



Human Resources
Professionals
Association

Investigations: A Conversation with Dean Benard

March 30, 2017

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Regulatory Process and
Special Projects
Specialist

Human Resources
Professional Association



Human Resources
Professionals
Association





Dean Benard



- Founder and CEO of Benard & Associates
- Over 20 years of investigation and mediation experience
- Expertise in both regulatory and workplace investigations
- Seminar and workshop facilitator
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Office of the Registrar

Winter 2017 webinar series



Wednesday,
February 15, 2017

Discipline: How Does it Work? With Rebecca Durcan

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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



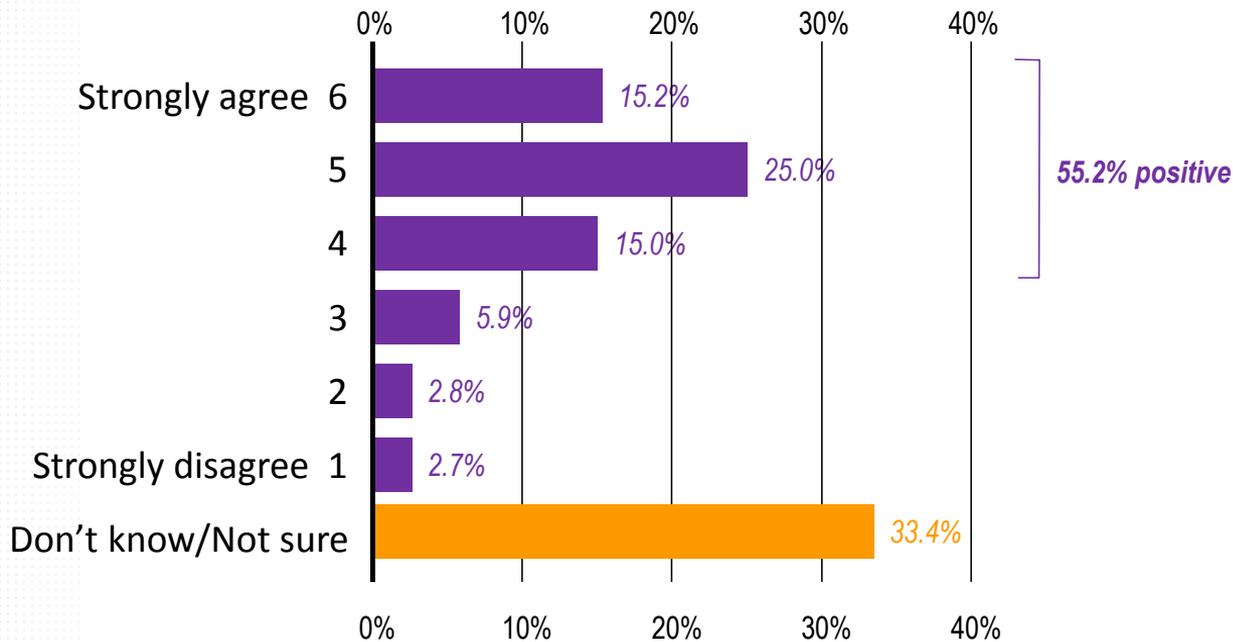
- This webinar is not the appropriate place and time to address specific individual circumstances
- Sometimes the correct answer depends on some details that are not provided with the question
- Please contact the Office of the Registrar with questions involving specific individual circumstances

Regulatory vs Workplace Investigations



- What are the differences between a regulatory investigation and a workplace investigation?
 - Regulatory – we are fact gatherers who obtain relevant information for a screening committee to make a decision on how to resolve a matter. We plan the best approach to gathering what we need, we interview people, gather documentary and other evidence, we write a report that presents all the relevant information so the committee can make an informed decision
 - Workplace – we do all of the above, but we also are the finder of fact. So we gather all the relevant information, assess the credibility and veracity of that information, we write a report that includes the evidence and our analysis of that evidence. We render a decision within our report and provide the reasons and rationale for that decision
 - So the biggest difference is that workplace investigators are decision makers and regulatory investigators are not. Otherwise the process of investigation is quite similar

“One of HRPAs duties as a professional regulatory body is to investigate all complaints made against members of the Association in a fair and impartial manner. In your opinion, if there was ever a complaint filed against you, do you believe that HRPAs would investigate the complaint in a fair and impartial manner?”



Agenda

- Brief Overview of Complaints Process at HRP
- The Registered Human Resources Professionals Act, 2013
- Investigator's Powers
- Conversation with Dean:
 - Role of an investigator
 - What can a member expect?
 - Interviews
- Questions

Question?

- What are some examples of the kind of regulatory investigations that you've performed?



