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# PUBLIC SERVICE ACT

## CHAPTER 385

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**PART 1 – INTRODUCTORY PROVISIONS****Definitions**

1 In this Act:

“**appeal board**” means the Public Service Appeal Board continued under section 16;

“**commission**” means the Public Service Employee Relations Commission continued under section 5 (1);

“**commissioner**” means the commissioner appointed under section 5 (2);

“**deputy minister**” means

- (a) a person appointed as a deputy minister under section 12, or
- (b) subject to section 14, a person who by an Act or by an order in council under that section is declared to have the status of a deputy minister;

“**employee**” means a person appointed under this Act other than a person appointed under section 15.

**Purposes of Act**

2 The purposes of this Act are to

- (a) facilitate the provision of service to the public in a manner that is responsive to changing public requirements,
- (b) recruit and develop a well qualified and efficient public service that is representative of the diversity of the people of British Columbia,
- (c) encourage the training and development of employees to foster career development and advancement,
- (d) encourage creativity and initiative among employees, and
- (e) promote harmonious relations of the government and employees and bargaining agents that represent employees in the public service.

**Application of Act**

3 Except as otherwise provided in this Act or in another Act, this Act applies

- (a) to all ministries of the government, and
- (b) to any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares this Act, or a provision of this Act, to apply.

**Consultation process**

4 (1) In this section, “**consult**” means seeking advice or an exchange of views or concerns prior to the making of a decision respecting the matters that determine merit under section 8 (2) or the making of regulations under section 25.

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- (2) The commission must consult with representatives of the employees' bargaining agents certified under the *Public Service Labour Relations Act* with respect to
    - (a) the application of the matters that determine merit under section 8 (2), and
    - (b) regulations that may affect the employees represented by the bargaining agents that the minister intends to recommend to the Lieutenant Governor in Council under section 25.
  - (3) In addition, the commission may consult with employees who are not represented by the bargaining agents referred to in subsection (2) with respect to the matters referred to in that subsection that affect members of those groups.

## **PART 2 – PUBLIC SERVICE EMPLOYEE RELATIONS COMMISSION**

### **Public Service Employee Relations Commission continued**

- 5 (1) The division of the government known as the Public Service Employee Relations Commission is continued under the administration of the minister.
- (2) The Lieutenant Governor in Council must appoint a commissioner as the deputy minister responsible for the commission.
- (3) The commissioner is responsible for personnel management in the public service including but not limited to the following:
  - (a) advising the minister respecting personnel policies, standards, regulations and procedures;
  - (b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;
  - (c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;
  - (d) developing, providing, assisting in or coordinating staff training, educational and career development programs;
  - (e) developing, establishing and maintaining job evaluation and classification plans;
  - (f) acting as bargaining agent for the government in accordance with section 3 of the *Public Service Labour Relations Act*;
  - (g) developing, establishing and maintaining occupational health and safety programs;
  - (h) developing and implementing employment equity policies and programs;
  - (i) conducting studies and investigations respecting staff utilization;
  - (j) carrying out research on compensation and working conditions;
  - (k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;

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- (l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;
  - (m) establishing and maintaining a personnel management information system;
  - (n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.
- (4) Subject to this Act and the regulations and on the recommendation of the commissioner, the minister may issue policies respecting the matters referred to in subsection (3).

**Delegation**

- 6 Subject to the regulations, the commissioner may
- (a) delegate any of his or her powers, duties or functions under this Act or the regulations to an employee of the commission,
  - (b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act or the regulations to a deputy minister or other employee of the ministry or to a member, officer or employee of the board, commission, agency or organization,
  - (c) *[not in force, see Supplement.]*
  - (d) establish conditions, standards or requirements for any delegation, and
  - (e) amend, replace or revoke any delegation made under this section.

**Access to facilities and records**

- 7 The commissioner is entitled to access to ministries and to boards, commissions, agencies and organizations that are declared to be subject to this section under section 3 and to their records relating to personnel matters or containing information required by the commissioner to carry out his or her duties under the Act or regulations.

**PART 3 – APPOINTMENTS TO THE PUBLIC SERVICE****Appointments on merit**

- 8 (1) Subject to section 10, appointments to and from within the public service must
- (a) be based on the principle of merit, and
  - (b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.
- (2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.

