



Human Resources
Professionals
Association

Introduction to regulatory decision-making and adjudication

August 22, 2016

Agenda

- What is regulatory decision-making and adjudication?
- The fundamental decision-making sequence
- Our adjudicative committees and the decisions they make
- Basic principles
- Roles in adjudicative processes
- Appeals
- Role of the HRP Board



Housekeeping

- Webinar will be recorded and posted online
- CPD code will be given at end of webinar
- Will post answers to questions that we could not answer in the webinar



OOTR webinars

Monday, July 18, 2016	Introducing the Employment Law exams for the CHRP and the CHRL
Monday, July 25, 2016	Designation update
Monday, August 8, 2016	The HR curriculum: Today and tomorrow
Monday, August 15, 2016	Professional regulation at HRPA
Monday August 22, 2016	Introduction to regulatory decision-making and adjudication



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

Regulatory decision-making and adjudication activity 2015



Number of applications referred to Experience Assessment Committee	564
Number of courses reviewed by the Academic Standards Committee	235
Number of Continuing Professional Development logs audited by CPD Committee	89
Number of referrals to CHRE Review Committee	59
Referrals to Registration Committee	22
Number of referrals to Appeal Committee	12
Number of complaints referred to Complaints Committee	5
Number of referrals to Discipline Committee	1
Number of referrals to Capacity Committee	1

What is 'regulatory decision-making and adjudication?'



The process of making a decision
about an individual case
which requires the application of some rule
(a.k.a. guideline, framework, policy)
to a set of facts and
which requires the application of discretion

What is regulatory decision-making and adjudication?



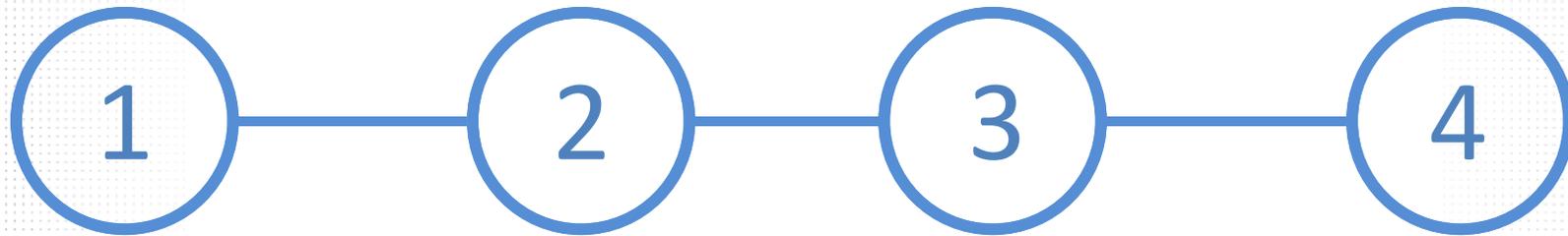
- The term 'adjudication' is used when the process is an adversarial one (usually involving a hearing of some kind)
- The term 'regulatory decision-making' is used when the process is not an adversarial one
- Decisions that are cut-and-dried are usually made by the Registrar (or Office of the Registrar staff)



Different decisions and different contexts

- Deciding whether a candidate meets a certain standard (criteria) based on information contained in an application (no investigative power)
- Making decisions after having conducted an investigation (committee responsible for fact-finding)
- Making decisions pursuant to a hearing where evidence is presented by opposing sides (adversarial context)
- Making decisions about the adequacy of the process followed to make a decision and the reasonableness of the decision (review)

