FINAL ASSESSMENT

of Implementation of Recommendations

MISFIRE:

The 2012 Ministry of Health Employment Terminations and Related Matters

OMBUDSPERSON
BRITISH COLUMBIA

Referral Report No. 3 | November 2022
To the Legislative Assembly 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 under the *Ombudsperson Act*. The Ombudsperson 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 enquiries and complaints annually.

Under the *Public Interest Disclosure Act* the Ombudsperson investigates allegations of wrongdoing from public employees in or relating to a public body covered by the Act as well as allegations of reprisal. Our Public Authority Consultation and Training team offers educational webinars, workshops and individual consultation with public organizations to support fairness and continuous improvement across the broader provincial and local public sector.

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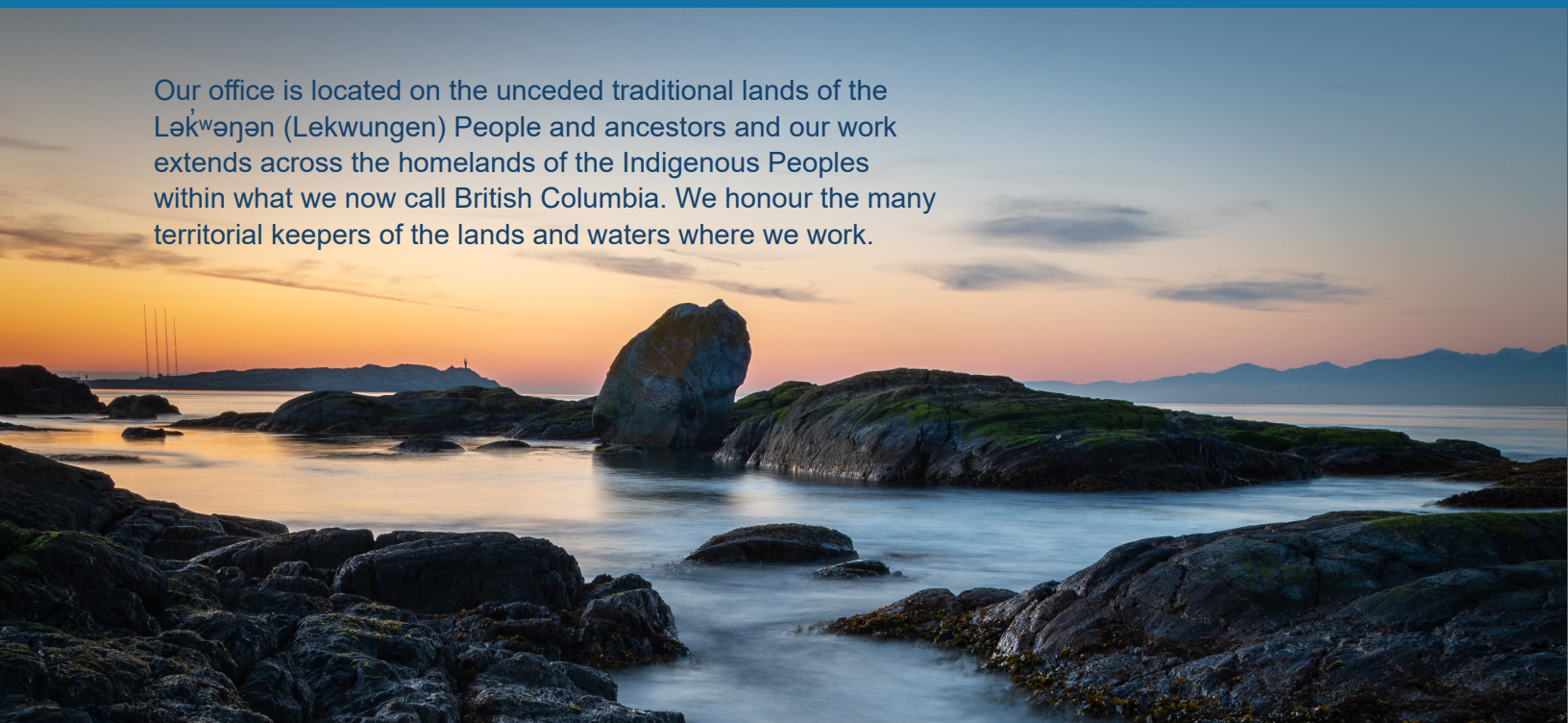
Our office is located on the unceded traditional lands of the Lək̓ʷəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the Indigenous Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.



