



Human Resources
Professionals
Association

**THE DISCIPLINE COMMITTEE OF THE
HUMAN RESOURCES PROFESSIONALS ASSOCIATION**

IN THE MATTER OF the *Registered Human Resources Professionals Act, 2013* and the regulations
thereunder;

AND IN THE MATTER OF a discipline proceeding against Jonathan Barrett, member of the Human
Resources Professionals Association.

PANEL: Lynne Latulippe - Public Member, Chair
Stephanie Izzard, CHRP, CHRL – HRP Association Member
Lise Maclean, CHRP, CHRL – HRP Association Member

BETWEEN:

THE HUMAN RESOURCES PROFESSIONALS ASSOCIATION

- and -

Jonathan Barrett

PRESENT:

Luisa Ritacca, Independent Legal Counsel to the Panel

Rebecca Durcan, Counsel for the Human Resources Professionals Association

ABSENT:

Jonathan Barrett, Member

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee ("the Panel") of the Human Resources Professionals Association ("The Association") in Toronto on April 15, 2019.

The Notice of Hearing dated January 21, 2019 was served on Jonathan Barrett on January 23, 2019. The Notice provided Mr. Barrett with the date, time and location for the hearing. The Association's counsel filed an Affidavit of Service confirming that Mr. Barrett was served with the Notice. Further, the Member informed the Association in writing on February 19, 2019 that he would not be participating in the discipline matter. In the circumstances, the Panel was satisfied that Mr. Barrett was aware of the hearing date and location. The Member having been duly served, the Panel decided to proceed in Mr. Barrett's absence.

The Allegation(s)

The Notice of Hearing alleges that Johnathan Barrett committed the following act(s) of professional misconduct:

1. At all material times, Jonathan Barrett (Mr. Barrett) was a member of the Human Resources Professional Association (the "Association").
2. On or about May 10, 2018, Mr. Barrett answered "Yes" to the following question on the Association Annual Renewal Form:

Since your initial registration or since your last renewal, have you been found guilty of any offence under any statute for which a pardon had not been granted? Exclude speeding and parking tickets.

3. As a result, and on or about May 22, 2018, the Association followed up with Mr. Barrett and asked him to provide documentation relating to the finding of guilt. Mr. Barrett did not respond.
4. On or about June 27, 2018, the Association followed up with Mr. Barrett and asked him to respond to the email of May 22, 2018. Mr. Barrett did not respond.
5. On or about July 3, 2018, the Association followed up with Mr. Barrett and asked him to respond to the email of May 22, 2018. On or about July 6, 2018 Mr. Barrett responded and advised that he was found guilty of a *Criminal Code of Canada* offence (s. 253(1)(a)) on or about January 2, 2018.
6. On or about July 9, 2018, the Association asked Mr. Barrett to provide his driving record.

7. On or about July 11, 2018 Mr. Barrett responded and advised the Association that he was "not comfortable" with the request to see his driving record.
8. On or about July 13, 2018, the Association responded and explained the rationale for the request and reminded him of his obligations under the *Rules of Professional Conduct*. Mr. Barrett did not respond.
9. On or about July 19, 2018, the Association wrote to Mr. Barrett and clarified that he could provide the documents described in the email of May 22, 2018 and not just the driving record requested on July 9, 2018. Mr. Barrett did not respond.
10. On or about July 31, 2018, the Associate Registrar of the Association filed a complaint against Mr. Barrett. The complaint was sent to Mr. Barrett by the Office of the Registrar on August 1, 2018 and reminded Mr. Barrett that he is required to co-operate fully with the investigation and to provide any requested documents. Mr. Barrett did not respond to the August 1, 2018 letter of the Office of the Registrar.
11. The Bylaws of the Association state as follows:
 - a. **Article 16.03** – As part of the annual renewal process, Members and Students are required to indicate whether any of the reportable events set out in section 16.01 have occurred since the last renewal cycle. Members and Students must complete the annual confirmation even if they have previously notified the Registrar of the occurrence of one or more of the reportable events under Section 16.01. The Member and Student must make all relevant disclosures as set out in Section 16.02 above, unless these disclosures were previously made to the Registrar.
 - b. **Article 16.06** – A failure to comply with Section 16 on the part of any Member or Student represents Professional Misconduct as defined in the By-laws and may be subject to a complaint against the Member or Student.
12. It is alleged that the above conduct constitutes professional misconduct as defined in the Association Bylaws and the following sections of the Association's *Rules of Professional Conduct*:
 - a. A registrant shall reply as soon as possible to any correspondence from the Registrar of the Association, the Board of the Association, or an expert appointed by the Board or the Registrar (**Chapter V, Division I, s. 6**);
 - b. A registrant of the Association shall comply with the regulatory authority of the Association (**Chapter V, Division III, s. 1**), specifically Article 16 of the Association Bylaws; and/or