The fundamental decision-making sequence



Information gathering

Deliberation

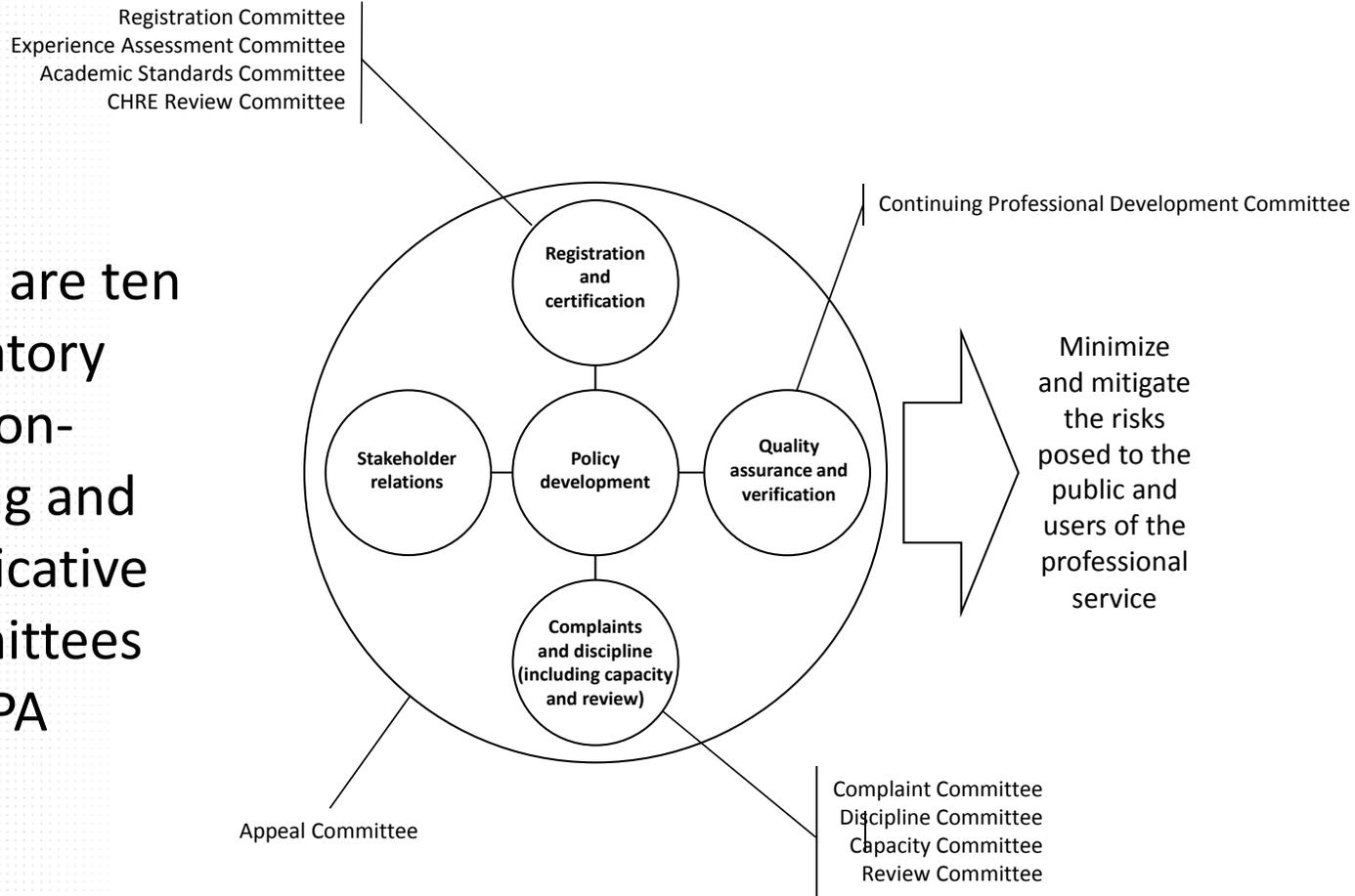
Decision

Decision writing
(Reasons)



HRPA Adjudicative Committees

There are ten regulatory decision-making and adjudicative committees at HRP



Registration Committee

- The Registration Committee makes decisions about whether an applicant should be registered (granted membership or allowed to register as a student) when there is evidence that puts the candidate's good character in question
- The Registration Committee has the option to impose terms and conditions on a candidate's registration.





