by any means the Special Committee considers appropriate;
- d. adjourn from place to place as may be convenient; and
- e. retain personnel as required to assist the Special Committee.;

That the Special Committee report to the House by May 10, 2024; 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.



# EXECUTIVE SUMMARY

Amendments made to the *Public Service Act* (the “Act”) in 2018 gave the Merit Commissioner the mandate to conduct dismissal process reviews to ensure that the processes used to dismiss public service employees with cause are consistent with required practices, policies, and standards. On May 11, 2023, the Special Committee to Review Provisions of the Public Service Act (the “Committee”) was appointed under section 25.1 of the Act to review the Act as it relates to dismissal process reviews. In undertaking this review, the Committee received presentations from stakeholders and accepted written submissions from the public.

The Committee finds that dismissal process reviews by the Merit Commissioner provide important independent oversight of government practices to ensure just cause dismissals are handled appropriately. Members acknowledge that the majority of input received during the Committee’s consultation indicated that the provisions in the Act related to dismissal process reviews are working as intended, and that the Merit Commissioner’s work has contributed to improved dismissal practices. As such, the Committee agrees that provisions in the Act related to dismissal process reviews—including those regarding eligibility for reviews, the Merit Commissioner’s ability to request information, and the Merit Commissioner’s discretion to determine which dismissals to review—should be maintained. The Committee also makes nine recommendations to address targeted issues raised during its consultation and for government to improve investigations of just cause dismissals. The order of the themes presented in this report and recommendations does not reflect priority.

The Committee recommends amending the Act to enable the Merit Commissioner to compel unions, courts, and other judicial bodies to confirm whether there is an active case in an individual’s name. This would provide the Merit

Commissioner with certainty that a dismissed employee has concluded all avenues of redress and recourse and that their case is thereby eligible for a dismissal process review. The Committee also recommends amending the Act to clarify that employees of administrative tribunals are eligible for dismissal process reviews. This would address uncertainty raised by the Merit Commissioner. Additionally, the Committee recommends amending the Act to clarify that it is not a waiver of legal advice privilege for government to share the legal material in dismissal files with the Merit Commissioner. Members agree this would be a reasonable measure to make the information sharing process between government and the Merit Commissioner more efficient and to ensure that the Merit Commissioner has access to all necessary documents to complete a thorough review.

The Committee also makes six recommendations to address issues related to investigations of just cause dismissals. These include reviewing investigation timelines and providing status updates to employees who are being investigated, considering medical issues, looking for ways to minimize negative mental health impacts for employees subject to investigations, and providing additional information on decisions related to interviewing witnesses during investigations.

# THE WORK OF THE COMMITTEE

On May 11, 2023, the Legislative Assembly agreed that a Special Committee to Review Provisions of the Public Service Act be appointed, pursuant to section 25.1 of the *Public Service Act*, to review that Act in relation to dismissal process reviews by the Merit Commissioner.

## Consultation Process

The Committee accepted written submissions from the public between August 15 and September 22, 2023. The Committee also held public hearings on October 5 and 6, 2023. Members received briefings from the Office of the Merit Commissioner and the Public Service Agency. They received presentations from other stakeholders including the Office of the Ombudsperson, the British Columbia Excluded Employees' Association, and the Ministry of Attorney General. A list of all participants in the Committee's consultation is available in Appendix A. The Committee carefully considered all input received during the consultation in its deliberations.

## Meeting Schedule

July 12, 2023

- Election of Chair and Deputy Chair
- Organization and planning

October 5, 2023

- Public Hearing

October 6, 2023

- Public Hearing

October 30, 2023

- Confidential presentation
- Deliberations

November 6, 2023

- Deliberations

November 20, 2023

- Deliberations
- Adoption of Report

# BACKGROUND

## 2012 Ministry of Health Employee Terminations

In 2012, the Deputy Minister of Health fired seven employees following an investigation of an anonymous complaint about contracting practices in the Ministry. A number of contracts were also terminated. Over the following three years, significant concerns were raised about whether government's decision to fire these employees was justified or fair.

