

The image features a large, stylized background graphic of the letters 'HR' in a light teal color. Overlaid on this is a dark navy blue horizontal bar containing the HRPA logo and text. To the right of this bar is a large, bold black letter 'R'. Below the 'R' is the word 'Discipline' in dark navy blue, followed by the date 'January 9, 2023' in white. Several red rectangular blocks are positioned behind the navy blue bar and the 'R', creating a layered effect.

**HR
PA**

**Human
Resources
Professionals
Association**

Discipline

January 9, 2023

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.



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Some questions we will address

- Where does discipline fit into the bigger picture of professional regulation?
- How does discipline work?
- What do we mean when we say that the Discipline Committee is independent of HRPA?
- Who does what in a discipline proceeding?
- What is the difference between the Complaints Committee and the Discipline Committee?
- Are discipline hearings public?
- Can decisions of the Discipline Committee be appealed?

Where to find information on current and past discipline proceedings

<https://www.hrpa.ca/protecting-the-public/current-past-discipline-hearings/>

Protecting the Public / Discipline

Discipline

The Discipline Committee hears any allegations referred to it by the Complaints Committee to determine whether the member, student or firm is guilty of professional misconduct or incompetence and applies the appropriate and just remedy to the registrant who is the subject of the allegation(s).

In accordance with our bylaws and the *Registered Human Resources Professionals Act, 2013*, the HRPAs publishes Notices of Hearings and any decisions rendered by the Discipline Committee concerning registrants facing allegations of professional misconduct or incompetence.

Below, you will find all current Notices of Hearings and HRPAs' past discipline decisions.

