

OOTR 2017 Fall webinar series

The webinar will begin shortly...



Human Resources
Professionals
Association
Office of the Registrar



Claude Balthazard, Ph.D., C.Psych., CHRL

Vice-president Regulatory Affairs and Registrar
Human Resources Professionals Association

Office of the Registrar

2017 Fall webinar series

Thursday,
October 26, 2017

The mission and mandate of the HRPA

Wednesday,
November 8, 2017

Licensure for HR: What's the scoop?

Thursday,
November 30, 2017

The transition from unregulated profession to regulated profession

Housekeeping

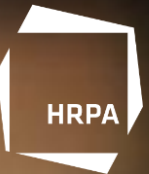
- Webinar will be recorded and posted online; the PowerPoint slides will also be posted
- The full transcript of the entries in the chat window will be posted with names removed and with answers to questions
- The CPD code for this webinar will not be given in the webinar itself, rather it will be sent to each webinar attendee as part of the post-webinar survey

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

Licensure for HR: What's the scoop?

November 8, 2017



Topics

- Comments about licensure for HR from the 2017 HRPA Member Survey
- Why we care about licensure
- Licensure can be more complicated than it appears at first
- Regulation and licensure
- Right-to-title and right-to-practice
- Components of licensure
- Broader licensure for HR—what it would take

Comments from the 2017 HRPA Member Survey

- *“There are many HR Professionals in the province, who are actively working as HR professionals without HRPA Membership, Members pay a significant amount of money as membership and update their knowledge, these non-members do nothing, but in the job market both get paid the same amount of salary. I feel HRPA not powerful enough like Ontario Nurses Association to ban professionals to work without membership. I have personal experience they work against the law and ethics. There is no place to complain or take actions against their behaviors.”*

Comments from the 2017 HRPAs Member Survey

- *“Keep going. You're making an impact. There are way too many HR people out there that continue to work in HR roles and are borderline unprofessional. Looking forward to CHRP etc. being only standard. Certified only. Cannot practice without certification. Will take awhile but that's where we need to go.”*
- *“If we are going to call us a professional regulatory association....then all HR professionals must be required to become members or the association is pointless. HR professionals not part of the HRPAs are not held to the same standards of practice. You are only able to partially protect the public.”*

Comments from the 2017 HRPAs Member Survey

- *“I see more companies recognizing the designations and listing them on jobs advertised. My hope is that it will become a requirement for practicing as a regulated professional for working in HR and recognized internationally as equivalent to standards in the UK, US and other places as a standard of excellence and understanding of HR principles. In terms of working in the interests of the public, the power HR professionals have to make hiring and firing decisions impacts the welfare and livelihood of contractors, employees and their families. I hope that this insight will help HRPAs to get the support it needs to make it the equivalent of the designation held by lawyers, doctors etc. as it impacts the families and the community when HR makes a decision to hire or terminate someone and has implications not just on the company, but also on the mental, emotional and financial resources of a person and therefore their family and community.”*

Comments from the 2017 HRPA Member Survey

- *“In my opinion, HR professionals, working in an HR capacity, should be required to obtain the CHRL designation, or in the process of obtaining same...”*
- *“If the goal is to protect the public, improve the standard of service, and increase the opportunities for HR professionals, then make HR a mandatory licensed profession recognized by the legislation and trade agreements (e.g. NAFTA).”*
- *“I believe there should be more restrictions to prevent the general public who do not have the proper HRM qualifications, such as certificates and degrees, from taking up the jobs of professionals who actually went to school to study HRM.”*

Comments from the 2017 HRPA Member Survey

- *“it’s not fair, as a member of HRPA I am required to follow all sorts of rules and I am subject to complaints from whomever. But Human Resources professionals who are not members of HRPA can still practice HR. How is that fair?”*

Licensure would solve all sorts of problems

- Organizations would have to hire or engage Human Resources professionals who are either members of HRPA or certified by HRPA
- Human Resources professionals would have to become members of HRPA or be certified by HRPA to practice Human Resources
- The public would be served by only by registered or certified human resources professionals (or non-registered individuals under the supervision of registered or certified Human Resources professionals)

Licensure is a provincial matter

Section 92 of the *Canadian Constitution Act, 1867*

92 Subjects of exclusive provincial legislation.

In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next herein-after enumerated; that is to say,—

13. Property and civil rights in the province.

Which has been interpreted to include:

regulation of trade and industry within the province, including labour relations and the regulation of professions,

The Legislature's perspective

- Licensure is a restriction on certain rights, the right to practice and the right to choose who one deals with
- The Legislature will act in what it believes to be the public interest (that is would be good for Human Resource professionals is not a valid ground for licensure)
- The Legislature will look for the least invasive means of achieving the public policy objective of safe and efficient delivery of professional services and access to those services

The Registered Human Resources Professionals Act, 2013

2 This Act does not affect or interfere with the right of any person who is not a member of the Association to practise in the field of human resources.