In 2015, the Select Standing Committee on Finance and Government Services passed a motion to refer the Ministry of Health terminations file to the Ombudsperson for investigation and report. In April 2017, the Ombudsperson released his report on the investigation, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*. The report included 41 recommendations to address both individual harm and broader systemic issues.

In response to recommendation 27 of the Misfire report, amendments were made to the *Public Service Act* ("the Act") to provide for dismissal process reviews.

Amendments to the Act adopted on April 17, 2018, included:

- Authorizing the Merit Commissioner to conduct dismissal process reviews;
- Creating eligibility criteria;
- Establishing the scope of reviews;
- Instituting reporting requirements;
- Putting in place protections for the Merit Commissioner.

## Dismissal Process Reviews

In conducting dismissal process reviews, the Merit Commissioner ensures that the processes used to dismiss public service employees are consistent with required practices, policies, and standards. The Commissioner does not

determine if an employee's dismissal was justified. The scope of reviews is limited to employees dismissed with just cause, defined as an employee having been terminated without notice or pay in lieu after the employer has proven on balance of probabilities that they have breached an employment contract or committed misconduct.

In conducting dismissal process reviews, the Merit Commissioner collaborates with other key stakeholders. The Public Service Agency (PSA), working with the ministry or other body where the employee worked, coordinates the collection of documentation required by the Commissioner to examine the file. The Legal Services Branch at the Ministry of Attorney General works with the PSA to review the dismissal file for any privileged information prior to the file being shared with the Merit Commissioner.

The Commissioner's annual report includes any issues identified and suggests process improvements in an anonymized way.

## Statutory Review

Section 25.1 of the Act requires a special committee of the Legislative Assembly to begin a one-time review of the Act in relation to dismissal process reviews by the Merit Commissioner within five years of this section coming into force.



# JUST CAUSE DISMISSALS

## What the Committee Heard

### Just Cause Dismissal Process

The Ministry of Attorney General noted that in 2017, the Public Service Agency (PSA) adopted *Human Resources Policy 23 - Termination for Just Cause* in response to the Misfire report. They added that the policy clarified the employer's roles, responsibilities and procedures, and ensured procedural fairness when terminating an employee for just cause. The PSA stated that they implemented a variety of actions and process improvements to increase the procedural rigour in human resource investigations and disciplinary decision-making to ensure proper processes are conducted and individuals are treated fairly before a decision is made to dismiss them.

The policy also includes two administrative due process checklists, for bargaining unit and non-bargaining unit employees, as well as procedural steps for review and approval. The Merit Commissioner told the Committee that the policy and its checklists are the standard to which the PSA holds itself accountable, and they are a key part of the Office of the Merit Commissioner's dismissal process reviews. The PSA added that the checklists include receiving and considering legal advice regarding the strength of the just cause dismissal and ensuring that file material was documented and provided in the relevant deputy minister's briefing package when they made the decision to terminate for just cause.

The Merit Commissioner emphasized that the principles of natural justice and procedural fairness must be applied to all just cause dismissals to avoid bias, ensure an employee's right to a fair opportunity to know and respond to issues of concern, encourage due care decision-making, and

document decisions appropriately. The Merit Commissioner also highlighted that the PSA's processes, policies, and checklists may evolve, and that their Office takes such changes into account; for example, during the period when the government's mandatory COVID-19 vaccination policy was in place, the termination policy was amended, and new checklists were created.

### Eligibility for Review

Based on the definition of "reviewable dismissal" under the *Public Service Act* ("the Act"), the Merit Commissioner can review only just cause dismissals of bargaining unit and excluded employees by the PSA, ministries, and other organizations covered under section 3 of the Act from April 1, 2018, onward. As outlined in section 5.12 of the Act, reviewable dismissals are only eligible for review based on specific timelines, namely they are eligible for review one year after termination or six months after the resolution of other proceedings. All avenues for redress or recourse must be exhausted or expired. The Merit Commissioner stated that eligibility provisions are serving their intended function and recommended maintaining these definitions and provisions.

