



Human Resources
Professionals
Association

A webinar presented by the Office of the Registrar

Investigations: A Conversation with Dean Benard

March 30, 2017

1. What if a business owner does not want to allow access to property or info?

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.

2. I didn't understand about the right to enter your private premises without a warrant if this is where your business is conducted? Could you please clarify?

If a member conducts business in a residence that is also used as a dwelling, the investigator is entitled to search the areas of the home that the member uses to conduct their business and no other areas of the dwelling.

3. What is the process for having a "support person" present?

There is no formal process to having a support person or legal representation present during an investigation. It is important to remember the support person should be there for moral support only and should not interfere with the investigation.

4. Wouldn't most businesses require you to get a search warrant just as a standard business process? Before opening files to an investigator.

Pursuant to the *Registered Human Resources Professionals Act, 2013*, an investigator has the power to request or retrieve any document deemed relevant to the investigation. They do not require a warrant to request or retrieve any information or document. A warrant can be sought by an investigator if they are faced with resistance in obtaining any relevant information and/or documents.

5. If all the documents are housed in a different country how does that affect the process?

Because HRP is legislated by the province of Ontario, an investigator does not have the ability to physically obtain what they need by going to another country and retrieving it. The investigator's power to enter and obtain information and documents is limited to the boundaries of Ontario.

That being said, an investigator can demand that the information be produced (i.e. the member can be requested to retrieve it from the place it is stored and hand it over to the investigator).

If the member fails to cooperate, they can be charged with obstruction under the *Registered Human Resources Professionals Act, 2013* and can be seen as failing to cooperate with an investigation, which is a breach of HRPAs rules of professional conduct.

6. Does the member receive a copy of the report?

The following individuals will see a copy of the investigator's report: The Complaints Committee, the HRPAs staff member who supports the Complaints Committee and there is a possibility the Complaints Committee's lawyer will review the report should the Committee seek legal advice.

The complainant and member who are party to the complaint will not be provided the full report, however references to the report can be included in the final decision and reasons document provided by the Complaints Committee to the complainant and member once a decision has been made.

If the complaint is referred to the Discipline Committee, then the report will also be seen by the HRPAs support staff for the Discipline Committees, lawyers before the Committee and possibly the Discipline Committee members if the report (or part of the report) is introduced as evidence.

7. Early in presentation (slide #18) - Investigator does NOT assess credibility. I have hard time wrapping my head around the concept. What does that mean?

The investigator's role is to gather information relevant to the issues present in the complaint. This will assist the Complaints Committee in making a fair and informed decision. The investigator does this by interviewing relevant witnesses and gathering relevant documents/information (i.e. physical evidence).

In the course of their investigation, the investigator cannot assess a witness's credibility. For example, if Witness A attests to one part of a story and Witness B's account of the same story is completely different, the investigator's role is to point out the discrepancy and get the facts. The investigator will not make a finding that they believe Witness A over Witness B because Witness A seem more credible. That is not within their scope. It is important to note that the Complaints Committee is also unable to assess credibility, as this is outside of their scope as well.

8. What is the statute of limitations on complaints?

There is no statute of limitations regarding complaints submitted to HRPAs.

9. Did he say that the forensic process is free for everyone to use?

No, this service is free for regulators in Ontario.

10. How can non-HRPA members be held accountable for their actions?

HRPA has jurisdiction over its members only. Professional misconduct of non-HRPA members should be directed to the appropriate authorities or governing bodies i.e. ministry of labour, human rights commission, labour relations board, etc.

11. Do you get complaints from the average employee who feels wronged by being terminated (for example)...and decides to make a complaint on the HR professional involved? If so, would this type of complaint be given merit? Is there any penalty for making bad faith complaints?

To view a sample of the types of complaints and dispositions, it would be recommended to review our newsletter [Regulatory Affairs](#). Below is a summary of the disposition of complaints in 2017 Q1:

Case	Date complaint filed	Nature of allegations	Date of disposition of complaint and decision of Complaints Committee
C-2016-3	June 10, 2016	It is alleged that the member failed to conduct herself with integrity while performing a third-party workplace harassment investigation and failed to interview witnesses deemed relevant to the complainant. The member is also accused of colluding with the complainant's employer against the complainant.	January 10, 2017 - No referral to discipline was made due to a lack of evidence to support professional misconduct.
C-2016-6	September 1, 2016	The member is accused of violating the competence and legal requirement standards of the HRP Code of Conduct	January 3, 2017 - No referral to discipline was made, however the member was issued a written caution, specifically concerning the member's involvement in workplace investigations and employee terminations.

Pursuant to [HRPA By-Law 20.03 Frivolous or Vexatious Complaints](#):

(a) Despite Section 19.01, at any time, if the complaints committee considers a complaint to be frivolous or vexatious or otherwise inappropriate to assess or investigate, the complaints committee may decide not to assess or investigate or continue to investigate the complaint.

12. Do they have the right to confiscate materials?

Yes, an investigator has the power to remove any document or thing under the member's control that is relevant to the investigation for the purposes of making copies or extracts. The investigator will return the document or thing to the member from whom it was taken.

13. Who pays for the investigationHRPA or the company who we are investigating?

The Complaints Committee has a budget and within that budget there is line item allocated to investigations. Therefore the fee for investigations is paid through the Complaints Committee's budget.

14. Can he explain what a regulator is and provide examples again?

The purpose of professional regulation is to protect the public interest by ensuring that regulated professionals are competent and act in an ethical manner. In exchange for taking on the duties and obligations of self-regulation, regulated professions enjoy a status that unregulated professions and occupations simply cannot attain.

Some example of regulators include, the College of Physicians and Surgeons, the Ontario College of Teachers, Ontario College of Trades, Professional s Engineers Ontario and of course, the Human Resources Professionals Association. For a complete list, please visit the [Office of the Fairness Commissioners](#) website.