



Human Resources  
Professionals  
Association

# The Appeals Process: How does it work

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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

- Objects (goals of HRPA)
- Internal appeals process
- Appeal Committee
- Panel and review of roles
- Who may appeal
- What decisions may be appealed
- Parties
- Grounds for appeal
- Requesting an appeal
- Difference between hearings and reviews
- Hearing and reviews
- Hearings: Order of Proceedings
- Evidence and expert evidence
- Potential Outcomes
- Finality of Decisions
- Are appeals public?



## 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;

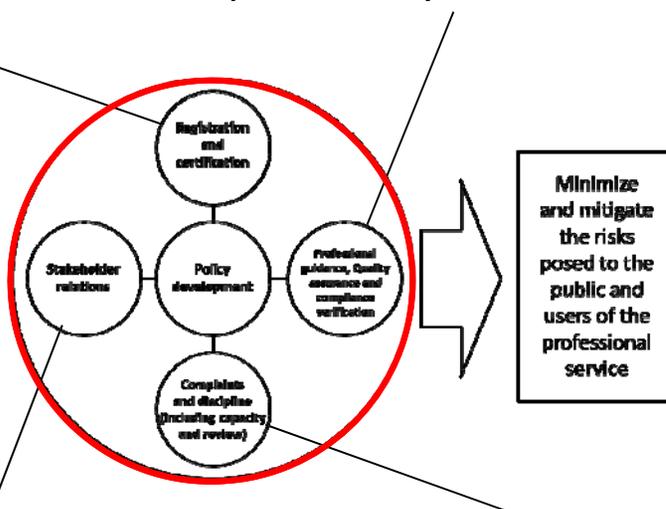


Establishing, maintaining, developing and enforcing standards of qualification

### 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



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



## Escalation

- In many organizations, when one is not happy with a decision, one escalates the matter up the management ladder
- That is not how it works at HRPA
- HRPA is a regulatory body--regulatory decisions are not like managerial decisions
- If one believes that a committee or the Registrar has made a wrong decision, the recourse is not to bump the matter up to the next level of management but to request and appeal