Under section 5.13 of the Act, the head of the PSA must provide the Merit Commissioner with information about reviewable dismissals and eligible dismissals, as well as provide the Commissioner with the dismissal file for a reviewable dismissal as soon as possible after it becomes eligible for review. The Merit Commissioner noted that the PSA has complied with all eligibility requirements under section 5.13 which helps ensure the Commissioner does not review files before they become eligible. The Merit Commissioner also observed that the current eligibility timelines are optimal. As a result, it allows their Office to report within a reasonable timeframe after a dismissal has

concluded. The Commissioner emphasized that this helps organizations to reinforce new, positive practices or make improvements within a reasonable time frame.

The Merit Commissioner also indicated that the pandemic created challenges with managing dismissal process eligibility. Notification delays of up to three years at the Human Rights Tribunal have meant that the Merit Commissioner may receive just cause dismissal files from the PSA prior to employees having exhausted all means of recourse or redress, and therefore they may not yet be eligible for review. To address this issue, the Merit Commissioner recommended amending the Act to empower the Office to compel unions, courts, and other bodies to confirm whether there is an active case in an individual's name for the sole purpose of determining eligibility.

Finally, the Merit Commissioner recommended amending the Act to clarify whether certain employees covered by section 27 (1) of the *Administrative Tribunals Act* would be eligible for dismissal process reviews since they are not explicitly listed under section 3 or section 5.11 of the Act.

## Dismissals without Just Cause

As previously noted, the Merit Commissioner can only review eligible dismissals under section 22 (2), which limits the scope of reviews to just cause dismissals. This also reflects the scope of the Ombudsperson's recommendation 27 in the Misfire report.

However, the Committee received input from an individual who was dismissed from the public service without cause. They shared the challenges faced in terms of communication and follow-up with the employer and discussed the difficulty of navigating complex avenues for redress and recourse available to them. They described the toll the lengthy process has taken on their mental and physical health as well as on their financial security. The individual recommended examining the overall framework for legal challenges.

The Merit Commissioner told the Committee that their Office is focused on reviewing and recommending process improvements for just cause dismissals. Additionally, the Merit

Commissioner conveyed there is not as significant a need to review dismissal processes where just cause is not asserted since an employee's right to be heard prior to a dismissal without just cause does not have the same strong legal foundation. The Merit Commissioner also highlighted that the review of dismissals without just cause may duplicate the review functions of other bodies such as unions or the Human Rights Tribunal. If it does not duplicate existing functions, there would be considerably fewer procedures to be reviewed than for just cause dismissals. The Merit Commissioner stated that if the Committee were to recommend an amendment to the Act expanding the scope of dismissal process reviews, they would pivot to meet this new mandate; however, their Office would need increased resources to hire staff to reflect the additional scope.

## Committee Discussion

The Committee acknowledged the practices and procedures implemented by the PSA following the Misfire report, which inform the Merit Commissioner's reviews. Committee Members also agreed that existing definitions of "reviewable dismissal," "dismissal file" and "eligible dismissal" as well as eligibility provisions in section 5.12 of the Act enable the Merit Commissioner to fulfil their mandate in a timely manner. Members recognized that maintaining existing requirements in the Act under section 5.13 ensures that the Merit Commissioner receives the information required to determine eligibility for review.

The Committee expressed a concern about timelines at the Human Rights Tribunal as raised by the Merit Commissioner, and how this can lead to long delays for dismissal process reviews. The Committee agreed that it is important to reduce these delays to ensure reviews can happen in a timely manner. Members recognized the importance of the Commissioner knowing a file is in front of the Human Rights Tribunal or proceeding through another avenue of redress or recourse to determine that a file is ineligible for review, and therefore agreed it is important to be able to verify whether a complaint has been filed. To help the Commissioner to fulfill their mandate, the Committee supported empowering the Commissioner to compel unions, courts, and other judicial

bodies to confirm whether there is an active case in an individual's name to determine the eligibility of a reviewable dismissal. Members agreed that only the minimum amount of information required to determine eligibility should be provided to the Merit Commissioner, in order not to create additional work for bodies such as the Human Rights Tribunal. Finally, Committee Members supported amending the Act to clarify that employees appointed under section 27 (1) of the *Administrative Tribunals Act* are eligible for dismissal process reviews.

