

The background features a large, stylized 'HR' in black and teal. The 'H' is composed of a teal vertical bar on the left and a red vertical bar on the right, connected by a horizontal bar. The 'R' is a large, bold black letter. The HRPA logo is positioned on the left side of the image.

**HR
PA**

**Human
Resources
Professionals
Association**

**The Requirement to Notify the Registrar
of Bankruptcies and Insolvency Events**

May 4, 2022

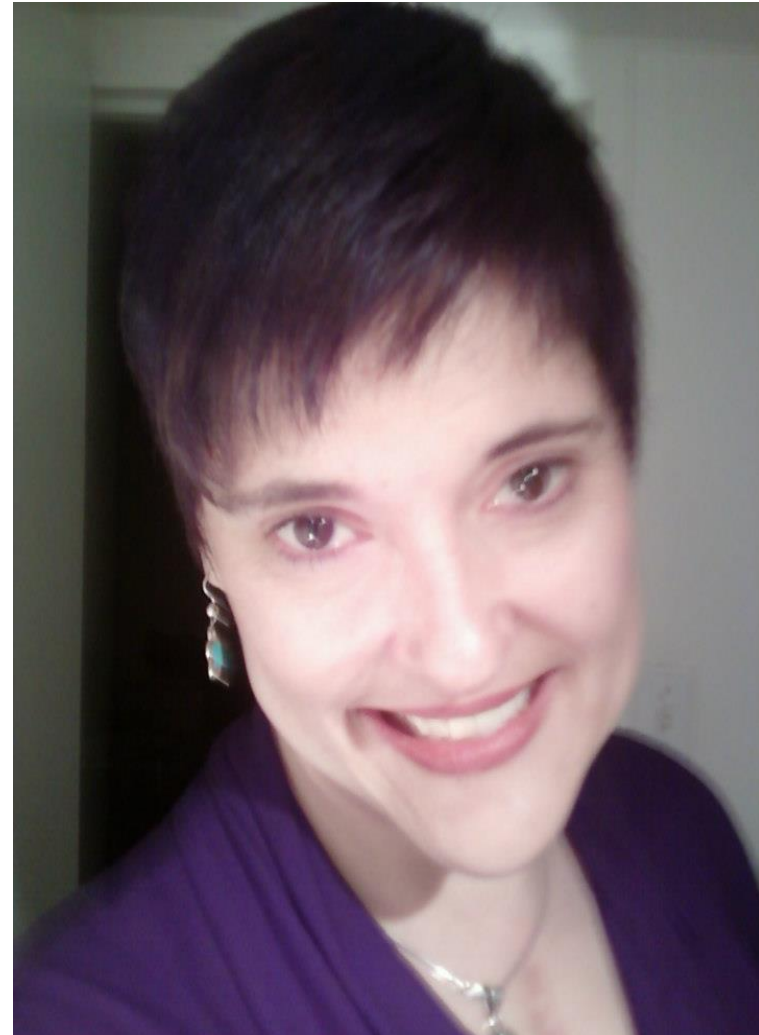
Margaret Wilson, CHRL

mwilson@hrpa.ca

416-923-2324 x 365

Regulatory Process Specialist

Human Resources Professionals
Association



Carolyn Lepera

clepera@hrpa.ca

416-923-2324 x 318

Regulatory Process Specialist

Human Resources Professionals
Association

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Spring 2022 Webinar Series

April 27, 2022	HRPA's Appeal Process
May 4, 2022	The Requirement to Notify the Registrar of Bankruptcies and Insolvency Events
May 11, 2022	The Continuing Professional Development (CPD) Requirement Explained
May 18, 2022	Renewing your Registration

Our previously aired regulatory and how-to webinar series can be found on the [Professional Development](#) page of our website.

Objects

The objects of the Association are,

(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;

(b) to promote and increase the knowledge, skill and proficiency of members of the Association, firms and students;

(c) to promote and protect the welfare and interests of the Association and of the human resources profession;

(d) to promote inter-professional collaboration with other professional bodies;

(e) to address any other matter that relates to the regulation of its members that the Board considers appropriate.

Agenda

Part 1: The compliance rate

Part 2: The requirement Rationale

- The Review Committee
- Powers of the Review Committee
- Review Committee Hearings
- Potential consequences for Members and Firms

Part 3: Questions

Poll #1

Have you or your firm (It does not mean every organization which employ HRPA members. A firm is a form of practice. It refers to sole proprietorships, partnerships, limited liability partnerships, and corporations through which HRPA members offer HR services) experienced a bankruptcy or filed a consumer proposal within the last year?

