

INTERIM ASSESSMENT OF IMPLEMENTATION OF RECOMMENDATIONS

*MISFIRE: THE 2012 MINISTRY OF
HEALTH EMPLOYMENT TERMINATIONS
AND RELATED MATTERS*

October 2018

The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Parliament Buildings, Room 207
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Referral Report No. 2, *Interim Assessment of Implementation of Recommendations, Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*. The report is presented pursuant to section 10(4) of the *Ombudsperson Act*.

Yours sincerely,



Jay Chalke
Ombudsperson
Province of British Columbia

As an independent officer of the Legislature, the Ombudsperson investigates complaints of unfair or unreasonable treatment by provincial and local public authorities and provides general oversight of the administrative fairness of government processes. It conducts three types of investigations: investigations into individual complaints; investigations that are commenced on the Ombudsperson's own initiative; and investigations referred to the Ombudsperson by the Legislative Assembly or one of its Committees.

The Ombudsperson has a broad mandate to investigate complaints involving provincial ministries; provincial boards and commissions; Crown corporations; local governments; health authorities; colleges and universities; schools and school boards; and self-regulating professions and occupations. A full list of authorities can be found in the *Ombudsperson Act*. The Office of the Ombudsperson responds to approximately 8,000 inquiries and complaints annually.

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MISFIRE UPDATE: FROM THE OMBUDSPERSON

In April 2017 our office released *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*. *Misfire* was the report of our investigation conducted following the July 29, 2015 referral from the Select Standing Committee on Finance and Government Services. The committee's motion was the first time that the Legislature exercised its authority under the *Ombudsperson Act* to refer a matter to our office for investigation and report. That referral resulted in the most resource-intensive investigation ever conducted in the 40-year history of the Ombudsperson's office in B.C.



Misfire contained 41 recommendations, all directed to various parts of the provincial government. One day after the release of *Misfire*, the government accepted in writing every recommendation and committed to implementing those recommendations in accordance with our established timelines. The government appointed former Supreme Court of Canada Justice, the Honourable Thomas Cromwell, to monitor the implementation of the recommendations for the first year. This report is our assessment of government's implementation of the *Misfire* recommendations over the year following the report's release.

I am pleased to report, as of the time of our assessment, that government has implemented all but four of the recommendations. Work on the remaining recommendations is well underway. Accomplishing so much over the year following the report's release involved a major commitment by the public service as well as political commitment by both the previous and current governments before and after the government transition in July 2017. Key to this success has been the leadership and collaboration demonstrated by the core group of Deputy Ministers responsible for implementation of the *Misfire* recommendations, as well as public servants across government who spent many hours developing policies, drafting legislation and reflecting on best practices with a goal of enhancing trust and accountability in the BC Public Service.

The recommendations in *Misfire* sought to address both individual harm and broader systemic issues. To date a wide variety of actions have been taken. Apologies and payments to those who were impacted have been made. Many new policies such as those focusing on conflict of interest and the approach to human resources investigations and their outcomes have been developed. A scholarship in memory of deceased employee Roderick MacIsaac at the University of Victoria is now in place. In addition, two new pieces of legislation were passed this past spring in the Legislature that will mean BC Public Service employees will have new statutory mechanisms to report wrongdoing in the workplace and just cause dismissal practices will be independently and regularly reviewed to ensure they comply with the law and policy.

As recommendations were implemented, it required that those impacted by the terminations and data suspensions had to relive their own experiences, to provide information to Mr. Cromwell in order that government could make things right. I recognize how challenging that was, and in some cases, continues to be.

Now, we turn to what's next. While much work has been done, there are still four recommendations to be fully implemented. As a result, this is not yet a final report. Our office will continue to closely monitor the progress of the implementation of these recommendations. Work is still being done by Mr. Cromwell and by government to address the indirect financial impacts on some individuals who were affected. Additional payments to individuals are still being worked through and outstanding grievances have yet to be finally settled. The Head of the Public Service has committed (see page 35 of this report) to finalize those payments to individual British Columbians in the very near future. It is time they did so. Finally, reconciliation efforts to create a more positive workplace culture at the Ministry of Health are still ongoing. We have advised government that it is to provide its next *Misfire* update to us no later than April 30, 2019. We will then report publicly on our assessment of that update.

In short, I am encouraged by the collective commitment shown so far to ensure decision-making and human resource practices in the public service are fair and reasonable. However, that commitment must not stop now. I look forward to government's final steps to fully implement the letter and spirit of the *Misfire* recommendations.



Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

On July 29, 2015, for the first time in the office's history, a committee of the legislature referred a matter to the Office of the Ombudsperson for investigation under section 10(3) of the *Ombudsperson Act*. The committee passed a motion to:

... refer the Ministry of Health terminations file to the Ombudsperson for investigation and report as the Ombudsperson may see fit, including events leading up to the decision to terminate the employees; the decision to terminate itself; the actions taken by government following the terminations; and any other matters the Ombudsperson may deem worthy of investigation. The committee trusts that his investigation can conclude in a timely manner.

On September 9, 2015, the committee unanimously approved special directions that set out in more detail the various matters related to the referral.¹

On April 6, 2017, the Ombudsperson released Referral Report #1, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*. That report contained 41 recommendations to address the individual harms and systemic failures and issues that we found through our investigation.

Government accepted all recommendations and committed to implement them.

This report contains my assessment of government's implementation of the 41 recommendations in *Misfire*. In conducting our assessment, we have reviewed the information government has made publicly available on its website (<https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>), and additional information requested from government. We have considered whether the actions by government have been sufficient to implement the letter and the spirit of each recommendation. We have identified the recommendations that we consider to be ongoing. In addition, in some cases, even though we have determined that the recommendation is fully implemented, we have commented on additional steps we believe government could take to give more robust effect to the recommendation.

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¹ The Special Directions are included as Appendix A to *Misfire*, available at <<http://www.bcombudsperson.ca/documents/misfire-2012-ministry-health-employment-terminations-and-related-matters>>.

BACKGROUND TO MISFIRE

In 2012, the Deputy Minister of Health fired seven employees following an investigation of an anonymous complaint about contracting practices in the ministry. In addition, a number of contracts were terminated. The way in which the investigation was carried out, and the public way in which government announced the firings, led to significant questions over the following three years about whether government's decision to fire these employees was justified or fair. As I described in *Misfire*, in the absence of clear information about why the firings occurred or who made those decisions, various theories emerged in the public discourse.

The *Misfire* report was focused primarily on addressing these questions by setting out the facts around government's investigation and decision-making processes. In carrying out the investigation, my staff relied on documentary records and testimony received under oath from 130 witnesses. Individuals whom I determined might be adversely affected by the draft report were provided the opportunity to make representations on the portion of the draft report that related to them.

Our investigation found that the 2012 investigations into employee conduct and contracting matters were flawed and unfair, and, in the absence of a proper initial assessment, the investigations rapidly grew in scope. In turn, they led to rushed decision making. We found that government had acted wrongly in, among other things, suspending and then firing Ministry of Health employees, suspending or terminating contracts and access to health data, and announcing publicly that the fired employees were the subject of an RCMP investigation.

The factual findings and conclusions in *Misfire* led me to make 41 recommendations to government. These recommendations were to remedy the individual harms caused by the events described in the report and to address broader systemic issues so as to prevent events such as those described in the report from recurring. Each of the recommendations had a date by which we expected implementation to be complete.

GOVERNMENT'S OVERALL RESPONSE TO MISFIRE

On April 7, 2017, government confirmed in writing that it had accepted and would implement all of the report's recommendations. This written response, which is available online at <https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>, fully implemented Recommendation 40, which stated:

By April 20, 2017, government provide, in a single document, a response to each of the ... recommendations [in Misfire], including stating whether it does or does not accept the recommendation. In the event government is of the view it cannot give due consideration to any particular recommendation within that time, it may identify the recommendation, the reason further time is required and the timeline within which it will respond.

Subsequently, government hired the Honourable Thomas Cromwell, a former Justice of the Supreme Court of Canada, to administer the recommended reparations process for individuals and to monitor government's implementation of all 41 recommendations (see following page for details). Government reported publicly on October 5, 2017, January 30, 2018, and April 30, 2018, on its progress in implementing of each of the 41 recommendations.²

² All of these reports can be found online at <<https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>>.

TERMS OF REFERENCE FOR THE HONOURABLE THOMAS CROMWELL'S APPOINTMENT

Government appointed Mr. Cromwell on April 7, 2017. The Terms of Reference for his appointment were subsequently amended on May 31, 2017.³ The Terms of Reference established the following roles for Mr. Cromwell:

- To independently monitor, for one year, the government's progress in implementing or giving effect to the recommendations in *Misfire*
- To administer a reparation fund established by government and in doing so:
 - take the steps necessary for government to give effect to Recommendations 1–6 and 14
 - identify additional individuals to whom government could appropriately offer *ex gratia* payments and/or other non-monetary relief, who are not eligible for the settlement process (described below) and make recommendations to government in relation to those individuals
 - where government accepts a recommendation for payment, to offer that payment to individuals and, if accepted, to help facilitate payment
- To facilitate a settlement process for individuals who may have legal claims against government based on the findings in *Misfire*, and any other information Mr. Cromwell may require, but who wish to avoid litigation. Mr. Cromwell's role as facilitator includes:
 - making recommendations to government about the design and implementation of the process.
 - identifying individuals who may have claims or grievances or other rights or remedies, assessing a range of damages to which that person may be entitled and providing a written opinion and recommendation to government about payment.
 - if government accepts any of his recommendations, offering payments on behalf of government in accordance with the Terms of Reference.

Under the Terms of Reference, Mr. Cromwell may consider *ex gratia* payments to any affected individuals, even those who have received previous settlements, signed a release of any claims, or whose legal claim or grievance is extinguished.

The Terms of Reference were accompanied by a further document, "Processes of Administrator and Facilitator," which set out in detail the work that Mr. Cromwell was expected to carry out to fulfill these roles.⁴

In accordance with his role as monitor, Mr. Cromwell issued two public interim reports (on October 12, 2017, and February 28, 2018) and one final report (on April 27, 2018), detailing government's progress in implementing the recommendations.

In accordance with his role as administrator, Mr. Cromwell supervised government's issuance of *ex gratia* payments to the individuals identified in the Ombudsperson's recommendations.