The Committee acknowledged that the account provided by the individual dismissed from the public service without cause raised a number of potential concerns related to procedural fairness. Members recognized that while dismissals without cause were beyond the scope of this Committee's review, the individual raised enough issues to justify further investigation by the Legislative Assembly. Members agreed that it is important to ensure natural justice and procedural fairness for these dismissal cases, but acknowledged that they are fundamentally different from just cause dismissals which should continue to be the focus of the Merit Commissioner's reviews.

## RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that:

1. The Act be amended to enable the Merit Commissioner to compel unions, courts, judicial tribunals, and quasi-judicial tribunals to confirm whether there is an active case in an individual's name for the sole purpose of determining a reviewable dismissal's eligibility for review.
2. The Act be amended to clarify that employees appointed under section 27 (1) of the *Administrative Tribunals Act* are eligible for dismissal process reviews.

# DISMISSAL FILES

## What the Committee Heard

### Documentation Provided to the Merit Commissioner

Under section 5.14 (3) of the *Public Service Act* ("the Act"), the Merit Commissioner may review the dismissal file and any other information the Commissioner considers relevant to carry out their responsibilities under section 5.11 of the Act.

The Merit Commissioner recommended maintaining their discretion to determine which records to obtain during dismissal process reviews. The Commissioner noted that the Public Service Agency (PSA) complied with the responsibilities outlined in the Act, generally providing quality documentation and in a timely way. This has supported the Commissioner in conducting effective and timely reviews.

The PSA stated that having to provide all documentation for each dismissal file under review has created an administrative burden for the organization. Instead, the PSA proposed that they provide the Merit Commissioner with a standard document package at the outset of each dismissal process review to increase efficiency and to reduce staff workload. The PSA would provide any additional documentation as requested by the Merit Commissioner. The Ministry of Attorney General added that the deputy minister of the employee facing a just cause dismissal receives a comprehensive package that includes the final investigation report, and they believe this could be a potential starting point for the Merit Commissioner's reviews.

The Merit Commissioner emphasized their need for more comprehensive documentation to make determinations, to formulate questions, or find points of interest. The Merit Commissioner also noted that having to request additional materials on a regular basis would create delays due to

the redaction process, leaving the reviewer to wait weeks to answer the questions that had arisen for them upon their preliminary review of the materials. Both the Merit Commissioner and the Ombudsperson highlighted the importance of maintaining the current provisions to ensure public confidence in the outcome of dismissal process reviews, further noting that the entity being reviewed should not be the one selecting which records the Commissioner receives.

### Privileged Information

Dismissal files contain legal advice provided by the Ministry of Attorney General's Legal Services Branch when requested under Appendix 1 or 2 of *Human Resources Policy 23 - Termination for Just Cause*. This advice is covered by legal advice privilege (also known as solicitor-client privilege). There is currently no statutory provision to allow the Merit Commissioner to review documents covered by legal advice privilege. As a result, the Ministry of Attorney General and the Merit Commissioner signed a protocol in March 2022 allowing for the disclosure of such privileged information to facilitate the review of dismissal files.

The Ministry of Attorney General described the review and redaction process for privileged information carried out by the PSA and the Legal Services Branch. They noted that two versions of each dismissal file are created for the Merit Commissioner. The "red-line" version includes the legal advice but has any other statutorily protected information redacted. The "black-line" version, which is created so that the Merit Commissioner's Office can keep a copy of the file, has the legal advice redacted as well. Once the Merit Commissioner finishes reviewing the "red-line" version, it must be destroyed or returned. The Ministry of Attorney General noted that if there was no requirement to provide a "black-line" version

to the Merit Commissioner, the redaction exercise would be more efficient, but the review would remain the same. The Deputy Attorney General stated that they maintain the right to decline to provide the legal advice and will provide a reason if the legal advice is not provided.