OMBUDSPERSON
BRITISH COLUMBIA

November 2022

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Referral Report No. 3, *Final 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

MESSAGE 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 2015 referral from the Select Standing Committee on Finance and Government Services. This 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 now 43-year history of the Ombudsperson of British Columbia.

Misfire contained 41 recommendations, directed to various parts of the provincial government and focused on individual redress and systemic change. One day after *Misfire* was released, the government accepted in writing every recommendation and committed to implement all of them. With government's quick acceptance of the recommendations, it was evident that our monitoring work would be essential in holding government to account for implementation.

In October 2018, I released an Interim Assessment report on government's implementation of the recommendations in *Misfire*. That 2018 assessment concluded that all but four of the recommendations had been fully implemented.[1] The recommendations implemented by the time of that report included:

- Apologies and *ex gratia* payments to most of the affected individuals.
- Funding a scholarship at the University of Victoria in memory of Roderick MacIsaac, a former co-op employee of the Ministry of Health whose employment was terminated and who tragically died by suicide.
- New policies and procedures including a policy framework for assessing and responding to real or apparent conflicts of interest, improved accountability for and oversight of internal human resources investigations, new guidelines for suspending access to health data and a new procedure for deciding whether to report employee conduct to the police.
- Passage of the *Public Interest Disclosure Act* and amendments to the *Public Service Act*

This second update report contains my final assessment of the implementation of recommendations in *Misfire*. The main body of the report contains updates on the four substantive recommendations where implementation was still ongoing at the time of the 2018 Interim Assessment:

- reverse the financial impacts of discipline decisions for three public servants **(Recommendation 3(b)).**
- make additional *ex gratia* payments to affected individuals **(Recommendation 4).**
- revisit the settlements made with the three unionized employees whose employment was terminated **(Recommendation 6).**
- establish a program to remediate the Ministry of Health's organizational culture **(Recommendation 33)**.

[1] Not including R41.

We obtained additional information about the status of each of those four recommendations. In addition, we received and reviewed additional information about four other recommendations that, although I assessed them as fully implemented in October 2018, I considered that government could take additional measures to make implementation more robust. Those recommendations are also discussed in the report.

I am pleased to report that government has now fully implemented all of the recommendations made in *Misfire.*

I emphasize, again, how difficult the events of 2012 were for individuals who were personally and professionally affected. I know that the implementation of the individual recommendations cannot fully remedy the harms caused by the wrongdoing we described in our report. It is my sincere hope that the work undertaken to implement our systemic recommendations means these events will not be repeated.

I wish to thank the Hon. Thomas Cromwell for his work in assisting government as they implemented a number of the recommendations. I also wish to acknowledge the public servants whose hard work and leadership enabled these changes to be made and whose diligence will ensure their ongoing effectiveness. The changes brought about by these recommendations have, since our report, strengthened the public service's commitment to ethics and accountability in a number of tangible ways.

In her recent response to this report the former Head of the Public Service states "the BC Public Service remains committed to applying the many lessons learned from your reports and will continue to build upon them, strengthening our ethical culture based on corporate values of integrity, service and accountability." I am encouraged by that assurance because the lessons learned from this investigation must not be forgotten; they must continue to be translated into positive actions by both current and future leaders in the public service.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

INDIVIDUAL RECOMMENDATIONS

When it accepted and agreed to implement the recommendations in *Misfire*,[2] government appointed Hon. Thomas Cromwell, former Justice of the Supreme Court of Canada, to oversee government's implementation process over the first year. This included administering a complex process for compensating individuals who were harmed. Some aspects of this process took longer than expected and were still in progress when I issued my interim update in October 2018. This process has now concluded, and all of the recommendations relating to individuals have now been fully implemented, as described below.

[2] See https://news.gov.bc.ca/files/Response_to_Ombudsperson_Report_Table_Apr_7_2017.pdf

INDIVIDUAL RECOMMENDATIONS

Recommendation 3(b)

Recommendation 3(b) was that government reverse the financial impact of three public servants who were disciplined as a result of the Ministry of Health investigation but whose employment was not terminated. In his monitoring report from April 30, 2018, Mr. Cromwell reported that work was ongoing to reverse the indirect financial impacts of the discipline for two of the three employees. The indirect financial impacts for the third employee had already been addressed by the time of our interim assessment. My office has reviewed documents from government which confirm that this work is complete, and the affected individuals have been compensated in accordance with Mr. Cromwell's recommendations. As a result, this recommendation is now fully implemented.

Recommendation 4

Recommendation 4 was that government

a. By September 30, 2017:

   ii. Establish a compensation fund in an amount not less than $250,000

   iii. 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.