This clause makes it clear, in case there was any doubt, that Human Resources is not licensed in Ontario

The Chartered Professional Accountants of Ontario Act, 2017

2 This Act does not affect or interfere with the right of any individual who is not a member of CPA Ontario to practise as an accountant.

Licensure

- But licensure is not a simple matter
- There are many variations on licensure
 - Broad v. narrow licensure
 - Exceptions to licensure
 - Exclusive v. non-exclusive licensure
- In fact, some may be surprised to learn that a limited form of licensure has already come to Human Resources and that this may be a model for the future

Broad v. narrow

Broad

- *“The authorization to practice law”*

Narrow

- *“The authorization to communicate a psychological diagnosis.”*
- *These are known as ‘controlled acts’ or ‘authorized acts.’*

Licensure can be more complicated than it appears at first

- The controlled acts can be quite narrow such that only a relatively small proportion of registered individuals perform these controlled acts (only 5% of registered accountants are licensed to practice public accounting)
- The controlled acts may not be exclusive to one profession (psychotherapy is open to registered psychotherapists, psychologists, social workers, and psychiatrists)
- Some professions have exceptions which are significant (30% of engineering work falls under the 'industrial exception')
- Some professions have conditions on the access to controlled acts such that only some members have access to these controlled acts
- Some professions do not have any controlled acts

Let's try to make sense of all of these

- Regulation v. licensure
- Right to title v. right to practice
- Protected titles
- Prohibitions
- Exceptions
- Scope of practice
- Controlled acts



Regulation and licensure

- Two different but related concepts
- Regulation means that there exists a professional regulatory body or governing body which governs and regulates its registrants (members, students, and firms depending on the statute) in the public interest
- Licensure means that registration may give registrants the authority to perform certain acts that are prohibited to non-authorized individuals (subject at times to additional requirements)
- All licensed professions are regulated, but not all regulated professions are licensed

Regulation and licensure

**Professional regulation
with licensure**

**Professional regulation
without licensure**



The regulatory aspects are virtually the same

**The only difference is that professional regulatory bodies that operate
in a profession where there is no licensure do not have to worry about
unauthorized practice**

Levels of Regulation

Registration	Certification	Licensure
<ul style="list-style-type: none">• Individuals that meet certain requirements are listed in a register	<ul style="list-style-type: none">• There is an assessment of competence and only qualified individuals can use the title	<ul style="list-style-type: none">• There is an assessment of competence and only licensed individuals can perform certain acts