Scheduled Hearings



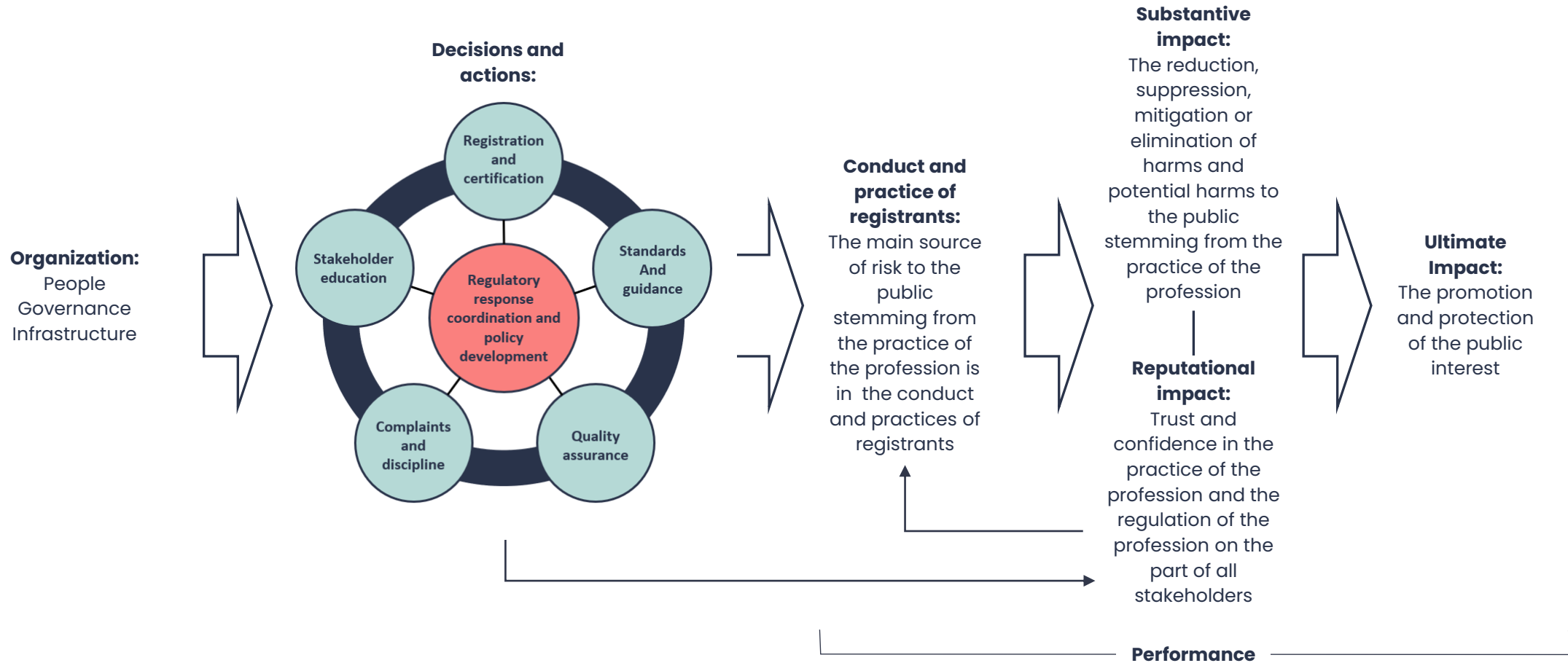
Current Notices of Hearings



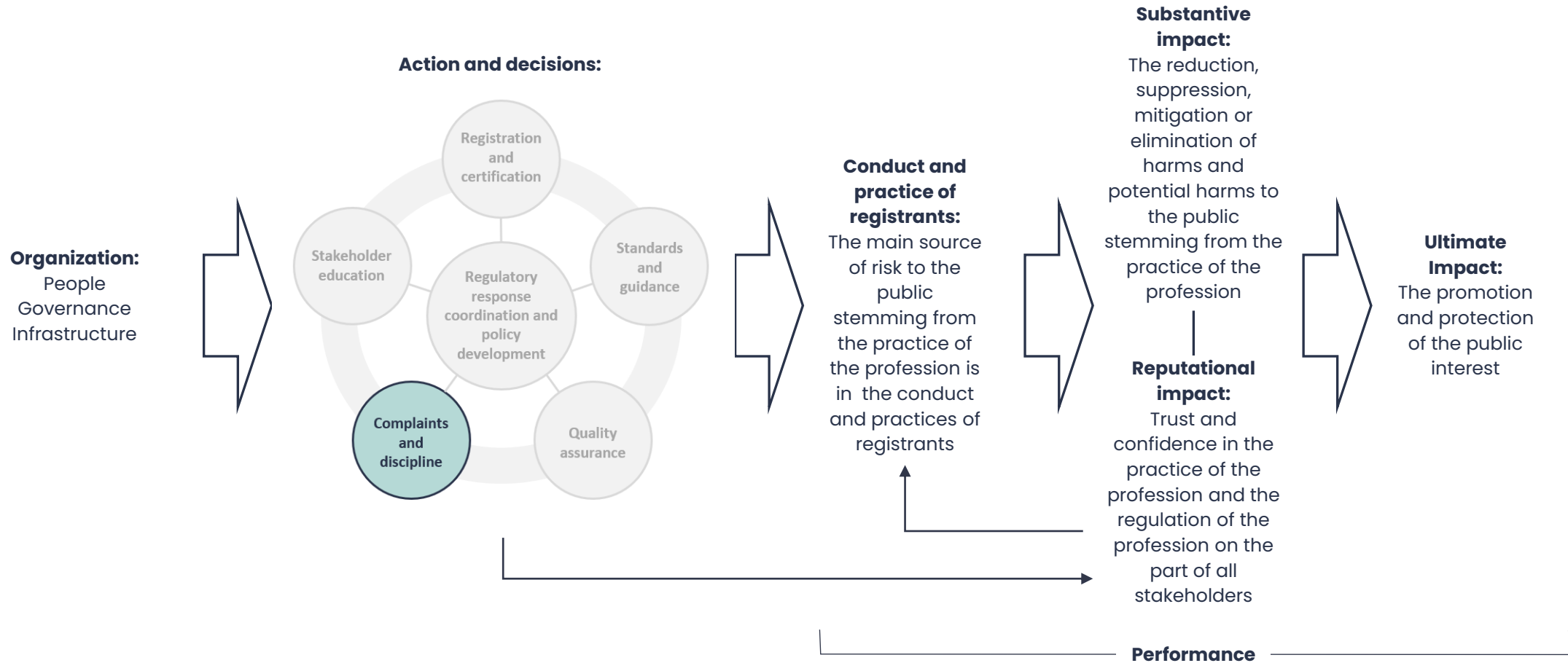
Past Discipline Decisions



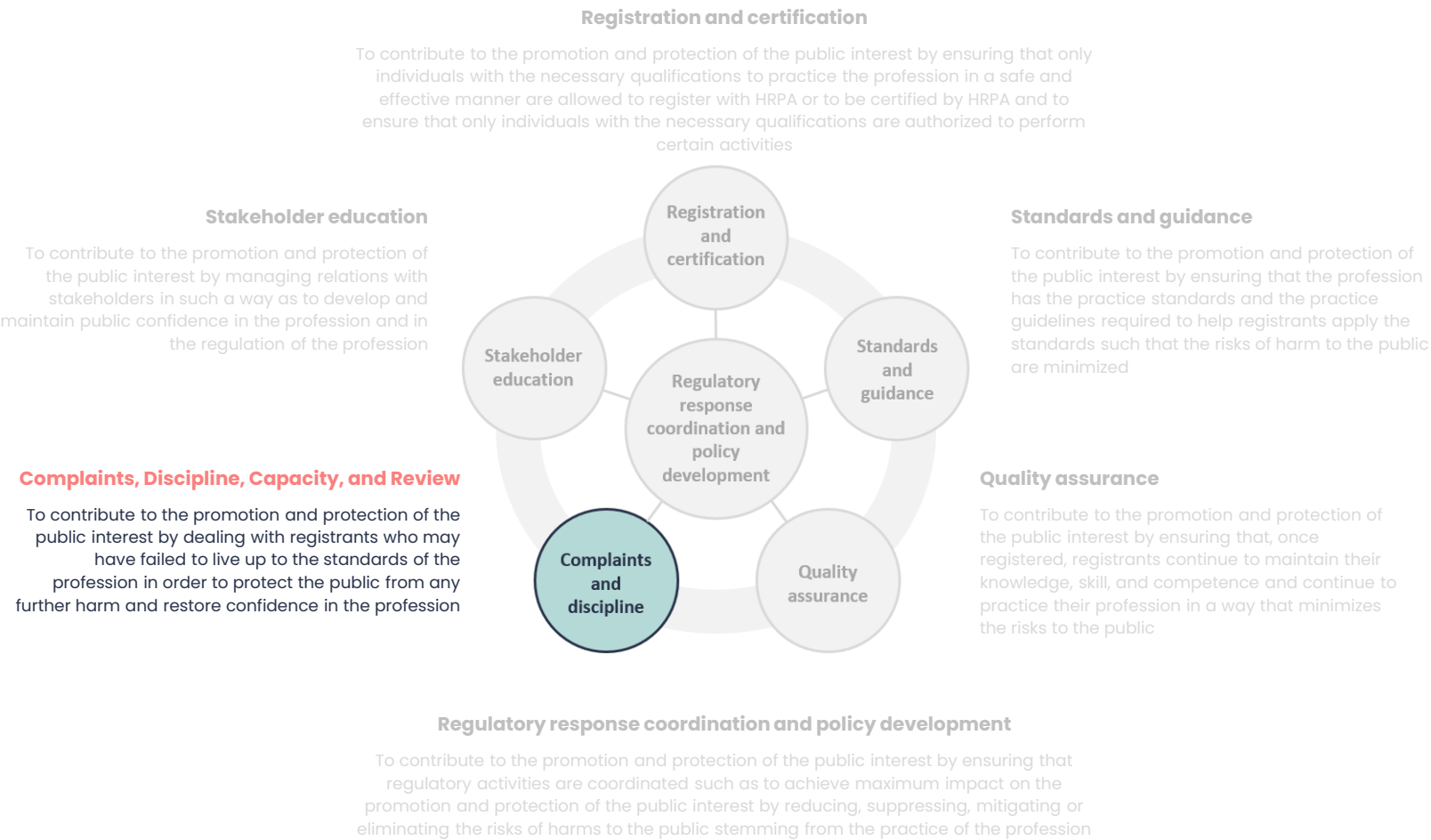
HRPA's regulatory framework



HRPA's regulatory framework



The five regulatory ‘levers’ and the coordinative function



Discipline

To promote and protect the public interest by:

- Stopping harm from continuing
- Acting as a deterrent to those who might consider breaking the rules
- Restoring public confidence in the profession and in the regulation of the profession
- Educating registrants as to what is and what is not appropriate professional conduct and practice

Discipline—what it is and what it is not

- The discipline process is about having an independent, impartial, and fair adjudication, based on the evidence presented, as to whether a registrant has committed misconduct, and, if found guilty, setting out the consequences of the misconduct
- Discipline is not about adjudicating a dispute between a complainant and a registrant
- Discipline cannot provide for reparations or compensation for the complainant

HRPA is not there to protect its registrants

- HRPAs exist to promote and protect the public interest
- When there is evidence that a registrant may have fallen short of the standards of the profession, HRPAs must act to promote and protect the public interest
- The discipline framework is designed to ensure natural justice and procedural fairness

How many discipline hearings does HRPA conduct per year?

