



Human Resources
Professionals
Association

Discipline – How does it work?

February 15, 2017

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Regulatory Process
Specialist
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Human Resources
Professional Association



Human Resources
Professionals
Association



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- In her role as General Counsel, Rebecca assists regulators with a wide variety of matters including registration, complaints, investigations, quality assurance and governance.



SML
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Office of the Registrar Winter 2017 webinar series



**Wednesday,
February 15, 2017**

Discipline: How Does it Work? With Rebecca Durcan

**Wednesday,
February 23, 2017**

Appeals: How Do They Work?

**Wednesday,
March 15, 2017**

The Professional Liability Insurance Requirement Explained

**Thursday,
March 30, 2017**

Investigations: A Conversation with Dean Benard

**Thursday,
April 6, 2017**

Update on the new CHRP, CHRL, and CHRE certification processes

**Thursday,
April 20, 2017**

**Renewal, Resignation, Suspension, Revocation,
Reinstatement and Re-achievement**

Housekeeping



- Webinar will be recorded and posted online
- To receive the CPD code, complete the survey sent to you after the webinar
- Will post answers to questions that we could not answer in the webinar

Questions involving specific individual circumstances



- This webinar is not the appropriate place and time to address specific individual circumstances
- Sometimes the correct answer depends on some details that are not provided with the question
- Please contact the Office of the Registrar with questions involving specific individual circumstances

Agenda

- What is professional discipline?
- Why is discipline important?
- The Discipline Committee
- Relevant legislation
- Referral and Notice of Hearing
- Fair Hearings
- Review of Roles
- The Panel's Complex Job
- Typical Hearings
- Possible orders (penalties)
- Public vs. Private Information
- Appeals



Objects (goals) of the HRP A



- (a) to promote and protect the public interest by governing and regulating the practice of members of the Association and firms in accordance with this Act and the by-laws, including,
 - (i) establishing, maintaining, developing and enforcing standards of qualification,
 - (ii) establishing, maintaining, developing and enforcing standards of practice,
 - (iii) establishing, maintaining, developing and enforcing standards of professional ethics,
 - (iv) establishing, maintaining, developing and enforcing standards of knowledge, skill and proficiency, and
 - (v) regulating the practice, competence and professional conduct of members of the Association and firms;

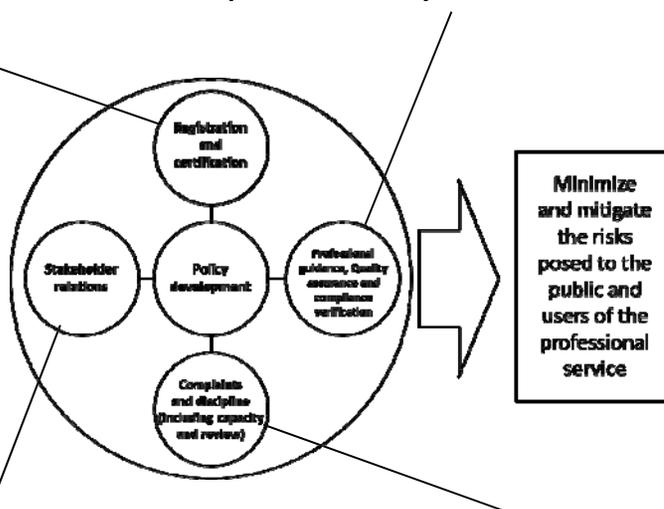


Establishing, maintaining, developing and enforcing standards of qualification

Linking HRPAs Regulatory Framework to the objects of the Association

To promote and increase the knowledge, skill and proficiency of members of the Association, firms and students

Establishing, maintaining, and developing and enforcing standards of practice, standards of professional ethics, and standards of knowledge, skill and proficiency



To promote and protect the public interest by governing and regulating the practice of members of the Association and firms in accordance with this Act and the by-laws

Enforcing standards of practice, standards of professional ethics, and standards of knowledge, skill and proficiency

Why is Discipline so important?



- Supports the HRPA's public protection mandate
- Shows the legislature our commitment to fulfilling the duties of our *Act*
- Holds HRPA members responsible for their actions
- Promotes public confidence in the professions ability to regulate itself

Discipline Committee



- A “Statutory” committee, meaning its powers are derived from the *Act*
- The mandate of the Discipline Committee is to hear allegations of professional misconduct or incompetence referred to it from the Complaints Committee, deliberate on those matters and apply the appropriate and just remedy to the Member who is the subject of the allegation(s)

Who Sits on the Discipline Committee?