In addition, in accordance with his role as facilitator and administrator of the reparation fund, Mr. Cromwell has identified individuals who may be eligible for an additional monetary or non-monetary payment and, as he reported in his final monitoring report, had received more than 40 claims in respect of these roles. At the time of this report, work on this part of the Terms of Reference was still underway.

With the agreement of government and the BC Government Employees Union, Mr. Cromwell has also agreed to resolve the potential reopening of the settlement agreements made on behalf of the three unionized employees who were dismissed (as described in Recommendation 6). The process for addressing this recommendation was set out in the Terms of Reference and the "Processes of Administrator and Facilitator" documents. At the time of this report, Mr. Cromwell had made a recommendation to government in respect of Recommendation 6 but no payments had yet been made.

³ The original and amended Terms of Reference can be found online at <<https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>>.

⁴ Available online at <https://news.gov.bc.ca/files/REF_Processes_document.pdf>.

INDIVIDUAL RECOMMENDATIONS

The individual impacts of the events described in *Misfire* were significant and wide-ranging. The harms are not easily remedied. However, I determined that government should take steps to address the harms it had caused to specific individuals. I made 15 recommendations for individual redress in these categories:

- public and individual apologies
 - *ex gratia* payments
 - return of personal effects
 - withdrawal of reports
 - funding of a scholarship
-

PUBLIC APOLOGY (RECOMMENDATION 7)

Recommendation 7 was that:

By May 31, 2017, government make a public statement that acknowledges and apologizes for the harm caused by the Ministry of Health investigation and the decisions that resulted, including the employee suspensions, employee discipline and terminations, contract suspensions and terminations, and unwarranted data suspensions.

The then Head of the Public Service issued two public statements following receipt of *Misfire*: one on April 6, 2017, and a further statement on May 31, 2017. The second statement was intended to expand on the first statement and said, in part:

On behalf of the BC public service, I acknowledge and apologise for the harm caused by the investigation and the decisions that resulted, including the employee suspensions, employee discipline and terminations, contract suspensions and terminations, and unwarranted data suspensions.

There may be no way to fully repair the damage that was done, as head of the public service I take responsibility to ensure government establishes and carries out a plan to address the recommendations, to help ensure events like these do not happen again.

...

Our standards of conduct expect that we act with integrity to instill confidence and trust and treat people with respect and dignity. We fell short of that standard, and through the actions and changes we will take in response to this report we will strive to repair that damage and rebuild the public's confidence and trust.

In making this recommendation, I wanted government to acknowledge publicly the harm done by its actions and to accept responsibility for what happened. I saw this public apology as a necessary precondition for individual and

organizational reconciliation. Given the high public profile of this issue, I also saw it as important for the broader public to see that government had acknowledged and apologized for its wrongdoing. The statements made by the former Head of the Public Service fully implement Recommendation 7.

APOLOGIES AND *EX GRATIA* PAYMENTS TO AFFECTED INDIVIDUALS (RECOMMENDATIONS 1, 2, 3(A), 5, 8, 9, 10, 14)

Individualized apologies and *ex gratia* payments to the people harmed by government action were the cornerstones of my recommendations for individual remedies. The individuals covered by these recommendations included the seven fired employees (in the case of Roderick MacIsaac, his estate), other public servants and contracted researchers.

My staff received and reviewed copies of the apology letters written to each of these individuals, as well as copies of the cheques issued for the *ex gratia* payments.

First, I am satisfied that government has made *ex gratia* payments in accordance with each of the above recommendations.

Second, I am satisfied that government has appropriately implemented the recommendations for individual apologies. The purpose of these recommendations was for government – as the wrongdoer – to acknowledge on an individual basis the harm caused by its actions. In our 2006 report, *The Power of An Apology: Removing the Legal Barriers*, we wrote:

Empathy is expressed when a person expresses regret for harm to another and acknowledges the other's hurt. When a person apologizes for harm done to another, it is implied that the person acknowledges the wrongdoing and is taking responsibility for what happened. It is the combination of acknowledging the wrongdoing and accepting responsibility that seems to give strength to an apology.⁵

⁵ Office of the Ombudsperson, *The Power of An Apology: Removing the Legal Barriers*, Special Report No. 27 (Victoria, BC: February 2006), <<http://www.bcombudsperson.ca/sites/default/files/Special%20Report%20No%20-%2027%20The%20Power%20of%20an%20Apology-%20Removing%20Legal%20Barriers.pdf>>.

In my view, the individual apology letters issued by government do this. As I recommended, the apology letters acknowledged the particular ways in which each individual had been harmed by government conduct. They offered “unqualified and comprehensive” apologies to the recipients. They expressed a commitment by the public service to ensure that the events described in the report do not occur again. In addition, government engaged in additional follow-up with some of the recipients of apology letters when requested, which I see as a positive indication that these apologies were made in good faith. For these reasons, I came to the conclusion that the government has implemented the recommendations, though I recognize that some people who received apologies may not have accepted them, and that no apology can undo what has happened.

The above actions fully implement Recommendations 1, 2, 3(a), 5, 8, 9, 10 and 14.

RETURN OF PERSONAL BELONGINGS (RECOMMENDATION 11)

During the investigation, my staff reviewed boxes of material, including from the offices of the fired employees, which government had stored since the 2012 investigation. We determined that many of these boxes contained personal belongings of those employees, and we believed it was important for these belongings to be returned. Accordingly, I recommended that by May 31, 2017, the Ministry of Health make arrangements for certain individuals or their representatives to review the contents of the boxes of material packed up from their offices for the purpose of identifying, and having returned to them, any books, papers, articles or other personal belongings.

These individuals reviewed the contents of the boxes in May 2017 and personal items were returned. Some questions about specific belongings were raised with Mr. Cromwell after this review. Later, he reported in his second interim report, dated February 28, 2018, that he was not aware of any outstanding concerns but would work with government to resolve them if any were brought to his attention. These actions, and the commitment to take future action if required, fully implement Recommendation 11.

WITHDRAWAL OF THE INVESTIGATION AND FORENSIC UNIT REPORT (RECOMMENDATIONS 12 AND 13)

In *Misfire*, I wrote:

I found that the investigation conducted by the Investigation and Forensic Unit of the Office of the Comptroller General had procedural flaws and the IU’s final report contained a number of inaccuracies and unsupported findings and inferences.

By naming a number of individuals in its final report, the IU implicated them in potential wrongdoing and invited negative inferences about their conduct. Many of these suggestions and negative inferences were unjustified and not supported by the evidence.

...

The impacts arising from the report were magnified when the report was disclosed to the media and then published.

As a result of these findings, I made two recommendations. First, I recommended that government issue a public statement confirming that the Ministry of Finance has withdrawn the final report of the IU and acknowledging that the report has inaccuracies and will not be relied on (Recommendation 12). Second, I recommended that government issue a letter of apology to each of the individuals named in the report, which confirms that the report has been withdrawn and will not be relied on (Recommendation 13). Both of these recommendations were to be completed by June 30, 2017.

In a letter posted on the government website (at <https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>) and dated June 29, 2018, the then Acting Comptroller General confirmed that the IU report had been withdrawn and that it contains inaccuracies and will not be relied on. In addition, government withdrew, and replaced with the public notice, all copies of the report that were contained in responses to Freedom of Information requests posted on its Open Information website. These actions fully implement Recommendation 12.

We also received and reviewed copies of letters that the then Deputy Minister of Finance sent to all of the individuals who were named in the report. These letters were dated June 30, 2017, and stated, in part:

The intent of this letter is to offer an unqualified and comprehensive apology to any individuals adversely affected by the OCG IU report. The Ministry of Finance has withdrawn the OCG Investigation Report, acknowledging that the ministry agrees with the Ombudsperson that the OCG report contains inaccuracies and no reliance will be placed on any part of that report in the future. The report will not affect your ability to work for or with government in the future should you wish to do so.

These letters of apology fully implement Recommendation 13.

SCHOLARSHIP IN MEMORY OF RODERICK MACISAAC (RECOMMENDATION 15)

In *Misfire* I stated:

Before he was suspended and then ultimately fired from his co-op position, Mr. MacIsaac was a PhD student at the University of Victoria who hoped to have a career in the public service. I found that Mr. MacIsaac was treated unfairly in the investigation and that the decisions to suspend and then terminate his employment were wrong. Mr. MacIsaac was poorly served by the public service he hoped to one day join on a permanent basis.

To honour Mr. MacIsaac's memory, I recommended that by September 30, 2017, the province fund an endowment in the amount of \$500,000 to establish a scholarship for doctoral students at the University of Victoria.

The province transferred these funds to the University of Victoria on July 17, 2017. These funds came from the reparation fund established by government in respect of the *Misfire* recommendations. On November 28, 2017, the university's Board of Governors approved the establishment of the Roderick MacIsaac Graduate Award. The terms of this award provide that a scholarship is awarded to:

... academically outstanding Ph.D. students pursuing knowledge related to public administration, health research, and/or statistical or quantitative analysis. Preference will be given to students with a focus on public administration who: are Canadian citizens or permanent residents who intend to build a career in Canada; can demonstrate financial need; are at least 35 years of age.⁶

I want to express my appreciation to the University of Victoria and its Board of Governors for establishing the scholarship.

Government's funding of this scholarship fully implements Recommendation 15.

⁶ University of Victoria, "UVic awards and fellowships" <<https://www.uvic.ca/graduatestudies/finances/financialaid/uvicawards/>>.

SYSTEMIC RECOMMENDATIONS

Our investigation highlighted systemic shortcomings that allowed the events that resulted in the firings and contract terminations to occur. As a result, I made a number of recommendations that focused on addressing these systemic issues and preventing similar events from recurring. These systemic recommendations relate to issues such as:

- standards for conducting public service investigations
- standards of conduct for public service employees
- the process for suspending access to data
- public service employment suspension and dismissal decisions
- the process for obtaining and responding to legal advice
- BC Coroners Service policy on disclosure of personal records of deceased individuals.

In addition, I made recommendations aimed at addressing some of the broader impacts of the 2012 investigations, including:

- public interest disclosure legislation
- organizational reconciliation in the Ministry of Health
- awards recognizing the contributions of public service employees
- reviewing a commitment to evidence-informed research, evaluation and decision making.

