

APPOINTMENT GUIDELINES

Administrative Tribunals

The Board Resourcing and Development Office

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1. Purpose and Application

This document sets out guidelines governing appointments to administrative tribunals in British Columbia. It references relevant appointments legislation, sets out the broad principles of government's policies and provides tribunals and host ministries with guidelines for effecting a merit-based process for the recruitment, selection and appointment of candidates to provincial administrative tribunals. Underlying these guidelines is government's commitment to the appointment of the best and most qualified candidates to positions in administrative tribunals.

The policies and guidelines set out in this document are intended to apply to every administrative tribunal in the province. The appointments process itself is a partnership that requires open communication and co-operation among the Board Resourcing and Development Office (BRDO), host ministers and ministries and individual tribunals. Throughout this process, informal consultation and communication should take place as and when required.

On an exceptional basis, special circumstances may require variations from the practices set out here. When these circumstances arise, it is essential that those seeking to vary stated practices consult with other partners and seek the approval of BRDO prior to proceeding.

These guidelines have been developed within the framework of the provincial legislation that governs appointments to administrative tribunals. The legislation is paramount. Where there is a conflict between these guidelines and the legislation, the legislation prevails.

2. Definitions

“Administrative Justice Office” (AJO) – the office responsible for implementing reforms to B.C.'s administrative justice system and for acting as a resource to tribunals and host ministries on issues of tribunal administration and governance.

“Administrative tribunal” – an independent agency established under federal or provincial legislation for the purpose of making decisions or resolving disputes and whose members are appointed by the Lieutenant Governor in Council or a minister of the provincial Cabinet (see *Appendix 1* for a list of tribunals covered by these guidelines).

“Administrative Tribunals Act” (ATA) – the legislation enacted in 2004 to provide for systemic administrative justice reform including imposing the legislative requirements for merit-based, fixed-term appointments to ensure high quality, independent decision-making. The ATA can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm. (The requirements for merit-based, fixed term appointments were first enacted under the *Administrative Tribunals Appointments and Administration Act*, 2003 (ATAAA), which still applies to a limited number of tribunals.¹)

¹ As of May, 2006, the ATAAA still applied to the Environmental Appeal Board, the Forest Appeals Commission and the Securities Commission.

“Appointing authority” – the Cabinet, the minister or another person who is authorized under a tribunal’s enabling legislation to make appointments to that tribunal.

“Board Resourcing and Development Office” (BRDO) – the office responsible for overseeing all public sector appointments in the province including establishing appointment guidelines, ensuring individual candidates for appointment are chosen based on merit and ensuring that appointees receive adequate professional development.

“Host minister” – the Cabinet minister accountable to government for the administration of a tribunal’s enabling legislation.

“Host ministry” – the ministry from which a tribunal receives administrative, financial, policy or operational support.

“Ministry Appointment Coordinator” – the person in each host ministry with designated responsibility for processing appointment requests in that ministry.

3. Background

Administrative tribunals are unique institutions that provide specialized forums for decision making and dispute resolution. Although created by government through enabling legislation, administrative tribunals, once established, exercise decision making responsibilities at arm’s length from government. Like the courts, administrative tribunals are expected to be impartial and fair. As an alternative to the courts, administrative tribunals are expected to be more accessible, less costly and more able to reach decisions in a timely and efficient manner.

Appointments to administrative tribunals are the prerogative of government, exercised either collectively by Cabinet or individually by responsible ministers. It is through the exercise of its appointing powers that government ensures public accountability across the administrative justice system. At the same time, government’s appointment policies and practices must support the principle of administrative independence, protecting tribunals and their members from real or perceived pressures to make adjudicative decisions other than on their merits. There is a natural and healthy tension between the public accountability of administrative tribunals and their independent decision making role. It is essential that the appointment policies and practices of government reflect these unique features of the administrative justice system.

These Appointment Guidelines for Administrative Tribunals are the result of parallel initiatives of the British Columbia government. The first initiative established the Board Resourcing and Development Office, now located within the Ministry of Labour and Citizens’ Services. This office has a government-wide mandate to:

- establish guidelines for all provincial appointments to public agencies and Crown corporations;
- ensure that all provincial appointments are made on the basis of merit following an open, transparent and consistent appointment process;

- ensure that appointees receive appropriate orientation and ongoing professional development with respect to agency governance issues.

The second initiative resulted in:

- legislation to require merit-based, fixed-term appointments to ensure high quality, independent decision making: the *Administrative Tribunals Act*, (ATA), enacted in 2004 and the *Administrative Tribunals Appointments and Administration Act* in 2003 (which the ATA substantially replaced). The ATA can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm.
- the Administrative Justice Office (AJO), established within the Ministry of the Attorney General, to continue the reform initiative to ensure a high quality, effective administrative justice system in BC. The AJO Web site can be viewed at: <http://www.gov.bc.ca/ajo/> .

By bringing together the requirements of the BRDO with the legislative reforms, supported by the AJO, these guidelines have been tailored specifically to address the needs of the administrative justice system.

4. Governing Principles

Administrative tribunals are often the only point of contact many people have with the formal justice system. As such, the constitution and make up of these tribunals should take into account the characteristics and diversity of the communities that are served by them. Within the broad policies of the provincial government, appointments to administrative tribunals are subject to the following governing principles:

Merit Based: Appointments are governed by the overriding principle of selection based on merit, an objective assessment of the fit between the skills and qualifications of the prospective candidate and the needs of the tribunal determined through a process that is transparent, consistent and proportional.

Professional Contribution, Reputation and Esteem: Nominees for appointment to administrative tribunals will also be assessed, where appropriate, on the basis of contribution to their profession, reputation in their chosen field and respect garnered amongst professional colleagues, associates and adversaries.