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- (3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate
    - (a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and
    - (b) the long term career development and advancement of employees appointed under this Act.
  - (4) Subject to the regulations, the commissioner may direct in respect of a vacancy or class of vacancies in the public service, that applicants be
    - (a) limited or given preference in a manner intended to achieve employment equity objectives,
    - (b) limited to employees to encourage career development and advancement,
    - (c) limited to employees of a stated occupational group, position level or organizational unit, or
    - (d) limited to a stated geographical area or locale.

#### **Probation**

- 9 (1) A person who is appointed to a position in the public service is on probation until the person has worked the equivalent of 6 months full time employment.
- (2) If the appointment is made from within the public service, the deputy minister or an employee authorized by the deputy minister may waive all or part of the probation period.
- (3) The deputy minister may, during the probation period, reject for just cause a person appointed to a position under the deputy minister's control.

#### **Exceptions to section 8**

- 10 Subject to the regulations
  - (a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and
  - (b) section 8 (1) (b) does not apply to the following:
    - (i) a temporary appointment of not more than 7 months in duration;
    - (ii) an appointment of an auxiliary employee;
    - (iii) a direct appointment by the commissioner in unusual or exceptional circumstances.

#### **Inquiries**

- 11 (1) An unsuccessful applicant for appointment to the public service may apply in writing to the chair of the selection panel for the competition with respect to that appointment for a statement of the reasons why he or she has not been appointed.

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- (2) The chair of the selection panel must provide the unsuccessful applicant with the statement referred to in subsection (1) as soon as possible but in any case not later than 30 days after the date on which the chair receives the application of the unsuccessful applicant under subsection (1).

**Deputy ministers**

- 12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.
- (2) An associate deputy minister has all the powers of a deputy minister.
- (3) Sections 8 and 18 do not apply to appointments under this section.

**Deputy ministers' pensions**

- 13 (1) When calculating the amount of a superannuation allowance under the *Pension (Public Service) Act*, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.
- (2) Subsection (1) does not apply
  - (a) to the calculation under section 9 (9) of the *Pension (Public Service) Act*, or
  - (b) to a person holding the position of acting deputy minister.

**Declaration of deputy minister status**

- 14 The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

**Appointment by Lieutenant Governor in Council**

- 15 (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers
  - (a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or
  - (b) will be appointed to a position that requires special professional, technical or administrative qualifications.
- (2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.
- (3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

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## PART 4 – PUBLIC SERVICE APPEAL BOARD

### Public Service Appeal Board continued

- 16
- (1) The Public Service Appeal Board is continued to hear appeals under section 18.
  - (2) The appeal board consists of at least 3 members appointed by the Lieutenant Governor in Council, one of whom must be designated as chair.
  - (3) A member of the appeal board appointed under subsection (2) holds office during good behaviour for a term not exceeding 3 years and serves on a full or part time basis as the Lieutenant Governor in Council may order.
  - (4) If there is a tie vote on any matter before the appeal board, the decision of the chair is the decision of the board.
  - (5) In addition to the members of the appeal board appointed under subsection (2), the appeal board may appoint persons as members of the appeal board for the purpose of one or more appeals.
  - (6) A member of the appeal board must be reimbursed for reasonable expenses necessarily incurred by the member in the performance of his or her duties and be paid remuneration authorized by the Lieutenant Governor in Council.

### Staff

- 17
- (1) The board may appoint a registrar and other employees it considers necessary for the purposes of the appeal board and may set terms and conditions of employment including remuneration for those employees.
  - (2) The other provisions of this Act and the *Public Service Labour Relations Act* do not apply to the registrar or other employees appointed under subsection (1).

### Appeals

- 18
- (1) An employee who is an unsuccessful applicant for appointment to a vacancy in a position in the public service may appeal to the appeal board on the ground that section 8 (1) has not been complied with.
  - (2) Subject to the regulations, the appeal board must establish its own procedure for the expeditious hearing of appeals under subsection (1).
  - (3) If an applicant commences an appeal under subsection (1), the appeal board must, before hearing the appeal, inform the commissioner and the appropriate deputy minister of the particulars of it.
  - (4) After hearing an appeal, the appeal board may do any of the following:
    - (a) dismiss the appeal;
    - (b) direct that the appointment or the proposed appointment be rescinded and reconsidered.
    - (c) [not in force, see Supplement.]