- All HRPA registrants are subject to discipline—designated and non-designated
- The discipline process starts with a complaint (although complaints do not necessarily lead to discipline)
- Typically, HRPA has ten to twelve complaints per year and one referral to discipline per year
- The complaint rate at HRPA is the lowest or second lowest of the thirty-eight professional regulatory bodies in Ontario

Discipline attracts the attention of the public

- Although it could be argued *proactive regulation* is more impactful than *reactive regulation*, when professional regulatory bodies get into trouble in the media it is often in regard to discipline matters:
 - When the regulatory body is seen to dismiss too many complaints without making a referral to discipline
 - When 'deals are cut' that appear to let the registrant off easy
 - When the penalties seem disproportionately light

The Discipline Committee is a tribunal

- Tribunals in Canada are established by federal or provincial legislation, and generally refer to any persons or institution with authority to judge, adjudicate on, or determine claims or disputes.
- HRPAs Discipline Committee is an administrative tribunal (just like the Ontario Human Rights Tribunal)
- Tribunals are like courts, but the rules are a bit different
- Tribunals conduct hearings
- In conducting hearings, tribunals are subject to the *Statutory Powers Procedure Act, 1990 (SPPA)* which defines minimum standards of procedural fairness

The Discipline Committee is a statutory committee

- The Discipline Committee, alongside the Complaints Committee, the Review Committee, the Capacity Committees, and the Appeal Committee, are established pursuant to section 12 (1) of the *Registered Human Resources Professionals Act, 2013 (Act)*.
- The powers and duties of the Discipline Committee are set out in section 34 of the Act.

Independence of the Discipline Committee

- The Discipline Committee is supported administratively by HRPA but is independent of HRPA in its decision making
- HRPA and the Discipline Committee are separate
- The Discipline Committee derives its authority directly from the *Act*
- Neither the HRPA Board of Directors, the Registrar, the CEO, or HRPA staff can interfere with or influence the decisions of the Discipline Committee (this is the case with all statutory committees)
- The Discipline Committee has no allegiance to any party, it is guided by impartiality and procedural fairness to all parties

A formal proceeding

- The most frequent reaction of those who participate in or witness a discipline proceeding is just how **formal** the process is
- Discipline hearings are very court-like
- The hearing room is set up very much like a courtroom
- There is a court reporter
- The Association is represented by Regulatory Counsel, the Discipline Panel has its own counsel called Independent Legal Counsel (ILC), and sometimes the defendant will also have legal counsel

Roles

- The Discipline Committee is the impartial and unbiased ‘judge’ that will make a determination based on the evidence put before it
- The Association is the prosecution—it presents evidence that suggests that a registrant has committed misconduct. The onus is always on the Association to prove the allegations.
- The registrant is the “defendant”—the registrant may decide to present evidence in response.
- The complainant is not a party to the proceeding but a witness who may provide evidence as to the alleged misconduct

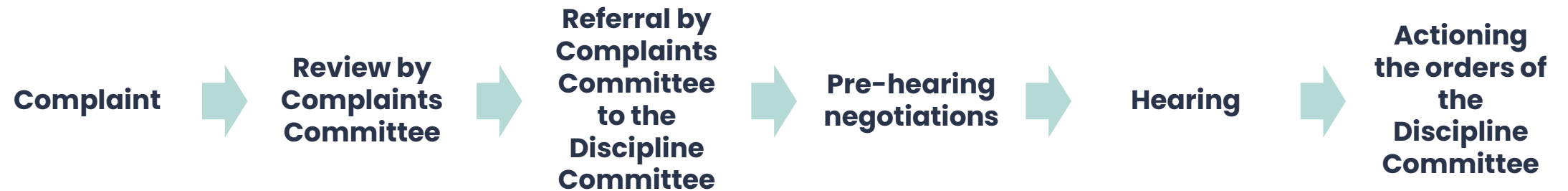
Committee and panels

- The Discipline Committee is authorized by by-law to sit in panels for the purposes of exercising its powers and performing its duties under the Act, and for any other purpose
- The panels have all the authority of the Committee--A decision of a panel of a committee constitutes a decision of the committee
- The term 'Discipline Committee' usually refers to 'a panel of the Discipline Committee'

‘The Registrar is hopelessly conflicted’