- c. A registrant shall assist with any disciplinary processes of the Association, or any investigation into possible misconduct on the part of either himself or herself or on the part of any other registrant by the Association: (1) registrants must respond promptly and forthrightly to any request by the Registrar, the Board of the Association or other duly authorized person in connection to any disciplinary process or any investigation into possible misconduct; (3) registrants shall forward to the Association any documents that are requested by the Association in the context of a registration matter, complaint, review, disciplinary process or investigation into possible misconduct. (**Chapter V, Division III, s. 5**)

Plea to the Allegation(s)

As the Member was neither present nor represented by counsel at the April 15, 2019 hearing, he was deemed to have denied the allegations.

Decision

Upon review of the evidence, the Panel determined that Mr. Barrett committed professional misconduct pursuant to Chapter V (The Registrant's Relations with the Association in the Practice of His or Her Profession), Division I (Identifying Oneself as a Registrant of HRP), Section 6; and Chapter V, Division III (Compliance with the Regulatory Authority of the Association), Sections 1 and 5 of the Human Resources Professionals Association's *Rules of Professional Conduct*.

Penalty Decision

The Panel made an order:

1. Requiring Mr. Barrett to appear before the Panel (in person or electronically) to be reprimanded within 30 (thirty) days of the date of this Order;
2. Directing the Registrar to suspend Mr. Barrett's Membership for two (2) months from the date of this Order;
3. Prohibiting Mr. Barrett from using any designation, term, title, initials or description implying that he is a member of the Association or is authorized to use the designation, term, title, initials or description during the period of suspension; and
4. Requiring Mr. Barrett to pay the Association's costs fixed in the amount of \$5,026.23. The costs are payable in full within 24-months of the date of this Order.

Facts and Evidence

The Association presented one witness, Mara Berger, Associate Registrar of the Association. She provided documentary evidence that Jonathan Barrett was an active HRP member from 2003 through to the date of the hearing.

Ms. Berger explained that in completing his Association Annual Registration Form, the member answered "yes" to the following question *"Since your initial registration or since your last renewal, have you been found guilty of any offence under any statute for which a pardon had not been granted? Exclude speeding and parking tickets."*

Ms. Berger took the Panel through various email communication between the Association and the Member for the period of May 18, 2018 to July 19, 2018:

- On May 18, 2018, Nathalie Moir, a Regulatory Process Specialist, contacted the Member to confirm that he had intended to answer "yes" to the question and Mr. Barrett responded on the same day to confirm.
- On May 22, 2018, Ms. Moir followed up with Mr. Barrett and advised him that he would be required to provide further information regarding the offence and outlined the type of information he should submit for review, with a deadline of June 22, 2018.
- Ms. Moir followed up on June 27, 2018 and again on July 3, 2018 as she had not received a reply.
- On July 6, 2018, the Member responded that he had been convicted on January 2, 2018 under s. 253(1)(a) of the Criminal Code – driving while impaired – and that he had paid a fine of \$1,560.
- On July 9, 2018, the Association asked Mr. Barrett to provide his driving record, to which he responded that he was "not comfortable" with this request.
- On July 13, 2018, Danielle Wagner of the Association explained the rationale for the request and reminded him of his professional obligations. He did not respond.
- Only July 19, 2018, Danielle Wagner clarified that he could provide the documents described in the email of May 22, 2018 and not just the driving record. The Member did not respond.

Ms. Berger testified, that as a result of this exchange with the Member, the Associate Registrar filed a complaint against Mr. Barrett on July 31, 2018. Alicia Lockey, Regulatory Process and Special Projects Specialist, informed the Member that he was required to co-operate fully with the investigation and to provide any documents requested.

On September 12, 2018, Mr. Barrett emailed Ms. Lockey indicating that he wanted to resign his membership with the HRP. She responded to inform him of the formal resignation process. Mr. Barrett did not pursue the formal steps taken for resignation.

On January 23, 2019, Mr. Barrett was personally served with the Notice of Hearing and other supporting documents.