Experience Assessment Committee

- The Experience Assessment Committee makes decisions as to whether a candidate's experience meets the established standard in regards to length and level based on the information provided in an application form
- In the context of both the Validation of Experience and the Alternate Route
- The Experience Assessment Committee may assign partial credit



Continuing Professional Development Committee

- The Continuing Professional Development Committee makes decisions as to whether the continuing professional development portfolio ('the CPD log') proffered by a designated member meets the established standard for what are acceptable CPD activities.
- The Continuing Professional Development Committee reviews CPD activities when candidates apply for reinstatement of a designation
- The Continuing Professional Development Committee oversees the CPD log audit process.



Academic Standards Committee

- The Academic Standards Committee makes decisions as to whether courses meet the established standard as part of the coursework requirement.
- The Academic Standards Committee makes such decisions at the institutional level (placing courses on the list of approved courses) and at the individual level (determining in individual cases whether courses not on the approved list meet the established standard)
- Decisions are made based on information provided by the institution or the applicant.



Complaints Committee

- The Complaints Committee makes decisions as to the most appropriate course of action to take in handling a complaint (but does not decide whether a member is guilty of misconduct)
- The Complaints Committee is required to investigate complaints (unless deemed frivolous, vexatious, moot, or made in bad faith) and has the authority to appoint investigators
- The Complaints Committee may:
 - Dismiss a complaint without any further action, or
 - make a referral to the Discipline Committee or the Capacity Committee or
 - issue an oral or written caution or
 - prescribe a Specified Continuing Education and Remediation Program (SCERP)



Discipline Committee

- The Discipline Committee makes decisions pursuant to a hearing
- At this hearing, a panel of the Discipline Committee hears evidence in relation to allegations of misconduct or incompetence
- The Discipline Committee makes two important decisions:
 - Is the member guilty of misconduct or incompetence?
 - If so, what is the most appropriate sanction?

Capacity Committee

- The Capacity Committee makes decisions when it is believed the misconduct may have been the result of incapacity
- The approach of the Capacity Committee is rehabilitative
- The Capacity Committee may conduct investigations and may require assessments from a physician or a psychologist





Review Committee

- The Review Committee makes decisions when a member or firm has become bankrupt or experienced an insolvency event
- The Review Committee must consider whether there is risk to the public stemming from the bankruptcy or insolvency event
- The Review Committee may appoint investigators
- The Review Committee may conduct hearings



Appeal Committee

- The appeal committee makes decisions as to whether errors were made by a committee or the Registrar
- The Appeal Committee has all the powers of the original committee but will usually not 'retry the case'
- The standard of review is reasonableness

Regulatory decision-making and adjudicative committees

- Statutory vs. non-statutory
- Authorized to conduct hearings?
- Subject to the Statutory Powers Procedure Act?
- Authorized to sit in panels?
- Authorized to conduct investigations (appoint investigators)?
- Authorized to award costs?

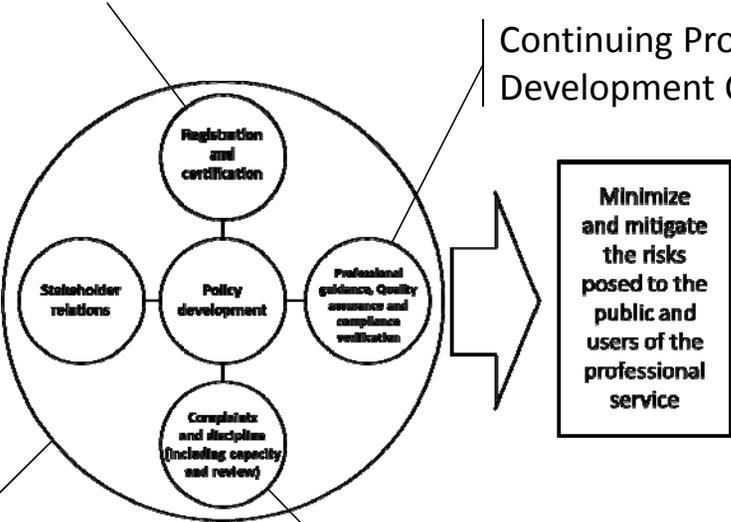


HRPA's Regulatory Committees

Registration Committee
Experience Assessment Committee
Academic Standards Committee
CHRE Review Committee