.....

CONFLICT OF INTEREST POLICY FRAMEWORK (RECOMMENDATIONS 17 AND 18)

Under the *Standards of Conduct for Public Service Employees*, public servants are required to disclose any potential conflicts of interest in relation to their work. In the investigation, I identified a lack of guidance for employees, managers and executives about how to assess and respond to any disclosures of potential conflict. I found that none of the bodies that were conducting investigations in 2012 carried out reasonable assessments of conflict of interest. As a result, the investigators and decision makers incorrectly concluded that employees were in conflicts of interest or had otherwise breached the Standards of Conduct.

Requiring employees to disclose potential conflicts is only the first step. Disclosures must be responded to using a reasoned, well-documented and consistent process. Such a process protects employees and promotes public confidence that government employees are acting in the public interest.

Accordingly, I recommended that by March 31, 2018, the Public Service Agency develop and implement a policy framework for assessing situations to determine whether a real or perceived conflict of interest exists (Recommendation 17). I recommended that the framework should:

- a. Require employees to disclose circumstances that may give rise to a real or perceived conflict of interest, including any outside remunerative work.
- b. Specifically require issues of conflict of interest to be addressed at the outset of employment and on an ongoing basis where the employee's job function or less than fulltime employment necessarily contemplates external remunerative work or external affiliation.
- c. Where a disclosure is made by an employee under paragraph (a), the employer shall identify the specific work duties of the employee and the underlying government interests that are relevant to the circumstances.

- i. Identify the specific personal interests of the employee that are relevant to the circumstances.
- ii. Analyze whether those interests conflict, or could be perceived to conflict, in a way that impairs the employee's ability to act in the public interest, undermines the public's confidence in the employee's ability to discharge work responsibilities, or undermines the public's trust in the public service.
- iii. Decide whether the circumstances give rise to a perceived or actual conflict of interest, and, if they do, consider whether there are steps that government or the employee must take to address or mitigate the conflict such that it does not pose an unacceptable risk to government or the public interest.
- iv. Document, on the employee's personnel file, and elsewhere as is required in the circumstances, the reasons for the conclusion reached and the directions, if any, to be followed. A copy of the reasons should be provided to the employee.
- v. To the extent reasonable and necessary, be transparent within the organization about how the conflict of interest has been addressed so that misunderstandings are minimized.

In addition, I recommended that by March 31, 2018, every ministry and government agency whose employees are subject to the public service Standards of Conduct assign a senior and fully trained staff member the task of assessing disclosed prospective conflicts of interest in their organization and providing advice to the employee and their supervisor about those disclosures (Recommendation 18).

On March 28, 2018, the PSA issued revised Standards of Conduct that include new conflict of interest guidelines for public servants. These guidelines set out procedures for responding to disclosures of conflict of interest that incorporate all of the elements of Recommendation 17. In this respect, government has fully implemented my recommendation.

However, I agree with the comments made by Mr. Cromwell in his final monitoring report dated April 27,

2018, that further work on the supporting materials would be helpful:

One area of special concern relates to the situation that arose in the events investigated by the Ombudsperson in which government made a policy choice to have public servants serving more than one employer. The Standards of Conduct address outside remunerative and volunteer work, but they do not address the specific issue of the “dual role” situation, which is complex and may require distinct treatment. The government has undertaken to develop additional case studies and resources for employees and supervisors specifically on this topic and those would be useful steps.⁷

As part of my office’s further monitoring (discussed below), we will be seeking additional information from government about its commitment to developing additional case studies and resources on this area of potential conflict of interest.

In relation to Recommendation 18, each ministry has assigned an ethics advisor (whose role is defined in the new Standards of Conduct, effective April 1, 2018) and these individuals attended training on either March 8 or March 15, 2018. The role of the advisor (who must be a deputy minister, assistant deputy minister or executive lead) includes “providing advice on [Standards of Conduct] issues to employees and managers including assessing and addressing possible [conflicts of interest] and ethics-related issues.” At the same time, government established a Corporate Ethics Advisory Service in the PSA. These actions fully implement Recommendation 18.

STANDARDS FOR THE CONDUCT OF PUBLIC SERVICE INVESTIGATIONS (RECOMMENDATIONS 19–23)

We described in *Misfire* how the PSA had made changes to its investigative processes since 2012, and in particular in response to the December 2014 review report by Marcia McNeil. We noted that the PSA had created an

Investigation Best-Practice Protocols Checklist, which aimed to ensure that human resource investigations are consistent with key principles of administrative fairness and natural justice.⁸ This checklist, combined with new training materials, is an important step that addresses many of the issues with the investigations that government conducted in 2012.

My recommendations about investigative processes therefore focused on what I saw as the outstanding issues in relation to public service investigations that needed to be remedied: executive accountability for investigations (Recommendation 19), compliance with policies (Recommendation 20), the investigative policies of the Investigation and Forensic Unit of the Office of the Comptroller General (Recommendations 21 and 22), and referring matters under investigation to the police (Recommendation 23).

EXECUTIVE ACCOUNTABILITY (RECOMMENDATION 19)

I found in the *Misfire* investigation that executives had no clear responsibility for ensuring that human resource investigatory processes were observed. As a result, I recommended that by March 31, 2018, the PSA revise its existing Accountability Framework for Human Resource Management to ensure a clear allocation of responsibility among senior executives of PSA and of line ministries responsible for ensuring that any internal human resource investigations occurring under their leadership:

- are conducted in accordance with the principles of administrative fairness,
- have a clearly articulated scope and focus, both of which are reassessed on a regular basis, and
- have appropriate lines of reporting.

The PSA revised its Accountability Framework in accordance with this recommendation, and it was made available online as of March 27, 2018. This action fully implements Recommendation 19.

COMPLIANCE REVIEW (RECOMMENDATION 20)

While the PSA has revised many of its policies and training materials for human resource investigations since 2012, I

⁷ Hon. Thomas Cromwell, Letter to Mr. Don Wright re: Ombudsperson’s Report, 27 April 2018, 2. <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/public-service/the_hon_thomas_cromwell_third_monitoring_report_april_27_2018.pdf>.

⁸ The checklist is reproduced on pages 373–374 of *Misfire* <<http://www.bcombudsperson.ca/documents/misfire-2012-ministry-health-employment-terminations-and-related-matters>>.

concluded that it would be useful for the PSA to undertake, and publish the results of, an independent compliance review of its investigatory policies established in response to the McNeil Review.

The PSA contracted with lawyer Corinn Bell to conduct this review, and her report was completed on March 16, 2018, and made available on government's web-site (at <https://www2.gov.bc.ca/gov/content/home/ombudspersons-report>).

Ms. Bell reviewed the 16 "Action Items" that government developed as a response to the findings in the McNeil report and evaluated government's implementation of each of them.⁹ Ms. Bell found that 12 of the Action Items were fulfilled, three were partially fulfilled and one was not fulfilled. Regarding the latter, although Ms. Bell concluded that the PSA did not conduct a review of potential changes to the *Public Service Act Regulations* (Action Item 16), she did not make any recommendations in respect of this Action Item.

However, Ms. Bell made 19 recommendations to government for further actions to fully implement Action Items 1–15. We followed up with government on the status of these recommendations. Government reported that as of June 5, 2018, 18 of the 19 recommendations made by Ms. Bell had been implemented. We learned that the PSA expects the one remaining recommendation from Ms. Bell's report to be implemented in the near future. To implement this recommendation, the PSA planned to specifically inform all public service managers of updated information available to them in relation to human resources investigations and disciplinary decision making, and launch an e-course for managers on human resources investigations and related roles and responsibilities.

Ms. Bell's report fully implements Recommendation 20. However, we will seek further information from the PSA about the one outstanding recommendation from that report.

INVESTIGATIONS CONDUCTED BY THE INVESTIGATION AND FORENSIC UNIT (RECOMMENDATIONS 21 AND 22)

The *Misfire* investigation found that the investigation conducted by the Investigation and Forensic Unit (IU) of the Office of the Comptroller General was inconsistent with the principles of natural justice and administrative fairness. This contributed to the flawed conclusions of the IU's report on the Pharmaceutical Services Division of the Ministry of Health. We recognize the vital role of the IU in ensuring the proper use of government resources, and so my recommendation was aimed at improving the capacity of the IU to conduct investigations that are fair and adequately resourced.

Recommendation 21 was that the Investigation and Forensic Unit (IU) take the following steps by September 30, 2017, to ensure that it appropriately exercises the principles of administrative fairness:

- a. The IU implement a program of ongoing professional development on administrative and procedural fairness for its investigators and any employees leading an investigation.
- b. The IU revise its draft policies and procedures manual to adequately integrate the principles of administrative fairness into its investigative approach.
- c. The Comptroller General review each investigative plan developed by the IU to ensure that the plan's scope is appropriate, and within jurisdiction, and the office can adequately resource the investigation as set out in the plan.
- d. The Comptroller General reassess the investigative plan on a regular basis, in consultation with the IU, and authorize adjustments to investigative scope or resources as necessary.

The IU did not meet the September 30, 2017, timeline for implementing this recommendation.

⁹ The letter containing these Action Items is included as Appendix E in *Misfire* <<http://www.bcombudsperson.ca/documents/misfire-2012-ministry-health-employment-terminations-and-related-matters>>.

As noted by Mr. Cromwell in his interim monitoring reports, the initial revisions completed by the IU did not “provide the necessary assurance that investigations will be conducted fairly.”¹⁰ I shared his concerns that the training program for IU investigators and employees was not sufficiently robust to ensure that, as we said in *Misfire*, “the language of fairness [is] integrated meaningfully with the IU’s understanding of how the IU assesses and determines the reliability of evidence.” Over the past few months, however, the IU has revised its training framework to incorporate feedback received from Mr. Cromwell, and I am satisfied that Recommendation 21 is now fully implemented.

In *Misfire*, we recognized that the IU had undergone a review by KPMG since its report on the Pharmaceutical Services Division and noted that the findings and recommendations made in the KPMG review were broadly consistent with what we observed in our investigation. Rather than duplicate these recommendations, I recommended that by September 30, 2017, the Ministry of Finance provide a report to the Auditor General on the progress of implementing each recommendation of the KPMG report (Recommendation 22). Such reporting is to continue quarterly or on such other schedule and for as long as specified by the Auditor General.

