

A scenic view of a lake with mountains in the background and three Adirondack chairs on a grassy shore in the foreground. The chairs are black with light-colored frames, arranged in a row on a green lawn. The lake is blue with a small boat in the distance. The mountains are green and blue, under a clear sky.

OOTR 2018 Summer webinar series

The Requirement to Notify the Registrar of Bankruptcies and Insolvency Events



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Office of the Registrar

2018 Summer webinar series

Thursday,
June 12, 2018

Renewal, Registration, Suspension, Revocation, Reinstatement and
Re-achievement

Thursday,
July 19, 2018

The requirement to notify the Registrar of bankruptcies and
insolvency events

Thursday
July 26, 2018

What to do if a complaint is about you

Housekeeping

- Webinar will be recorded and posted online
- CPD code for this webinar will not be given in the webinar itself, rather it will be sent to each webinar attendee as part of the post-webinar survey
- 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(registrar@hrpa.ca) with questions involving specific individual circumstances

Poll #1

Have you or your firm (At HRPAs, the term firm has a very specific meaning. It does not mean every organization which employ HRPAs members. A firm is a form of practice. It refers to sole proprietorships, partnerships, limited liability partnerships, and corporations through which HRPAs members offer HR services) experienced a bankruptcy or filed a consumer proposal within the last year?

- Yes
- No

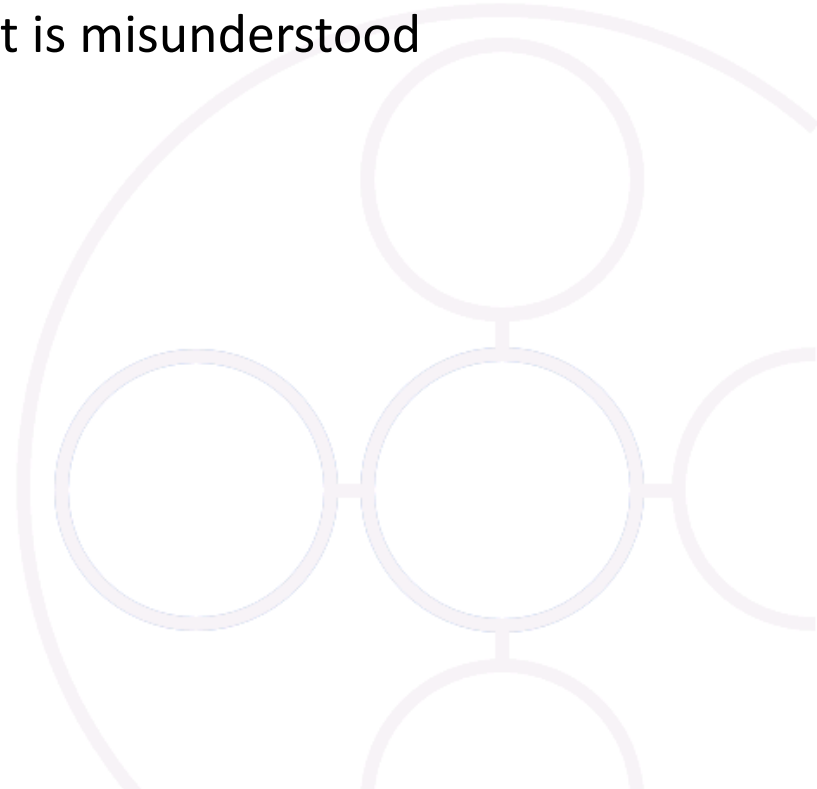
Poll #2

The *Registered Human Resources Professionals Act, 2013*, requires all members to notify the Registrar of any insolvency event (i.e., bankruptcy or consumer proposal). Were you to experience an insolvency event (i.e., bankruptcy or consumer proposal), would you notify the Registrar of such?

- Yes
- No
- I don't know

The requirement is misunderstood

- A key point today is that the requirement is misunderstood
- Collecting information
- Not a shaming exercise



Agenda

Part 1: Calculating the compliance rate

Part 2: The requirement

- Rationale
 - Who is affected?
 - The Review Committee
 - Obligations of members
 - Required documentation and how it is reviewed
 - Powers of the Review Committee
 - Review Committee Hearings
 - Potential consequences for Members and Firms
- Questions

Why is this important?

- As we shall see, compliance with the requirement is very low
- There are three main reasons why it is important to be concerned about this low compliance rate
 1. It is the law after all and it is just not right that our compliance rate be so low
 2. It is a test of sorts of our collective commitment to self-regulation, its speaks poorly to our commitment to self-regulation
 3. It is not good for the reputation and image of Human Resources professionals to have such a low compliance rate

How bad is it?

