

The Professional Liability Insurance Requirement Explained

April 10, 2019



The webinar will begin shortly



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Office of the Registrar

2019 Spring Webinar Series

Friday,
April 5, 2019

The Requirement to Notify the Registrar of
Bankruptcies and Insolvency Events

**Wednesday,
April 10, 2019**

**The Professional Liability Insurance Requirement
Explained**

Wednesday,
April 17, 2019

What do to if a Complaint is About YOU?

Tuesday,
May 14, 2019

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

On-demand webinars

- Our previously aired regulatory and how-to webinar series can be found on the [Regulatory Webinars](#) page of our website.
 - Listen to recording
 - Download the power point slides
 - View the Questions & Answers

Housekeeping

- Webinar will be recorded and posted online
- 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
- Will post answers to questions that we could not answer in the webinar

Questions Involving Specific Individual Circumstances

- 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

Agenda

- What is professional liability insurance?
- What is the professional liability insurance requirement for HRPAs registrants?
- By-laws and the Rules of Professional Conduct
- Why does HRPAs require its registrants in independent practice to carry insurance?
- What does 'full and adequate' insurance mean?
- What should I look for in buying the insurance?
- What should I expect the policy to cover?
- What are the causes of claims?
- What should I do in the event someone makes a claim against me?
- Risk Management
- Q & A

What is professional liability insurance?

- Can also be called 'malpractice' or 'errors & omissions' insurance
- The purpose is to covers claims made against a professional for the losses of a third party because of an alleged failure on part of the professional to meet the expected standards of performance
- Pays for the defense of the professional in dealing with the allegations of any third party, even if the allegations are groundless

What is the professional liability insurance requirement for HRPA registrants?

- Must be maintained by any HRPA registrant in independent practice who offers HR services, including on a part-time or volunteer basis
- Independent practice refers to when a registrant is practicing human resources management but not as an employee of that particular organization
- Can be purchased from any licensed Canadian insurer
- Can be purchased through any competent insurance broker
- Must be full and adequate for the registrant's particular exposures

By-Laws and the Rules of Professional Conduct

- The Professional Liability Insurance requirement is included both in the By-laws and in the Rules of Professional Conduct
- The requirement was established in accordance with HRPA's objects as set out in the *Registered Human Resources Professionals Act, 2013*

Objects of the HRPA

(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;**

The By-laws

- S. 17 of the By-laws states:

Any Member, Student or Firm, providing Human Resources services to the public either on a full-time, part-time, or occasional basis and whether for remuneration or pro bono shall:

 - (a) maintain professional liability insurance; and
 - (b) provide the Registrar with satisfactory proof of such insurance in the form of a copy of the insurance certificate. Acceptance of the copy of the insurance certificate by the Association as proof that the Member, Student or Firm maintains professional liability insurance shall not constitute approval of the insurance policy itself.

The By-laws continued

The By-laws also address the following:

- No Exclusion or Waiver for civil liability in contract
- Amount of Coverage
- Duration of Coverage
- Maintenance of Coverage
- Notification of Insurance Cancellation or Reduction
- Failure to Comply

Rules of Professional Conduct

- Chapter 6 of the Rules of Professional Conduct addresses specific obligations of HRPA registrants when acting as independent practitioners.
- With respect to professional liability insurance the Rules state that:
 1. Any registrant or firm in independent practice providing human resources services to the public either on a full-time, part-time, or occasional basis and whether for remuneration or pro bono shall maintain professional liability insurance.

Rules of Professional Conduct continued

2. It is prohibited to insert in a contract of professional services any clause excluding, directly or indirectly, in whole or in part, the registrant's or the firm's personal civil liability. The registrant or firm may not sign a contract containing such a clause.
3. A registrant or firm in independent practice shall maintain appropriate professional liability insurance that a prudent person in the business of the registrant or firm would maintain.

Common law

- Those who hold themselves as having special knowledge and skill upon which others rely can be liable for the losses sustained through failure to meet the required level of skill and performance.
- Where that skill is of an intellectual nature and the person holds a special designation recognizing that intellectual ability then the law applies a much higher degree of care to be required of that person.

Why is the insurance compulsory?