Continuing Professional Development Committee

Statutory committees in red



Appeal Committee

Complaint Committee
Discipline Committee
Capacity Committee
Review Committee





Statutory committees

- As required by the Act, HRPAs must establish the following committees:
 - Complaints Committee
 - Discipline Committee
 - Capacity Committee
 - Review Committee
 - Appeal Committee
- Although these committees are established by HRPAs, they are independent of HRPAs and derive their authority from the *Act*
- These statutory committees do not 'report to' the Board in any conventional sense



Non-statutory committees

- The other non-statutory committees deal with various aspects of registration and certification
 - Registration Committee
 - Experience Assessment Committee
 - Academic Standards Committee
 - CHRE Review Committee
 - Continuing Professional Development Committee
- These committees derive their authority from the authority of the Board to set standards of qualification



Authorized to conduct hearings

- Proceedings where evidence is heard
- Committees which are authorized to conduct hearings:
 - Discipline
 - Capacity
 - Review
 - Appeal
- Appeal is only required to hold a hearing when the original decision was made pursuant to a hearing



Subject to the SPPA?

- When a hearing is required by law, such hearings are subject to the *Statutory Powers Procedure Act, 1990*
- The SPPA sets out minimum standards of procedural fairness for proceedings involving hearings
- The SPPA allows different kinds of hearings: written hearings, electronic hearings, and oral hearings

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 a written hearing, members of the public are entitled to reasonable access to the documents submitted unless the tribunal is of the opinion that one of the conditions above apply
- An electronic hearing shall be open to the public unless the tribunal is of the opinion that it is not practical to hold the hearing in a manner that is open to the public or that one of the conditions above apply

Authorized to sit in panels

- All decision-making and adjudicative committees at HRPAs are authorized to sit in panels
- The decision of the panel is the decision of the committee



Authorized to conduct investigations (appoint investigators)?



- 49. (1) The complaints committee may appoint investigators for the purposes of investigating allegations of professional misconduct
- 49. (2) The Registrar may appoint investigators for the purposes of investigating matters relating to notices of bankruptcy or insolvency event (when requested to do so by the Review Committee)
- 49. (3) The Association may appoint investigators for the purposes investigating information suggesting that a member is incapacitated

HRPA Regulatory decision-making and adjudicative committees



	Statutory	May hold hearings	Subject to SPPA	Authorized to sit in panels	May appoint investigators	May award costs
Registration Committee	No	No	No	Yes	No	No
Experience Assessment Committee	No	No	No	Yes	No	No
Continuing Professional Development Committee	No	No	No	Yes	No	No
Academic Standards Committee	No	No	No	Yes	No	No
CHRE Review Committee	No	No	No	Yes	No	No
Complaints Committee	Yes	No	No	Yes	Yes	No
Discipline Committee	Yes	Yes	Yes	Yes	No	Yes
Capacity Committee	Yes	Yes	Yes	Yes	Yes	No
Review Committee	Yes	Yes	Yes	Yes	Yes	No
Appeals Committee	Yes	Yes	Yes	Yes	No	Yes

Principles of regulatory decision-making and adjudication

- Respect for established process and procedures
- Impartiality
- Fairness
- Independence



Whose side are regulatory decision-makers and adjudicators on?



- Adjudicators are not on anybody's side
- Adjudicators are not on the side of the member, they are not on the side of the complainant, nor are they on the side of the Association
- Adjudicators are on the side of fairness and impartiality
- Fairness to the member against which allegations have been made and fairness to the complainant both are equally important

Whose side is HRPAs on?