Government provided this report to the Auditor General on September 22, 2017. In the report, government outlined steps it had taken to implement each KPMG recommendation. The Auditor General subsequently reported¹¹ that follow-up on the report would be the responsibility of its Compliance, Controls and Research team, and we expect that government will fully comply with any requests for additional information made by the Auditor General. These actions fully implement Recommendation 22.

REFERRING MATTERS UNDER INVESTIGATION TO THE POLICE (RECOMMENDATION 23)

One of the decisions made in the 2012 investigation that had the most significant impact on the affected individuals was to refer the matters under investigation to the RCMP

and then to make that action public. As stated in *Misfire*, given the significant consequences that can flow from a decision to refer a matter to the police, public service investigators should have clear guidelines to assist them in determining:

- when it is appropriate to refer a matter to the police
- what information can and should be provided to the police absent a legal obligation, and
- the pre-conditions that must be established prior to sharing information with the police.

I therefore recommended that, by March 31, 2018, the Ministry of Justice develop:

- a. for approval by the Head of the Public Service, a new procedure regarding reporting employee misconduct in non-emergency situations to the police, and
- b. implement training for public service investigators who, as part of their duties, report potential crimes to the police, with a focus on:
 - i. the factors to consider in determining whether to report a potential crime to the police, and
 - ii. what information is appropriately shared with the police, particularly in the absence of a legal requirement to do so.

Government has drafted and implemented a procedure that addresses the concerns we identified in *Misfire* and establishes reasonable and appropriate considerations for deciding whether to report a matter to the police in non-emergency situations. Under the new procedure, decisions about whether to report will be made by someone at an appropriately senior level.

To accompany the procedure, government developed two-hour training sessions aimed at investigators, executives and other public servants. Initial training sessions were held in April and May 2018. The training is delivered by the Legal Services Branch of the Ministry of Attorney General through The Learning Centre, operated by the PSA.

¹⁰ Hon. Thomas Cromwell, Letter to Mr. Don Wright re: Ombudsperson’s Report, 28 February 2018, 2.

¹¹ Auditor General of British Columbia, *Performance Audit Coverage Plan 2017/18–2019/20*, January 2018, 15 <http://www.bcauditor.com/sites/default/files/publications/reports/OAG%20PACP%202017_18-2019_20.pdf>.

Because government has developed a procedure and implemented training for public service investigators, it has implemented Recommendation 23. It is my expectation that going forward, government will make this important training mandatory for all public service investigators and government decision makers who may be considering whether to report matters to the police.

DATA ACCESS SUSPENSIONS (RECOMMENDATION 24)

During the 2012 investigation, many employees and contractors of the Ministry of Health had their access to health data suspended. There were cases in which:

- there was insufficient evidentiary basis for the suspensions
- the Ministry of Health failed to notify individuals that their data access had been suspended, did not provide reasons for the suspension, and did not provide individuals with an opportunity to respond to the allegations against them
- the investigation was not conducted in a timely way and, as a result, the suspensions continued for much longer than was reasonable or necessary, and
- the Ministry of Health did not adequately consider the impacts of many of the data access suspensions on health research and whether and how those impacts could be mitigated or addressed.

As a result of these investigative findings, I recommended that, following consultation with the Information and Privacy Commissioner, the Ministry of Health create new guidelines for making decisions about suspending access to administrative health data, by December 31, 2017. The guidelines should address the flaws in ministry practice that we identified in *Misfire*, by, for example, better defining the threshold for data suspensions in cases where there is only an unconfirmed suspicion of a data breach.

The Ministry of Health did not meet the December 31, 2017, timeframe for developing these guidelines. In addition, the initial draft of the guidelines did not adequately address the flaws in ministry practice that we had identified. Mr.

Cromwell also identified these issues in the first version of the guidelines.

However, by March 29, 2018, these guidelines had been revised in a way that fully implements Recommendation 24.¹²

PUBLIC SERVICE EMPLOYMENT SUSPENSION AND DISMISSAL DECISIONS (RECOMMENDATIONS 25–29)

The 2012 decisions to suspend and then fire Ministry of Health employees were at the centre of the investigation that resulted in our *Misfire* report. The process leading to these decisions had previously been examined by Marcia McNeil in her 2014 review report, as a result of which the PSA made some changes to its policies and practices.

However, I identified some systemic issues that had still not been addressed at the time *Misfire* was released. I therefore made recommendations about steps that are required to occur before an employee is dismissed for just cause (Recommendation 25), suspending excluded employees without pay (Recommendation 26), oversight of dismissal decisions (Recommendation 27), internal and external communications about personnel matters (Recommendation 28) and a policy on announcing police referrals related to the conduct of a public servant (Recommendation 29).

POLICY ON DISMISSALS FOR JUST CAUSE (RECOMMENDATION 25)

In our investigation, I found that the PSA did not request legal opinions, and the Ministry of Justice did not provide legal opinions, on whether there was just cause to dismiss each of the six employees who were fired from the Ministry of Health. I found that lawyers from the Ministry of Justice reviewed some of the dismissal letters and that the Deputy Minister of Health had an honest but mistaken belief about the scope of the legal advice on the dismissals provided to the PSA. Had these issues been addressed at the time, it might have been clearer that the Ministry of Health did not – as I found – have just cause to dismiss any of these employees.

I recommended that by June 30, 2017, the Head of the PSA and the Head of the Public Service develop and implement

¹² These guidelines can be found online at <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/public-service/revised_health_access_suspension_guidelines.pdf>.

a policy that requires the following steps to take place before a deputy minister dismisses an employee for just cause under section 22(2) of the *Public Service Act*:

- a. In relation to excluded employees, the PSA obtain a written legal opinion about whether there are sufficient grounds to support the termination. The PSA should provide its lawyer with sufficient background and file material for the lawyer to assess the evidentiary strength of the government's just cause position.
- b. In relation to included employees, the PSA obtain written senior labour relations advice about the strength of government's just cause position from one of its senior labour relations advisors. The PSA should provide its advisor sufficient background and file material for the advisor to assess the evidentiary strength of the government's just cause position.
- c. The deputy minister with authority to dismiss be required to review and consider the PSA's advice, and the legal advice, prior to making a decision about whether to terminate an employee for cause. Such consideration should be confirmed in writing.

A policy that incorporates all of the requirements set out in the recommendation has been developed and approved and was distributed to all deputy ministers and PSA executives on June 30, 2017. This policy, which includes mandatory checklists to be completed as part of the dismissal process, is also publicly available as part of government's core human resources policies.¹³

These actions fully implement Recommendation 25.

SUSPENDING EXCLUDED EMPLOYEES WITHOUT PAY (RECOMMENDATION 26)

In the *Misfire* investigation, I found that the practice in the public service of suspending excluded (non-union) employees without pay was contrary to law, as there was no statutory or contractual authority for the practice. While the PSA had changed its policy so that, generally, employees were suspended with pay, at the time of our report it still maintained that there were circumstances where suspension without pay was justifiable. Given the absence

of legal authority for suspensions of excluded employees without pay, I recommended that, effective immediately, government cease its practice of suspending excluded employees without pay pending an investigation in the absence of authority in the *Public Service Act* to do so.

On April 7, 2017, the day after the release of *Misfire*, the Head of the PSA issued a memorandum to all PSA executive staff that included the following direction:

... effective today, it is the policy of the public service that all suspensions of excluded employees pending an investigation into alleged misconduct must always be with pay. No exceptions to this policy are permitted.

This action fully implements Recommendation 26.

OVERSIGHT OF DISMISSAL DECISIONS (RECOMMENDATION 27)

At the time of our report, there was no regular independent oversight of dismissal practices in the public service. I identified that such oversight would be beneficial, as it would allow for systemic issues to be identified and improved. I envisioned this oversight as a general review of whether government had complied with its legal and policy requirements, and suggested that it be carried out by someone independent of government. Independent oversight is a way to ensure that the new policies and processes that the PSA has developed since 2012 are being consistently followed. I therefore recommended that by March 31, 2018, government introduce legislation for consideration by the Legislative Assembly to amend the *Public Service Act* to provide the Merit Commissioner, an independent officer of the legislature, with the authority to:

- a. Conduct reviews of all public service dismissals for just cause, to ensure adherence to public service standards and legal requirements. Such reviews are to take place following the completion of all labour relations or litigation proceedings related to the termination.
- b. Publicly report the results of these reviews, along with whatever recommendations the Merit Commissioner considers appropriate in the circumstances.

¹³ Available online at <<https://www2.gov.bc.ca/gov/content/careers-myhr/managers-supervisors/employee-labour-relations/conditions-agreements/policy#23-termination>>.

On April 10, 2018, government introduced Bill 13, the *Public Service Amendment Act*, in the legislature. This bill received Royal Assent on May 17 and came into effect on the same day. The bill added provisions to the *Public Service Act* that provide for the Merit Commissioner to review and report on the extent to which government complied with its own policies and standards when it dismissed public servants for cause. This new law will provide important independent oversight of the dismissal process, and it fully implements Recommendation 27.

COMMUNICATIONS ABOUT PERSONNEL MATTERS AND POLICE REFERRALS (RECOMMENDATIONS 28 AND 29)

After the review report completed by Marcia McNeil in December 2014, the PSA and Government Communications and Public Engagement (GCPE) developed guidelines for the public service on communicating, both publicly and internally, about personnel matters. These guidelines appropriately protect the privacy of employees who have been investigated or are subject to discipline. While these guidelines were already in place at the time of our report, they had not been made public. I recommended that, by June 30, 2017, the PSA and GCPE make public their policies regarding internal and external communications about personnel matters. Making these guidelines public would both increase employee awareness and promote public accountability and transparency.

Government's policy on internal and public disclosure of human resources matters, dated June 30, 2017, is available online at <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/information-management-technology/information-privacy/policy-communications-hr-matters.pdf>. This action fully implements Recommendation 28.

In addition, the question of whether to publicly disclose the fact that the RCMP had been contacted in relation to the 2012 investigation was not dealt with in a structured, rigorous or principled manner that adequately considered various competing interests. The impact of including this fact in the news release and other public materials related to the investigation was significant, particularly for the individuals who were the subjects of government's investigation.