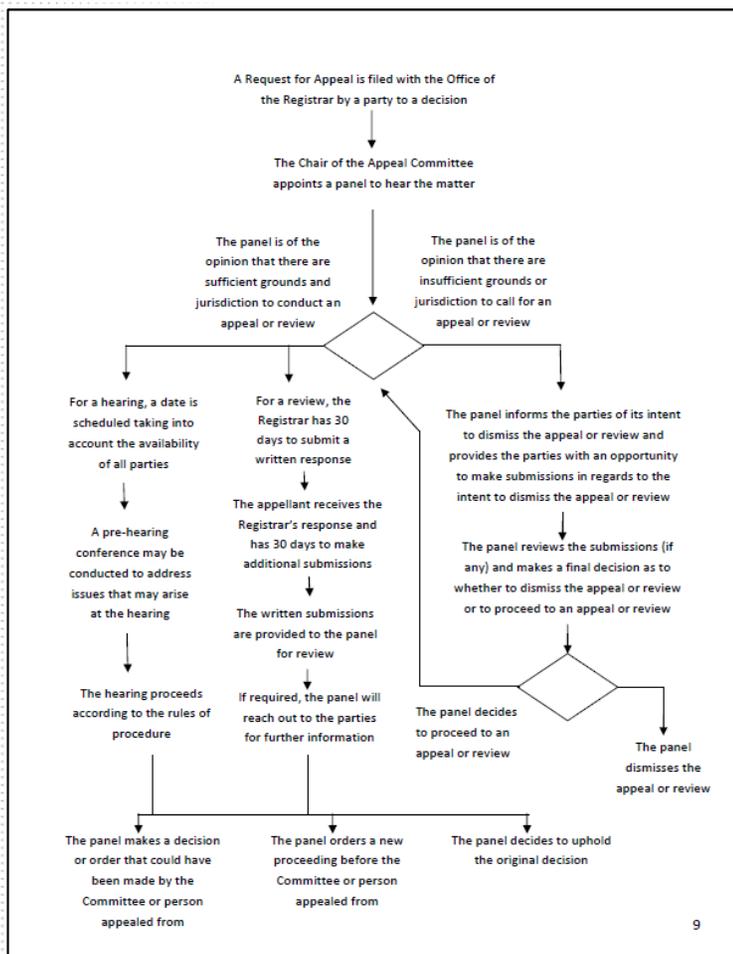
## Decision of the Registrar

- A decision of the Registrar includes decisions by Office of the Registrar (OOTR) staff
- Or, putting it another way, decisions of any OOTR staff are decisions of the Registrar



## Internal Appeals Process

- The purpose of HRPA's internal appeal process is to provide for the opportunity of a re-examination of decisions made by the HRPA's regulatory committees or by the Registrar by an independent and impartial panel
  - There are 2 possible levels of re-examination for regulatory decisions made at HRPA. The first level of review is an internal appeal to the HRPA Appeal Committee. The 2<sup>nd</sup> level is an external application for judicial review to the Divisional Court
  - Important aspect of HRPA's regulatory framework. HRPA is committed to full, fair, transparent and effective regulatory processes
- \*\*\*The purpose of an appeal is not to retry or re-decide the case. Individuals wishing to get a 2<sup>nd</sup> opinion should submit a new application or request for consideration.**



This flowchart of the appeal process at HRP can be found in a document titled *About Internal Appeals at HRP published on the HRP website*



## A statutory committee

- To ensure fairness in its regulatory practices, HRP A established an Appeal Committee in accordance with the *Registered Human Resources Professionals Act, 2013* and section 21 of the By-laws
- The Appeal Committee is a *statutory* committee of HRP A
- This means that the mandate and authority of the Appeal Committee comes directly from the Act and not from the Board of Directors
- The Appeal Committee is independent of the Board of Directors and of HRP A staff
- The HRP A board has not authority to review or reverse decisions of the Appeal Committee except in extraordinary circumstances



## Appeal Committee

- Although the Appeal Committee has all the decision-making authority of the original decision-maker, the Appeal Committee's main concern is whether something went wrong with the original decision
  - Did the original decision-maker consider all the facts presented to them?
  - Did the original decision-maker follow the established rules of procedure?
  - Did the original decision-maker apply the correct rule correctly?



## Who sits on the Appeal Committee?

- HRPAs designated members (CHRP/CHRL/CHRE)
- HRPAs non-designated members
- Public Representatives
- Lawyers
- No HRPAs member may sit on the Appeal Committee who is a member of the following committees: Experience Assessment Committee, the Continuing Professional Development Committee, the Complaints Committee, the Academic Standards Committee, the Capacity Committee, the Board Nominating Committee, the Review Committee or the CHRE Committee



## Panels

- Sits in panels of three (panels have all the authority of the full committee)
- The Chair of the Committee will strike a panel to review an appeal
- Panel members are appointed by the Chair of the Appeal Committee from amongst the members of the Appeal Committee
- A panel must consist of
  - A public rep
  - At least one designated member
  - Third member of the panel can be a designated or non designated member or can be a lawyer



## Review of roles: Panel

- Ensure both sides can present their case
- Review or listen carefully to the evidence
  - No pre-judgement allowed
- Review or listen carefully when all parties make their submissions either verbally or via written submissions
- If applicable listen to all submissions by counsel
- Assess and observe the credibility of evidence and witnesses



## Review of roles: Association staff

- Assist the Committee Chair in striking a panel
- Consult with Independent Legal Counsel (ILC) on behalf of the committee if required
- Make all pre-review or pre-hearing arrangements on behalf of the panel
- Role in one word – facilitate
- Staff do not participate in any of the decision-making of the Committee