The Merit Commissioner recommended that the Act be amended to clarify that it is not a waiver of legal advice privilege for the government to share dismissal files with their office. The Commissioner noted that this change would streamline the process, reduce the workload for the PSA and the Ministry of Attorney General, and minimize the risk of disruption, should the terms of the protocol be challenged. However, the PSA noted that every dismissal file would still need to be reviewed for statutorily protected material, such as information that must not be disclosed under the *Child, Family and Community Services Act*. In response, the Merit Commissioner stated that if the Committee accepted their recommendation, the PSA should be able to determine whether investigation documentation is likely to include statutorily protected material by reading the investigation's terms of reference and investigation report; the PSA may then be able to provide those specific files to the Legal Services Branch for review. In many other dismissal files, an initial review may be able to quickly ascertain that there would be no such references, eliminating the workload generated by a thorough review.

The Ombudsperson noted that for the Misfire investigation they were able to obtain all the records that were demanded, notwithstanding the existence of any legal advice privilege. The Ombudsperson expressed it would be reasonable for another statutory officer to receive the same treatment. The Deputy Attorney General was unaware of any specific provision that provides a statutory officer with the right to obtain the province's legal advice; however, the Province is, in various circumstances, willing to voluntarily provide access on certain terms and conditions which is often documented in a protocol such as the one with the Merit Commissioner. The Ombudsperson highlighted that government has an interest in ensuring that information transmitted to a statutory officer does not trigger waiver of legal advice privilege and that by providing government with assurance that sharing that

information with the Merit Commissioner does not waive such privilege, it would allow the Merit Commissioner to do their job, as well as relieve the administrative burden on the PSA and the Legal Services Branch.

## Committee Discussion

The Committee discussed the merits of whether the Merit Commissioner should continue to have discretion over which documents to review as part of a dismissal process review, or whether they could begin with a more limited subset of documents. Committee Members appreciated that the PSA's proposal to provide a standard package to the Merit Commissioner would streamline the process. While the Committee recognized the impact of providing full dismissal files on the PSA's staff and resources, they agreed it is important to maintain the Merit Commissioner's discretion to determine which materials to review to ensure thoroughness and maintain public trust in the Commissioner's oversight function.

Regarding material subject to legal advice privilege, the Committee agreed that the Merit Commissioner's recommendation would be a viable way to reduce the volume of work for the PSA and the Legal Services Branch while ensuring that the Commissioner has access to the information necessary to conduct dismissal process reviews. As a result, Members recommended amending the Act to clarify that it is not a waiver of legal advice privilege to share dismissal files, including legal material, with the Merit Commissioner.

## RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that:

3. The Act be amended to clarify that it is not a waiver of legal advice privilege to share dismissal files, including legal material, with the Merit Commissioner.



# DISMISSAL PROCESS REVIEWS

## What the Committee Heard

### The Oversight Role of the Merit Commissioner

Section 5.11 of the *Public Service Act* ("the Act") outlines the Merit Commissioner's responsibilities regarding monitoring the application of government practices, policies, and standards in relation to just cause dismissals by conducting reviews of eligible dismissal files. Since 2018, the Merit Commissioner has reviewed all 43 eligible cases and findings first appeared in the Commissioner's 2020-2021 annual report.

The Merit Commissioner stated that their Office's independent oversight of dismissal process reviews ensures citizen, public servant, and legislator confidence that processes are fair, consistent, and support public policy through the provision of the Act. Similarly, the Ombudsperson emphasized that if too many restrictions are placed on what statutory officers can do and see in the course of their work, then public confidence in the outcome disappears. The Ombudsperson told the Committee that by embedding oversight in legislation, it ensures procedural longevity and creates a deterrent for repeated offenses. As such, both the Merit Commissioner and the Ombudsperson recommended maintaining provisions in the Act related to the Commissioner's role in section 5.11 as independent reviewer of eligible just cause dismissals.