At the time of the *Misfire* report was released, government communications policy did not directly address the question of whether, and when, referral to the police should be included in a public announcement. Accordingly, we recommended that the PSA and GCPE develop and make public a policy on announcing police referrals related to the conduct of a public servant by June 30, 2017. I recommended that the policy clearly state that unless there is an immediate risk to public health, safety or other similar exceptional circumstances, government should not publicly announce that it has referred the conduct of a public servant to the police prior to Crown Counsel approving charges.

Government has incorporated guidance on this matter into its general policy on internal and public disclosure of human resources matters, referenced above. This action fully implements Recommendation 29.

EXECUTIVE TRANSITIONS (RECOMMENDATION 30)

As we described in *Misfire*, the transitions that regularly occur between departing and new executive are generally well supported. Critically for the 2012 Ministry of Health investigation, at least one of the transitions to new executive did not, however, go smoothly. There were issues with the availability of records and in contacting a predecessor executive who had key information. To help support the PSA in ensuring that all transitions between executive run smoothly, I recommended that by September 30, 2017, the PSA provide a report to the Head of the Public Service on ensuring excellence in executive transitions so that senior executives new to their portfolio are appropriately and effectively supported to immediately carry out their new responsibilities.

A report entitled *Executive Transitions* was completed by an external contractor and submitted to the Head of the Public Service on September 26, 2017. My office followed up with government on the steps it had taken to implement that report's recommendations to improve the executive transition process. In response, government described specific initiatives that had been developed and were being implemented as part of the new Executive Talent Management Branch of the Public Service Agency. I am

satisfied that the steps taken by government in response to the report will help ensure that transitioning executives are better supported in their roles. These actions fully implement Recommendation 30.

OBTAINING AND RESPONDING TO LEGAL ADVICE (RECOMMENDATION 31)

In *Misfire*, I identified occasions when legal advice provided to government by its lawyers was not followed and it was unclear who had authority to decide whether or not to follow legal advice. In cases where government receives legal advice that a proposed course of conduct is clearly unlawful, it is bound to follow the advice unless it has a legitimate basis for questioning the advice. When government receives legal advice that a proposed course of conduct has legal risks, it is entitled to act in spite of those risks, but such a decision should only be made by someone sufficiently senior to understand and fully consider the impacts on public administration. Moreover, client ministries and executives should always be clear about the scope of legal advice that is being provided to them. This was not always the case with the 2012 Ministry of Health investigation.

Noting that there was no policy to guide public servants on decisions to not follow risk-based legal advice, I recommended that by March 31, 2018, the Head of the Public Service establish written protocols that address:

- a. Who has the authority to decide that government will not follow risk-based legal advice;
- b. The process to be used when ministries decide to act contrary to legal advice, including how decisions in such situations are to be escalated, disputes resolved and outcomes documented; and
- c. The process to be followed when limited legal advice is obtained, including who needs to be advised that the scope of the advice is limited.

The Ministry of Justice (now the Ministry of Attorney General) has developed a policy and accompanying flow chart that provides guidance to public servants in accordance with my recommendation.¹⁴ While this action fully implements the recommendation, I expect that the Head of the Public Service will take further steps to ensure

this policy is circulated widely in the public service so that employees who are receiving legal advice can apply it as required. As part of my office's ongoing monitoring work (discussed below), we will seek a further update on the steps government has taken to make public servants aware of the policy.

PUBLIC INTEREST DISCLOSURE LEGISLATION (RECOMMENDATION 32)

Government's poor handling of the original complaint about employees in the Ministry of Health created the momentum for its flawed investigation. Government's failure to adequately assess and respond to the concerns allowed the scope of the investigation to expand without a proper evidentiary basis. A comprehensive, legislated public interest disclosure process can help to ensure that valid complaints are adequately investigated and that complaints with no basis receive an appropriate response.

As noted in *Misfire*, at the time of our report British Columbia was one of only two provinces in Canada that did not have public interest disclosure legislation. Also known as "whistleblower" legislation, these statutory schemes both protect those who make disclosures in good faith and promote important public service principles of accountability, integrity and transparency.

In the report, I described the existing approach in B.C. as "a patchwork of legislation and policy that ... falls short of a comprehensive framework for addressing whistleblower complaints." I identified the opportunity for B.C. to establish a legislative scheme for public interest disclosure that drew on best practices from other jurisdictions, such as independent oversight, investigation and reporting; requiring government to establish and make public internal policies and procedures for responding to disclosures; safeguards against disclosures that are inaccurate or misleading; and protection against reprisal for individuals who make disclosures.

Accordingly, I recommended that by March 31, 2018, government introduce, for consideration by the Legislative Assembly, public interest disclosure legislation that provides for the reporting, assessment, fair investigation, resolution and independent oversight of allegations about wrongful conduct within the government of British Columbia.

¹⁴ This policy is available at <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/public-service/legal_advice_protocols_march_2018_final.pdf>.

On April 25, 2018, government introduced Bill 28, the *Public Interest Disclosure Act*, in the legislature. This bill received Royal Assent on May 17, 2018, and will come into force by regulation. The Act provides for both internal and independent external assessment and investigation of disclosures, and has protections against reprisal for disclosers who come forward in good faith.

The introduction of the *Public Interest Disclosure Act* fully implements Recommendation 32.

AN EVIDENCE-INFORMED APPROACH TO PHARMACEUTICAL MANAGEMENT (RECOMMENDATIONS 34 AND 35)

In *Misfire*, we highlighted the longstanding commitment in the Pharmaceutical Services Division of the Ministry of Health to making evidence-informed policy decisions. As we described in *Misfire*, in an evidence-informed approach:

... the ministry takes additional steps to encourage the cost-effective use of public money by understanding the use and effectiveness of approved drug therapies. As well, the ministry proactively supports ongoing assessments of drug therapies and research and evaluation projects that take population health outcomes into account when decisions are made about which drugs to fund and to continue funding. This model also includes stakeholder engagement with patient groups, doctors and pharmacists by promoting the adoption of educational and best-practices initiatives related to prescribing and dispensing drugs. The model proceeds on the basis that government's role is to ensure that public resources are directed to drugs that are – according to independent scientific evidence – effective against the condition they are intended to treat and do not result in adverse health outcomes for patients. The premise of this more expansive model is that it will, if properly administered, help government save money on drug costs, improve health outcomes and reduce other health system expenditures.

Prior to 2012, this approach had received broad support through all levels of the ministry and in an independent report issued by the Auditor General.

However, as a result of decisions made during the 2012 investigations, several of the ministry's initiatives to support evidence-informed approaches to pharmaceutical management were ended. The Pharmaceutical Services Division's broader commitment to evidence-informed evaluations and policy was called into question. These initiatives were ended arbitrarily, and not because they were deemed no longer useful. To the contrary, as we described in *Misfire*, the evidence we reviewed indicated that these initiatives were seen as "useful, valid and consistent with the ministry's obligations to ensure high-quality, appropriate, cost-effective and timely health services for British Columbians."

Given the value of evidence-informed policy making to effective public administration, and given the significant impacts of the 2012 investigations, I made two related recommendations.

First, I recommended that by September 30, 2017, the Ministry of Health review and assess the extent to which the termination of evidence-based programs during the internal investigation may have created gaps that now remain in providing evidence-informed, safe, effective and affordable drug therapy and related health care services to British Columbians (Recommendation 34).

Second, I recommended that by December 31, 2017, to the extent that such gaps are found to exist as a result of the review under the preceding recommendation, the Ministry of Health publicly release a plan, with a reasonable timeline and transparent objectives and deliverables, to address the gaps (Recommendation 35).

The Ministry of Health completed a report entitled *Review and Assessment of the Termination of Evidence-Based Programs in Pharmaceutical and Related Health Services: Ministry of Health Response to Ombudsperson's Recommendation 34* in fall 2017.¹⁵ As Mr. Cromwell identified in his first monitoring report in October 2017, government shared this Review with researchers and contractors and they suggested that it fell short of identifying the full impacts of the 2012 investigations on evidence-based research

¹⁵ This report is available online at <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/public-service/review_and_assessment_-_termination_of_evidence-based_programs.pdf>.

in the Ministry of Health. Mr. Cromwell encouraged the ministry to continue its discussions with those individuals. Subsequently, on March 8, 2018, the Ministry of Health released *Putting our Minds Together: Research and Knowledge Management Strategy*, which served as government's response to Recommendation 35.¹⁶ It was developed in consultation with employees, researchers and contractors, including those affected by the investigation, and establishes a plan with timelines for addressing each of the gaps identified in its review. *Putting our Minds Together* added to the October 2017 assessment in that it contained an appendix listing each of the evidence-based programs affected by the 2012 investigations and identifying the current status of each of those programs.

Taken together, these two documents, and in particular *Putting our Minds Together*, fully implement Recommendations 34 and 35. As part of my office's further monitoring, we will seek updates from the Ministry of Health on its progress in meeting the goals and timelines set out in *Putting our Minds Together*.

STAFF AWARDS (RECOMMENDATIONS 16 AND 36)

It is important for government to recognize employees whose work supports the key values of the public service. One of the ways in which government does this is through annual employee awards. The Premier's Awards, which were launched in 2004, recognize employees whose "professionalism, dedication and innovation have made a difference in many lives and communities in BC." In addition, ministries may offer similar awards to recognize the excellence of their own staff.

Through the *Misfire* investigation, I identified two important areas where we believed it would be beneficial to recognize the positive contributions of public servants.

First, the co-op program in the Ministry of Health – which is part of a long tradition in the public service – was detrimentally impacted when Roderick MacIsaac, a co-op student, was unjustly suspended and then fired. I recommended that by September 30, 2017, the Ministry of Health establish an annual staff award for excellence in training, mentoring and supporting co-op students (Recommendation 16). Such an award would highlight the many

benefits that come from hiring co-op students in the public service. The Ministry of Health established the criteria for such an award and released the nomination package on April 16, 2018. The first recipient was announced in June 2018.

The PSA has established a separate Staff Award of Excellence for "Cultivating the Co-op Employee Experience," which has the same criteria as the Ministry of Health award but is available to employees throughout the broader public service. The first recipient of this award was announced in December 2017. I commend the PSA for taking this additional step to recognize the value of co-op students and their mentors throughout the broader public service.