- The HRPAs are self-regulatory bodies and the Government seeks to ensure there is protection for the public if mistakes occur
- HRPA is a regulator and that role is primarily about protection of the public interest – which is ultimately in the registrants' interest as well
- Insurance means there is coverage available when mistakes are alleged – but it also exists to defend the professional when there has been no mistake to protect the good standing of the HR Professional

SINCE THE REQUIREMENT IS COMPULSORY, COMPLIANCE IS A MUST!

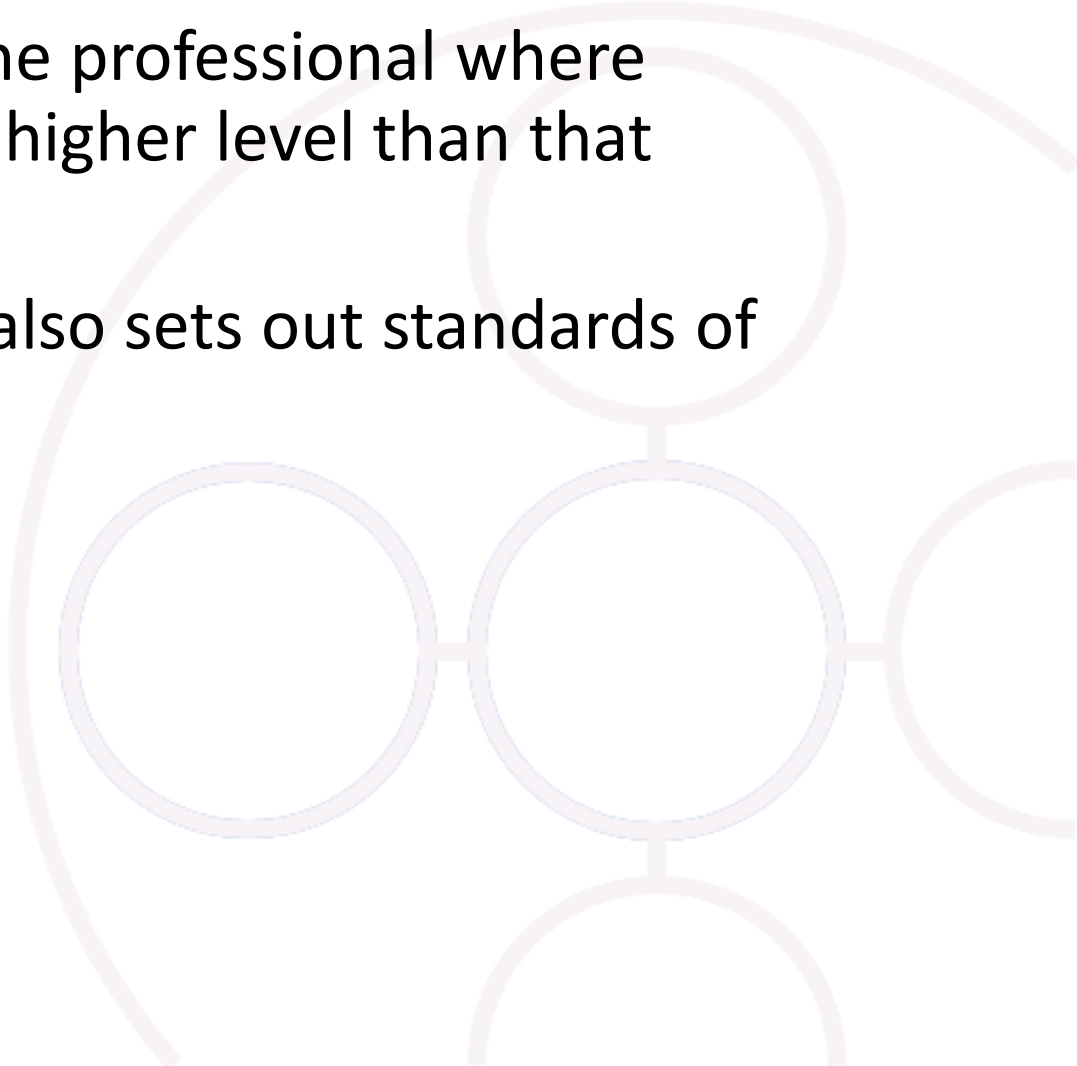
What insurance does HRPAs require its registrants in independent practice to have?

- Professional liability insurance coverage is a requirement for all HRPAs registrants who practice as independent consultants, including on a part-time or volunteer basis
- You cannot contract out of the obligation for insurance
- There is no set limit but you must ensure that the limit and cover are adequate for your practice
- You can choose to buy the insurance from any licensed Canadian insurer and through any competent insurance broker

What Does 'Full and Adequate' Insurance Mean?