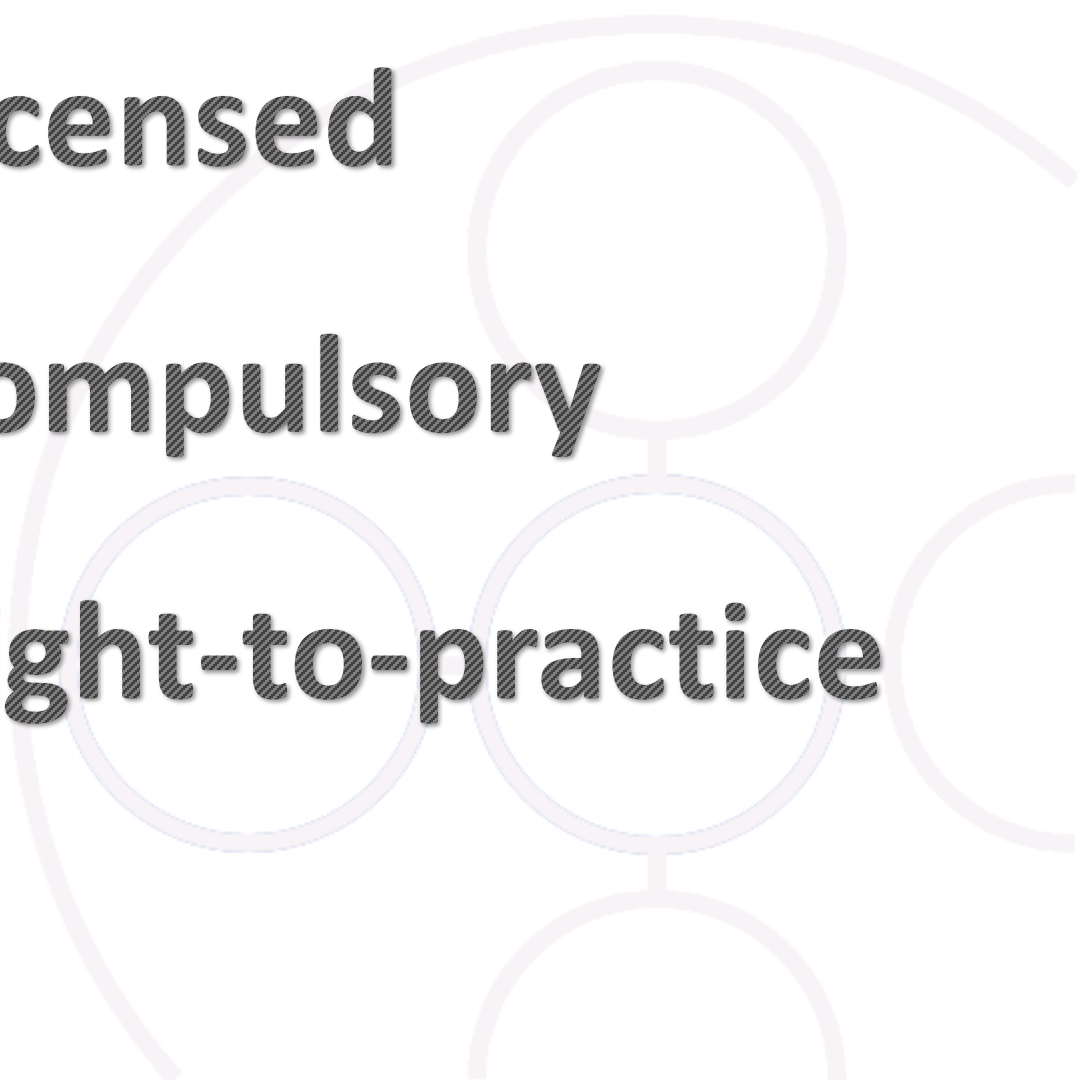
In Ontario, the Human Resources Management profession is regulated at the *registration* and *certification* level

Another perspective

		Voluntary	Compulsory
Substantive requirements	Yes	Voluntary Certification	Compulsory Certification
	No	Voluntary Registration	Compulsory Registration

Just because Human Resources is not a licensed profession...

- does not mean that it is not regulated
- HRPAs are not any less of a professional regulatory body because there is no licensure
- There is nothing in our *Act* that allow HRPA to 'go soft' on regulating its members or to 'tone down' regulatory efforts
- HRPA is as much of a professional regulatory body as the Law Society of Upper Canada, the College of Physicians and Surgeons of Ontario, or Professional Engineers Ontario.



Non-licensed v. Licensed
Voluntary v. Compulsory
Right-to-title v. Right-to-practice

Right-to-title and right-to-practice

- All professions have a protected title and/or initials
- Right to title refers to titles and initials that are set aside by statute
- Only individuals authorized to do so may use these titles or initials
- These are called protected titles
- The CHRP, CHRL, and CHRE are protected titles
- HRP is the only body in Ontario authorized to authorize individuals to use one of these protected titles

Holding out

- In general, any action initiated by a individual that informs others of his or her status as a registered professional or as an individual authorized to perform certain protected acts
- This would include, for example,
 - any oral or written representation to another,
 - use of the any protected title on business cards. letterhead, Facebook page, or LinkedIn page
 - the display of a certificate, or
 - listing as a having a designation in a directory.
- Includes making additions to a title or initials

Holding out

- There are exceptions
- Protection can be narrow. For instance, ‘engineer’ is not a protected title but ‘Professional Engineer’ is. ‘Accountant’ is not a protected title but ‘Chartered Professional Accountant’ is
- Context is important—was there an intent to deceive?