- If HRPAs showed a bias in favour of its members in any of its regulatory activities, the public would have no confidence in HRPAs as a professional regulator--this would nullify any benefit of having a professional regulatory body
- In adversarial proceedings, HRPAs will be in opposition to the member (HRPA will be prosecutor in discipline proceeding and the respondent in appeal proceedings)

Roles

- Committee Chair (volunteer)
- Panel Chair (volunteer)
- Panel member (volunteer)
- Administrative support (staff)
- Regulatory counsel
- Independent Legal Counsel (ILC)
- Role of the Board





Staff vs. Volunteer

- The whole idea behind self-regulation is that decisions about registrants and applicants for registration are made by members of the profession (volunteers)
- When a decision requires the application of judgment—adjudication and determinations—such decisions are made by committees of volunteers
- When decisions are more administrative in nature, the authority to make the decision is often delegated to the Registrar
- Staff provide administrative support for committees



Staff assigned to support a committee

- Understands the rules of procedure that apply to the specific committee
- Records minutes of business meetings
- Maintains records for the committee
- Makes arrangements for rooms and other requirements
- Manages correspondence to and from the Committee and Panels
- Working with panel chairs, schedules committee meetings, hearings, and pre-hearing conferences
- Prepares case files and forwards to panel members
- Reviews panel decisions and makes editorial suggestions (not on the substance of the decision and reasons but on clarity, completeness, and style)
- Ensures that committee roster and email distribution list is up to date

Staff and committees

- When staff support committees they are bound by confidentiality
- Staff who support committees will not share information with the Registrar or Associate Registrar until decisions are released





Committee Chair

- Manages the work of the committee
- Assigns committee members to specific cases and either sits as or appoints a panel chair
- Promotes improvements to the operation of the committee
- Promotes a positive, team-oriented atmosphere among staff and members
- Ensures effective assessments of the committee and its members are conducted
- Promotes appropriate development opportunities to improve committee effectiveness.
- Ensures members abide by the HRPA Board-approved Terms of Reference
- Maintains good communication and a positive working relationship
- The Committee Chair is responsible for member appointments.
- Oversees, as need be, the recruitment of new members
- Make decisions as to whether committee members are in a conflict of interest

Panel Chair

- Ensures that the panel carries out its work without undue delay.
- Ensures that the proceedings unfold according to established procedures
- Seeks legal or other advice as required.
- Makes a decision when a member of a panel declares a conflict of interest
- Is responsible for writing the decision of the panel (a task which may be delegated to another member of the panel)
- Is responsible for bringing to the attention of the Committee Chair any matters that would be of significance to the Committee as a whole
- Facilitates the full participation of all parties, representatives and members to ensure fair treatment and just outcome
- When there is a hearing, clearly describes the hearing procedure and the issues to be decided
- Ensures that the panel remains within the jurisdiction of the committee
- Understands the role of staff and does not ask or direct staff to carry out activities that would be inappropriate for staff to do
- Writes the panel decisions and seeks input from panel members prior to finalizing decision



Panel member

- Fully participates in the work of the panel
- Makes himself or herself available to meet and conduct the work required
- Reads all documents, submissions, and reports submitted to the panel
- Is properly prepared for each case
- Recognizes and discloses any potential conflict of interest
- Conducts himself or herself in a manner that establishes and maintains the independence and authority of the committee
- Complies with the *Code of Conduct for Members of Regulatory Committees*
- Maintains respectful and effective working relations with staff and colleagues
- Asks clear, concise, relevant and understandable questions
- Identifies and uses only relevant facts and expert evidence from written and oral sources
- Applies requirements and standards as they are written





Panel members are equal

- In making adjudicative decisions, all panel members have an equal voice
- The majority of panel members (i.e., two out of three) are required for a decision
- When a member of a panel is no longer available, a panel can make a decision when the two remaining panel members are in agreement

Regulatory counsel

- Provides legal advice to the Association in matters of professional regulation
- Assists with the correct interpretation of the *Act* and By-laws
- Assist the Association with prosecution at discipline



Independent Legal Counsel (ILC)

- Provides advice to committees on procedural matters
- Helps committees understand their authorities and their options
- When there is a hearing, ILC will usually be present



