

The background features a large, stylized 'HR' in black and red. The 'H' is composed of red rectangular blocks, and the 'R' is a solid black shape. A dark blue horizontal bar is positioned across the middle of the 'H'. The HRPA logo is on the left of this bar, and the full name of the association is to its right. In the bottom right corner, the title of the event and the date are displayed.

**HR
PA**

**Human
Resources
Professionals
Association**

**HRPA's New Practice
Standard: Conducting
Workplace Investigations**

October 12, 2022

Housekeeping

- This webinar is eligible for 1 CPD hour. You will receive the CPD code as part of the post-webinar survey.
- This webinar will be recorded, and the recording, slides and Q&A will be posted on our website under Professional Development – eLearning & On Demand—on-demand webinars—Office of the Registrar.
- Time has been set aside for Q&A at the end, but please feel free to add your questions to the chat box at any time during the presentation.

Introductions

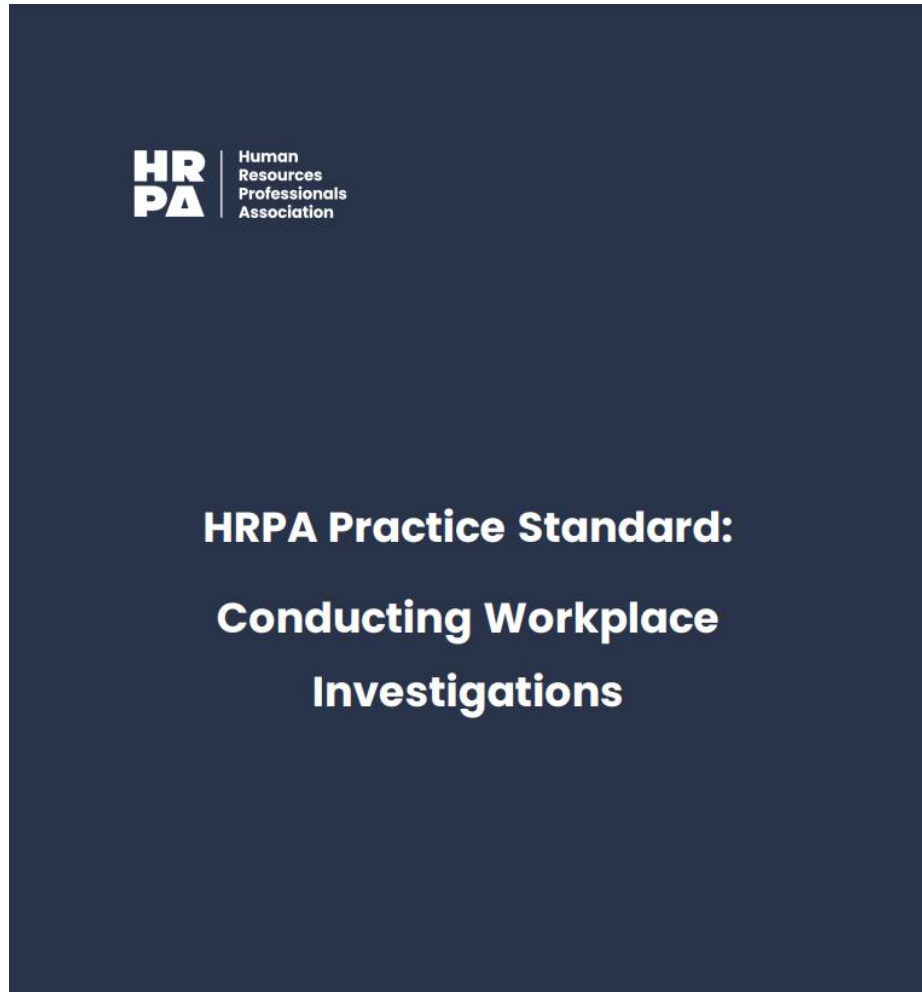


Dean Benard,
President & CEO,
Benard + Associates
Inc.



Emily Sully,
Policy Analyst,
HPRA

HRPA's New Practice Standard



- Topic identified as one of the highest-ranking risks of harm stemming from the practice of HR
- Meant to help you mitigate risks and avoid common pitfalls
- Helps supplement the **Code of Ethics and Rules of Professional Conduct**
- All HRPA members and students are expected to meet the requirements of this Standard