- Must insure you as a Human Resources Professional
- The limit should be for a 'worst case' scenario
- If the limit includes defense cost then consider a higher limit
- A limit of \$1,000,000 per claim and \$2,000,000 aggregate is popular but lower and higher limits are available - discuss with your insurance broker

What are the Causes of Claims?

- Canadian Law imposes standards upon the professional where performance is required to meet a much higher level than that expected of an ordinary person
 - The HRPAs Rules of Professional Conduct also sets out standards of professional performance
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What are the Causes of Claims? (continued)

Losses can arise from:

- Wrongful selection of a candidate
- Lack of a thorough investigation of a candidate
- Bad advice on human resources management programs
- Lack of legal search on employment or pay equity programs
- Loss of key employees due to a deficient compensation program
- In a third party dispute resolution, the situation may be worsened due to mishandling
- Following union negotiations, party could claim financial losses alleging mishandling

Who is Involved with the Insurance?

- The “Insured” means you – the party buying the policy
- The “Insurance Broker” is your independent representative with expertise in handling professional liability insurance
 - the role of the insurance broker is to put your interests first in advising you about the cover and the options available
 - the broker is normally compensated with commission from the premium
- The “Insurer” is the insurance company that issues the policy on the terms agreed through the broker and in return for you paying the premium

Choosing the right insurance broker

- The broker is there to work for you and provide the best advice and guidance for you in making the decision of what insurance coverage to purchase and on what terms and conditions.
- In selecting the right insurance broker you may consider:
 - Contacting the HRPAs' affinity provider for professional liability insurance, LMS ProLink at: www.lms.ca
 - Contacting some of your peers for referrals
 - Contacting insurance brokers and asking for their qualifications in handling professional liability insurance and asking for client references that you can check
 - An indication of good advice would be the prompt and full answering of the check items that follow plus more detailed information about the coverage and the options available

What should I look for when buying the insurance?

- Is it Claims Made coverage?
- Does the coverage apply to everything I do in my practice?
- Is there a retroactive exclusion date?
- Are defense costs included within the limit?
- Does the deductible apply to defense costs as well as settlement payments?
- Is the limit adequate?
- Is the coverage for Canada only?
- Is there an option for coverage after I retire?
- If I fail to renew are all claims excluded if reported after the expiry date?
- If I plan to buy insurance from a different company at renewal, have I reported everything to my old insurance company because the new one will exclude everything already known about a possible claim?

THIS IS NOT A COMPLETE LIST

CHECK FOR FULL ACCURACY WITH YOUR INSURANCE BROKER

What should I expect the policy to cover?

- 'Claims Made' coverage applies to claims reported during the policy period because of an error, omission or negligent act after the Retroactive Exclusion Date
- The coverage only applies to services of a Human Resources Professional
- Defence of claims is insured
- The coverage may be limited to Canada
- Exclusions common to many policies include:
 - dishonest or fraudulent acts
 - fines, penalties
 - bodily injury claims
 - libel and slander
 - claims where the insured had knowledge of the circumstances prior to the effective date of the policy
- Make sure your application form for the insurance is complete and accurate since any mistake in completing the application form, even innocent mistakes, can lead to the policy being declared void

THIS IS NOT A COMPLETE LIST AND YOUR OWN POLICY MAY VARY

CHECK FOR FULL ACCURACY WITH YOUR INSURANCE BROKER

Submitting evidence of your Professional Liability insurance

- Your insurer will be required to issue a certificate to you showing the details of the professional liability policy you have purchased
- You will be required to submit a copy of the certificate to HRPA the first time you inform HRPA of your professional liability insurance coverage
- Your insurer will be required to notify the HRPA directly if your policy is cancelled

What should I do in the event that someone makes a claim against me?