Role of the HRPB Board



- The Board is accountable to the Legislature for the proper administration of the Act
- However, the Board cannot interfere with the decisions of adjudicative committees
- The Board has the responsibility to ensure that the adjudicative committees have all the 'conditions for success'
- Oversight

Board oversight



- Ensure that committees are duly established
- Clear and effective policies, guidelines, and frameworks for committee decision making
- Support for committee recruitment
- Support for committee member orientation and training
- Ensure that all members of adjudicative committees sign off on Code of Conduct
- Ensure that necessary by-laws are in place to support the work of adjudicative committees
- Provide for administrative support for adjudicative committees
- Provide for access to Independent Legal Counsel (ILC)
- Monitor the performance of adjudicative committees (procedural fairness, backlogs, issues)
- From time to time commission external on some aspect of the work of adjudicative committees

Appeals



- There are two levels of appeals available to individuals who are the subject of regulatory decisions at HRPA: internal appeals and external appeals
- Appeals focus on process
- The main evidence for the appeal will be the decision itself; that is why decision writing is key
- The standard of review is reasonableness



The concept of deference

- The purpose of appeals is not to ‘retry the case’
- Unless the appeals panel finds that something was wrong with the process of the original decision, it should not re-make the decision (even if members of the appeal panel feel that they would have made a different decision given the same set of facts)



Divisional Court

- Just about any decision of the HRPA can be appealed to Divisional Court
- The Divisional Court is a branch of the Superior Court of Justice. Every judge of the Superior Court of Justice is also a judge of the Divisional Court.
- The Divisional Court is the principal forum for judicial review of government action in the province of Ontario.
- The Divisional Court also hears statutory appeals from administrative tribunals in the province.

Committee meetings



Business meetings

- All members invited
- Discuss challenging and/or interesting issues
- Establish or refine procedures
- Make recommendations to the Registrar as to where policies may need to be developed or clarified
- Identify issues that require further research
- Skill development and training

Decision-making and adjudicative proceedings

- Committee members work in panels
- Focus is on making fair and impartial decision
- Respect for process and procedure is of utmost importance
- Importance of making strong defensible decisions
- Efficiency, yes, but not at the expense of procedural fairness

The HRPAs Code of Conduct for Members of Regulatory Decision-making and Adjudicative Committees



- HRPAs has elaborated a Code of Conduct for Members of Adjudicative Committees
- Provides guidance on numerous matters especially conflict of interest and avoiding any apprehension of bias
- All members of HRPAs adjudicative committees must sign off on HRPAs Code of Conduct for Members of Adjudicative Committees



Duty of confidentiality

62. (1) Every person engaged in the administration of this Act and the by-laws shall preserve secrecy respecting information or material that comes to his or her knowledge or possession in the course of his or her duties under this Act, and shall not disclose any such information or material to any person except,
- (a) to his or her counsel;
 - (b) with the consent of the person to whom the information or material relates;
 - (c) to the extent that the information or material is available to the public;
 - (d) as may be required in connection with the administration of this Act and the by-laws or with any proceeding under this Act; or
 - (e) as may otherwise be required by law.

Non-compellability in civil proceeding



- Members of adjudicative committees are not compellable witnesses in any civil proceeding, other than a proceeding under this Act or a judicial review relating to a proceeding under this Act, respecting any information or material obtained by them while acting within the scope of their duties under this Act



Documents not admissible

From our *Act*:

- **65.** No record of a proceeding under this Act and no document or thing prepared for or statement given at such a proceeding and no decision or order made in such a proceeding is admissible in any civil proceeding, other than a proceeding under this Act or a judicial review relating to a proceeding under this Act. 2013, c. 6, s. 65.



Protection from liability

From our *Act*:

- **66.** No action or other proceeding may be instituted against the Association, the Board or any committee, any member or former member of the Association, of the Board or of a committee, or any officer, employee or agent of the Association or of the Board for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty of the Association under this Act or for any alleged neglect or default in the exercise or performance in good faith of such power or duty. 2013, c. 6, s. 66.

Questions