The deal



- The big picture here is ‘the deal’
- In exchange for the privilege of self-regulation, HRPA and its members agree to certain terms and conditions
- The *Registered Human Resources Professionals Act, 2013*, is our contract with the Legislature—it spells out the terms and conditions of our ‘deal’ with the Legislature
- Establishing and maintaining a fair, impartial, and effective complaints process is part of ‘the deal’

Complaints and Discipline

- Complaints and discipline are often lumped in together but they are two separate processes
- The purpose of the complaints process is not to establish guilt (that is the purpose of the discipline process)
- The purpose of the complaints process is to decide if a referral to discipline should be made and if not what other action might be appropriate to protect the public interest
- The complaints process is sometimes referred to as a 'screening' process

Purpose of complaints process

- Decide the best course of action in dealing with situations where the conduct of a member may have fallen short of the standards of the profession in such a way as to keep the public safe
- Maintain public confidence in regards to HRPA's willingness and ability to deal fairly and effectively with situations where the conduct of a member may have fallen short of the standards of the profession

Mandate and authority

- The parameters of the complaints process, Complaints Committee and investigator's powers are set out in the *Registered Human Resources Professionals Act, 2013*
- The mandate and authority of the Complaints Committee derives from the *Act*, not from the By-laws or the Board
- Although supported by HRPA, the Complaints Committee is independent of HRPA and is not 'under the control' of HRPA
- The Complaints Committee, like everything else at HRPA, must have the public interest as paramount

What can the Complaints Committee do?



- Refer to Discipline
- Dismiss the complaint and take no further action
- Issue a verbal or written caution
- Work out a resolution that it will put before the Discipline Committee (a joint submission to Discipline Committee)
- Referral to Capacity Committee

A brief look at the complaints process

- Intake and referral to committee
 - Registrar's role
 - Complainant/member review
- Initial review by panel
 - Complaints Committee panel struck
- **Investigation**
 - Formal
 - Informal
- Panel decision

Who are investigators?

- When the Complaints Committee Panel appoints an investigator, these investigators are (external) professional investigators
- Because the Registrar would be a party to any discipline proceeding should a referral to discipline be made, the Registrar cannot investigate
- Should the case be referred to discipline, the investigation report is 'discoverable' and the investigator could appear as a witness

Investigator's Role

- What is the investigator's role?
 - To gather information relevant to the issues so the Complaints Committee has the information required to make a fair and informed decision. The goal is to get to the truth regardless of what that truth is.
- What can an investigator do?
 - Interview relevant witnesses
 - Gather relevant documentation or physical evidence – wherever that might be
 - Utilize powers of investigation in the face of non-cooperation
- What can an investigator NOT do?
 - Cannot assess credibility formally
 - Cannot make decisions on outcome
 - It is not the investigator's investigation. It is the Committee's investigation, and the investigator is the conduit of information – essentially a fact gatherer

Investigator's Powers

- Investigator's powers (as articulated in the Act) state that an investigator may:
 - At any reasonable time, enter and inspect the business premises of the member under investigation, other than any part of the premises used as a dwelling without the consent of the owner or occupier and without a warrant
 - Question and require the member to provide information relevant to the investigation
 - Examine any document or thing that is relevant to the investigation, including a client file under the member's control

Investigation



- On giving a receipt for it, remove any document or thing under the member's control that is relevant to the investigation for the purposes of making copies or extracts, returning the document or thing promptly to the member from whom it was taken
- Use any data storage, processing or retrieval device or system used in carrying on business on the premises that is under the control of the member in order to produce a document in readable form (e.g., print an electronic document)

What can a Member Expect?

- If I were a member subject to investigation, what should I expect?
 - If it is at the stage where a third party investigator is involved you should expect to:
 - Be treated fairly
 - Have your questions about the process answered
 - Be asked to provide relevant information
 - Be given an opportunity to provide information in your defense
- How should I act?
 - Be yourself
 - Cooperate by providing information and answering questions
 - Maintain confidentiality
- What are some things I should avoid?
 - Try not to be aggressive. We know it isn't fun to be in that position, but hostility or aggressiveness only makes everyone uncomfortable and in the end the process will happen regardless. Remember, the investigator is not out to get you.
 - Do not discuss your situation with any potential witnesses
 - Do not tamper with or conceal evidence
 - Do not fabricate evidence

Investigation: No obstruction

- As articulated in the *Registered Human Resources Professionals Act, 2013, section 53 (1)*:
 - NO PERSON shall obstruct an investigator executing their duties or withhold from them or conceal, alter or destroy any document or thing relevant to the investigation

Offence and penalty

- Every person who contravenes section 53, subsection (1) (no obstruction) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

Dealing with Obstruction

- What do you do if a member refuses entry?
 - Explain the legislation to them and their obligations and hope they cooperate
 - If that doesn't work, get a warrant
- Do you need a warrant to enter a member's premises?
 - No - we can enter the business premises but if we are refused entry we cannot force our way in.
 - We can gather what we want but the legislation is intended to promote cooperation. We can't just search through drawers and cabinets for what we want.
 - With a warrant we can force our way in and search any place that reasonably might contain what we are looking for.
- Can you get access to employee's or employer files?
 - Yes we are entitled to obtain such records with or without a warrant.