The Merit Commissioner also recommended maintaining the existing provision in section 22.3 of the Act, which specifies that the Commissioner must not be compelled to give evidence in relation to a dismissal that is or was initially a just cause dismissal.

### Determining Which Dismissals to Review

Section 5.14 (2) of the Act provides the Merit Commissioner with the discretion to decide which eligible dismissals to review. To date, the Commissioner has chosen to review all eligible files. The Commissioner noted that this legislative flexibility allows the Office to adjust their approach as needed. For example, 315 dismissal files related to the mandatory COVID-19 vaccination policy requirements are becoming eligible for review and they plan to examine a sample of them in 2023-24.

The Public Service Agency (PSA) emphasized that extensive resources and efforts are required to produce and disclose individual dismissal files to the Merit Commissioner's Office in support of dismissal process reviews. They stated that the time and effort taken to support dismissal process reviews diverts limited staff capacity away from other work, contributing to delays in the timeliness of human resource investigations and decision-making processes, which can have impacts on the individuals involved. The PSA highlighted that 41 of the 43 dismissal cases reviewed to date by the Merit Commissioner met the standard of administrative fairness and recommended that, as such, the Commissioner only review a sample of just cause dismissal files going forward.

The Merit Commissioner noted that reviewing all eligible cases provides important insights into the fair implementation of policies and procedures. The Commissioner recognized the value of reporting on trends, while emphasizing that it is also critical to observe notable practices, even those found in a single case, to provide feedback to an organization for appropriate action. The Merit Commissioner stated that, to date, examining all cases has not been burdensome to their Office. In response to the PSA's recommendation, the Merit Commissioner highlighted that trends observed in a

sample of the small number of eligible just cause dismissal files would not be generalizable nor statistically valid. Ultimately, the Commissioner, along with the Ombudsperson, recommended maintaining existing provisions relating to the Commissioner's discretion to determine which eligible dismissals to review.

Finally, the BC Excluded Employees' Association (BCEEA) recommended that the Merit Commissioner continue to review all eligible dismissals to ensure that ample information be provided to the Commissioner in conducting their reviews.

## Dismissal Process Improvements

Section 5.2 of the Act outlines the Merit Commissioner's annual reporting requirements. In these reports, the Commissioner makes observations and recommendations to help organizations improve just cause dismissal processes. The Merit Commissioner emphasized that through such reports, their Office's oversight serves to identify areas for ongoing improvement or emerging areas for improvement. Section 5.2 (4) (b) of the Act includes provisions to ensure that a dismissed individual's privacy is protected in the Commissioner's reports by summarizing results and ensuring that no identifying information is included. The Merit Commissioner recommended maintaining these provisions.

The Ombudsperson stated that, even absent findings of non-compliance, the Merit Commissioner's independent oversight of the dismissal process is valuable as it ensures ongoing attention to the process. Additionally, the Merit Commissioner noted that at this time it is unknown whether the introduction of the Merit Commissioner's just cause dismissal review function and subsequent process improvements made by the PSA have impacted the number of just cause dismissals compared to past practices. The BCEEA noted that the Merit Commissioner's annual reports made findings and recommendations that align with their experiences supporting their members throughout the entire investigation process, which indicates to them that dismissal process reviews are sound.

The BCEEA also indicated that a lack of communication about the status of an investigation often leads to increased stress on the part of the employee who is being investigated. Drawn out investigations and a lack of communication can also lead to employees feeling alienated, to reputational damage, and to the erosion of trust in the employer. Additionally, the BCEEA emphasized that to ensure due process, all issues, including medical and mental health concerns, need to be considered and documented. Finally, the BCEEA shared that some witnesses in just cause dismissal investigations are not contacted, which may exclude critical information and leaves the respondent without any information, and feeling the process is unfair. To ensure the process is fair and equitable, they recommended that employers advise employees of which witnesses they are interviewing and document their rationale for excluding any others.