Probity: Tribunal members must be committed to the principles and values of public service and perform their duties with integrity.

Transparency: The appointment process must be clear, understandable and available to the public.

Consistency: The appointment process must be applied consistently in respect of all appointments to tribunals.

Proportionality: The appointment process must be subject to the principle of proportionality; that is, the process must be appropriate for the nature of the position and its responsibilities.

5. Appointments Legislation

The primary authority for the constitution of an administrative tribunal is found in its enabling legislation. This enactment sets out not only a tribunal's mandate and jurisdiction but also its composition and the form and structure of its appointments and who makes the appointments, typically by either Cabinet through an Order in Council or by a host minister through a Minister's Order (referred to in the ATA as the appointing authority).

Sections 2 to 10 of the ATA have been selectively applied to various tribunals' enabling legislation, establishing general requirements for appointments across the administrative justice system. The application of ATA sections 2 to 10 to individual administrative tribunals is noted in Appendix 1. Accordingly, the fundamental requirements for appointments to administrative tribunals include:

5.1. *Appointments after a Merit Based Process*

Appointments to administrative tribunals can only be made after completion of a "merit based process". The process itself is not set out in legislation but it is expected that individual tribunals, host ministries and the BRDO will develop a process that is appropriate to the unique circumstances of each tribunal.

The effectiveness of the selected process will be measured by assessing whether:

- any person who is interested in an appointment to a tribunal can find out about upcoming appointments and can apply through a clearly defined selection process; and
- any person who meets the required qualifications for appointment to a particular administrative tribunal has the opportunity to be considered for that appointment.

In developing a merit based process for recruitment and selection, the tribunal and the host ministry must:

- develop a description for each position;
- establish criteria for evaluating individual applicants against the requirements of the position;
- follow a process for screening and selection that is objective, proportionate and has credibility within the community in which the tribunal operates; and
- wherever possible, provide choice to the appointing authority for selecting appointees from a pool of qualified candidates.

The applicable legislative provisions, ATA sections 2 (1) and 3 (1), can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

5.2. *Appointments for Fixed Terms*

Recognizing the professionalism and independent judgment required of tribunal members, appointments to administrative tribunals will be for fixed, renewable terms.

Where a tribunal's enabling legislation does not provide for or prohibit specific appointment terms, initial appointments for tribunal chairs should be specified within a 3 to 5 year range and initial appointments for tribunal vice chairs and members should be specified within a 2 to 4 year range. In appropriate circumstances, reappointments may be made for terms of up to 5 years.

The applicable legislative provisions, ATA sections 2 (2) and 3 (2), can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

5.3. *Appointments after Consultation with the Tribunal Chair*

Although Cabinet or the host minister is ultimately responsible for most tribunal appointments, the tribunal chair must be consulted before appointing or recommending the appointment of vice chairs and members. This is intended to ensure that the views of the chair and the operational requirements of the tribunal are key factors that government considers in making tribunal appointments.

The applicable legislative provisions, ATA sections 3(1) and 5, can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

5.4. *Tribunal Management and Operations*

In order to enhance the public accountability of administrative tribunals, tribunal chairs are expected to be responsible for their effective management and operation and for the organization and allocation of work among the tribunal's members.

Individual tribunal chairs and host ministers are encouraged to enter into Memoranda of Understanding (MOUs) setting out their respective obligations, commitments and responsibilities.

(Note: Part 7.1, below, "Memorandum of Understanding", sets out more information about MOUs. Further information on MOUs is available on the AJO Web site at:

<http://www.gov.bc.ca/ajo/> .)

The applicable legislative provision, ATA section 9, can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

6. Roles and Responsibilities

The following offices and individuals are involved in the appointments process:

6.1. *Board Resourcing and Development Office (BRDO)*

The BRDO is accountable for monitoring appointments to all public agencies, including administrative tribunals. In its role and functions, the BRDO provides an administrative link between tribunals and the line ministries of government, on the one hand, and the executive branch and Cabinet, on the other.

Specific responsibilities of the BRDO include the following:

- setting appointment guidelines and monitoring their implementation and effectiveness;
- publishing a list of appointment terms and expiry dates on the BRDO website together with information on how interested individuals can apply for appointments;
- developing appropriate recruitment and selection processes for upcoming appointments;
- confirming the approach and respective roles and responsibilities of the BRDO, the tribunal and the host ministry in a specific recruitment and selection initiatives;
- identifying or seeking out potential candidates for appointment, including individuals who have submitted expressions of interest in upcoming appointments through BRDO;
- carrying out due diligence on individuals nominated for appointment; and
- approving the list of qualified candidates that goes forward to the host minister for appointment or recommendation.

6.2. *Host Minister*

The host minister appoints (in the case of appointments by Minister's Order) or recommends the appointment of (in the case of appointments by Order in Council) a candidate to fill a position on an administrative tribunal. Prior to making an appointment or recommending an appointment, the host minister must consult with the tribunal chair.

The applicable legislative provisions, ATA sections 3(1), 4(3) to (8) and 5, can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

6.3. *Host Ministry*

Subject to any agreement that has been entered into between the host minister and the tribunal chair (see Part 7.1, below, "Memorandum of Understanding"), the host ministry takes either the lead role or a supporting role in the recruitment and selection process. Each host ministry designates a Ministry Appointment Coordinator (MAC) who is responsible for processing all appointment requests for that ministry.

6.4. *Tribunal Chair*

Subject to any agreement that has been entered into between the host minister and the tribunal chair (see Part 7.1, below, "Memorandum of Understanding"), the chair takes either the lead role or a supporting role in the recruitment and selection process.

(Note: Part 9, below, "Temporary Appointments", sets out information about temporary appointments that may be made by the tribunal chair.)