Witnesses



- How do you decide who to investigate?
 - Investigators do not make that decision. They are assigned investigations by the Committee
 - If they come across information about another member that appears to be an issue, the investigator can share that information with the Registrar who can determine the next course of action
- How do you select witnesses?
 - We are looking for relevant witnesses who have first hand knowledge
 - Character references are not what we want in most cases
 - We will ask the Complainant and member who they think might have relevant information. However, that does not mean we will interview them
 - We might make inquiries with employers about possible witnesses
 - Some may be identified through our review of the documentation we gather

Investigation Reports

- Do you provide a report?
 - Yes
- What does the report entail?
 - Background to the investigation – what got us here and why are we doing an investigation
 - Investigative steps – an overview of what we did to investigate
 - Each issue will be highlighted and all evidence connected to each issue will be presented. This includes summaries of all interviews, references to all documentation or physical evidence
- Who will see this report?
 - The Complaints Committee
 - HRPA staff (only the ones who directly support the committee)
 - Possibly the lawyer for the Complaints Committee if the Committee seeks legal advice
 - If a referral is made to Discipline then HRPA staff associated with the Discipline Committee, lawyers before the committee and possibly the committee members if the report or portions of the report are introduced as evidence
- Is the report made public?
 - No - the report is not made public but portions of it could become part of the evidence introduced at a discipline hearing and therefore information within the report could become public at that stage

Legal Advice

- Should a member or witness who are subject of an investigation have a lawyer present during your interview?
 - This is not required but is certainly allowed
 - More important for a member under investigation, not so much a witness
 - This is more of a judgment call for the member who might consider:
 - Seriousness of the allegations
 - The member's understanding of the allegations

Conversation with Dean

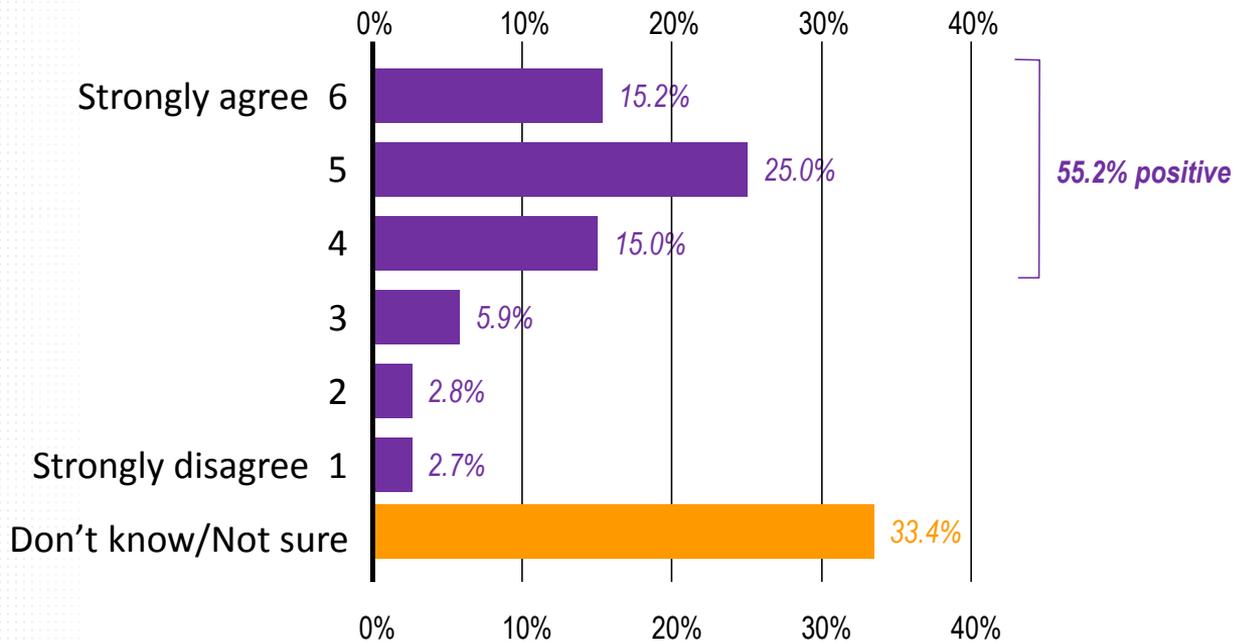
Interesting Facts?



What to do when the complaint is about you?

- We know it is difficult at a psychological level to have someone challenge one's competence or professionalism
- Unfortunately, that is just part of being a regulated profession
- What to do?
 - Cooperate with HRPA
 - Trust the process

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**Suggestions for webinar topics?
Feedback?**

registrar@hrpa.ca



Questions