These actions fully implement Recommendation 16.

Second, I noted throughout *Misfire* that evidence-based research and programs in the Ministry of Health were suspended or ended entirely as a result of the internal investigation. Public servants we interviewed expressed concern that the 2012 investigation had undermined government's commitment to evidence-based decision making. I determined that one of the ways in which government could visibly demonstrate its renewed commitment to evidence-based decision making and restore public servant confidence in this area was by establishing a new category of Premier's Awards to recognize public servants whose work is outstanding in the area of evidence-based or evidence-informed policy or program development (Recommendation 36). I recommended that government establish this award by March 31, 2018.

Government has established an award for "Evidence-Based Design". This award:

... recognizes groups, teams, or organizations within the BC Public Service whose work is outstanding in the area of evidence-based or evidence-informed policy or program development and the process by which the policy or program was designed.

Nominated groups, teams or organizations must demonstrate, among other factors, the evidence-based or evidence-informed process used to design the policy framework.

¹⁶ This report is available online at <<https://www2.gov.bc.ca/assets/gov/health/conducting-health-research/putting-our-minds-together-research-and-knowledge-management-strategy.pdf>>.

There are four finalists for the 2018 award and the winner will be announced in November. The development of this award fully implements Recommendation 36.

UBC'S B.C. ACADEMIC CHAIR IN PATIENT SAFETY (RECOMMENDATIONS 37 AND 38)

In 2005, the Ministry of Health funded an endowment that allowed the creation of the B.C. Academic Chair in Patient Safety at the University of British Columbia. This Chair was part of a broader government commitment to improving patient safety in health care. The Chair was vacant until filled by Dr. Malcolm Maclure in 2009. At the time, he was also working at the Ministry of Health, and the ministry and UBC agreed that he would work at both places part-time, with each organization paying part of his salary.

When Dr. Maclure's ministry employment ended in 2012, UBC agreed that he could work as the Chair full-time, and as a consequence, UBC paid his full salary. This resulted in the Department of Anaesthesiology, Pharmacology and Therapeutics in the Faculty of Medicine diverting about \$40,000 per year from its departmental budget. Over four years, it accumulated a \$200,000 budget deficit. Due to the circumstances of Dr. Maclure's dismissal, as detailed in *Misfire*, I recommended that by March 31, 2018, government grant \$200,000 to UBC, Faculty of Medicine, Department of Anaesthesiology, Pharmacology and Therapeutics (Recommendation 37).

Government transferred these funds to the department in fall 2017. This action fully implements the recommendation.

I also recommended that by March 31, 2018, UBC and government meet to discuss the sufficiency of the 2005 endowment regarding patient safety (Recommendation 38). I made this recommendation because we heard evidence during the investigation that concerns about the sufficiency of the endowment were raised coincidentally with the 2012 investigation and, because of the investigation, had never been adequately addressed.

In accordance with the recommendation, representatives from the Ministry of Health and UBC met to discuss the

endowment. I understand from both parties that these meetings allowed for a good faith discussion of the issues, although they did not result in the Ministry of Health agreeing to increase the amount of the endowment.

I am satisfied that this recommendation has been fully implemented. I will, however, note that both parties acknowledge that the endowment remains under fiscal pressure in terms of being able to fund a salary for the Chair that is in line with other similar positions, and this matter may need to be revisited in the future.

BC CORONERS SERVICE POLICY ON DISCLOSURE OF ESTATE RECORDS (RECOMMENDATION 39)

Our investigation included looking at the process followed by the BC Coroners Service in responding to Roderick MacIsaac's family during its investigation into the circumstances of his death. I found that the BC Coroners Service:

... did not have clear policy guidance in responding to Mr. MacIsaac's family's request for access to a document that RCMP computer specialists, in support of the Coroner's Service, had discovered on Mr. MacIsaac's password-protected computer in the course of the investigation.

Accordingly, I recommended that by September 30, 2017, the BC Coroners Service develop a policy about disclosure of documents discovered on the deceased person's electronic devices, including password-protected and cloud-stored documents, to the person's family or personal representative.

The first policy that the Coroners Service developed did not implement this recommendation, as it did not provide the policy guidance that would adequately address the issue we had identified. However, at the urging of Mr. Cromwell, the Coroners Service revisited its policy and a revised version was issued on April 25, 2018. While the Coroners Service did not meet the September 30, 2017, timeline, I am nonetheless satisfied that it has now fully implemented Recommendation 39.

FURTHER MONITORING

In *Misfire*, I recommended that by April 30, 2018, government provide a written status report to the Ombudsperson on the implementation of the recommendations made in this report, and at such other times as required by the Ombudsperson (Recommendation 41).

Government has fully implemented the first part of this recommendation. It issued written status updates on October 5, 2017, January 30, 2018, and April 30, 2018. It provided written responses to Mr. Cromwell's interim and final monitoring reports. In addition, government has provided my staff with detailed information on or records related to steps taken to implement specific recommendations.

As described below, some of the recommendations in *Misfire* remain outstanding at the time of this report. We will be requesting further status updates and, as such, Recommendation 41 will also remain outstanding until I am satisfied that no further monitoring is necessary. The four additional outstanding recommendations are:

- redressing the financial impact on employees who were disciplined but not fired
- *ex gratia* payments to employees or contractors of three research entities
- reopened grievances
- reconciliation at the Ministry of Health

In addition, further updates will be requested on four recommendations that have been implemented.

.....

RECOMMENDATIONS REQUIRING FURTHER MONITORING

The four recommendations which we have assessed as not having been fully implemented are:

- **Recommendation 3(b):** By June 30, 2017, government ... in the case of the three [public servants] who were disciplined, reverse the financial impact of that discipline and remove the disciplinary findings from their employment record.

In his April 2018 report, Mr. Cromwell indicated that the direct impacts had been addressed but that work to address the indirect financial impacts of the discipline was ongoing.

- **Recommendation 4:** That government:

- a. By September 30, 2017:
 - i. Establish a compensation fund in an amount not less than \$250,000
 - ii. Identify and contact individuals (other than individuals identified in the other *ex gratia* payment recommendations) who were employees, associates or research subcontractors of:
 - 1. Resonate
 - 2. Blue Thorn Research and Analysis Group
 - 3. the Therapeutics Initiative
 who were impacted by the data and contract suspensions and cancellations and invite them to make applications to the fund.
- b. By March 31, 2018 make *ex gratia* payments to the applicants from the fund on a fair and equitable basis, taking into account the impact the data and contract suspensions and cancellations had on them.

Government has established a reparation fund to be used, in part, for the *ex gratia* payments recommended in *Misfire*, including the payments in Recommendation 4. Under his Terms of Reference, Mr. Cromwell is administering this fund. In implementing Recommendation 4, Mr. Cromwell decided to cap the compensation fund at \$250,000. He also identified impacted individuals and, after reviewing their applications, made recommendations to government for the distribution of the fund. Government accepted his recommendations and the funds were distributed to 18

individuals, who received payments in the amount of \$20,000, \$12,500 or \$10,400.

Under Mr. Cromwell's Terms of Reference, he may also consider and recommend payments from the reparation fund over and above any *ex gratia* payments recommended in *Misfire*. Because this process may result in additional payments to the individuals included in Recommendation 4, and because my recommendation was that the fund be "not less than" \$250,000, I will await the conclusion of Mr. Cromwell's work under his Terms of Reference before making a final assessment of this recommendation. At the time of this report, this work was ongoing.

- **Recommendation 6:** If by June 30, 2017, the BCGEU, following consultation with David Scott, Ramsay Hamdi, and a representative of the estate of Roderick MacIsaac, approaches government about revisiting any or all of the June and September 2013 grievance settlements, that government:
 - a. Enter into good faith negotiations with the BCGEU concerning the replacement of the existing settlements with new settlements, and
 - b. If new settlements cannot be reached (or the parties prefer this option as their primary option), make its best efforts to work with the BCGEU to develop a Statement of Agreed Facts concerning the circumstances of the dismissals, which Statement the parties can agree to place before a labour arbitrator pursuant to the collective agreement, in order to allow for a proper adjudication of damages. Whether the existing settlements would terminate upon tendering the Statement of Agreed Facts, or after the labour arbitrator's decision, can be addressed by the parties as a matter of labour law.

As reported by Mr. Cromwell in his final monitoring report, dated April 27, 2018, he has taken on the role of making recommendations about possibly revisiting the grievance settlements. He has made a recommendation to government but as of the date of this report, no payments had been made.

- **Recommendation 33:** By September 30, 2017, and following consultation with the BCGEU and BC Excluded Employees' Association, and in a manner consistent with its privacy obligations, the

Ministry of Health develop and implement a carefully designed organizational reconciliation program with the goal of re-establishing positive, respectful professional relationships with staff and contractors who will productively support the mandate of the ministry moving forward. This program should:

- a. build on the recent ministry initiatives to support employee morale and engagement, invite the participation of ministry staff and contractors,
- b. involve the active participation of management,
- c. include clear objectives and deliverables, and
- d. be completed within 12–18 months by providing a final report to all ministry staff and contractors.

In accordance with our recommendation, the Ministry of Health has initiated what it calls a “culture change” process of organizational reconciliation. At the time of this report, work on this initiative was still ongoing.

In each of the above cases, government has demonstrated that work is underway but at the time of writing this report, it is not yet complete.

In addition, we will seek further updates on the following four recommendations which we have assessed as implemented but where we have suggested additional steps be taken to give more robust effect to the recommendation:

- **Recommendation 17:** We will seek an update on government’s commitment to developing additional case studies and resources in relation to conflicts of interest.
- **Recommendation 20:** We will seek an update on the PSA’s implementation of the outstanding recommendation from Ms. Bell’s report.
- **Recommendation 31:** We will seek an update on the further steps government takes to make its employees aware of the legal advice policy.
- **Recommendation 35:** We will seek updates on government’s progress in implementing the commitments set out in its *Putting Our Minds Together* report.

I have advised the Head of the Public Service that the next report from government on these eight matters is to be provided by April 30, 2019.