6.5. *Party with the Lead Role*

(Note: Part 7.1, below, “Memorandum of Understanding”, sets out more information on defining the various roles and responsibilities of the host minister and tribunal chair.)

By agreement, the host minister and the tribunal chair decide who has the lead role in the recruitment and selection process. The responsibilities of the party with the lead role should normally include:

- providing, on the tribunal’s website, a link to the BRDO’s list of appointment terms and expiry dates together with additional information, if any, on how interested individuals can apply for appointments to the tribunal;
- in consultation with the BRDO, confirming the approach and respective roles and responsibilities of the tribunal and the host ministry in a specific recruitment and selection initiative;
- obtaining from the BRDO the names of any potential candidates for appointment, including individuals who have submitted expressions of interest in upcoming appointments through the BRDO;
- preparing the Request for Appointment (Tribunal) and compiling the material that must be submitted with it;
- submitting the Request for Appointment (Tribunal) to the BRDO;
- initiating the approved recruitment strategy, including posting on the tribunal, BRDO and BC Public Service Agency websites;
- convening a selection committee to review and screen applications;
- preparing the short list and leading the selection process for the short listed candidates, following the agreed upon method;
- ensuring that appropriate due diligence and reference checks are carried out;
- forwarding a list of suitable candidates to the BRDO with a confirmation that the recruitment and selection plan, as set out in the Request for Appointment (Tribunal), was followed; and
- as requested, providing additional information or advice to the BRDO or the host minister on candidate selection.

6.6. *Party with the Supporting Role*

By agreement, the host minister and the tribunal chair decide who has the supporting role in the recruitment and selection process. Subject to this agreement, the responsibilities of the party with the supporting role should normally include:

- notifying the lead party of upcoming appointments, extended absences or resignations;
- assisting the lead party in preparing the Request for Appointment (Tribunal) and contributing to the development of the material that accompanies it;
- participating in the recruitment and selection process on an as needed basis as requested by the lead party;
- where appropriate, providing at least one member to sit as part of the selection committee;
- assisting with the short listing and selection process, following the agreed upon method; and

- as requested, providing additional information or advice to the BRDO or the host minister on candidate selection.

7. Documentary Requirements

A memorandum of understanding (MOU) between the chair of the tribunal and the host minister may set out the appointments process, including the responsibilities of the parties, the designation of the parties in lead and supporting roles and the timing and schedule for the identification and review of upcoming appointments.

In addition, the following critical documents are required in an appointments process:

- a position description for each appointment requested
- a completed Request for Appointment (Tribunal);
- a set of evaluation criteria and a screening guide for each recruitment initiative; and
- a Tribunal Candidate Profile and Declaration.

7.1. Memorandum of Understanding

Tribunal chairs and host ministers are encouraged to enter into memoranda of understanding setting out their mutual obligations, commitments and responsibilities. These agreements should be negotiated between the parties at the beginning of a chair's term of office and should be reviewed periodically or whenever a new tribunal chair or host minister is appointed or assigned. (Further information on MOUs is available on the AJO Web site at: <http://www.gov.bc.ca/ajo/> .)

A MOU provides the framework for ongoing relations between the tribunal and its host ministry. It covers issues such as planning, accountability, performance measurement, finance and budgets, reporting requirements and any other required administrative arrangements between the tribunal and the host ministry.

With respect to appointments, a MOU may set out who initiates the appointments process, which party takes the lead, which party plays the supporting role and what variations from the guidelines set out here are acceptable to the BRDO, the host ministry and the tribunal. The MOU may include an agreement by the minister and the chair to meet or consult on an ongoing basis, a requirement to review upcoming appointments, a commitment to establish a mutually acceptable process for recruitment and selection and a clear understanding about anticipated recruitment costs and responsibilities for paying these costs.

In addition to a MOU between the tribunal chair and the host minister, tribunals are encouraged to make information available to the public about upcoming appointments on either the host ministry's or the tribunal's website. This information should include:

- position descriptions for appointments to the tribunal;
- a list of expected expiry dates or a link to the BRDO's website where information on appointment terms and expiry dates is set out; and

- information on how to apply for appointments to the tribunal.

7.2. Position Descriptions

A position description serves to define the dimensions of a position and the knowledge, skills and personal attributes a person must have to carry out the work successfully. An effective position description should:

- provide applicants with an understanding of what the job requires before they apply for or accept a position;
- provide recruiters, selection panels and tribunal chairs with a benchmark against which the attributes of all applicants can be assessed and against which future performance can be measured; and
- reinforce, for the public, the public sector and individual applicants, the enduring principle of appointments based on merit.

Position descriptions are prepared, reviewed or updated by the lead party at the beginning of a recruitment process. They are attached to the Request for Appointment (Tribunal) and should be posted where they are likely to be seen by individuals interested in them.

Personal Attributes

All persons appointed to tribunals in British Columbia should possess the following basic competencies:

- skills in conducting hearings and knowledge of administrative law, including an understanding of alternative dispute resolution;
- analytical and decision making skills;
- communication skills, both oral and written;
- interpersonal skills; and,
- organizational and case management skills.

7.2.1. Key Qualifications

Each tribunal has distinct skills and experience requirements. The position description should include any specific qualifications that are required by legislation and a list of the particular education, skills and experience required for the tribunal as a whole (for example – experience in specific fields such as law, economics, property assessment, finance, human rights or social welfare; community relations or advocacy; geographic representation; equity representation or stakeholder representation).

Samples of suggested position descriptions for tribunal chairs, vice chairs and members are included in Appendices 2, 3 and 4, respectively. While specific descriptions are required for each appointment type, the essential components of the position description include the following headings and information:

Purpose and Mandate

- Identifies the tribunal's governing legislation and provides a brief description of the scope of the legislation that gives rise to proceedings before the tribunal;

- gives a synopsis of the tribunal's mandate, case load, and jurisdiction;
- touches on the standards, rules and directives with which the tribunal must comply.