In my earlier monitoring report, I described how government had established a compensation fund to be administered by Mr. Cromwell. Mr. Cromwell initially capped the fund at $250,000, and those funds were distributed to 18 individuals connected with the three research

entities in 2018. In accordance with his Terms of Reference, Mr. Cromwell was also able to consider and recommend payments from the compensation fund over and above any of the *ex gratia* payments I recommended. This process has now concluded, and in accordance with recommendations made by Mr. Cromwell, additional compensation payments were made to affected individuals. Based on the actions taken by government in accordance with Mr. Cromwell's work, I conclude that this recommendation is fully implemented.

Recommendation 6

Recommendation 6 related to the re-opening of the settlements reached between government and BCGEU in relation to dismissed employees David Scott, Ramsay Hamdi and Roderick MacIsaac. As I reported in my first monitoring update, Mr. Cromwell had, with the agreement of government and the BCGEU, taken on the role of making recommendations about potentially revisiting the grievance settlements. Through this process, Mr. Cromwell independently developed recommendations to government. My office has reviewed documents from government confirming that it has fully implemented the recommendations from Mr. Cromwell. I therefore conclude that Recommendation 6 is fully implemented.

SYSTEMIC RECOMMENDATIONS

By October 2018, government had implemented all but one of the systemic recommendations for change to laws, policies and related processes. In this section, I describe my assessment of the outstanding recommendation, which relates to organizational reconciliation at the Ministry of Health. I also describe the additional steps government has taken since 2018 to give fuller effect to four other systemic recommendations that I indicated in 2018 could benefit from more robust implementation.

SYSTEMIC RECOMMENDATIONS

Recommendation 17

Recommendation 17 was to develop a policy framework for disclosing and assessing potential conflicts of interest that may arise in the course of a person's employment in the public service. When we issued our first monitoring report, we concluded that this recommendation was implemented; however, we indicated that I would seek an update on government's commitment to develop additional case studies and resources in relation to conflicts of interest.

The updates my office received from government demonstrated that the PSA continues to take additional steps to implement the new standards and guidelines related to conflicts of interest. This includes, for example, an e-course called "Ethics for Everyone" that was launched in April 2019 and contains conflict of interest scenarios.

While I will not require any further updates from government in relation to this recommendation, it is my expectation that this important work on identifying, addressing and documenting conflicts of interest will continue to be a priority for the Public Service Agency.

Recommendation 20

Recommendation 20 was that an independent compliance review of the PSA's investigatory policies be established in response to the December 2014 review report of external lawyer Marcia McNeil.

In October 2018, I reported that government had implemented this recommendation by contracting with an external lawyer, Corinn Bell, to conduct the review. In the resulting report, Ms. Bell made 19 recommendations to government, and at the time of our first update, government had implemented all but one of those recommendations. The outstanding recommendation related to the development of an online course for public service managers on human resources investigations and related roles and responsibilities.

In January 2019, government introduced a new online self-paced course for public servants, called "HR Investigations and Discipline, Ministry and PSA Roles and Responsibilities." The introduction of this course completes the implementation of the recommendations from Ms. Bell's report and as a result, no further monitoring is required.

Recommendation 31

In *Misfire*, we described occasions when legal advice provided to government was not followed, or where there was confusion about the scope of the legal advice that had been provided. I recommended that government establish written protocols for obtaining and responding to legal advice, so that decisions to not follow risk-based legal advice would only be made at senior levels of government, and where only limited legal advice is obtained, the limited scope of such legal advice would be

clear to all parties. Government had developed and implemented such a protocol when I issued my interim assessment in 2018. However, it remained unclear the extent to which employees who are receiving legal advice had been made aware of this protocol and could apply it as required. Government has since confirmed that in addition to making the protocol publicly available (at https://www2.gov.bc.ca/gov/content/home/ombudspersons-report), it has made the protocol accessible through Legal Service's Branch client-facing website. In addition, the Ministry of Attorney General presented to the Deputy Ministers' Council about the application of the protocol.

Given these steps, no further monitoring is required. Of course, as leadership changes in the public service, it will remain essential for government to ensure public servants continue to be aware of and appropriately implement this protocol.

Recommendation 33

Recommendation 33 was that:

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.