- ☐ Yes
- ☐ No

Poll #2

The *Registered Human Resources Professionals Act, 2013*, requires all members to notify the Registrar of any insolvency event (i.e., bankruptcy or consumer proposal). Were you to experience an insolvency event (i.e., bankruptcy or consumer proposal), would you notify the Registrar of such?

- ☐ Yes
- ☐ No
- ☐ I don't know

Compliance Rate

The compliance rate for the requirement to notify the Registrar of insolvency events is calculated as follows:

Insolvency event compliance rate = $\frac{\text{Actual number of notifications}}{\text{Expected number of notifications}}$

How did we do?

All insolvency events are registered with the Office of the Superintendent of Bankruptcies.

Based on the data published by the Office of the Superintendent of Bankruptcies, the insolvency rate for 2020 is 3.4 per 1000.

At a rate of 3.4 insolvency events per 1000, with 23,768 members, HRPAs would have expected about 81 insolvency events reported in 2020.

The Actual Numbers

Expected about 81 insolvency events in 2020.

2 insolvency events reported to HRPAs in 2020.

Insolvency event compliance rate = $\frac{\text{Actual number of notifications (2)}}{\text{Expected number of notifications (81)}}$

HRPA's compliance rate in 2020 was 2.5%

Over-estimation

The evidence indicates that self-reporting of compliance overestimates actual compliance by a fair margin

On a recent Member and Student Survey, 68% of respondents indicated that they would notify the Registrar of an insolvency event should they experience one.

The actual compliance rate, is closer to 2.5%.

Why does it matter?

There are three main reasons why it is important to be concerned about this low compliance rate:

- It is the law .
- It speaks poorly to our commitment to self-regulation.
- It is not good for the reputation and image of Human Resources professionals to have such a low compliance rate.

Misunderstood requirement

- A key goal today is to clarify what might be a misunderstood requirement
- It is not about collecting information
- It is not a shaming exercise

What is a “bankruptcy or insolvency” event?

- Any of the following are a bankruptcy or insolvency event:
- Member or firm becomes “bankrupt”
- Member makes a proposal to his or her creditors
- Proceeding is brought against a Member as an insolvent debtor
- Receiving order is made against a Firm



What is the Requirement?

Subsection 40 (2) of the Registered Human Resources Professionals Act, 2013, states 'A member who or firm that experiences a bankruptcy or insolvency event shall notify the Registrar in accordance with the by-laws.'

By being included in the Act, the requirement for our members to notify the Registrar of a bankruptcy or insolvency event is a matter of law.

The requirement is part of the deal that we made with the provincial legislature in exchange for the privilege to be self-regulated.

Who does the requirement apply to?

With the exception of student registrants, all HRPA members must notify the Registrar if they are experiencing a bankruptcy or insolvency event.

Requirement to notify the Registrar of a bankruptcy or insolvency applies to both new members as well as existing members.

Requirement applies regardless of when the bankruptcy or insolvency event began; even if the event began before the requirement was brought into place.

Rationale

After the Registered Human Resources Professionals Act, 2013, was passed in 2013, protection of the public interest became the primary function of the HRP.

The Ontario legislature at Queen's Park felt that this requirement was necessary and desirable to protect the public interest.

A Member or Firm's bankruptcy or insolvency event may pose a risk of harm to the public. This requirement is in line with our public protection mandate.

Risk

The rationale for members to notify the Registrar of insolvency events is that there are additional risks to others that could stem from the insolvency event.

HR professionals often have broad access to:

- corporate records
- financial accounts
- pension & benefit accounts
- payroll-related accounts

Risks

that broad access increases the possible risk to an employer should an HR professional be under intense financial pressure.

Historical cases of fraud demonstrate the link between financial desperation and misconduct.

HR professionals who have experienced an insolvency event may also find it difficult to maintain their independence and may be improperly influenced by creditors.

Next steps

- Reports of a bankruptcy or insolvency event must be made immediately upon the event taking place.
- If unsure of situation qualifies, contact the Office of the Registrar for clarification.
- In writing to registrar@hrpa.ca



What needs to be provided to the Registrar?

- Required to complete the [Bankruptcy and Insolvency Reporting Form](#)
- Declaration granting permission to access documentation directly from Trustee
- Documents relating to bankruptcy or insolvency event (undertaking to provide if it is not yet ready)
- Pleadings (undertaking to provide if it is not yet ready)
- Information on the Financial situation of firm

Role of the Registrar

The Registrar is responsible for:

- Managing all correspondence with the parties in regard to any matter referred to the Review Committee;
- Scheduling hearings;
- Maintaining records of all proceedings between HRP, the Member, and the Review Committee ;
- Registrar refers all documents and information to Review Committee

The Review Committee

The decisions surrounding what to do does not lie with the Registrar, but with the Review Committee.