Nature and Scope of the Position

- outlines the tribunal's expectations of the incumbent;
- explains broad duties and responsibilities of the position;
- provides additional information about the position that may be relevant, including location, environmental considerations and other information of a contextual nature.

Program Linkages

- lists colleagues and stakeholders with whom the incumbent will have interactions.

Accountabilities

- sets out performance expectations and major accountabilities.

Duties and Responsibilities

- describes in detail what the position entails;

Selection Criteria and Required Competencies

- describes specific education, experience or professional designations required and indicates whether alternate combinations of experience and education will be considered;
- states abilities and skills that are necessary for the position (should be specific, measurable and observable);
- defines personal suitability (for example – citizenship, length of residency in British Columbia, time commitment expected and preferred personal attributes);
- lists core competencies required for the position.

7.3. Request for Appointment (Tribunal)

The purpose of the Request for Appointment (Tribunal) is to initiate the recruitment process and to advise the BRDO and the host ministry of the appointments that need to be made. The recommended form for the Request for Appointment (Tribunal) is included as Appendix 5.

The Request for Appointment (Tribunal) includes a copy of the position description for the position in question and a list of pertinent contact information.

The Request for Appointment (Tribunal) and accompanying material must be prepared by the lead party and submitted to the BRDO and the supporting party at least six months prior to the date an appointment is required.

7.4. Evaluation Criteria and Screening Guide

The purpose of evaluation criteria and screening guides is to ensure that the recruitment and selection process is objective, observable and based on merit. Tribunals and host ministries are encouraged to develop these criteria and guides so that they reflect the unique circumstances of each tribunal and the environment within which each operates. As such, the evaluation criteria and screening guide should reference the competencies, attributes and qualifications listed in the position description and satisfy requirements in the Request for Appointment (Tribunal). They need not be extensive or exhaustive, but they must be adequate to ensure that:

- members of the selection committee are looking for the same things from each of the candidates (consistent process);
- applicants who do not possess the necessary competencies, attributes and qualifications are rejected (merit based process);
- every qualified applicant has the chance to be considered for appointment (merit based process);
- the screening process accommodates an assessment of each applicant's professional contribution, reputation and esteem; and
- interested members of the public can ascertain the qualities the tribunal is looking for and respect the appointment decision once made (transparent process).

7.5. Tribunal Candidate Profile and Declaration

All candidates whose names are being put forward and recommended for appointment to an administrative tribunal must complete a Tribunal Candidate Profile and Declaration. This form is normally completed by candidates who are short listed for consideration.

The Tribunal Candidate Profile and Declaration includes information about a candidate's background, disclosure of any potential conflicts of interest, a declaration acknowledging general responsibilities to the tribunal, questions about personal integrity and public accountability and finally a list of personal references.

After an appointment is made, the BRDO will provide a copy of the appointee's completed Tribunal Candidate Profile and Declaration to the tribunal chair.

A standard form Tribunal Candidate Profile and Declaration is attached as Appendix 6. Tribunals are encouraged to particularize the Tribunal Candidate Profile and Declaration to make it relevant to the needs of the tribunal. Amendments to the Tribunal Candidate Profile and Declaration must be reviewed and approved in advance by BRDO.

The essential components of the Tribunal Candidate Profile and Declaration include information about the following:

7.5.1. Probity

In completing the profile, candidates must consider whether there is anything in their personal histories that may make their candidacy for a tribunal appointment inappropriate. This part of the declaration is intended to protect the government and the tribunal from future embarrassment.

Candidates must indicate their willingness to submit to security checks, credit checks or other checks, including criminal record checks, if these are relevant to the nature of the position being sought.

7.5.2. Conflicts of Interest

As part of the profile, candidates must indicate whether they have any interests, associations or relationships that could give rise to conflicts of interest with their duties and responsibilities as a tribunal appointee. Known or potential conflicts of interest must be identified and disclosed as part of the appointment process.

A conflict of interest may arise from:

- memberships, directorships or employment;
- interests in business enterprises or professional practices;
- share ownership (direct or indirect);
- beneficial interests in trusts;
- existing professional or personal associations with the tribunal or persons appearing before the tribunal;
- ongoing or outstanding matters before the tribunal;
- professional associations or relationships with other organizations;
- personal associations with other groups or organizations;
- family relationships.

If a conflict of interest is disclosed then, depending on the nature of the conflict, either:

- the candidate is not suitable for appointment; or
- the candidate is suitable for the appointment provided that an appropriate mechanism or system can be established to deal with the conflict.

Mechanisms for avoiding or managing the risk of conflicts include:

- divesting conflicting business interests;
- severing connections that may create a conflict of interest;
- declaring interests; and
- abstaining from hearing matters before the tribunal affecting those interests.

8. Making Appointments – Major Steps

A successful recruitment initiative requires excellent cooperation and communication among all of the players including the tribunal, the host minister and ministry, the BRDO, applicants, successful candidates and, where appropriate, interested stakeholders. The lead party is responsible for initiating the recruitment process, for ensuring that all of the players are aware of each of the steps being taken and for bringing the process to a successful conclusion.

An overview of the timelines and the responsibilities of the various parties are set out in Appendix 7 for ministerial appointments and in Appendix 8 for Order in Council appointments.

8.1 Identify the Need for an Appointment

The first and perhaps most important step in the recruitment process is for the lead party to notify the BRDO and the supporting party about an upcoming appointment and about the preferred strategy for recruiting and selecting qualified candidates. It is essential that the lead party reach agreement with its partners on basic principles and approaches at the time the need for a new appointment is identified. Wherever possible, this step should take place at least six months before the appointment must be filled.