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- (5) The appeal board may summarily dismiss an appeal under subsection (1) if it considers that the appeal is frivolous or vexatious.
- (6) A member of the appeal board may sit alone or the chair may appoint a panel consisting of 3 members to hear and decide an appeal.
- (7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

***Inquiry Act***

- 19 For the purpose of an appeal under section 18, the members of the appeal board have the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

**Appeal board's decision final**

- 20 A decision or direction of the appeal board is final and binding.

**PART 5 – MISCELLANEOUS****Oaths**

- 21 A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

**Dismissal and suspension of employees**

- 22 (1) The commissioner, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.
- (2) The commissioner, a deputy minister or an individual delegated authority under section 6 (c) [*for section 6 (c) see supplement*] may dismiss an employee for just cause.

**Retirement**

- 23 Unless otherwise provided by the Lieutenant Governor in Council, retirement is compulsory for all employees who reach 65 years of age, and the effective date of retirement is the first day of the month next following that in which the anniversary of the date of birth occurs.

**Annual report**

- 24 The minister must lay before the Legislative Assembly as soon as practicable, a report for the fiscal year ending March 31 respecting the work of the commission.

**Power to make regulations**

- 25 (1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations respecting government personnel management, including regulations respecting the following:
- (a) the definition of "auxiliary employee" in section 1 [*for section 1 definition of "auxiliary employee" see supplement*];
  - (b) recruitment, selection and appointment of staff including standards and procedures respecting advertising vacancies and who may apply for those vacancies;
  - (c) probation periods for employees who are appointed to positions in the public service;
  - (d) health and safety of employees;
  - (e) terms and conditions of employment;
  - (f) job evaluation and classification;
  - (g) standards of employee conduct;
  - (h) all matters respecting discipline, suspension and dismissal of employees;
  - (i) monitoring and auditing of all personnel functions.
- (2) Regulations under subsection (1)
- (a) may be different for different categories of employees, and
  - (b) may be made retroactive to a date not earlier than the date this section comes into force, and if made retroactive are deemed to have come into force on that date.
- (3) The Lieutenant Governor in Council may make regulations respecting the terms and conditions of employment of persons appointed under section 15.
- (4) The Lieutenant Governor in Council may make regulations respecting appeals and inquiries to the appeal board including regulations respecting
- (a) the manner of bringing appeals and the time limits within which they may be brought,
  - (b) time limits within which appeals must be heard and concluded, and
  - (c) all matters respecting practice, procedure and costs on appeals.
- (5) If there is a conflict between a provision of a regulation under subsection (1) or (4) and a provision in a collective agreement between the government and a bargaining agent certified under the *Public Service Labour Relations Act*, the provision in the collective agreement prevails with respect to employees covered by the collective agreement.

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**Transitional – deputy ministers' pensions**

- 26** Despite section 13, section 4.1 of the *Public Service Act*, S.B.C. 1985, c. 15, continues to apply with respect to a person who became a deputy minister before November 5, 1991 and to whom the section would otherwise have applied.

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**Amendments Not in Force****PUBLIC SERVICE ACT**

RSBC 1996, chapter 385

<b>Section</b>	<b>Citation</b>
1 .....	RS1996 (Supp) -385-1; 1993-66-1.
6 .....	RS1996 (Supp) -385-2; 1993-66-6.
9 .....	RS1996 (Supp) -385-3; 1993-66-9.
18 .....	RS1996 (Supp) -385-4; 1993-66-18.

**Legislative History****PUBLIC SERVICE ACT**

RSBC 1996, chapter 385

<b>Section</b>	<b>History</b>
1 .....	1993-66-1.
2 .....	1993-66-2.
3 .....	1993-66-3.
4 .....	1993-66-4.
5 .....	1993-66-5.
6 .....	1993-66-6.
7 .....	1993-66-7.
8 .....	1993-66-8.
9 .....	1993-66-6; 1985-15-6.
10 .....	1993-66-10.
11 .....	1993-66-11.
12 .....	1993-66-12.
13 .....	1993-66-13.
14 .....	1993-66-14.
15 .....	1993-66-15.
16 .....	1993-66-16.
17 .....	1993-66-17.
18 .....	1993-66-18.
19 .....	1993-66-19.
20 .....	1993-66-20.
21 .....	1993-66-21.
22 .....	1993-66-22.
23 .....	1993-66-23.
24 .....	1993-66-24.
25 .....	1993-66-25.
26 .....	1993-66-26.

**EXPLANATORY NOTE**

**Amendments Not in Force:** If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

**Legislative History:** The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".

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