My recommendation that the ministry engage in a process of organizational reconciliation emerged from our finding that the 2012 investigations in the ministry had created "a kind of trauma" within the organization. As we highlighted in our *Misfire* report:

> Re-establishing the confidence, trust and respect of ministry staff and its contractors should be a key part of the ministry's strategy moving forward.[3]

Following the release of *Misfire* in April 2017, the ministry has engaged in a concerted effort to address its organizational health and engage in a process of reconciliation with its employees. An initial consultation process resulted in the May 2018 release of *Organizational Reconciliation Program: Actions to Build a Healthy Organizational Culture*, a Ministry of Health report that contained five goals, each with an associated objective and recommended deliverables, and eleven recommendations for implementation. This report envisioned a three-year implementation process (2018-21). The report was accompanied by nine "Leadership Commitments" through which executives at the Ministry of Health committed to create a healthy workplace with meaningful work and empowered employees.

In April 2019, the ministry released a *Culture Change* Progress Report to staff which reviewed each of the five goals in the original report and evaluated actions taken or planned that would implement those goals.

In January 2020, the Ministry of Health released a Ministry Plan, which reiterated its commitment to the internal goals of meaningful work, empowered people and a healthy workplace.

[3] Misfire, page 383.

The ministry has pointed to Work Environment Survey results to demonstrate the success of this project. Using its 2015 results as a baseline, the ministry's 2018 and 2020 WES scores (as well as a "Pulse Check" survey conducted in 2019) show improvement in each of the areas that the ministry identified as related to its *Culture Change* project. To the extent that WES scores act as a proxy for employee satisfaction, the ministry is doing better now than it was in 2015. I also note that the Employee Advisory Forum and Article 29 Committee[4] continue to be important additional mechanisms for executives at the ministry to hear from staff about workplace culture.

Although the ministry has not directly linked its work on the *Putting our Minds Together* strategy (see discussion of **Recommendation 35**) to work on this recommendation, I see these two matters as linked. Reaffirming a commitment to evidence-based health decision making through external connections with the broader research community will, I hope, go some way to restoring the trust amongst contractors and other stakeholders that the 2012 investigations eroded.

The work that the ministry has done to develop and implement its *Culture Change* organizational reconciliation project implements **Recommendation 33**. However, concluding that this recommendation is implemented does not mean that the work initiated by the ministry in response to this recommendation is done. Any organizational change project is never fully complete; there is always more that can be done, and there are always things that can be done better. I concluded that this recommendation is implemented from the perspective of our monitoring role because it is clear that the ministry has developed, through consultation, a meaningful strategy with clear goals, objectives and deliverables; that objective indicators have shown improvement; that it has reported back to staff on its progress; and that it has evaluated its success in improving organizational culture.

I strongly encourage the ministry to continue its commitment to developing and implementing strategies to maintain and improve its organizational health in consultation with staff.

Recommendation 35

Recommendation 35 resulted from our conclusion that as a result of the 2012 investigations, many of the ministry's initiatives to support evidence-informed approaches to pharmaceutical management were ended, and the Pharmaceutical Services Division's broader commitment to evidence-informed evaluations and policy was questioned. I recommended that government conduct a review to identify existing gaps in providing evidence-informed, safe, effective and affordable drug therapy and related health care services to British Columbians (**Recommendation 34**). Second, I recommended that to the extent such gaps are found to exist, the Ministry of Health publicly release a plan, with a reasonable timeline and transparent objectives and deliverables, to address the gaps (**Recommendation 35**).

In my 2018 interim assessment I concluded that the ministry's report, *Putting Our Minds Together: Research and Knowledge Management Strategy* that, along with an earlier report, *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*, implemented **recommendations 34 and 35**. The *Putting Our Minds Together* report contained an ambitious strategy for reincorporating evidence-informed processes into ministry policy and decision

[4] Article 29 Committees, established under the collective agreement between BCGEU and the BC Public Service Agency, are joint union-management committees that deal with non-bargaining matters including conditions leading to grievances and reviewing organizational health issues relating to employee recruitment and retention. See Eighteenth Main Public Service Agreement, effective April 1, 2019 to March 31, 2022, https://www2.gov.bc.ca/assets/gov/careers/managers-supervisors/managing-employee-labour-relations/bcgeu_main_agreement.pdf.

making. Given the scope of the proposed strategy, I said in releasing my 2018 update that I would seek additional updates about the ministry's implementation of this strategy.

A detailed update received from the ministry at the end of July 2020, demonstrated that it has made tangible progress in implementing several aspects of this strategy. For example, the inaugural scholar of the Scholar in Residence program began his term in November 2018, and research fellows at the ministry continue work on important policy questions. Work to improve and streamline data access continues; the ministry told us that the COVID-19 pandemic has further highlighted the importance of timely access to relevant data. Further, the ministry has established an expert advisory group composed of internationally-recognized experts to provide advice on the implementation of the strategy.