On February 11, 2019, Mr. Barrett responded to an email from the office of Steinecke Maciura LeBlanc to say that he had terminated his membership and had no intention of participating. He indicated that he would not be responding to any further communication.

In response to a question from the Panel, Ms. Berger stated that it was quite possible that the Member would have retained his membership if he had complied with the Association and provided the documents requested, but without the documents, no determination could be made

Reasons for Decision

This was a relatively straightforward case that the Member failed to respond appropriately to his regulatory body. The Panel accepted the evidence of the Association, supported by a strong documentary base and found on the balance of probabilities that professional misconduct occurred.

There were three allegations of misconduct.

A) A registrant shall reply as soon as possible to any correspondence from the Registrar of the Association, the Board of the Association, or an expert appointed by the Board or the Registrar (Chapter V, Division I, s. 6);

The Panel acknowledges that at certain points Mr. Barrett did respond to the Association and that he did so promptly, particularly at the beginning. However, when viewing the evidence in totality, the Panel finds that the Member was ultimately unresponsive, and this constituted professional misconduct. Through his failure to respond, he missed an opportunity to cooperate with the regulator and to resolve this matter without undue escalation and expense.

B) A registrant of the Association shall comply with the regulatory authority of the Association (Chapter V, Division III, s. 1), specifically Article 16 of the Association Bylaws;

The Panel notes that Article 16.01 of the Association Bylaws requires disclosure of any finding of guilt for a criminal offence, and the Panel is satisfied that the Member did disclose this information.

The Panel also notes that Article 16.02 Disclosure Requirements reads:

The disclosure referenced in Section 16.01 shall be in writing, and shall include:

- (a) all documentation pertaining to the subject of the disclosure, including but not limited to the pleadings, or, if all documentation is not yet available, an undertaking to provide the documentation as soon as it becomes available; and
- (b) a consent permitting HRP to directly access information and documents related to the subject of the disclosure from the Regulatory Organization, as the case may be.

It is the view of the Panel that members need to provide independently verifiable information in a timely manner to their regulator if self-regulation is to succeed. The regulator needs the specific information to determine the impact on the Member's ability to act in the profession and on the reputation of the profession at large. The Panel finds that Mr. Barrett did not comply with the regulatory authority of the Association in this regard and that this failure constituted professional misconduct.

C) A registrant shall assist with any disciplinary processes of the Association, or any investigation into possible misconduct on the part of either himself or herself or on the part of any other registrant by the Association: (1) registrants must respond promptly and forthrightly to any request by the Registrar, the Board of the Association or other duly authorized person in connection to any disciplinary process or any investigation into possible misconduct; (3) registrants shall forward to the Association any documents that are requested by the Association in the context of a registration matter, complaint, review, disciplinary process or investigation into possible misconduct. (Chapter V, Division III, s. 5)

The Panel finds that the Member did not respond to the Association's requests, did not assist with the investigation and disciplinary process, as triggered by the August 1, 2018 formal complaint document, and did not provide the documents requested by the Association. He failed to participate in either the complaint process or the disciplinary hearing. For example, he indicated on February 11, 2019, that he had no intention of participating and that he would not be responding to further communication. The Panel finds that Mr. Barrett's failure to assist constituted professional misconduct.

Reason for Penalty

The Panel carefully considered the submissions of the Association regarding penalty. While the Association raised the need for specific deterrence, to discourage the Member from similar acts, it focused more on general deterrence and public confidence. General deterrence was needed so that HRPAs members would respect their regulatory body. The penalty needed to be sufficient that the public would have confidence that the Association can appropriately regulate its members. The need for remediation was less of a factor since the Member had indicated he did not wish to continue with the HRPAs.

The Panel considered as a mitigating factor that this was the first disciplinary finding against Mr. Barrett, who has been a member since 2003, and that his actions were on the less severe end of the spectrum of misconduct.

The Panel considered as an aggravating factor the number of requests made by the Association to which Mr. Barrett failed to respond.

The Association requested 2/3 of the prosecutorial costs of \$10,052.48, taking the position that the Member had been unreasonable in not participating in the process. The panel reduced this to 50% to recognize that the Member had made some efforts to respond at the beginning.

Based on all these factors, the Panel imposed the penalty and costs as set out above.

I, Lynne Latulippe, sign this Decision and Reasons as Chair of the panel of the Discipline Committee on behalf of the members of the panel that heard this matter.

Date: May 6, 2019

Signed: Lynne Latulippe (Chair)