- Avoid giving any comments or response other than to state that this is something your legal advisor needs to be involved with immediately and the response will be given from your advisor
- Do not admit any liability
- Be aware that any phone conversation may be recorded
- Report any claims or possible claims immediately to your insurer
- Ensure your file is complete and accurate
- Cooperate with the insurer's claim staff

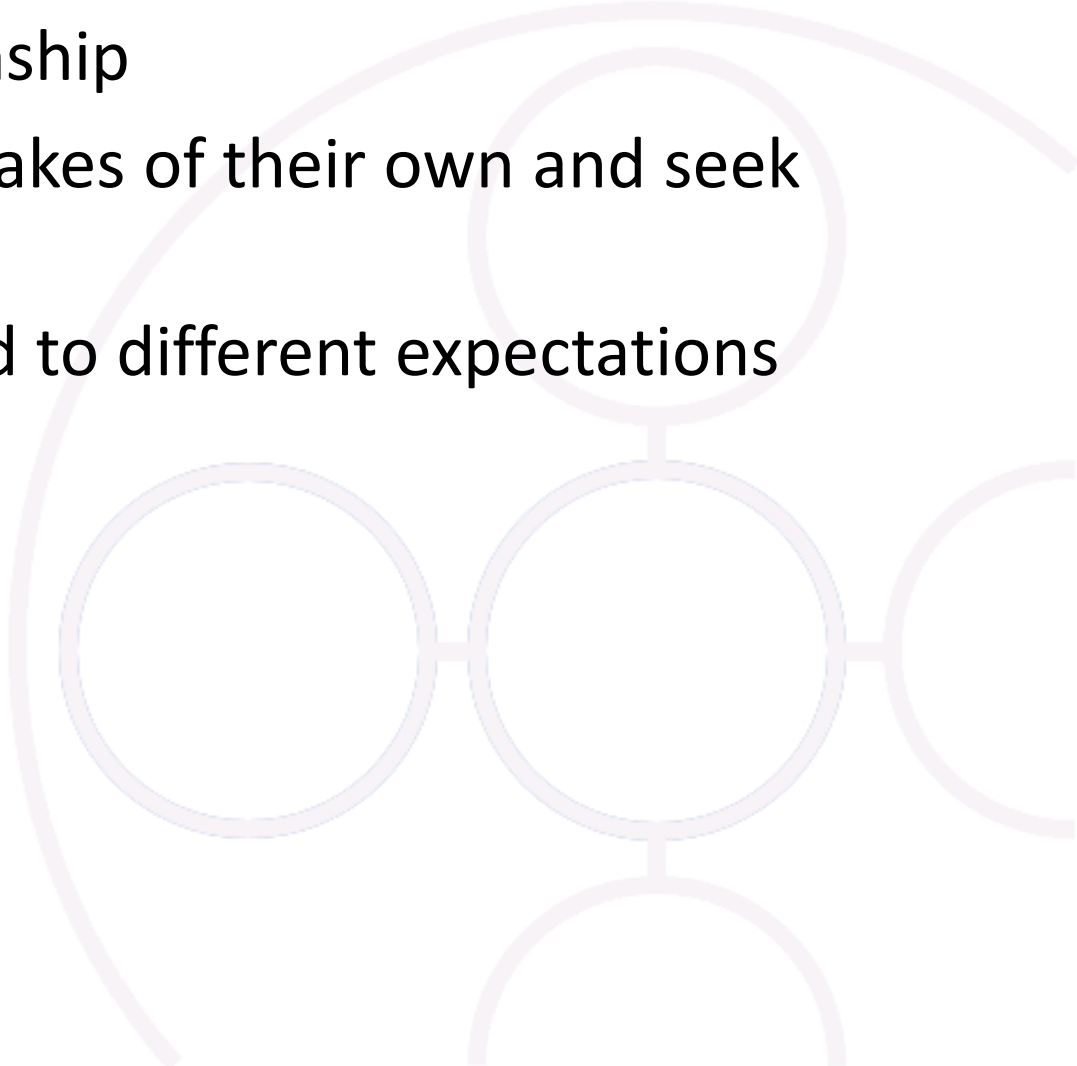
What is a claim?