In response to the BCEEA's observations, the Merit Commissioner noted to the Committee that they have commented in past annual reports that files sometimes lack documentation that would allow them to identify the cause of delays. The Commissioner supported the principle of ongoing improvement to documenting when consideration has been given to medical issues raised during an investigation or dismissal, and stated this is another issue they have raised in past annual reports. The Merit Commissioner also noted that materials concerning the tracking and the exclusion of identified witnesses would be considered during a dismissal process review. Finally, the Merit Commissioner told the Committee that the PSA has the sole responsibility for implementing any process changes.

## Committee Discussion

The Committee recognized the importance of the Merit Commissioner's oversight role as an independent reviewer of eligible just cause dismissals. Committee Members agreed that such independent oversight ensures public confidence in the just cause dismissal process.

The Committee considered amending the Act to require the Merit Commissioner to review all eligible just cause dismissals to ensure independent oversight of the process in

every case. The Committee also recognized that supporting dismissal process reviews increases the workload of the PSA, and discussed the sampling approach recommended by that organization. Ultimately, Committee Members favoured maintaining the Merit Commissioner's discretion to select which eligible files to review. It was agreed that this provision provides the Merit Commissioner with the flexibility to continue to review the majority of cases and to elect to review a sample if there is a sudden increase in cases in a given year.

Committee Members acknowledged that they did not hear from any individuals who had been subject to a just cause dismissal as part of the Committee's public consultation, despite efforts to promote opportunities for engagement. As such, the Committee's understanding of the process for just cause dismissals was primarily informed by the

organizations that offered their perspectives. In particular, the Committee appreciated the insights from the BCEEAA which has represented employees who faced just cause dismissal investigations.

The Committee agreed that the procedural fairness issues raised by the BCEEAA should be addressed, including reducing delays during investigations, enhancing communication and transparency, and considering and accounting for an employee's medical issues. Members discussed how the consideration of medical issues could improve the dismissal process in a meaningful way, while also identifying the importance of taking employee privacy considerations into account. In addition, Committee Members agreed that explaining and documenting the exclusion of witnesses would contribute to procedural fairness and should be part of the documentation reviewed by the Merit Commissioner.

## RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that the provincial government:

4. Review the timelines for just cause dismissal investigations to better understand at which points delays occur and to identify systemic issues for further review or improvement.
5. Enable an employee subject to a just cause dismissal investigation to confidentially and securely determine the status of their investigation at each step throughout the process.
6. Consider medical issues throughout just cause dismissal investigations and factor such issues into just cause dismissal decisions.
7. With employee consent, include the consideration of medical issues in just cause dismissal recommendation reports.
8. Assess how just cause dismissal investigations could be improved to minimize negative impacts on the mental health and emotional wellbeing of employees subject to such investigations.
9. Notify employees which witnesses are interviewed during a just cause dismissal investigation and provide rationale for witnesses who are not interviewed.

# LIST OF RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that:

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

The Committee recommends to the Legislative Assembly that the provincial government:

4. Review the timelines for just cause dismissal investigations to better understand at which points delays occur and to identify systemic issues for further review or improvement.
5. Enable an employee subject to a just cause dismissal investigation to confidentially and securely determine the status of their investigation at each step throughout the process.
6. Consider medical issues throughout just cause dismissal investigations and factor such issues into just cause dismissal decisions.
7. With employee consent, include the consideration of medical issues in just cause dismissal recommendation reports.
8. Assess how just cause dismissal investigations could be improved to minimize negative impacts on the mental health and emotional wellbeing of employees subject to such investigations.
9. Notify employees which witnesses are interviewed during a just cause dismissal investigation and provide rationale for witnesses who are not interviewed.

# APPENDIX A: SUBMISSIONS AND PRESENTATIONS

British Columbia Excluded Employees' Association

Sheila Doyle

James S. Kennedy

Ministry of Attorney General

Office of the Merit Commissioner

Office of the Ombudsperson

Public Service Agency

Shon Thomas