- HRPAs Members (CHRL/CHRE)
 - Public Representatives
 - Lawyers
-
- When required, the Chair of the committee will strike a panel to hear allegations against a member. Quorum of the panel is three

What is *Professional Misconduct*?



- Conduct inconsistent with the Act, By-laws, the Rules of Professional Conduct or the Standards and Guidelines of Practice that poses or may pose a risk of harm or loss to any person
- Behavior outside the bounds of what is considered acceptable of its membership by the governing body of a profession

Starting the Process - Referral



- The Discipline Committee hears allegations referred to it by a single “screening” or “Referring” committee; the Complaints Committee
- Complaints can come from:
 - Registrants
 - Public
 - Registrar

Referral Criteria



The three criteria for referral to discipline are:

- If the allegations were true would the matter be serious enough to refer to discipline?
- Should the matter be referred to discipline, is there enough evidence to make a case? (prosecutorial viability)
- Is it in the public interest to make a referral to discipline, or is another course of action more appropriate?

Step One - Notice of Hearing



- Sets out the specific allegations made against the member
 - Allegations are similar to “Charges” in criminal proceedings
 - Allegations are what the regulator seeks to prove
- Notifies the member of the factual particulars of the allegations
- Includes procedural notice of important matters (date and time of hearing and possible disclosure obligations)



Important Note

- The panel hearing the matter is confined to matters raised in the Notice of Hearing
- The panel cannot find a member engaged in professional misconduct on a concern that has not been alleged in the Notice of Hearing.

Statutory Powers and Procedure Act (SPPA)



- Generally applies to administrative tribunals in Ontario, including discipline tribunals of self-regulating professions
- Sets out basic rules of procedure for these tribunals, such as;
 - Contents of a Notice of Hearing
 - Ability to examine witnesses
 - Admissibility of evidence

Step Two - Pre-Hearing Conference



- Off-the-record meeting
 - Information cannot be used later
 - Presiding officer does not sit at hearing
 - Everyone is free to speak
- Goal is to settle
- If matter does not settle? Plan for hearing
- Not mandatory

Principles of Conducting a Fair Hearing



- *Neutrality*
 - Act as independent judges
 - Don't appear to make up mind
 - Don't be overly friendly or overly hostile
 - Always be courteous
- *Adversarial Process*
 - Each party represents own interests
 - Forensic capitalism

A Discipline Hearing is Not...

- An investigation
- Case conference
- A consensus forming exercise
- An informal meeting
- A debating society



Who is involved in a Discipline Hearing?



- Prosecution counsel
- Member and (possibly) Member's counsel
- Panel of Discipline Committee
- Independent Legal Counsel (ILC)
- Court Reporter
- Witnesses
- Support staff
- Public attendees

Review of Roles – Association Staff



- Assist the Committee Chair in striking a discipline panel
- Make all pre-hearing arrangements on behalf of the panel
- Hire a court reporter for the hearing
- Arrange the attendance of ILC
- Ensure the results of the hearing are published where appropriate
- Role in one word - facilitate

Review of Roles – Association’s Counsel



- Also called the Prosecution Counsel
- Presents evidence before the panel that supports the allegations outlined in the Notice of Hearing
- Ensure that the matter is prosecuted in a fair manner
- “A prosecutor never wins, a prosecutor never loses”

Review of Roles - Defence Counsel



- Also called the Member's Counsel
- Role is resolutely partisan
- Under no obligation to do more than respond to evidence which is incriminating
- Hired directly by the member responding to the allegations
- The member can choose to forgo hiring Defence counsel



Expert Witnesses

- In professional discipline cases, expert witnesses are usually called to testify about the professional standards
- Their evidence may be opinion-based
- Expert witnesses have knowledge beyond that of a “lay” or non-expert person
- Must remain impartial and independent – their role is to assist the panel

Dealing with Expert Evidence

- Approach to assessing expert evidence
 - Relevance (what are the issues before you)
 - Factual assumptions (what expert was told)
 - Extent of qualifications (expertise)
 - Relevance of qualifications (to issue)
 - Preparation (research, contact with peers)
 - Credibility (especially neutrality)