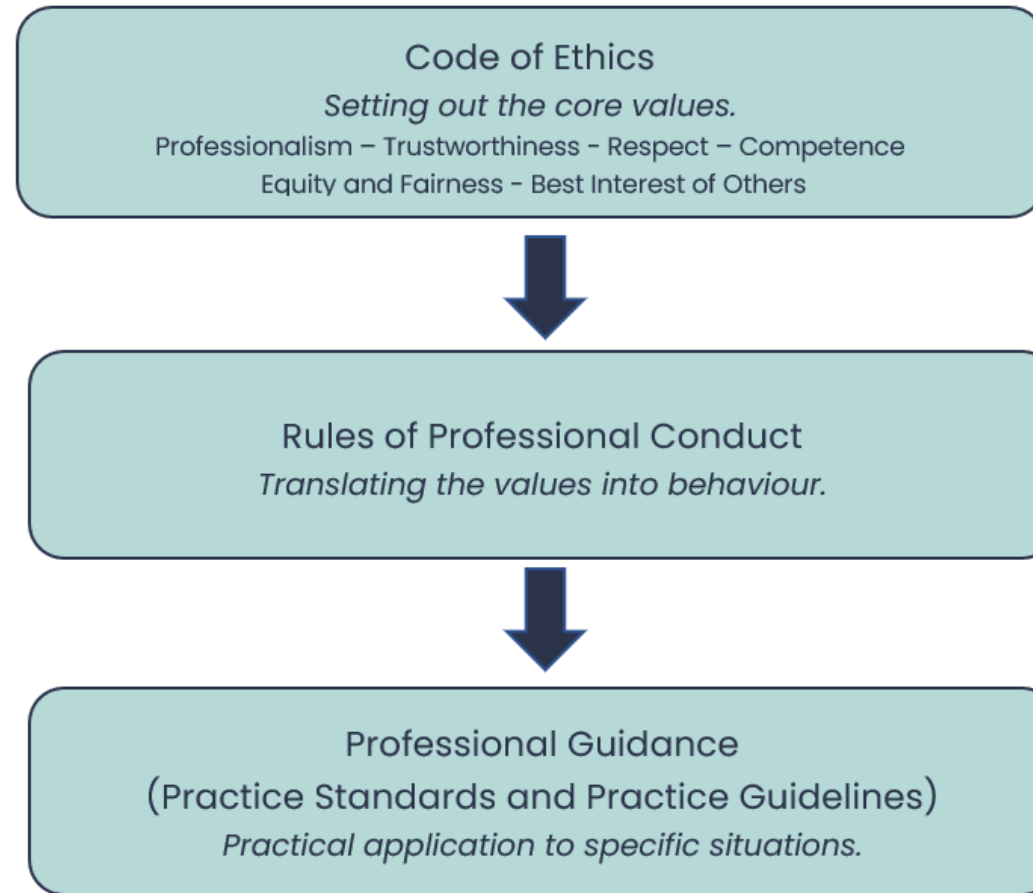
Recap on Practice Standards

Practice Standards define the minimum standard of practice or performance needed to ensure safe and effective practice as it relates to specific HR topics (e.g. investigations). They also:

- Are living documents that will be reviewed and updated regularly as practice expectations evolve
- Show the public what they should expect from registered HR professionals
- Play a key role in HRPAs' mandate of public protection
- Are part of HRPAs' By-Laws
- Are not a substitute for professional judgment, but provide guidance on how to act in particular circumstances – keeping in mind that not all provisions will apply to everyone

Non-compliance of registered HRPAs members and students can result in complaints and/or disciplinary measures.

Guidance Hierarchy



How the Standard was developed

Extensive research from a wide variety of sources

In consultation/collaboration with subject-matter experts, including legal counsel, Dean Benard, HRPA's Professional Standards Committee (PSC), and HR professionals

Thorough approvals process:

PSC → Governance & Nominating Committee → Board of Directors

Risks of Harm to the Public

Failure to conduct a proper workplace investigation is a breach of the Ontario Occupational Health and Safety Act and the Ontario Human Rights Code. It can cause:

- worsening issues of harassment, discrimination, violence and misconduct in the workplace
- human rights violations
- privacy and confidentiality breaches
- retaliation
- lack of procedural fairness
- Incorrect conclusions arrived at by the investigator
- legal exposure
- unfair/disproportionate responses to the investigation findings, and
- harm to both mental and physical health.

Breakdown of Standard Sections

Confidentiality and Privacy

Privilege

Procedural Fairness, Impartiality and Objectivity

Deciding to Take a Case – Investigator Selection

Interviews

Gathering All Relevant Information, Documentation, and Record Keeping

Communicating Outcomes of Investigation and Addressing Retaliation

How can I use the Standard in practice?