I am pleased to see that the ministry has taken concrete steps to address the gaps in evidence-based programs that it identified. While significant work remains, I will not be conducting further monitoring work. I note that the ministry has committed to monitoring and assessing its progress in implementing the strategy, and has developed a draft evaluation plan. Given that the ministry identified transparency as an important part of its strategy,[5] I encourage the ministry to regularly report on its progress so that staff, the health sector, the research community and the public can see the results of these efforts.

Recommendation 41

Recommendation 41 was that 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.

As I have now concluded that all of the recommendations have been implemented, I do not require government to provide any further updates.

[5] Putting our Minds Together, 4.

RECOMMENDATION SUMMARY

RECOMMENDATION SUMMARY

Fully implemented as of date of Interim Assessment

Implemented as of date of Interim Assessment but further evidence of robust implementation, subsequently provided.

Fully implemented as of date of Final Assessment

Recommendations Pertaining to Employees, Contractors and Researchers		
Recommendation		**Status**
R1	By June 30, 2017, government make an *ex gratia* 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**
R2	By June 30, 2017, government make an *ex gratia* payment in the amount of $50,000 to each of Mark Isaacs, Dr. Colin Dormuth and Dr. William Warburton.	**Fully implemented**
R3	By June 30, 2017, government make: a. an *ex gratia* payment in the amount of $15,000 to each of six public servants who were also subjects of the investigation; and,	**Fully implemented**
	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.	**Fully implemented**
R4	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: 3. Resonate 4. Blue Thorn Research and Analysis Group 5. 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.	**Fully implemented**

R5	By June 30, 2017, government make an additional *ex gratia* payment in the amount of $50,000 to each of Ron Mattson and Mark Isaacs.	**Fully implemented**
R6	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.	**Fully implemented**
R7	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**
R8	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**
R9	By March 31, 2018, the Ministry of Health issue a written apology to each of the individuals to whom an *ex gratia* payment is made from the compensation fund established in recommendation 4.	**Fully implemented**
R10	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**

R11	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**
R12	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**
R13	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**
R14	By June 30, 2017, government make an additional *ex gratia* payment in the amount of: a. $25,000 to Dr. Malcolm Maclure b. $25,000 to Dr. Rebecca Warburton.	**Fully implemented**
R15	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**
R16	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**

Systemic Recommendations		
R17	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**
R18	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**

R19	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: 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**
R20	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.	**Fully implemented**
R21	By September 30, 2017, to ensure that the principles of administrative fairness are appropriately exercised by the Investigation and Forensic Unit (IU): 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**
R22	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.	**Fully implemented**
R23	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, 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: 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**

R24	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**
R25	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 *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.	**Fully implemented**
R26	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.	**Fully implemented**
R27	By March 31, 2018, government introduce legislation for consideration by the Legislative Assembly to amend the *Public Service Act* to provide the Merit Commissioner 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.	**Fully implemented**
R28	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**

R29	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**
R30	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**
R31	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.	**Fully implemented**
R32	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**
R33	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.	**Fully implemented**

R34	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**
R35	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**
R36	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 recognise public servants whose work is outstanding in the area of evidence-based or evidence-informed policy or program development.	**Fully implemented**
R37	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**
R38	By March 31, 2018, UBC and the government meet to discuss the sufficiency of the 2005 endowment regarding patient safety.	**Fully implemented**
R39	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**
Government's Consideration of Recommendations		
R40	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**
Ongoing Monitoring		
R41	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.	**Fully implemented**

RESPONSE FROM GOVERNMENT

The government was provided with our assessment of their implementation of the *Misfire* recommendations.

On November 8, 2022, the Head of the Public Service provided government's response. It is reproduced on the following page.

BRITISH COLUMBIA
BC Public Service

Where ideas work

November 8, 2022

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

Dear Jay Chalke:

Thank you for your October 14, 2022 providing me a confidential draft of your final monitoring report on *Misfire: The 2021 Ministry of Health Employment Terminations and Related Matters*.

The BC Public Service has worked diligently to address the issues surfaced in your original and subsequent follow-up reports. I appreciate your acknowledgement that all 41 recommendations have now been fully implemented.

I want to assure you, and the citizens of British Columbia, that the BC Public Service remains committed to applying the many lessons learned from your reports and will continue to build upon them, strengthening our ethical culture based on corporate values of integrity, service and accountability.

Yours sincerely,

Lori Wanamaker
Deputy Minister to the Premier,
Cabinet Secretary and Head of the BC Public Service

pc: Bobbi Sadler, Deputy Minister, BC Public Service Agency
Stephen Brown, Deputy Minister, Ministry of Health
Barbara Carmichael, A/Deputy Attorney General, Ministry of Attorney General

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