Review of Roles – ILC



- Independent Legal Counsel
 - Provide accurate and impartial legal advice, as needed, to the panel
- Role is purely advisory – panel is the decision maker
- Advice provided to the panel is “on the record”



Review of Roles - Panel

- Ensure both sides can present their case
- Listen carefully to the evidence
 - No pre-judgement allowed
- Listen carefully when counsel makes their submissions
- Assess and observe the credibility of evidence and witnesses



Credibility Findings

- Credibility = Honesty + Ability (to tell truth)
- Must explain why
 - Appearance or demeanor
 - Ability to perceive
 - Ability to recall
 - Motivation
 - Probability or plausibility
 - Internal consistency
 - External consistency

Appearance of Bias



- Can take various forms
 - Pre-knowledge or pre-judgment
 - Prior involvement
 - Connection to the issue
 - Conduct during the hearing
 - Monetary interest
- Members of the Discipline Committee are trained to report to ILC immediately if they believe there is any conflict of interest

The Panel's Most Important Job...



- When case finished, decide whether allegations have been proven
- If proven, impose sanction that you believe is fair and appropriate
- Provide reasons that are clear and explain WHY the panel made the decision
- Role in one word: Decide

Typical Hearings

- Contested hearings
 - When a member denies the allegations
- Uncontested Hearings
 - When the member admits the allegations



Order is important...



- It is essential that the hearing follows the proper order, in accordance with the *SPPA*
- Generally, a contested hearing will proceed as follows;
 - Opening statements from Counsel summarize their positions
 - Member enters his or her plea
 - Association witnesses are called and cross-examined
 - Panel may ask questions of witnesses
 - Defence witnesses are called and cross-examined; Association can reply
 - Closing submissions are made (final arguments)
 - ILC can provide advice; Panel can ask questions
 - Panel retires to consider evidence and render a decision as to whether the Member engaged in professional misconduct
 - If yes? Then proceed to penalty phase of hearing



Penalty Decisions

- The most commonly considered goals of penalty decisions are as follows:
 - General deterrence to the membership
 - Specific deterrence to the member
 - Rehabilitation/remediation of the member
- If the panel has determined that the member has engaged in professional misconduct, both the Association and the Member make submissions as to the appropriate penalty.

Possible Orders of the Discipline Committee (penalties)



If there is a finding of *Professional Misconduct* or *Incompetence*

- Revocation of membership (if 2/3 of panel agree)
- Suspension of membership for up to two years
- Refrain from using any designation, term, title
- Issue a reprimand (May be recorded on Public Register)
- Direct member to take a rehabilitative measure (take a specific course, counselling etc.)
- Impose restrictions or conditions for the member to practice in the field of Human Resources, while remaining a member
- Pay a fine
- Make any other order that the committee considers appropriate

Are Discipline Hearings Public?



- Hearings are usually open to the public – check our newsletter!
- On the HRPA website, current discipline matters are listed
- Discipline information is available on the Public Register
- Allowing the public to attend hearings and easily access discipline information makes the process transparent and is in the public's best interest

When is a Closed Hearing Appropriate?



- When matters of public security may be disclosed or
- Intimate financial or personal matters may be disclosed

Can Decisions be Appealed?



- Yes. A final decision of the Discipline Committee can be appealed to the Appeal Committee
- The purpose of HRPA's internal appeal process is to provide for the opportunity of a reexamination of decisions made by HRPA's regulatory committees or by the Registrar
- There must be a legitimate reason or 'grounds' to request an appeal; simply disagreeing with a decision does not constitute grounds for an appeal

Grounds for an Appeal



- A denial of natural justice:
 - The individual did not have a fair opportunity to present their case,
 - The panel or individual making the original judgment was not/were not impartial, and/or
 - The process, policy or rule that was applied is flawed, unfair, or unreasonable. Here the process, or rule itself is challenged rather than the specific application of the process
- An error in the decision itself, the committee or Registrar:
 - Failed to consider the correct facts, and/or
 - Failed to apply the correct rule or policy in making their decision

Where Can I Find Information on Current Discipline Matters?



- Regulatory Affairs – the Office of the Registrar Newsletter
- Office of the Registrar emails
- Website



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Questions?