

December 28, 2021

PACIFIC SOCIETY FOR THE ADVANCEMENT  
OF EMPLOYMENT EQUITY

Dear Ms. Catherine Arber,

Administratively – purely administratively – your office may be adhering to the requirements of the *Public Service Act* but by a holistic review of the patterned social outcomes, your office is not in line with the spirit in which the Act was formed, and I hope you will consider this. Interpretive errors form such disjunctions. Your office would know – and I will briefly reference it here for the sake of discussion - that one of the formally stated purposes of the Act is:

...to recruit and develop a well-qualified and efficient public service that is representative of the diversity of the people of British Columbia.

You have conveyed that considerations of workforce representation do not fall within the purview of your office; that your job is to monitor the application of the merit principle by assessing whether the selection processes were correctly applied. The PSAEE stresses however that this interpretation is not wholly correct, because this interpretation *includes* the possibility that your office could consecutively yield findings of ‘merit-based’ appointments even if not a single coloured citizen is appointed in a thousand appointments. The PSAEE cannot accept interpretations in which such possibilities would be deemed legitimate – even hypothetically. Where the hiring process fails to form a representative workforce, *it is not because of random chance* (rather it is attributable to error). A fair hiring process – one that is merit-based – would not yield a workforce that is devoid of or lacking in visible minority citizens; chance would not yield such patterned outcomes; inequitable systems do.

You have expressed that you do not collect data on race, ethnicity or any other protected characteristic because - in the way that the formal understanding of your office is organized, the Act does not expressly place such a requirement upon your office. However, I would emphasize that there is nothing in the Act expressly prohibiting the Office of the Merit Commissioner from deciding to review or collect such data towards furthering the aforementioned purpose of the Act; you *may* decide to collect or review this information. Such actions would necessarily have to be seen as being in faithful alignment with the spirit in which the Act came into being. Acquiring such cognizance is inalienable from the mandate of your office if your mandate is to be fulfilled correctly.

It is upon the Office of the Merit Commissioner to develop a more proper audit criteria that begins to capture that dynamics which have thus far been missed and which account for the absence of citizens of colour in the public service. Thank you.

Sincerely,

Jay Krishan

Key Points:

- I. Legislation stipulates what must be done; it does not however specify how it must be done. Whilst the Act does not require your office to review or collect data on protected characteristics it does not expressly prohibit your office from doing so either; you *may* decide to review or collect such information. Doing so would be consistent with the spirit in which the Public Service Act was furthered. If your office adopts this as a responsibility (which, again, would be consistent with the spirit of the Act), HR will have to alter its practices in order to be answerable to you.
- II. Without commenting on internal validity, the audit findings of your office lack external validity. This is because the adopted scope of your analysis is too narrow. While the majority of appointments have been assessed by your office to be merit based during the past decade, the public service workforce as a whole has remained unrepresentative despite the passage of time. This sort of contradiction typically results when an analysis has an incorrect scope. Your audits findings must, in the view of the PSAEE, aim to achieve both internal and external validity.
- III. The Office of the Merit Commissioner may concern itself with considerations of representation because a hiring process which yields and maintains an unrepresentative workforce is a tell-tale sign that the appointments are not merit-based.
- IV. Your office has a special or advanced knowledge of the nuances of the hiring processes as well as the requisite social capital - by virtue of your mandate – to engage the actors and offices that can bring change. The PSAEE will repeat its understanding that you are in an important position to bring change.