- THIS WILL BE DEFINED IN YOUR PARTICULAR POLICY
- Read your policy to be aware but it will include:
 - A letter or statement indicating you are being held responsible for a problem
 - Discovery of facts or circumstances that you believe could become a claim
 - IF IN DOUBT - BE CAUTIOUS AND REPORT
 - There may be time to fix the issue

'Claims made' reporting

- Coverage applies to the date when the claim is made or first discovered
- Excludes claims reported after expiry, even if the error happened during the policy period
- **REPORT IMMEDIATELY!**

Professional Liability Challenges

- Changes in the Client/Consultant relationship
 - Businesses with problems can make mistakes of their own and seek redress from outside professionals
 - Changes within client businesses can lead to different expectations that have not been communicated
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Professional Liability Challenges continued

- A better informed public is more inclined to sue
- The public recognizes the HR Professional and expects perfection
- The Rules of Professional Conduct set out demands upon the HR Professional and when things don't work out the client may look for an independent party to blame

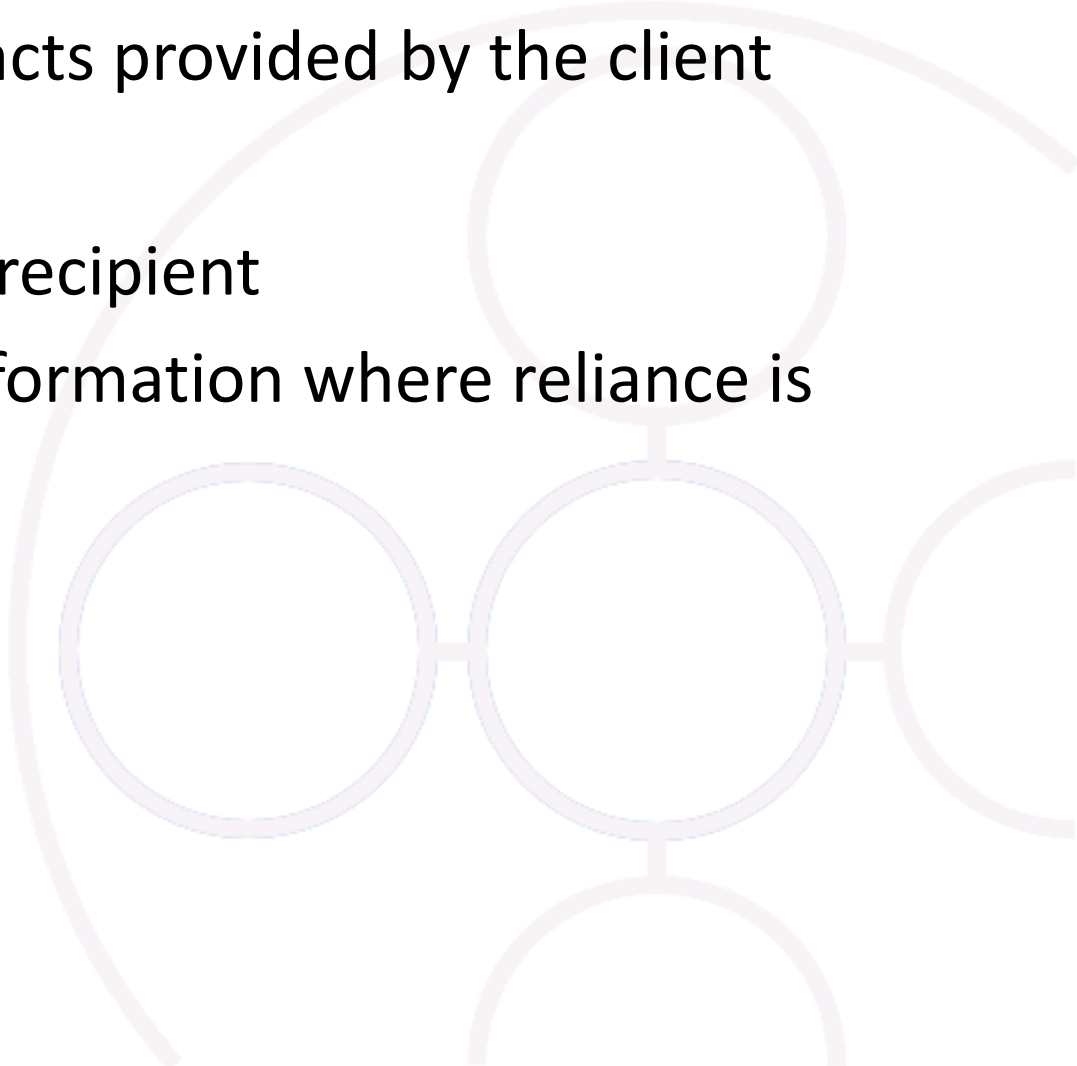
RISK MANAGEMENT



Communications

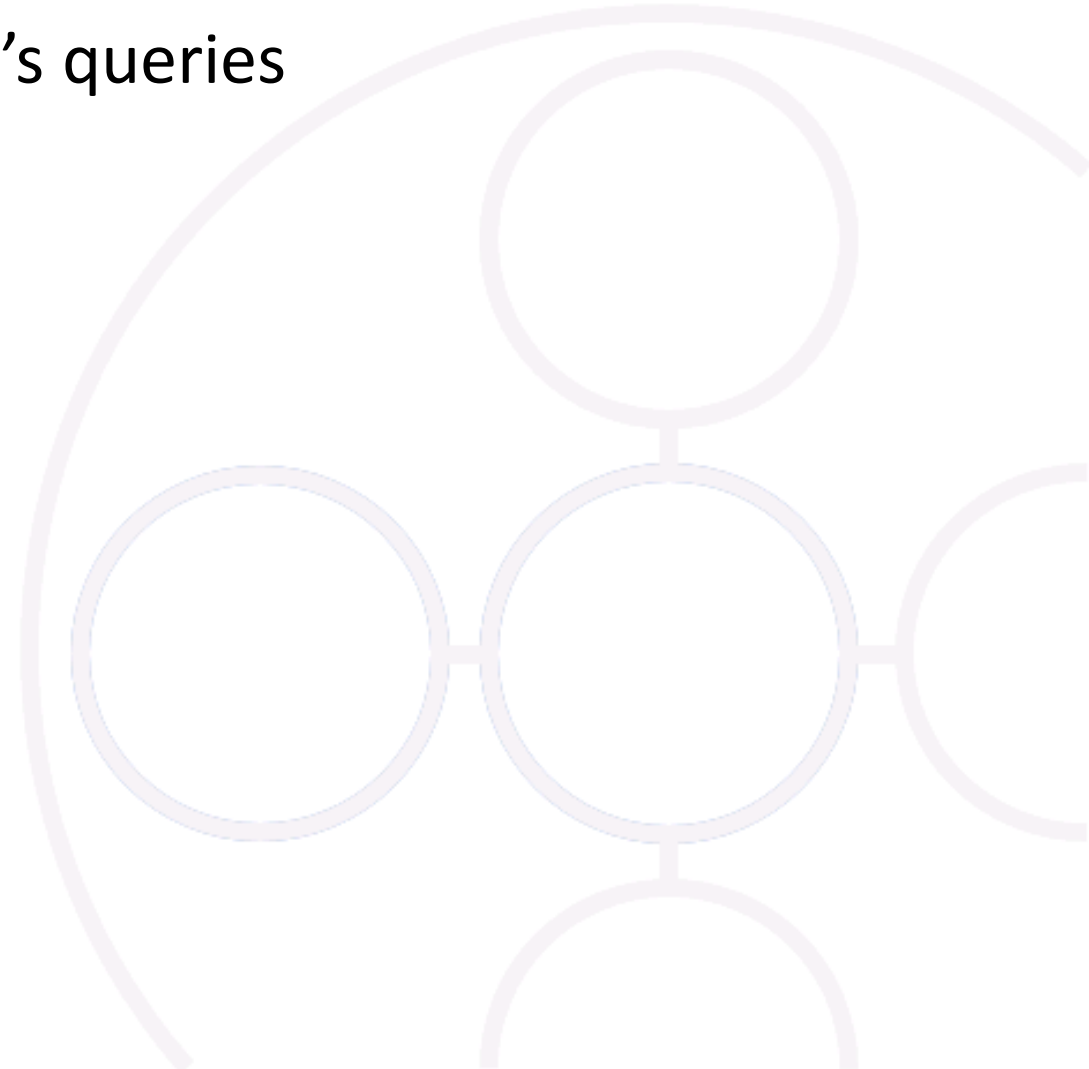
- Be clear with your client about your mandate and any limitations and confirm it in writing
- Keep well documented files including notes of conversations- DATED and TIMED
- Report in a timely and detailed manner
- Be sensitive to issues of urgency
- Avoid use of industry “jargon”
- Always treat client information confidentially