- Isn't there a conflict of interest in that the Association supports the Discipline Committee but also appears as a party before the Discipline Committee?
- No. Although the Association will pay for the ILC and expenses of the panel, this is merely a function of the statutory framework. The Association is not given any preference or advantage by the Panel.
- The Office of the Registrar has strict protocols as to how information is managed on a need to know basis
- OOTR staff sign off on a special Code of Conduct that applies to such matters

The discipline process from end to end



The Complaints Committee

- The Complaints Committee is part of the Discipline process
- Only the Complaints Committee can make a referral to the Discipline Committee
- The Complaints Committee does not make a determination as to the guilt or innocence of the registrant but makes a decision as to whether a referral should be made to discipline (it can make other decisions as well)

The Complaints Process

- The registrant is provided with a copy of the complaint as well as any additional information or supporting documentation and provided with an opportunity to respond to the allegations of professional misconduct.
- The complainant receive a copy of the registrant's response and has the opportunity to address any additional issues or new information.
- The registrant then has one last opportunity to comment before the complaint is provided to the Complaints Committee for review.

Options of the Complaints Committee

- The Complaints Committee must investigate all credible complaints—the extent of the investigation required is determined by the Complaints Committee
- Upon investigation, the Complaints Committee may:
 1. Dismiss the Complaint.
 2. Order a Caution or Advice.
 3. Negotiate a settlement agreement and refer the agreement to the Discipline Committee for approval.
 4. Refer the Complaint to the Discipline Committee.

Frivolous and vexatious complaints

- The Complaints Committee can dismiss a complaint as frivolous and vexatious without investigation but first it must provide the complainant and the registrant the opportunity to argue that the complaint is not frivolous and vexatious

Referral to discipline

- A referral to discipline is made when three conditions are met:
 - a. The allegations are serious enough such that, if they were to be true they would warrant a referral to discipline
 - b. That there is sufficient evidence to proceed to discipline
 - c. That a referral to discipline is in the public interest
- In addition, HRPA requires a prosecutorial viability assessment before a referral is made to discipline

Notice of Hearing

The Notice of Hearing is an important document:

- It lays out the allegations that the registrant must answer to (no new allegations can be introduced at the hearing stage)
- The Notice of Hearing is a formal notice to the registrant that a discipline hearing will occur
- Once the registrant has been served the Notice of Hearing, it becomes a public document published on the HRPAs website

Pre-hearing negotiations

- Hearings are expensive
- Hearings can be contested or uncontested
- Contested hearings are when the registrant intends to contest the allegations and a full hearing will be required to air the evidence from both sides with an opportunity to cross-examine
- An uncontested hearing is when a settlement is negotiated between the Association and the registrant; the settlement ('joint submission') will be put before the Discipline panel
- It is in the interest of the Association and the registrant to arrive of a settlement if possible