## Review of roles – Independent Legal Counsel



- Independent Legal Counsel (ILC)
  - Provide accurate and impartial legal advice, as needed, to the panel
  - Advice on jurisdiction of the committee to hear an appeal
- Role is purely advisory – panel is the decision-maker
- Advice provided to the panel is “on the record”



## Who may appeal?

- The Appeal Committee will respond to written request for an appeal from any party in the original proceedings
- Individuals who were not a party to the original proceedings cannot appeal decisions of the regulatory committee or of the Registrar



## What decisions may be appealed?

- Decisions of the Registrar
- Decisions of the following Committees:
  - Experience Assessment Committee
  - The CHRE Review Committee
  - Academic Standards Committee
  - Discipline Committee
  - Review Committee
  - Complaints and Investigation Committee
  - Registration Committee
  - Continuing Professional Development Committee
- Comprehensive list of appealable decisions can be found under section 21.02 of the By-laws

## Parties

- The parties to an appeal are the person requesting the appeal and the HRP
- The Registrar or a delegate represents the Association at the review or the hearing





## Requesting an appeal

- Must complete a “Request for An Appeal form” which sets forth the grounds for an appeal
- The form must be signed and dated
- The form must be filed within 30 calendar days from the date of notification of the decision being appealed
- No fees
- Upon receipt the Office of the Registrar sends the appellant a confirmation of receipt
- Matter is referred to the Chair of the Appeal Committee
- The Chair appoints a panel



## Grounds for an Appeal

- There must be a legitimate reason or 'grounds' to request an appeal; simply disagreeing with a decision does not constitute grounds for an appeal
- An individual may challenge a regulatory decision for a variety of reasons, which are referred to as the “grounds for an appeal”.
- The By-laws establish that, unless otherwise stated, the grounds for an appeal are limited to:
  - Denial of nature justice
  - Registrar failing to consider the correct facts, or failing to apply the correct rule or policy in making their decision



## 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



## Grounds for an appeal

- **Registrar failing to consider the correct facts, or failing to apply the correct rule or policy in making their decision**
  - The committee or registrar failed to consider relevant facts (e.g., information submitted for a Validation of Experience application was not considered by the panel making the original decision)
  - The committee applied a rule or policy incorrectly (e.g., the reasons included in the original decision make it clear that a rule was being applied that is not relevant to the decision being made)



## Insufficient grounds and jurisdiction

- A panel may be struck to review the request for an appeal to determine the merit to the request and if there are sufficient grounds to proceed
- Insufficient grounds or outside the jurisdiction of the appeal committee – notice of intent is sent to dismiss the appeal to the appellant
- Appellant is given 30 days to respond to the notice of intent to dismiss
- Panel will re-convene to consider any submissions and make a final decision to proceed or to dismiss

It is fairly unusual that a Request for an Appeal will be deemed to be without merit or to be outside the jurisdiction of the Committee

## What the appeals process is not

- To conduct a review and offer a 2<sup>nd</sup> opinion
- To re-try the case or re-trial of the original proceedings



# Difference between hearings and reviews



HRPA has 2 types of appeals:

- Hearings
- Reviews

**Hearings** - are only held when the decision or order being appealed was made pursuant to a hearing – this only applies to decisions of the Discipline, Capacity and Review Committee

**Reviews** – appeals of decisions made by any other committee (Experience Assessment, Academic Standards, Complaints and Investigation, Registration and CHRE Committee) or the Registrar shall be conducted via a review

The standard of a review for both hearings and reviews is reasonableness



## Who is involved in a review?

- Reviews are now based on written documentation only.
- Reviews are conducted by a panel of 3
- Once a Request for Appeal has been filed for a review, the Registrar has 30 calendar days to submit a written response
- The response is provided to the appellant, and the appellant has 30 calendar days to make any additional submissions in relation to the registrar`s response.
- Not permitted to raise any new grounds
- As part of their written submissions both parties must provide any supporting documentation they what the panel to consider
- Submissions are provided to the panel for review.