MR. CROMWELL’S WORK AS FACILITATOR AND ADMINISTRATOR

Mr. Cromwell was appointed as an interim monitor of government’s implementation of the *Misfire* recommendations, as an administrator of an *ex gratia* compensation fund and to facilitate the resolution of any other legal claims related generally to this matter. Mr. Cromwell’s work as administrator (except for the payments that gave effect to our recommendations 1-6 and 14) and facilitator go beyond the scope of our report and recommendations. The work described above reflects a willingness by government to further consider all potential claims arising from government actions in this matter. In carrying out his role, Mr. Cromwell is conducting a legal assessment of both the strength of potential claims against government and any potential damages, in much the same way that a court would following a civil trial. This work may result in recommendations for substantial monetary awards to impacted individuals.

Mr. Cromwell’s work as facilitator must be distinguished, however, from the recommendations for *ex gratia* payments made in *Misfire*. The *Misfire* recommendations arose from our findings of government maladministration and in particular, the unfair treatment that created a cloud of public suspicion hanging over affected individuals for a prolonged amount of time. I considered *ex gratia* payments to be an important way of acknowledging the harm caused by government actions. I also recognized that because many of the individuals affected had litigated or otherwise disputed government’s actions, it was not appropriate for my office to engage in a reassessment of any settlements reached through the court process. However, government, as a party to the settlements reached with affected individuals, is in a position to reconsider whether those settlements were adequate and appropriate. Mr. Cromwell’s process allows this to occur. Importantly, the *Misfire* report created the factual foundation on which Mr. Cromwell will base his assessments of any claims.

However, because this work is generally outside the scope of the recommendations made in *Misfire*, we will not be monitoring or reporting on it, except as it relates to Recommendations 3(b), 4 and 6, which remain outstanding, as described earlier.

CONCLUSION

I am pleased to see that in the 17 months since *Misfire* was released, government has made progress on all of the recommendations and has fully implemented the majority of them. On the recommendations that I have assessed as ongoing, significant progress has been made.

I can point to three factors as influencing this positive outcome.

First, government's public and high-profile acceptance of and commitment to implementing the recommendations set the stage for the work to come.

Second, the role played by Mr. Cromwell in critically assessing and providing independent feedback to government as it went through the implementation process led to government, in some cases, taking additional steps beyond its initial announcement. This resulted in an end product of higher quality and more robust implementation. I want to publicly acknowledge and thank Mr. Cromwell for his important work.

Third, and most importantly, the hard work done by public servants throughout government in developing policies, drafting legislation, conducting research and providing us with information has allowed me to conclude that much of the promised work on the recommendations has in fact been completed.

I look forward in a future assessment to being able to report that all of the recommendations in *Misfire* have been fully implemented.

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RECOMMENDATION SUMMARY

1	By June 30, 2017 , government make an <i>ex gratia</i> payment in the amount of \$75,000 to each of Dr. Malcolm Maclure, Dr. Rebecca Warburton, Ron Mattson, Robert Hart, Ramsay Hamdi, David Scott, and the estate of Roderick MacIsaac.	Fully implemented
2	By June 30, 2017 , government make an <i>ex gratia</i> payment in the amount of \$50,000 to each of Mark Isaacs, Dr. Colin Dormuth and Dr. William Warburton.	Fully implemented
3(A)	By June 30, 2017 , government make: a. an <i>ex gratia</i> payment in the amount of \$15,000 to each of six public servants who were also subjects of the investigation; and,	Fully implemented
3(B)	b. in the case of the three individuals in paragraph (a) who were disciplined, reverse the financial impact of that discipline and remove the disciplinary findings from their employment record.	Ongoing*
4	That government: a. By September 30, 2017: i. Establish a compensation fund in an amount not less than \$250,000 ii. Identify and contact individuals (other than individuals identified in the other <i>ex gratia</i> payment recommendations) who were employees, associates or research subcontractors of: 1. Resonate 2. Blue Thorn Research and Analysis Group 3. the Therapeutics Initiative who were impacted by the data and contract suspensions and cancellations and invite them to make applications to the fund. b. By March 31, 2018 make <i>ex gratia</i> payments to the applicants from the fund on a fair and equitable basis, taking into account the impact the data and contract suspensions and cancellations had on them.	Ongoing*
5	By June 30, 2017 , government make an additional <i>ex gratia</i> payment in the amount of \$50,000 to each of Ron Mattson and Mark Isaacs.	Fully implemented

6	<p>If by June 30, 2017 the BCGEU, following consultation with David Scott, Ramsay Hamdi, and a representative of the estate of Roderick MacIsaac, approaches government about revisiting any or all of the June and September 2013 grievance settlements, that government:</p> <ol style="list-style-type: none"> Enter into good faith negotiations with the BCGEU concerning the replacement of the existing settlements with new settlements, and If new settlements cannot be reached (or the parties prefer this option as their primary option), make its best efforts to work with the BCGEU to develop a Statement of Agreed Facts concerning the circumstances of the dismissals, which Statement the parties can agree to place before a labour arbitrator pursuant to the collective agreement, in order to allow for a proper adjudication of damages. Whether the existing settlements would terminate upon tendering the Statement of Agreed Facts, or after the labour arbitrator's decision, can be addressed by the parties as a matter of labour law. 	Ongoing*
7	By May 31, 2017 , government make a public statement that acknowledges and apologizes for the harm caused by the Ministry of Health investigation and the decisions that resulted, including the employee suspensions, employee discipline and terminations, contract suspensions and terminations, and unwarranted data suspensions.	Fully implemented
8	By July 31, 2017 , government issue a personal apology to each of Dr. Malcolm MacLure, Dr. Rebecca Warburton, Ron Mattson, Robert Hart, Ramsay Hamdi, David Scott, Dr. William Warburton, the family of Roderick MacIsaac, Mark Isaacs, Dr. Colin Dormuth, Contractors 1 and 2, and the six public servants referred to in recommendation R3.	Fully implemented
9	By March 31, 2018 , the Ministry of Health issue a written apology to each of the individuals to whom an <i>ex gratia</i> payment is made from the compensation fund established in recommendation 4.	Fully implemented
10	By March 31, 2018 , the Ministry of Health issue a written apology to each person not included in the above recommendations, to whom it sent a data demand letter in 2012 and 2013 as a consequence of the investigation.	Fully implemented
11	By May 31, 2017 , the Ministry of Health make arrangements for each of Dr. Malcolm MacLure, Dr. Rebecca Warburton, Ron Mattson, Robert Hart, Ramsay Hamdi, David Scott, Dr. William Warburton and a representative for the estate of Roderick MacIsaac to review the contents of the boxes of material packed up from their offices for the purpose of identifying, and having returned to them, any books, papers, articles or other personal belongings.	Fully implemented
12	By June 30, 2017 , government issue a public statement confirming that the ministry has withdrawn the final report of the Investigation and Forensic Unit, and acknowledge that the report contains inaccuracies and will not be relied on.	Fully implemented
13	By June 30, 2017 , the Ministry of Finance send a letter of apology to each of the individuals named in the report of the Investigation and Forensic Unit, who it notified following the unauthorized disclosure of the report, confirming that the ministry has withdrawn the report and that the report will not affect the ability of those individuals to work for or with government in the future should they wish to do so.	Fully implemented

14	By June 30, 2017 , government make an additional <i>ex gratia</i> payment in the amount of: a. \$25,000 to Dr. Malcolm Maclure b. \$25,000 to Dr. Rebecca Warburton	Fully implemented
15	By September 30, 2017 , government provide funding in the amount of \$500,000 to endow a scholarship for PhD candidates at the University of Victoria.	Fully implemented
16	By September 30, 2017 , the Ministry of Health establish an annual staff award for excellence in training, mentoring and supporting co-op students.	Fully implemented
17	By March 31, 2018 , the Public Service Agency develop and implement a policy framework for assessing situations to determine whether a real or perceived conflict of interest exists. The framework should: a. Require employees to disclose circumstances that may give rise to a real or perceived conflict of interest, including any outside remunerative work. b. Specifically require issues of conflict of interest to be addressed at the outset of employment and on an ongoing basis where the employee's job function or less than fulltime employment necessarily contemplates external remunerative work or external affiliation. c. Where a disclosure is made by an employee under paragraph (a), the employer shall identify the specific work duties of the employee and the underlying government interests that are relevant to the circumstances. i. Identify the specific personal interests of the employee that are relevant to the circumstances. ii. Analyze whether those interests conflict, or could be perceived to conflict, in a way that impairs the employee's ability to act in the public interest, undermines the public's confidence in the employee's ability to discharge work responsibilities, or undermines the public's trust in the public service. iii. Decide whether the circumstances give rise to a perceived or actual conflict of interest, and, if they do, consider whether there are steps that government or the employee must take to address or mitigate the conflict such that it does not pose an unacceptable risk to government or the public interest. iv. Document, on the employee's personnel file, and elsewhere as is required in the circumstances, the reasons for the conclusion reached and the directions, if any, to be followed. A copy of the reasons should be provided to the employee. v. To the extent reasonable and necessary, be transparent within the organization about how the conflict of interest has been addressed so that misunderstandings are minimized.	Fully implemented*
18	By March 31, 2018 , every ministry and government agency whose employees are subject to the public service Standards of Conduct assign a senior and fully trained staff member the task of assessing and providing advice to the employee and their supervisor about disclosed prospective conflicts of interest in their organization.	Fully implemented