Communications continued

- Always question the reasonableness of facts provided by the client
 - Appropriate use of voicemail/machines
 - Do not always assume understanding by recipient
 - Always follow up in writing on any key information where reliance is critical
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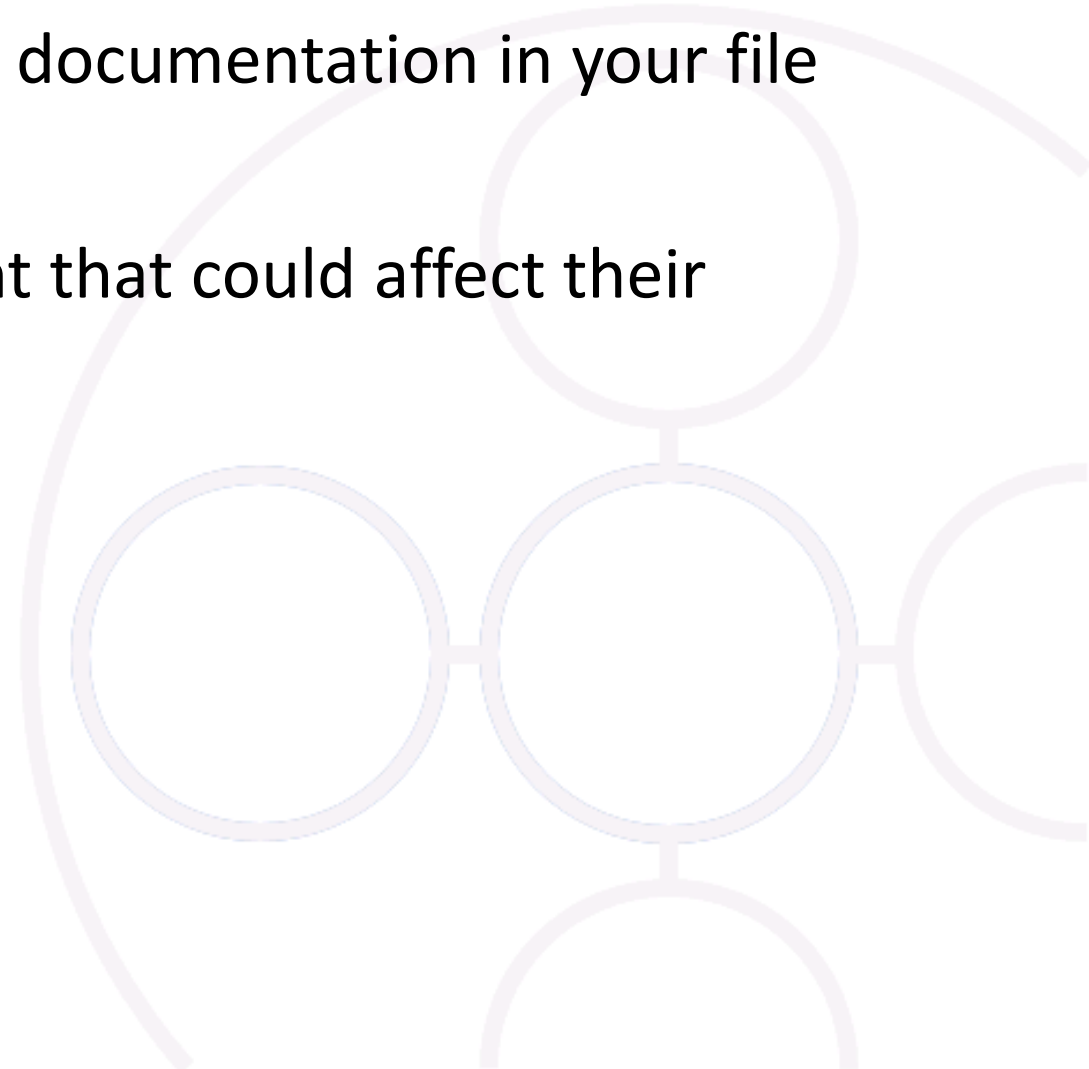
Communications continued

- Thoroughly investigate any of your client's queries
- Fully disclose the information you obtain
- Emphasize what could not be verified
- Don't "sugar coat" the information



Working professionally

- Consider using CHECKLISTS and keep the documentation in your file
- Work to avoid conflicts of interest
- Fully disclose all of the facts to your client that could affect their decision
- Keep remembering who your client is



Retirement coverage

- You can receive a claim long after you have completely stopped practicing as an HR Professional
- Consider maintaining your cover for a reasonable period after you have ceased to practice
- If you have knowledge of any situation or circumstance that could result in a claim – report it immediately to your insurer and certainly before the policy expires

Questions

Suggestions for webinar topics?

Feedback?

registrar@hrpa.ca