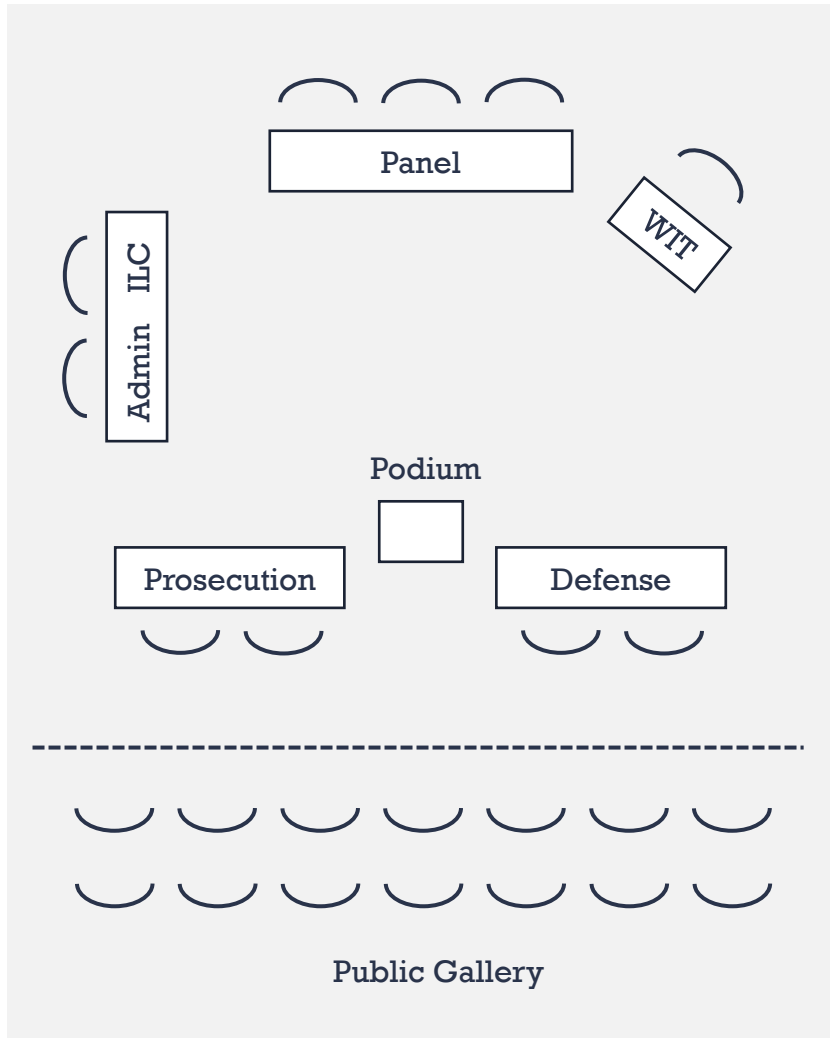
Discipline hearings are public

An oral hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public.

A contested hearing

- The process is similar to court
- Opening statements are made (defense can wait until Association finishes their witnesses)
- The prosecution introduces evidence and/or witnesses. The registrant, or counsel for the registrant, can cross-examine. If necessary, the prosecution can re-examine the witness.
- The defense gets its turn to introduce evidence and/or witnesses. The Association gets an opportunity to cross-examine the witnesses introduced by the defense. If necessary, the defense can re-examine the witness.
- If necessary, the Association can call reply witnesses. The defence can then cross-examine them and the Association can re-examine if necessary.
- Both sides summarize their arguments in closing submissions, first the prosecution and then the defense



Typical arrangement for a hearing room

The kinds of allegations that have been prosecuted at HRPA

- Defrauding one's employer in the amount of \$78,000
- Reselling HRPA's exam prep materials
- Misrepresentation upon renewal
- Failure to respond to the Association's request for information in the context of a proceeding
- '*Conduct unbecoming*'—Conduct that brings the profession into disrepute

What the Discipline Committee may do

1. If at least two-thirds of the committee panel hearing the matter agree, revoke the member's, student's or the firm's registration.
2. Suspend the member's, student's or firm's registration for a period of time.
3. Direct that a member or student whose registration is suspended refrain from using any designation, term, title, initials or description implying that they are a registrant of the Association or is authorized to use the designation, term, title, initials or description during the period of suspension.
4. Determine the timing and manner of the return of a certificate of registration to the Association by an individual whose registration is suspended or revoked.
5. Impose restrictions or conditions on the right of the member, student or firm to practise in the field of human resources.
6. Issue a reprimand and, if the committee considers it appropriate, direct that the reprimand be recorded in the register.

What the Discipline Committee may do

7. Direct the member, student or firm to take any specified rehabilitative measure, including requiring successful completion of specified professional development courses or to seek specified counselling or treatment.
8. Direct the member, student or firm to pay a fine and specify the timing and manner of payment.
9. Direct that the imposition of the outlined measures be postponed for a specified period or on specified terms, including the successful completion of specified courses of study.
10. Direct that a failure to comply with the committee's order shall result in the revocation of the member's, student's or firm's registration.
11. Make any other order that the committee considers appropriate in the circumstances.

Fines and costs

- The Discipline Committee has the authority to impose fines and award costs
- The discipline committee may award the costs of a proceeding before it under section 34 against the member who or firm that is the subject of the proceeding, in accordance with its procedural rules.
- Costs may only be ordered against a Party where the conduct of the Party has been unreasonable, frivolous or vexatious or the Party has acted in bad faith.
- The costs ordered by the Discipline Committee may include costs incurred by the Association arising from the investigation, prosecution, and hearing of the matter that is the subject of the proceeding and any other costs specified by the by-laws.
- Typically the Association will only ask for a fraction of the costs incurred (i.e., 50%)
- Even at 50% costs can quickly mount into the 1000's of dollars

Appeals

- Decisions of the Discipline Committee may be appealed by either the complainant or the registrant to HRPAs Appeal Committee
- Decisions of the Appeal Committee – including decisions regarding an appeal of a discipline decision – may be reviewed by Divisional Court
- And from there to higher courts

Impact of COVID-19

- Like many other endeavors, the conduct of hearings has gone virtual using Zoom or similar platforms
- And, like many other endeavors, it was found that disciplinary hearings could be adapted to work in the virtual environment

Questions