The Review Committee is a statutory committee, its powers are set out in legislation Registered Human Resources Professionals Act, 2013,

The Review Committee shall abide by the Act and By-laws.

Mandate of the Review Committee

The Review Committee shall review every matter referred to it by the Registrar under Section 40 of the Act to determine whether the member or firm's bankruptcy or insolvency event may pose a risk of harm to any person; to direct the Registrar to investigate the matter; to determine whether a hearing is warranted; to conduct hearings when warranted to determine whether the member or firm's bankruptcy or insolvency event poses a risk of harm to any person; and upon a determination that there are reasonable grounds for believing that the member or firm's bankruptcy or insolvency event poses or may pose a risk of harm to any person following a hearing, to exercise any of the powers granted to it under Subsection 41(8) of the Act

Composition of Review Committee

The Chair of the Review Committee is appointed by the HRPB Board.

The Review Committee is made up of both HRPB Members and Public Representatives.

By law, the committee must have a minimum of 3 HRPB Members in good standing, who hold the CHRL and/or CHRE designation.

Composition (cont.)

Being a statutory committee, the Review Committee must include a minimum of one public representative.

In conducting its duties under the Act, the Review Committee has access to Independent Legal Council (ILC) when such legal advice is necessary or prudent.

Request for documentation

Review Committee can ask at any time for the Registrar to request any additional information from the Member or Firm that is relevant to the matter, including:

- Bank Statements;
- Financial Statement;
- Tax returns;
- Letters from the Member's or Firm's banking institution as to their financial status.

Member or firm must do so within the time frame as provided by review committee.

What is the committee considering?

The circumstances that caused the bankruptcy or insolvency event, and the conduct of the Member or Firm in respect of such circumstances.

The extent to which the insolvency event may put at risk the interests of:

- Any client or employer of the Member or Firm;
- Any other party adversely affected by the insolvency event or proposal.

The number and nature of the creditors affected;

Whether or not there was any associated criminal or civil liability on the part of the Member or Firm, in respect to the bankruptcy or insolvency event;

The Member or Firm's financial circumstances at the date of the review or hearing;

The date the Member or Firm expect to be discharged or released from bankruptcy or insolvency;

Other considerations as the committee sees fit.

Review Committee's decisions

- After reviewing the information and documentation the Review Committee may
- Take no further Action
- Direct the Registrar to Investigate
- Require member or firm to provide documentation/information on an ongoing basis. Specify the manner and timeframe
- Hold a hearing

Take no further Action

Review Committee's Role is to Assess Risk to the Public.

If they feel there is no risk; decide to take no further action.

Investigation

According to the Act, if the Review Committee requests the Registrar to investigate, the investigator will have the following powers:

- Right to enter business premises of the Member or Firm;
- Require production of relevant material.

All persons (not just Members and Firms) must not obstruct the investigation. To do so is a provincial offence.

If the Review Committee requires the Registrar to investigate, the Registrar must report the results to Review Committee.

Request for ongoing Information

The Review Committee may request any information relevant to the matter to be provided on an ongoing basis, with set deadlines.

If, based upon the ongoing information, the Review Committee determines that there is a risk to the public then the Committee can decide to hold a hearing on the matter.

Hold a Hearing

- Purpose of a hearing
- Review Committee to determine whether bankruptcy or insolvency event poses or may pose a risk of harm to any person



Who is present at a hearing?

Panel of three members of the Review Committee

- At least one member of panel must be a public representative
- The panel may retain Independent Legal Counsel

The Member or Firm who is bankrupt or insolvent

The HRP

Any member of the Association or general public are allowed to observe. (S. 9 of the SPPA)

What if the Panel decides that a risk to the public is present?

Review Committee may order on or more of the following:

Suspend the member's membership or the firm's registration

Impose restrictions or conditions on the right of the member or firm to practice in the field of human resources

Make any other order, other than revoking the member's membership or the firm's registration, that the committee considers appropriate in the circumstances.

Consequences of Not reporting an insolvency event

Failure to report on the part of any Member or a Firm represents professional misconduct as defined in the By-laws and may be subject to a complaint against the Member.

A complaint against the Member may result in a referral to the Discipline Committee.

Questions?

Not the appropriate place to address individual specific circumstances. Sometimes the correct answer depends on some details that are not provided with the question

registrar@hrpa.ca

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