8.1. *Prepare Position Description*

The lead party should prepare or update a position description for the upcoming appointment.

8.2. *Confirm Recruitment and Selection Process*

Subject to agreement with the BRDO, the lead party, in consultation with the supporting party, should review and confirm a recruitment and selection process that is consistent with these guidelines.

8.3. *Recruitment*

The recruitment process should be proactive, proportionate to the nature of the position being filled and appropriate to the needs and circumstances of the tribunal. The goals of the recruitment process are to:

- inform the public about the upcoming appointment so that all interested parties can apply; and
- identify a pool of highly qualified potential candidates.

At the most general level, the partners in the recruitment process should agree at the outset how information about the upcoming appointment will be made known, what constraints and opportunities must be considered and what strategies and processes will be adopted.

The specific recruitment strategies adopted by each tribunal should be designed to accommodate the needs of the tribunal, the type of position being filled, the environment within which the tribunal operates and the availability, within the marketplace, of individuals with the skills and experience the tribunal requires.

In notifying the BRDO and the supporting party that an appointment is required, the lead party should take the opportunity to determine whether there may already be in existence through the tribunal or the BRDO:

- information about individuals who have previously expressed an interest in an appointment to a particular tribunal or who are currently serving as members of other tribunals; or

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- a list of candidates who have been pre-qualified from a previous recruitment process or initiative.

If advertising is to be done for upcoming appointments then, at a minimum, the advertisement should be posted on the BRDO website and the tribunal (or host ministry) website. In addition, advertisements should be posted in locations that are known to or will be readily available to potential candidates.

Candidates may be identified through the following sources:

- advertising;
- stakeholders or interested parties;
- professional search consultants;
- directed invitation to apply;
- BRDO database;
- the host minister or other elected representatives.

The recruitment documents should include information about how and according to what criteria candidates will be evaluated. A contact name should be provided to applicants – either through the chair of the tribunal, the host ministry or the BRDO.

If the recruitment process fails to identify suitable candidates, the tribunal, host ministry or BRDO may conduct further recruitment on an informal basis, as needed, following discussions with the other parties.

8.3.1. Selection

The underlying goal of the selection process is to identify the most qualified candidates. In order to carry out a thorough candidate assessment, there must be a standard against which individual applicants are evaluated and a process that allows that evaluation to take place in an objective and observable manner.

Selection Committee

A selection committee should be established to assess candidates and carry out the required due diligence. The makeup of the committee should be proportional to the nature of the position being filled and include members who broadly represent the interests of the parties who are accountable for the tribunal's performance or who can contribute a perspective or specific expertise to the committee's work.

For full-time appointments, the selection committee should normally include:

- for the appointment of a chair, the minister's delegate, the chair of another administrative tribunal and a representative of the BRDO, or in addition to, or as an alternative to the BRDO, a representative of the AJO;
- for the appointment of a vice chair, the chair of the tribunal, a representative of the host ministry or another tribunal and a representative of the BRDO;
- for the appointment of a member, the chair or vice chair of the tribunal and a representative of the host ministry or another tribunal.

For part-time appointments, the selection committee may be constituted on a more informal basis, but its processes must be transparent and open to public scrutiny.

Visual Screening

The selection process should include a mechanism to identify those candidates who do not demonstrate a sufficient knowledge or skills in each of the competency areas identified in the position description.

This would typically include a review of the candidate's application package. Candidates whose applications do not demonstrate a satisfactory working knowledge or skills in each key competency area would not be invited to participate further in the selection process.

8.3.2. Assessment of Competencies

The selection process should identify the specific tools that will be used to assess the competencies of the remaining candidates. In addition to personal interviews, other forms of assessment may be considered.

Interview

In most situations, it is recommended that candidates participate in some form of direct personal interview. The structure and length of the interview and the types of questions asked will vary with the type of appointment to be made. Interviews may be conducted in person, over the phone or even by email, if appropriate. The interview panel should comprise the same people who did the initial screening and should include either the chair or a vice chair of the tribunal.

The interview questions should reflect the requirements set out in the position description and generally cover the following points:

- professional background;
- reasons for applying to the tribunal;
- extent of knowledge in relevant areas (for example, legal knowledge or professional expertise);
- professional skills and experience;
- practical issues;
- situational issues;
- personal attributes;
- willingness to meet the tribunal's demands (for example with respect to time commitments, training or public relations).

Questions should be prepared in advance in writing and administered to each candidate in a consistent way.

Other forms of assessment

Although interviews are the most common technique for selecting qualified candidates, other methods of candidate selection may be used when appropriate. These include:

- a simulated hearing or adjudication that a candidate could be expected to encounter if appointed to the tribunal;
- the completion of a more detailed questionnaire outlining the competencies, skills and knowledge the candidate would be expected to bring to the tribunal;
- a requirement to submit examples of previous written decisions;
- written tests or submissions;
- assessments from referees, professional colleagues or others in the community.

Public Service Agency Guidelines

The BC Public Service Agency (BCPSA) is the agency within the provincial government that sets standards for the recruitment and selection of government employees.

Appendix 4 in Directive 4.1 sets parameters for assessing education, experience, knowledge and skills in a merit based recruitment and selection process. Although these parameters have not been designed specifically for administrative tribunals, they are nonetheless useful in defining the essential qualities of merit and there are provided here as general guidelines for tribunals and host ministries.

Assessing Education and Experience

Education and experience requirements should be directly related to job duties, should be able to predict performance on the job and recognize the variety of ways to obtain knowledge and skills.

Acceptable combinations of education, training and experience should be established in advance whenever possible so that panels are clear on what criteria will be used for screening.

Assessment tools to measure education and experience include:

- resumes or curriculum vitae;
- application forms;
- reference checks.