- Based on information derived from the HRP A Member Survey, we estimate the compliance rate to be

10.2%

How did we calculate the compliance rate?

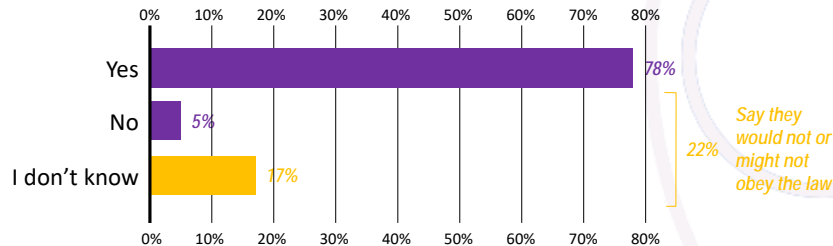
$$\text{Compliance rate} = \frac{\text{The number of members having given notice to the Registrar of a bankruptcy or insolvency event}}{\text{The number of members having experienced a bankruptcy or insolvency event}}$$

Bankruptcy and insolvency event rate based on Member Survey responses

- The HRP A Member Survey contained the following question:

“Have you or your firm experienced a bankruptcy or filed a consumer proposal within the last year?”

“The Registered Human Resources Professionals Act, 2013, requires all members to notify the Registrar of any insolvency event (i.e., bankruptcy or consumer proposal). Were you to experience an insolvency event (i.e., bankruptcy or consumer proposal), would you notify the Registrar of such?”



Source: 2018 HRP A Member and Student Survey

The number of members having experienced a bankruptcy or insolvency event

	2016	2017	2018
Number of survey respondents (excluding students)	3,677	2,496	2314
Number of survey respondents (excluding students) indicating that they had experienced a bankruptcy or insolvency event in the last 12 months	31	20	18
Bankruptcy and insolvency event rate calculated based on Member and Student Survey responses	.0084	.0080	.0078
Number of members at beginning of the survey	20,842	21,445	21,173
Number of notices to the Registrar that one would expect based on the above	176	172	166
Actual number of reports of bankruptcies or insolvency events in the last twelve months	N/A	3	17
Compliance rate	N/A	1.7%	10.2%

Based on HRPAs Member Survey responses, the bankruptcy and insolvency event rate is 7.78 incidents per 1000 members

Final calculations

- Based on a bankruptcy and insolvency event rate of .0078 (or 7.78 per thousand) and with 21,173 members, we would expect about 166 notices of insolvency per year ($21,173 \times .0078 = 166$)
- So far, the Registrar has received 17 notifications of bankruptcy or insolvency event

$$\text{Compliance Rate} = \frac{17}{166} = 10.2\%$$

These are still early days

Unregulated
profession



Regulated
profession



What exactly is the requirement?

- Subsection 40 (2) of the *Registered Human Resources Professionals Act, 2013*, states ‘A member who or firm that experiences a bankruptcy or insolvency event shall notify the Registrar in accordance with the by-laws.’
- By being included in the *Act*, the requirement for our members to notify the Registrar of a bankruptcy or insolvency event is a **matter of law**.
- The requirement is **part of the deal** that we made with the provincial legislature in exchange for the **privilege to be self-regulated**.

What counts as a “bankruptcy or insolvency?”

Any of the following is a bankruptcy or insolvency event:

- Member or firm becomes “bankrupt”
- Member makes a proposal to his or her creditors
- Proceeding is brought against a Member as an insolvent debtor
- Receiving order is made against a Firm



Rationale

- After the *Registered Human Resources Professionals Act, 2013*, was passed in 2013, **protection of the public interest** became the primary function of the HRP.
- The Ontario legislature at Queen's Park felt that this requirement was necessary and desirable to **protect the public interest**.
- A Member or Firm's bankruptcy or insolvency event may pose a **risk of harm to the public**. Accordingly, this requirement is in line with our public protection mandate.

Which HRPA Members are affected by this requirement?

- With the exception of student registrants, all HRPA members must notify the Registrar if they are experiencing a bankruptcy or insolvency event.
 - Designated members – CHRP, CHRL, CHRE
 - Practitioner Members
 - Firms
- Students are obligated to report if their firm is experiencing a bankruptcy or insolvency.

Which HRPA Members are affected by this requirement?

- Requirement to notify the registrar of a bankruptcy or insolvency applies to both new members as well as existing members.
- Requirement applies regardless of when the bankruptcy or insolvency event began; even if the event began before the requirement was brought into place.