Human Resources does have title protection

- Some believe that because others can call themselves 'Human Resources professionals' that we don't have title protection
- The problem with 'Human Resources professional' is that it is too broad a term
- 'Health professional,' 'Financial services professional,' and 'Legal professional' are also unprotected

Components of licensure

- Prohibition
- Scope of practice and controlled acts
- Exceptions
- Authorization (authority to authorize)



Licensure

- The default is that everyone has the right to offer whatever service they want to offer (except for matters that are illegal)
- Prohibitions remove this right and make certain acts off limits to individuals sometimes with some exceptions. Such prohibitions require a statute.
- Unless the individual is authorized to perform these prohibited acts by a body that has been authorized by statute to grant this authorization

Licensure

- Licensure exists whenever the provision of certain services of the performance of certain acts only open to members of a profession, even when
 - Not all members of the profession are authorized to perform these acts
 - The authorization to perform these controlled acts is shared between more than one profession
 - There are exceptions such that individuals who are not authorized by the governing body can also perform controlled acts
 - Some professions do not have access to any controlled acts

Not all members of the profession are authorized to perform these acts

- Accounting is not licensed (that is why we have bookkeepers, tax preparers, financial advisors, etc.)
- Public accounting is licensed, however
- Only, 5% of Chartered Professional Accountants have a public accounting license
- Or, to put it the other way around, 95% of Chartered Professional Accountants are unlicensed and accounting itself is not a licensed profession

Not all members of the profession are authorized to perform these acts

- For instance members of the College of Psychologist of Ontario have access to the controlled acts of:
 - Communicating a diagnosis
 - Using electrical energy for the purposes of aversive conditioning
- However, many professionals registered with the College of Psychologists of Ontario do not perform either of these controlled acts
- For these professionals, it is still the case that they cannot hold out to be 'Psychologists' or 'Psychological Associates.'

The authorization to perform these controlled acts is shared between more than one profession

- There are many controlled acts that are shared between more than one profession
- For instance, ‘psychotherapy’ is soon to be proclaimed as a controlled act—but many different professions will be able to have access to this controlled act (psychologists and psychological associates, social workers, registered psychotherapists, and psychiatrists)
- The conduct of workplace investigations, for remuneration, can be done by (1) individuals authorized to carry out investigations under the Private Security and Investigative Services Act (PSISA), (2) lawyers, and (3) Human Resources professionals registered with HRP.

Exceptions

- Sometimes the exceptions are narrow, but sometimes they are broad
- For example, the 'industrial exemption' in engineering
- The 'industrial exemption' enables acts of professional engineering on production equipment or machinery to be carried out by unlicensed individuals in a manufacturing workplace.
- Professional Engineers Ontario (PEO) has estimated that 30% of engineering work in Ontario falls under this exception

Exceptions

- Representing clients before tribunals is usually reserved for lawyers and paralegals
- However, there is an exception in the *Law Society Act, 2006*:
 - 1 (8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:
 1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

Licensure already exists for Human Resources

- If the definition for licensure is that individuals registered with HRPA are authorized to do something that members of the general public are not, then a limited form of licensure has already come to HR
 - Members of HRPA can perform workplace investigations for remuneration
 - Members of HRPA can represent clients before HR-related tribunals

Workplace investigations

Workplace investigations

14.1 A member of the Association, who is in good standing, is authorized to conduct, for remuneration, workplace investigations in order to provide information, and section 2 of Ontario Regulation 435/07 made under the *Private Security and Investigative Services Act, 2005* applies. 2017, c. 2, Sched. 13, s. 6.

- The *Private Security and Investigative Services Act, 2005*, provided for this kind of exception/authorization
- Note that this authorization does not apply to students registered with HRPA

Broader licensure for HR—what it would take

- But that is not what many mean when they think of licensure for HR
- What is usually meant is that only individuals registered with HRPA, or certified by HRPA, would be allowed to practice HR
- This may or may not happen at some time in the future—lets look at what it would take

If the Human Resources profession is to get broader licensure (beyond conducting workplace investigations and representing clients before Human Resources related tribunals) it is going to earn it. The Ontario Legislature will 'give' us nothing.

The conditions for licensure

1. The HR profession (viz. HRPA) would need to clearly define what it believes it can do that no one else should be able to do (scope of practice or controlled acts)
2. The HR profession (viz. HRPA) would need to demonstrate that its members are, by selection and training, are uniquely and consistently qualified to do these things and that the governing body ensures that this is the case
3. The HR profession (viz. HRPA) would need to demonstrate that the risk to the public of allowing others to do these things is just too great by demonstrating real harms
4. The HR profession (viz. HRPA) would need to demonstrate that its members are willing to be governed and support a professional regulatory body that is dedicated to promoting and protecting the public interest

The conditions for licensure

- It can be seen that, in regards to licensure, the Human Resources profession is not quite there yet
- Another possibility is to license certain controlled acts but that this license is 'on top of' certification. In other words, that certified Human Resources professionals must meet additional requirements to obtain and maintain the license to perform these controlled acts. In this approach, not all certified Human Resources professionals would be authorized to perform these controlled acts. This is similar to accounting where the general practice of accounting is not licensed but the practice of public accounting is.