Assessing Knowledge and Skills

Only knowledge which must be brought to the job (not that which can be picked up quickly – i.e. knowledge of specific legislation) should be stated as a requirement.

Skill requirements should be directly related to the job and should be described in terms of behaviour that is specific, observable and measurable.

Assessment tools used to measure knowledge and skills include:

- written tests or writing samples;
- tests of ability through performing job tasks, such as writing a sample decision;
- oral interviews;
- case studies;
- background assessment questionnaires where applicants respond to specific questions about where they obtained specific knowledge or demonstrated specific skills;
- past work performance/reference checks.

8.3.3. Referencing

Candidates should be asked to provide a minimum of two professional (recent, supervisory or peer) referees and two personal referees.

8.4. *Submit Request for Appointment (Tribunal)*

Once the recruitment and selection process has been determined, the lead party initiates the appointment process by preparing and submitting a Request for Appointment (Tribunal) and the accompanying documentation.

The Request for Appointment (Tribunal) is signed off by the tribunal, the host ministry and the host minister before it is submitted by the lead party to BRDO for approval.

The Request for Appointment (Tribunal) should be submitted to the BRDO at least six months before the date the new appointment is required.

8.5. *Identify Candidates*

The lead party initiates the search for suitable candidates following the recruitment process approved by BRDO and outlined in the Request for Appointment (Tribunal).

The form of an application is optional. Normally, it would include a covering letter and a resume or curriculum vitae. Tribunals and host ministries may also agree to adopt a uniform application form.

Public notices about the appointment should include information about what an applicant is required to submit, where access to any required application forms can be made and how and from whom an applicant can obtain further information about the tribunal or the posted position. Applicants should also be made aware that they cannot be assured of being considered for appointment unless they submit a complete application package by the closing date.

8.6. *Assess Candidates*

Following the recruitment process and the identification of candidates, candidates should be assessed using the agreed upon methods.

8.7. *Select and Recommend Candidates*

At the end of the assessment process, the selection committee should prepare a list of candidates for submission to BRDO. Before the list is finalized, the chair of the selection committee must ensure that appropriate due diligence has been carried out. In this respect, candidates recommended for the final list will be contacted and required to complete the Tribunal Candidate Profile and Declaration. The chair of the selection committee should ensure that the profiles are complete and reviewed carefully. Where necessary, a confidential process should be established for exploring and assessing potential conflicts of interest.

Once the due diligence process has been completed, the lead party will present the names of the recommended candidates to the BRDO. The BRDO may make further independent enquiries before the final list is presented to the host minister for appointment or recommendation.

Depending on the circumstances and the arrangements between the lead party and the BRDO, the final list may contain the names of all applicants or only the names of those who are being recommended for appointment. If a complete list is provided, it should indicate which candidates are being recommended for appointment and which are not.

Except in unusual circumstances, the recommended candidates should be listed in a preferred order and the list should include more names than positions to be filled. Where sufficient candidates are available, the host minister should be provided with a choice of three candidates for each position to be filled.

8.8. *Formalize the Appointment*

It is the BRDO's responsibility to forward the final list of recommended candidates to the host minister and to review and discuss that list with the host minister. From the final list, the host minister will select candidates for appointment (Minister's Order), make recommendations for appointment to Cabinet (OIC) or request further recruitment and screening. Once the final list has been approved by the host minister, the BRDO will forward recommendations for OIC appointments to Cabinet for final review and approval.

After the host minister has approved the list of selected or recommended candidates, the BRDO confirms the recommended candidate(s) and term(s) of appointment, completes the Request for Appointment (Tribunal) Cover Page and forwards the Cover Page to the Ministry Appointment Coordinator (MAC) (with a copy to the host minister's assistant). The MAC prepares the appointment documents (OIC/MO) and obtains the following approvals:

- if an Order in Council, approvals from Legislative Counsel; and Assistant Deputy Minister, Corporate Planning.
- if a Minister's Order, approvals from Assistant Deputy Minister, Corporate Planning.

After these approvals are obtained, the ADM, Corporate Planning, forwards the OIC/MO to the host minister for approval or signature.

If the appointment document is an OIC, the MAC must, within 10 days of the minister's approval, obtain the host minister's signature on the OIC package and forward the signed package to Cabinet Operations for placement on the Cabinet Agenda. In order to be considered on the Cabinet agenda, an OIC package must be delivered to Cabinet Operations by NOON on Wednesday of the three weeks prior to the scheduled Cabinet Meeting.

If the appointment document is a MO, ministry staff forward signed copies to the OIC Office (for record keeping) and to the BRDO.

8.9. *Finalize Communications*

The following communications steps take place once an order has been approved:

Upon receipt or notification of the approval, the BRDO will:

- notify the appointee that the appointment has been made;
- notify the tribunal that the appointment has been made and ensure the tribunal has the appointee's contact information.

The host ministry, in co-operation with the tribunal chair, will:

- if appropriate, prepare a News Release or Information Bulletin relating to the appointment;
- prepare or obtain the documents the host minister requires to confirm the appointment;
- if the appointee is a public servant, send a letter to the appointee incorporating the words: "This letter will serve to confirm that the services that you provide to [name of tribunal] are within the scope of your employment with the Province of British Columbia."

Within two weeks after the appointment has been made, the host minister's office will send the appointee a letter confirming the appointment (or re-appointment) and enclose the following documents:

- a copy of the OIC or Minister's Order;
- a government agencies, tribunals and commissions appointee Indemnity Form; and
- a certificate of appointment.

The tribunal will contact the appointee by letter or telephone to welcome the new appointee (or re-appointee) and arrange for appropriate orientation. The tribunal will provide the appointee with:

- the remuneration guidelines that apply to the appointment; and
- the conduct guidelines that apply, including any relevant guidelines on conflicts of interest and any relevant performance standards, guidelines or expectations.