The Review Committee

- Decisions surrounding what to do with a member's report of a bankruptcy or insolvency event does not lie with the Registrar, but rather with the Review Committee.
- The Review Committee is a statutory committee, meaning its powers are set out in legislation.
- In fulfilling its mandate under the *Registered Human Resources Professionals Act, 2013*, the Review Committee shall abide by the *Act* and By-laws.

The mandate of the Review Committee

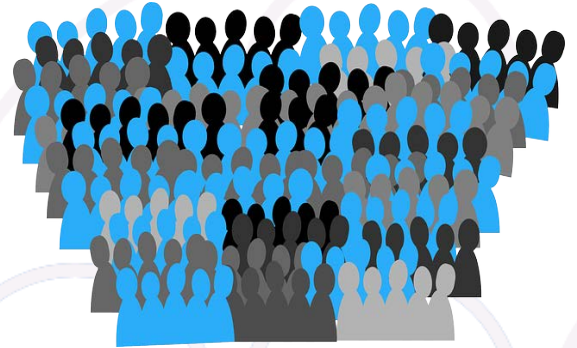
- The Review Committee shall review every matter referred to it by the Registrar under Section 40 of the *Act* to determine whether the member or firm's bankruptcy or insolvency event may pose a risk of harm to any person; to direct the Registrar to investigate the matter; to determine whether a hearing is warranted; to conduct hearings when warranted to determine whether the member or firm's bankruptcy or insolvency event poses a risk of harm to any person; and upon a determination that there are reasonable grounds for believing that the member or firm's bankruptcy or insolvency event poses or may pose a risk of harm to any person following a hearing, to exercise any of the powers granted to it under Subsection 41(8) of the *Act*

Who sits on the Review Committee?

- The Chair of the Review Committee is appointed by the HRPB Board.
- The Review Committee is made up of both HRPB Members and Public Representatives.
- By law, the committee must have a minimum of 3 HRPB Members in good standing, who hold the CHRL and/or CHRE designation.

Public Representatives and Independent Legal Counsel

- Being a statutory committee, the Review Committee must include a minimum of one public representative.
- In conducting its duties under the *Act*, the Review Committee has access to Independent Legal Council (ILC) when such legal advice is necessary or prudent.



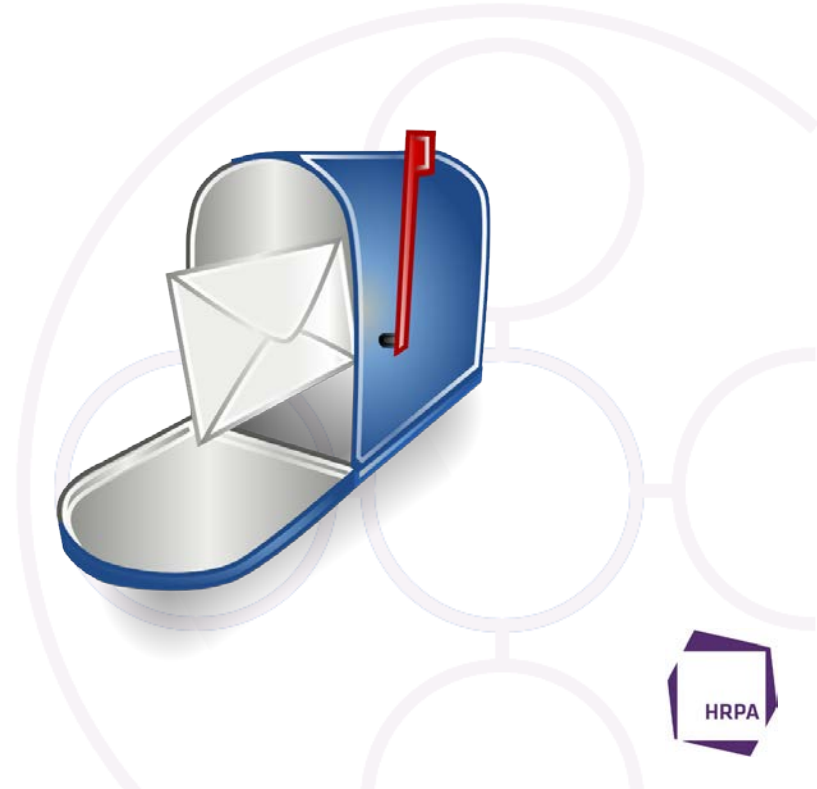
The role of the Registrar

The Registrar is responsible for:

- Managing all correspondence with the parties in regard to any matter referred to the Review Committee;
- Scheduling hearings;
- Maintaining records of all proceedings between the Review Committee, the Member, and the HRPAs;
- Responding to Member's and Firm's requests and questions as needed.