19	<p>By March 31, 2018, the Public Service Agency revise its existing Accountability Framework for Human Resource Management to ensure a clear allocation of responsibility among senior executives of PSA and of line ministries responsible for ensuring that any internal human resource investigations occurring under their leadership:</p> <ul style="list-style-type: none"> a. are conducted in accordance with the principles of administrative fairness, b. have a clearly articulated scope and focus, both of which are reassessed on a regular basis, and c. have appropriate lines of reporting. 	Fully implemented
20	<p>By March 31, 2018 the Public Service Agency undertake, and publish the results of, an independent compliance review of its investigatory policies established in response to the McNeil Review.</p>	Fully implemented*
21	<p>By September 30, 2017, to ensure that the principles of administrative fairness are appropriately exercised by the Investigation and Forensic Unit (IU):</p> <ul style="list-style-type: none"> a. The IU implement a program of ongoing professional development on administrative and procedural fairness for its investigators and any employees leading an investigation. b. The IU revise its draft policies and procedures manual to adequately integrate the principles of administrative fairness into its investigative approach. c. The Comptroller General review each investigative plan developed by the IU to ensure that the plan's scope is appropriate, and within jurisdiction, and the office can adequately resource the investigation as set out in the plan. d. The Comptroller General reassess the investigative plan on a regular basis, in consultation with the IU, and authorize adjustments to investigative scope or resources as necessary. 	Fully implemented
22	<p>By September 30, 2017 the Ministry of Finance provide a report to the Auditor General on the progress of implementing each recommendation of the KPMG report. Such reporting is to continue quarterly or on such other schedule and for as long as specified by the Auditor General.</p>	Fully implemented
23	<p>By March 31, 2018, the Ministry of Justice develop:</p> <ul style="list-style-type: none"> a. for approval by the Head of the Public Service, a new procedure regarding reporting employee misconduct in non-emergency situations to the police, b. and implement training for public service investigators who, as part of their duties, report potential crimes to the police. This training should focus on: <ul style="list-style-type: none"> i. the factors to consider in determining whether to report a potential crime to the police, and ii. what information is appropriately shared with the police, particularly in the absence of a legal requirement to do so. 	Fully implemented

24	By December 31, 2017 , following consultation with the Information and Privacy Commissioner, the Ministry of Health create new guidelines for making decisions about suspending access to administrative health data. The guidelines should address the flaws in ministry practice that we identified in this report including better defining the threshold for data suspensions in cases where there is only an unconfirmed suspicion of a data breach.	Fully implemented
25	By June 30, 2017 , the Public Service Agency (PSA) and the Head of the Public Service develop and implement a policy that requires the following steps to take place before a Deputy Minister dismisses an employee for just cause under section 22(2) of the <i>Public Service Act</i> : <ul style="list-style-type: none"> a. In relation to excluded employees, the PSA obtain a written legal opinion about whether there are sufficient grounds to support the termination. The PSA should provide its lawyer with sufficient background and file material for the lawyer to assess the evidentiary strength of the government's just cause position. b. In relation to included employees, the PSA obtain written senior labour relations advice about the strength of government's just cause position from one of its senior labour relations advisors. The PSA should provide its advisor sufficient background and file material for the advisor to assess the evidentiary strength of the government's just cause position. c. The Deputy Minister with authority to dismiss be required to review and consider the PSA's advice, and the legal advice, prior to making a decision about whether to terminate an employee for cause. Such consideration should be confirmed in writing. 	Fully implemented
26	Effective immediately , government cease its practice of suspending excluded employees without pay pending an investigation in the absence of authority in the <i>Public Service Act</i> to do so.	Fully implemented
27	By March 31, 2018 , government introduce legislation for consideration by the Legislative Assembly to amend the <i>Public Service Act</i> to provide the Merit Commissioner with the authority to: <ul style="list-style-type: none"> a. Conduct reviews of all public service dismissals for just cause, to ensure adherence to public service standards and legal requirements. Such reviews are to take place following the completion of all labour relations or litigation proceedings related to the termination. b. Publicly report the results of these reviews, along with whatever recommendations the Merit Commissioner considers appropriate in the circumstances. 	Fully implemented
28	By June 30, 2017 , the Public Service Agency and Government Communications and Public Engagement make public their policies regarding internal and external communications about personnel matters.	Fully implemented
29	By June 30, 2017 , the Public Service Agency and Government Communications and Public Engagement develop and make public a policy on announcing police referrals related to the conduct of a public servant. The policy should clearly state that unless there is an immediate risk to public health, safety or other similar exceptional circumstances, government should not publicly announce that it has referred the conduct of a public servant to the police prior to Crown Counsel approving charges.	Fully implemented

30	By September 30, 2017 , the Public Service Agency provide a report to the Head of the Public Service on ensuring excellence in executive transitions so that senior executives new to their portfolio are appropriately and effectively supported to immediately carry out their new responsibilities.	Fully implemented
31	By March 31, 2018 , the Head of the Public Service establish written protocols that address: <ul style="list-style-type: none"> a. Who has the authority to decide that government will not follow risk- based legal advice; b. The process to be used when ministries decide to act contrary to legal advice, including how decisions in such situations are to be escalated, disputes resolved and outcomes documented; and c. The process to be followed when limited legal advice is obtained, including who needs to be advised that the scope of the advice is limited. 	Fully implemented*
32	By March 31, 2018 , government introduce, for consideration by the Legislative Assembly, public interest disclosure legislation that provides for the reporting, assessment, fair investigation, resolution and independent oversight of allegations about wrongful conduct within the government of British Columbia.	Fully implemented
33	By September 30, 2017 , and following consultation with the BCGEU and BC Excluded Employees' Association, and in a manner consistent with its privacy obligations, the Ministry of Health develop and implement a carefully designed organizational reconciliation program with the goal of re-establishing positive, respectful professional relationships with staff and contractors who will productively support the mandate of the ministry moving forward. This program should: <ul style="list-style-type: none"> a. build on the recent ministry initiatives to support employee morale and engagement, invite the participation of ministry staff and contractors, b. involve the active participation of management, c. include clear objectives and deliverables, and d. be completed within 12–18 months by providing a final report to all ministry staff and contractors. 	Ongoing*
34	By September 30, 2017 , the Ministry of Health review and assess the extent to which the termination of evidence-based programs during the internal investigation may have created gaps that now remain in providing evidence-informed, safe, effective and affordable drug therapy and related health care services to British Columbians.	Fully implemented
35	By December 31, 2017 , to the extent that such gaps are found to exist as a result of the review under the preceding recommendation, the Ministry of Health publicly release a plan, with a reasonable timeline and transparent objectives and deliverables, to address the gaps.	Fully implemented*
36	By March 31, 2018 government establish a new category of Premier's Awards (in addition to the existing categories of leadership, innovation, legacy and partnership) to recognize public servants whose work is outstanding in the area of evidence-based or evidence-informed policy or program development.	Fully implemented

37	By March 31, 2018 , government grant \$200,000 to the University of British Columbia (UBC), Faculty of Medicine, Department of Anaesthesiology, Pharmacology & Therapeutics.	Fully implemented
38	By March 31, 2018 , UBC and the government meet to discuss the sufficiency of the 2005 endowment regarding patient safety.	Fully implemented
39	By September 30, 2017 , the BC Coroners Service develop a policy about disclosure, to a deceased's family or personal representative, of documents discovered on the deceased person's electronic devices, including password-protected and cloud-stored documents.	Fully implemented
40	By April 20, 2017 , government provide, in a single document, a response to each of the preceding recommendations, including stating whether it does or does not accept the recommendation. In the event government is of the view it cannot give due consideration to any particular recommendation within that time, it may identify the recommendation, the reason further time is required and the timeline within which it will respond.	Fully implemented
41	By April 30, 2018 , government provide a written status report to the Ombudsperson on the implementation of the recommendations made in this report, and at such other times as required by the Ombudsperson.	Partially implemented

* Further monitoring to be conducted.

GOVERNMENT RESPONSE

The government was provided with our assessment of their implementation of the Misfire recommendations. On October 24th, 2018, the Head of the Public Service provided government's response. It is reproduced on the following pages.

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October 26, 2018

Mr. Jay Chalke
Ombudsperson
Province of British Columbia
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Dear Mr. Chalke:

RE: *Assessment of Implementation and Recommendations*

I am writing in response to your assessment of government's progress toward implementing the 41 recommendations in your April 2017 report *Misfire: the 2012 Ministry of Health Employment Terminations and Related Matters*.

The events of 2012 had severe and tragic consequences on the impacted employees and contractors and their families. As you may know, I met with a number of them last year, and that meeting left me with a profound sense of sadness that we as an employer could do such damage to our employees and contractors. That this could happen demanded meaningful changes to policies and processes in government. In response, and in addition to the individual reparations recommended in *Misfire*, we have addressed systemic shortcoming through a comprehensive suite of necessary legislation, policies, procedures and programs. I would like to thank you and your staff for your diligent review of the evidence provided in support of your assessment of our work. Holding government to account to deliver on the recommendations is an important part of ensuring such tragic events could not ever happen again.

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Though we have actioned all the recommendations, there remains work to do:

- Government is working on the final details to fully implement recommendations 3(b) and 6. We anticipate this work will be complete in October.
- We commit to providing your office with additional information about the implementation of recommendations 17, 20, 31, 33, and 41 as it becomes available.
- For recommendation 41, we commit to providing a report by April 30, 2019, and to responding to future requests from your office for additional information.
- Government will carefully consider any questions that may arise in the future with respect to recommendations 22 and 38.
- The Hon. Thomas Cromwell is considering the final group of submissions from impacted individuals to inform his recommendations to government for additional ex gratia payments. Once we have received the recommendations associated with all of the most significantly impacted individuals, we will send the recommendations to the Deputy Attorney General for consideration in accordance with the Amended Terms of Reference. Mr. Cromwell is still waiting for information from a couple of claimants, and those recommendations will be reviewed separately at a later date. We acknowledge that because some recipients of ex gratia payments under the terms of reference may also have received an ex gratia payment under recommendation 4, recommendation 4 will not be considered complete until the Hon. Cromwell's process has concluded, and the ex gratia payments provided to the impacted individuals.

I would like to acknowledge, as you and the Hon. Thomas Cromwell have also done, my appreciation for the hard work of public servants across multiple ministries to implement the *Misfire* recommendations.

In closing, I look forward to submitting the final report to your office when all recommendations have been fully implemented and all additional work underway under the Hon. Thomas Cromwell's Amended Terms of Reference is complete.

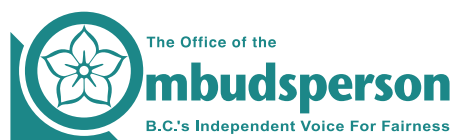
This will not, however, mark the end of government's journey. Organizational reconciliation in the Ministry of Health, and a positive culture of trust and respect across the Public Service demand and deserve our sustained efforts and we will not waver in this commitment.

Yours sincerely,



Don Wright
Deputy Minister to the Premier, Cabinet Secretary
And Head of the Public Service

Cc: Lori Halls, Deputy Minister, BC Public Service Agency
Lori Wanamaker, Deputy Minister, Ministry of Finance
Stephen Brown, Deputy Minister, Ministry of Health
Richard Fyfe, Deputy Attorney General



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