On the effective date of the appointment, the BRDO will update its records and website. If requested by the tribunal chair, the BRDO will provide information to the chair about any matters that have come to the BRDO's attention that the chair should take into account in making recommendations for appointments in the future.

8.10. *Notify the Public*

The BRDO website contains a page entitled Recent Appointments that lists all appointments made within the previous 30 days. The website is updated every Friday.

Where a significant appointment is made, the tribunal or host ministry may wish to issue a News Release or Information Bulletin.

9. Temporary Appointments

Many tribunal chairs have legislative authority to appoint temporary members, after consultation with the minister, for time-limited (maximum of six months), non-renewable terms. The appointment of temporary members allows the chair to manage the tribunal's work more effectively and respond quickly to unexpected increases in case loads.

Temporary appointments are expected to be made in accordance with the general principles of merit, openness, fairness and transparency but are not required to follow each of the steps recommended elsewhere in these guidelines for regular appointments.

The tribunal chair and the minister are required to consider whether a candidate for a temporary appointment is otherwise qualified to hold an appointment as a member of the tribunal. Suitable candidates would include former members of the tribunal, individuals with appointments to other similar tribunals or respected members of a professional or other community with recognized expertise in issues related to the tribunal's work.

The appointment process for temporary appointments may be streamlined and simplified and would normally involve an initial, informal screening to ensure that the candidate meets the qualifications listed in the position description. The candidate will also need to complete a Tribunal Candidate Profile and Declaration (see Part 7.5, above) to disclose any potential conflict of interest and to provide other necessary background information.

In addition, if for some reason there is no chair (for example, an unexpected resignation or even death), an appointing authority may have the authority to appoint a current member, or a person who would otherwise be qualified as a member, as the acting chair for a term of up to 6 months. In making such an appointment, the appointing authority may follow a streamlined process, giving appropriate consideration to the necessary qualifications. Extending the appointment for an additional term of up to 6 months may be permitted, but only in exceptional circumstances.

Temporary appointments are different from appointments made to address extended absences (see Part 10 below).

The applicable legislative provisions, ATA sections 6 and 4(5) and (6), can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

10. Extended Absences

If a member or the chair is absent or is expected to be absent or incapacitated for an extended period of time, it may be necessary to appoint or designate someone to carry out that person's duties in order to ensure the continued effective functioning of the tribunal.

When it is a tribunal member that is absent or incapacitated, the appointing authority, after consulting with the chair, may appoint a replacement to serve until the member returns to duty or the member's term expires, whichever is earlier. These appointments are not required to follow each of the steps recommended elsewhere in these guidelines, but is expected they will

be made in accordance with the general principles of merit, openness, fairness and transparency. The candidate will also need to complete a Tribunal Candidate Profile and Declaration (see Part 7.5, above) to disclose any potential conflict of interest and to provide other necessary background information.

When it is the chair who is absent or incapacitated for an extended period of time, the appointing authority may designate a vice chair or member, or to appoint an individual who would otherwise be qualified as a member or chair, to act while the chair is absent or incapacitated. This is intended to meet operational requirements, while ensuring the merit principle is also satisfied. If the person to be appointed is not already a member, then that person should complete a Tribunal Candidate Profile and Declaration (see Part 7.5, above) to disclose any potential conflict of interest and to provide other necessary background information.

(Note: The chair will normally have the authority to designate a vice chair or member to act as chair during the chair's absences, and the appointing authority will typically only have authority to make an appointment of an acting chair if the chair is absent or incapacitated for an extended period of time.)

Extended absences are different from temporary appointments (see Part 9 above).

The applicable legislative provisions, ATA s. 4(2), (3),(4) and s. 5, can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

11. Chair's Obligation to Assess Members

It is the responsibility of the tribunal chair to develop techniques for measuring and assessing the performance of tribunal vice chairs and members and for providing regular opportunities for feedback about performance to appointees. Performance expectations should be measured against criteria set out in position descriptions and should be mutually understood and accepted at the outset of an appointment by both the tribunal chair and the tribunal's members. It should be clearly understood by both chairs and members that the choice of performance measures must not, and must not be seen to, compromise the independence and autonomy of individual members or panels of the tribunal in the exercise of their decision making responsibilities.

The AJO may be able to provide assistance with processes, policies and related resources for assessing tribunal members.

12. Resignations

As a matter of practice, if an incumbent decides to resign before the expiry of an appointment term, the incumbent should provide the tribunal with reasonable notice in writing setting out, where appropriate, the effective date of the resignation.

Following an appointee's resignation, the host minister should send a letter thanking the appointee for his or her contribution.

13. Terminations

It may be necessary in some circumstances to terminate an appointment before the end of term. It is strongly suggested that, prior to any termination, the host minister consult with the tribunal chair and discuss the issue with the BRDO and the AJO.

Section 14.9 of the *Public Sector Employers Act, RSBC 1996*, provides an appointee may be terminated without notice before the end of the term of their appointment on payment of the lesser of

- (a) twelve months' compensation, or
- (b) the compensation in an amount equal to the remuneration otherwise owing until the end of term.

Section 8 of the ATA provides the appointing authority may terminate appointments for cause.

The applicable legislative provision, ATA section 8, can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

In the event that an appointment is rescinded, the host minister's office or the tribunal chair, as determined appropriate, should notify the appointee that his or her appointment has been rescinded. Where appropriate, the host minister's office should send a letter thanking the appointee for his or her contribution.

14. Expiry of Term

On the expiry of the term of appointment and where an appointee has indicated they are not intending to stand for reappointment or the decision is made not to reappoint, the host minister's office should send a letter thanking the appointee for his or her contribution.