What to do when a Member or Firm experiences a bankruptcy or insolvency event?

- A report must be made to the Registrar immediately
- Registrar must refer the report to Review Committee



How can I notify the Registrar?

- Reports of a bankruptcy or insolvency event can be made to the Office of the Registrar in writing, to registrar@hrpa.ca.
- If you are unsure in any way if a situation you are in would apply to this requirement, it is in your best interest to contact the Office of the Registrar for clarification.

Be Mindful of Timing

- Reports of a bankruptcy or insolvency must be made immediately upon the event taking place
- The Review Committee will specify a deadline for when any requested documentation is to be provided, and in what manner



What needs to be provided in a report to the Registrar?

1. Documents relating to bankruptcy or insolvency event (undertaking to provide if it is not yet ready)
2. Pleadings (undertaking to provide if it is not yet ready)
3. An undertaking to provide if it is not yet ready
4. Financial situation of firm
5. Declaration granting permission to access

What happens next?

- Registrar refers all documents and information to Review Committee
- Review Committee must review every matter that the Registrar refers



Request for documentation

- Review Committee can ask at any time for the Registrar to request any additional information from the Member or Firm that is relevant to the matter, including:
 - Bank Statements;
 - Financial Statement;
 - Tax returns;
 - Letters from the Member's or Firm's banking institution as to their financial status.
- Member or firm must do so within the time frame as provided by review committee.

Committee review of provided documentation

What information is the committee taking into consideration when deciding if there is a risk of harm to the public?

- The circumstances that caused the bankruptcy or insolvency event, and the conduct of the Member or Firm in respect of such circumstances
- The extent to which being bankrupt or insolvent may put at risk the interest of:
 - Any client or employer of the Member or Firm;
 - Any other party or parties adversely affected by the bankruptcy, insolvency or proposal.

Committee review of provided documentation

- The number and nature of the creditors affected
- Whether or not there was any associated criminal or civil liability on the part of the Member or Firm, in respect to the bankruptcy or insolvency event
- The Member or Firm's financial circumstances at the date of the review or hearing
- The date the Member or Firm expect to be discharged or released from bankruptcy or insolvency
- Other considerations as the committee sees fit

What can the Review Committee order after they review the information and documents?

1. Direct registrar to investigate
2. Hold a hearing
3. Require member or firm to provide, on an on-going basis, any document or information described above for the time and in the manner specified by review committee
4. Take no further action

If an investigation by the Registrar is ordered, what does that look like?

- According to the *Act*, if the Review Committee requests the Registrar to investigate, the investigator will have the following powers:
 - Right to enter business premises of the Member or Firm;
 - Require production of relevant material.
- All persons (not just Members and Firms) must not obstruct the investigation. To do so is a provincial offence.
- If the Review Committee requires the Registrar to investigate, the Registrar must report results to Review Committee.

Request for ongoing information

- The Review Committee may request any information relevant to the matter to be provided on an ongoing basis, with set deadlines.
- What if the Review Committee requires the Member or Firm to provide ongoing information, and subsequently the Review Committee determines that the bankruptcy or insolvency event may pose a risk of harm to any person?
 - The committee can decide to hold a hearing on the matter

Review Committee hearings

- If hearing is ordered, the Review Committee will determine whether bankruptcy or insolvency event poses or may pose a risk of harm to any person



Who will be present at a Review Committee hearing?

- Panel of three members of the Review Committee
 - At least one member of panel must be a public representative
 - The panel may retain Independent Legal Counsel
- The Member or Firm who is bankrupt or insolvent
- The HRPAs
- Any member of the Association or general public are allowed to spectate

What happens if the Panel decides that a risk to the public is present?

Review Committee may order one or more of the following:

1. Suspend the member's membership or the firm's registration
2. Impose restrictions or conditions on the right of the member or firm to practise in the field of human resources.
3. Make any other order, other than revoking the member's membership or the firm's registration, that the committee considers appropriate in the circumstances.

What are the consequences of not reporting a bankruptcy or insolvency?

- Failure to report on the part of any Member or a Firm represents professional misconduct as defined in the By-laws and may be subject to a complaint against the Member
- A complaint against the Member may result in a referral to the Discipline Committee

Questions

**Suggestions for webinar topics?
Feedback?**

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