## Hearings

- Where a hearing is required it will be conducted in accordance with the *Statutory Powers Procedures Act, 1990* and the Appeal Committee Rules of Procedure.
- Hearings can be held in person, in writing or electronically
- Difference as defined by SPPA between a written hearing and a review is that the review is not considered public.
- Most hearings will either be in person or done electronically



## Hearings: Order of proceedings

For in person and electronic hearings the order of proceedings will be as follows,

1. Opening remarks by the panel chair
2. Brief opening statements by the Parties
3. Appellant`s case (the party seeking the change)
4. Respondent`s case (HRPA)
5. Final argument by the appellant and HRPA
6. Closing remarks by the panel chair



## Documents at hearing

- Must serve the document or documents to the other party as well as the panel at least 14 days before the hearing
- Neither party can bring documents to the hearing for consideration without previously having provided them to the other party.

Essential issue here is one of fairness

Parties not required to serve and file submissions in advance of hearing, unless the Appeal Committee orders otherwise

## Timing

- HRPAs strive to ensure that all appeals are handled in a timely manner.
- Keep in mind
  - Appeal Committees are volunteers
  - Hearings are scheduled based on availability and when it is feasible to do so
  - Notice is given to all parties, as to date, time and place



## Representation

- The appellant may be assisted by a personal advisor or representative during the review or at the hearing if he or she wishes
- This personal advisor or representative may be a lawyer or paralegal





## Evidence

Parties are typically not allowed to present new evidence that was not before the original decision – maker

Exceptions to submission of `fresh evidence`

If being submitted to advance an argument that there was a denial of natural justice

Rules

- a) Is it credible
- b) If admitted, it would have an important influence on the result
- c) If could not have been obtained by reasonable diligence at the time of the original decision



## Evidence

- Not all information is admissible as evidence and not all evidence is fact

The appeal committee will consider the following factors when making a decision to admit what is considered “new or fresh” evidence

- Is the evidence relevant?
- Is the evidence reliable?
- Is the evidence necessary?
- Would it be fair to admit it?



## Expert evidence

- Expert Evidence is admissible only when such evidence is relevant to an assumption or determination made by the original decision-maker
- Expert evidence that was not available to the original decision makers must meet the same admissibility standards as all fresh evidence
- Experts are individuals who have comprehensive knowledge or a particular area or matter due to their education, training, skill or experience
- Expert evidence can be given through testimony or a written report



## Rules of expert evidence

- One of the parties submits fresh evidence, the other party must be given sufficient time to review the expert evidence and seek out their own expert
- Introduction of expert evidence will lengthen the proceedings
- Parties must notify the Chair at least 10 days before the scheduled appeal or review, and as part of this notification must also inform the Chair as to the date it will be received. The date must be within 30 days of the notice.
- The other party has 30 days to obtain their own expert



## Potential outcomes

- The appeal committee may, unless otherwise stated in the Act or the By-laws
- Make any decision or order that could have been made by the original committee or registrar
- Order a new proceeding before a new panel of the original committee or registrar
- Dismiss the appeal



## Potential outcomes

The Appeal panel may not:

- Make any decision or order that would contravene the RHRPA 2013, any By-law of the Association or any approved policy of the Board
- Make a decision that is beyond the scope of authority of the original committee or the Registrar
- Order an individual to have passed the exam when the individual has not
- Waive non-exemptible requirements such as the degree
- Grant any designations



## Finality of decisions

- A decision or order of the panel takes effect 30 days after the decision is released, unless the panel orders otherwise or unless provided for differently in the By-laws
- In almost every case, a decision of the panel is final
- All Appeal Committee decisions may be subject to judicial review by Divisional Court



## Are appeal proceedings public?

- Reviews are not public, but hearings are
- In the case of hearings, the original decision was made using a hearing process which was public, it makes sense that an appeal of that decision would also be public
- Results of public proceedings such as hearings are made published in *Regulatory Affairs*—the OOTR's newsletter



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Questions?