Other webinars in this series

The mission and mandate of the HRP

On-demand webinar

It is important for all organizations to understand their mission and mandate—everything follows from the mission and mandate. As it turns out, HRP's mission and mandate was set out in the Registered Human Resources Professionals Act, 2013. This webinar will explore the topic of HRP's mission and mandate—who set HRP's mission and mandate? what was the process used to establish HRP's mission and mandate? And what are the implications of HRP's mission and mandate. Plenty of time will be set aside for questions.

The transition from unregulated profession to regulated profession

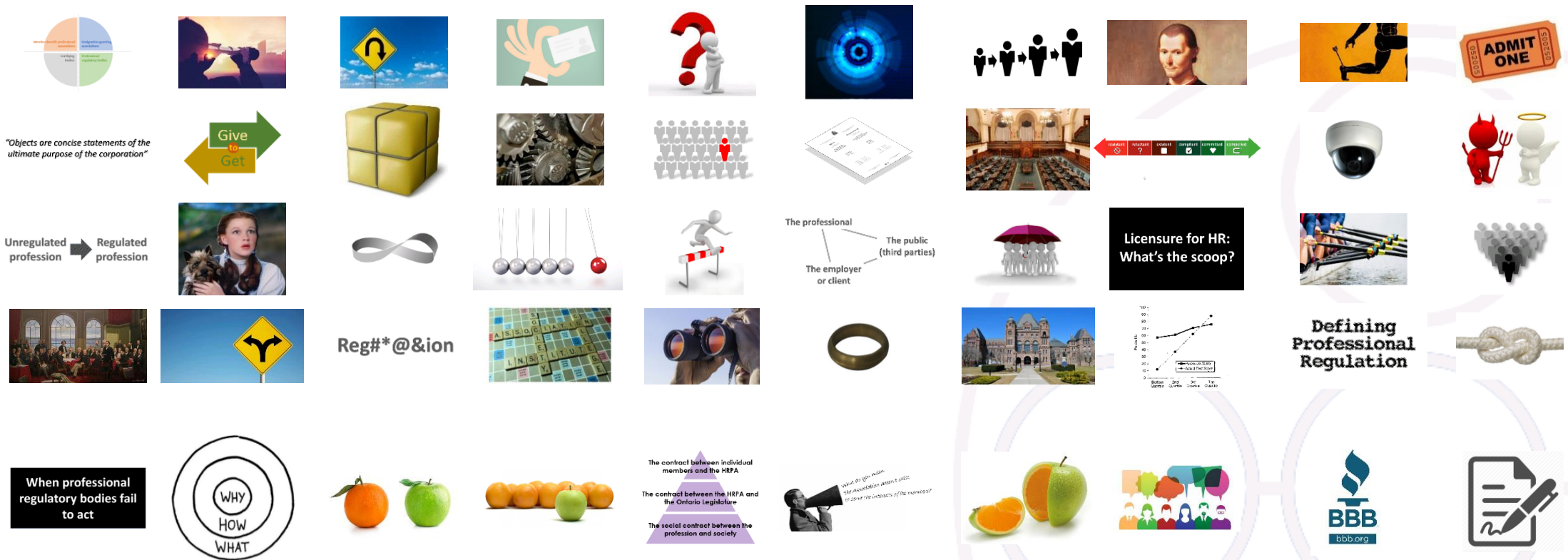
Thursday, November 30, 2017

The Human Resources profession in Ontario is at the beginning of a transition from being an unregulated profession to being a regulated profession. The passage of the *Registered Human Resources Professionals Act, 2013*, was really just the beginning of the transition. So what does this transition entail? To be somewhat simplistic about it, members are going to have to get used to being regulated, and HRP is going to learn how to govern and regulate a profession. This webinar will consider various dimensions of this transition.

Previous related webinars available on-demand

- The mission and mandate of the HRP
- Decoding HRP's objects
- HRP's metastrategy
- The Registered Human Resources Professionals Act: The first three years
- The Costs and Obligations of Professionhood
- Self-regulation: Why it is important, why should you care, and what it should mean to you?
- Let's Talk About... The Public Interest
- Professional Regulation at HRP
- The requirement to notify the Registrar of bankruptcies and insolvency events

LinkedIn Series of articles



Questions



**Suggestions for webinar topics?
Feedback?**

registrar@hrpa.ca