Subject to an administrative tribunal's enabling legislation, when an appointment expires, the chair may authorize that individual to continue to exercise powers as a member of the tribunal in any proceeding over which that individual had jurisdiction immediately before the end of the expired term. This authorization by the chair will avoid delays by allowing a tribunal member to complete proceedings and any other outstanding work in a timely and efficient manner. It will avoid the need to recommence incomplete proceedings should an appointment expire, and support effective tribunal organization.

The applicable legislative provision, ATA section 7, can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

15. Reappointments

While reappointments to administrative tribunals are not guaranteed, an appointee may be considered for reappointment if the appointee's performance has been satisfactory and there are no other considerations that would militate against the reappointment. In this respect, tribunal appointees should be made aware that their performance will be a factor that is taken

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into account when reappointment recommendations are made. (Note: Part 11, above, “Chair’s Obligation to Assess Members”.)

Some of the factors that may be considered in determining whether an appointee has performed satisfactorily include:

- the appointee’s contribution to the achievement of the tribunal’s goals and service plans;
- the general decorum of the appointee in carrying out the tribunal’s work;
- the timeliness of the appointee’s decisions;
- the appointee’s attendance;
- the appointee’s other activities in support of the work of the tribunal.

In assessing the performance of an individual appointee against the overall needs of the tribunal, tribunal chairs should weigh the benefits of expertise gained through experience against the fresh views that new appointees can bring to the tribunal’s work.

If the tribunal chair considers that may be appropriate to recommend an incumbent’s reappointment:

- the incumbent should confirm in writing his or her willingness to serve;
- the tribunal chair should advise the host minister that the incumbent is being recommended for reappointment; and
- the incumbent should be advised that his or her reappointment will be recommended:
 - on an individual basis;
 - along with any other qualified candidates who have expressed an interest in the appointment; or
 - as part of a full recruitment and selection process.

Circumstances such as the timing of a reappointment, the availability of other qualified individuals interested in and willing to accept a tribunal appointment, the expertise of the incumbent, the ongoing workload of the tribunal and the costs and commitment required to carry out a formal recruitment process or to train a new appointee will be factors that are taken into account in determining whether to recommend a reappointment without going through the full recruitment and selection process that is set out in these guidelines.

Tribunal chairs should be guided in their recommendations by government’s underlying commitment to openness and transparency and to merit as the basis for all tribunal appointments. Tribunal positions should be filled by candidates with the best qualifications to meet the tribunal’s requirements.

The applicable legislative provisions, ATA section 2(2) and 3(2), provide for reappointments for terms of up to 5 years. They can be viewed at:

http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

16. Timelines

It is the goal of every recruitment process that appointments be finalized at least 30 days prior to the required effective date of the appointment.

17. Costs

Expenses incurred as part of the recruitment process are the responsibility of either the tribunal or the host ministry, in accordance with the arrangement the parties have reached either in their MOU or otherwise.

Where the BRDO, the tribunal and the host ministry agree that the BRDO will undertake an intensive active search or screening process for significant appointments, the tribunal will be responsible for costs related to that process.

18. Remuneration

Appointees to public agencies normally receive remuneration in accordance with any applicable regulations or Treasury Board guidelines. ATA section 10 requires tribunal appointees' remuneration be set by the Minister in accordance with Treasury Board Directive 3/04, which applies to administrative tribunals and can be viewed at <http://www.fin.gov.bc.ca/ocg/fmb/manuals/TBDirs/TBD3-04.doc>. That Directive permits exceptions only in exceptional circumstances and requires that any exceptions must be approved in advance of the appointment.

The applicable legislative provision, ATA section 10, Remuneration and benefits for members, can be viewed at: http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm .

19. Orientation and Professional Development

Each tribunal is responsible for developing and implementing an orientation program for new appointees and for ongoing professional development for tribunal members.

The BRDO may provide assistance with respect to tribunal governance and training. In addition, the British Columbia Council of Administrative Tribunals provides a foundation course for tribunal appointees and new appointees are encouraged to attend. BCCAT's website is located at <http://www.bccat.net>. The AJO may also be able to provide information on training and related resources.

20. Legislation

If there is a conflict between any governing legislation and these guidelines, the governing legislation prevails.

21. Amendment and Updates

These guidelines are a work in progress. The Board Resourcing and Development Office, in consultation with the Administrative Justice Office, will work continually to improve the tribunal appointment process. Comments and suggestions from those involved in the process are welcomed.

Updates to these guidelines will be issued from time to time.

Appendices

Appendix 1 – Administrative Tribunals in British Columbia

Sections 2 to 10 of the Administrative Tribunals Act apply, except as noted.

Agricultural Land Commission
British Columbia Farm Industry Review Board
British Columbia Board of Parole (except s. 7)
British Columbia Review Board (Criminal Code) (except s. 6 and s. 7)
Building Code Appeal Board (except s. 9)
Community Care and Assisted Living Appeal Board
Employment and Assistance Appeal Tribunal (except s. 7 (part of) and s. 10)
Employment Standards Tribunal
Environmental Appeal Board*
Financial Services Tribunal (except s. 2 and s. 8)
Forest Appeals Commission*
Forest Practices Board
Hospital Appeal Board
Human Rights Tribunal (except s. 2 and s. 3)
Industry Training Appeal Board
Labour Relations Board
Mediation and Arbitration Board
Mental Health Review Panels
Passenger Transportation Board
Property Assessment Appeal Board
Property Assessment Review Panels (except sections 2, 3, 5 and 9)
Safety Standards Appeal Board
Securities Commission*
Utilities Commission (except s. 4)
Workers' Compensation Appeal Tribunal**

*The *Administrative Tribunals Appointments and Administration Act, 2003*, still applies to these tribunals.

** Sections 2 to 10 ATA do not apply; see section 232 of the Workers compensation Act instead.

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