- Before participating in a workplace investigation and when unsure on how to approach a particular situation, review the Practice Standard to help support you and remind you of how to proceed, how to address common challenges, and how to avoid common pitfalls
- While the Standard cannot address every situation, it can be used to supplement professional judgment
- The Standard is public and can also be shared with your colleagues who are part of the investigation team



Common Pitfalls & How to Avoid & Address Them

Common Pitfall #1: Lack of Appropriate Knowledge/Competencies

- It all starts here – Investigations are not all the same
- I took the course – I can do it! (Great attitude but possibly misguided)
- Being a mediator, lawyer, human resources professional, or subject matter expert isn't enough
- Skills – Do you have them?
- Consider case complexity, parties involved, and nature of issues to your experience and aggregate competencies

Common Pitfall #2: Confidentiality and Privacy Breaches

- Breaches can taint witnesses affecting the reliability of their information
- Don't overshare – everything on a “need to know” basis
- Have all participants sign confidentiality agreements
- Don't interview people in a public place – what is public?
- Establish a system for evidence storage and retrieval – chain of custody
- Explain your efforts on confidentiality and its limits

Common Pitfall #3: Internal Biases + Lack of Procedural Fairness

- Follow your policies
- Give all parties a fair opportunity to be heard
- Respect peoples' need for support
- Ensure Respondents know issues prior to their interview
- Maintain an open mind & understand your own biases
- Be mindful of your comments in interviews
- Assess credibility carefully – base it on concrete things
- Always tie conclusions to evidence
- Document what you did and didn't do – show rationale

Common Pitfall #4: Insufficient Investigation Plan

- Planning is critical to staying in scope and on track
- Be prepared to alter the plan as you go
- A good plan contains
 - Scope statement / mandate
 - Evidence required
 - Witnesses required
 - Sequence of interviews
 - Potential obstacles identified
 - Timelines identified
- Your plan can make report writing easier

Common Pitfall #5: Not Using a Trauma Informed Approach

- Critical to create a psychologically safe space
- Offer support wherever possible
- Explain process and roles of people involved
- Be careful to consider how trauma can affect memory – encourage open sharing of information don't dictate order
- Don't judge unreasonably – remember to check your bias at the door
- All of this helps establish trust

Common Pitfall #6: Conflicts of Interest

- Identify if one exists – not a unilateral decision
 - Personal interests or values
 - Prior knowledge or involvement with one or more parties
 - Your position in the organizations compared to the parties
- Not everything is a conflict of interest but many things can look like one
- Must be addressed immediately
- If in doubt, report it, seek input, and deal with it openly
- It doesn't have to be real to be a problem – it's about perception as much as anything

Common Pitfall #7: Poor Timing and Scheduling

- Timing is everything
- Work within policy timelines
- Lives are disrupted and productivity is disrupted
- BUT don't rush at the expense of completeness
- Allow enough time for interviews
- Update people on timing
- Under promise and over deliver

Common Pitfall #8: Poor Interview Questions and Interview Process

- Avoid scripts, “20 questions”, and tables to slot in answers
- Allow for the narrative to be provided
- Treat your interview like a funnel – open ended to narrow questioning
- Avoiding leading questions – this can be tricky
- Remember the purpose of each interview
- Prepare for interviews – know what you want
- Maintain control of the interviews
- Record your interviews – with permission but still take notes

Common Pitfall #9: Not Gathering All Relevant Information and/or Records

- Consider the existence of documentary information
 - Memos, emails, texts, social media posts, etc.
 - Never assume what you received from one party is ALL the information
 - Ask about the existence of other evidence – don't assume
 - Gather information that supports both sides
 - Keep an open mind – you are not an advocate, you are a neutral

Common Pitfall #10: Not Properly Communicating Outcomes of Investigation and Addressing Retaliation

- Legislatively, in Ontario, you have 10 days to communicate outcomes
- You DO NOT have to share the full report, nor should you
- Provide a summary of findings to complainant and respondent
- Witnesses are not entitled to know anything about outcome
- Reprisal should be addressed in the confidentiality forms you have people sign and should be emphasized verbally in interviews

What if I Need Additional Help?

- We have a dedicated email address for any questions about guidance issued: guidance@hrpa.ca.
- You can also email us with any feedback you may have on the Standard.
- If you prefer reaching out to us by phone, you can schedule a phone call appointment online, or call us at: 1-800-387-1311 or 416-923-2324.

A Note About Other Guidance + Webinars

Already Published (visit hrpa.ca/guidance):

- ✓HRPA's modernized Code of Ethics and Rules of Professional Conduct
- ✓Practice Guideline on Addressing Racism and Racial Discrimination
 - ***Upcoming webinar about the Guideline October 17th, 2022, 12-1 pm, register now!***

Coming Soon:

- Practice Guideline on Social Media Use
- Practice Guideline on Terminations
- Practice Guideline on Fostering Mental Health in the Workplace

Questions



You can also submit questions
after this webinar by emailing
guidance@hrpa.ca



Human
Resources
Professionals
Association



Thank You!