

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

OOTR 2018 Summer webinar series

**What to do if a
Complaint is
About YOU?**



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Office of the Registrar

2018 Summer webinar series



Thursday,
July 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
- 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



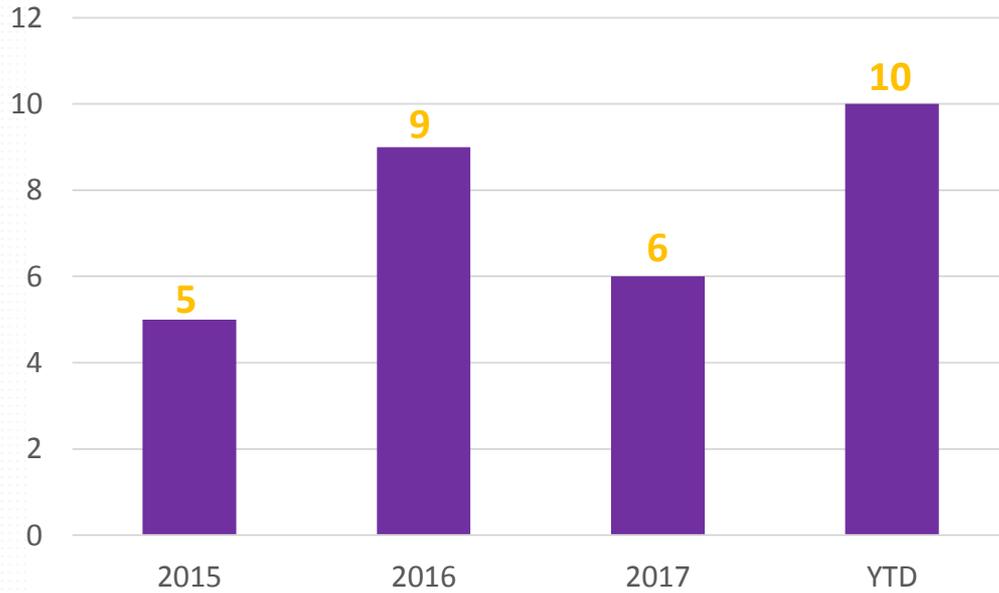
Questions involving specific individual circumstances



- 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

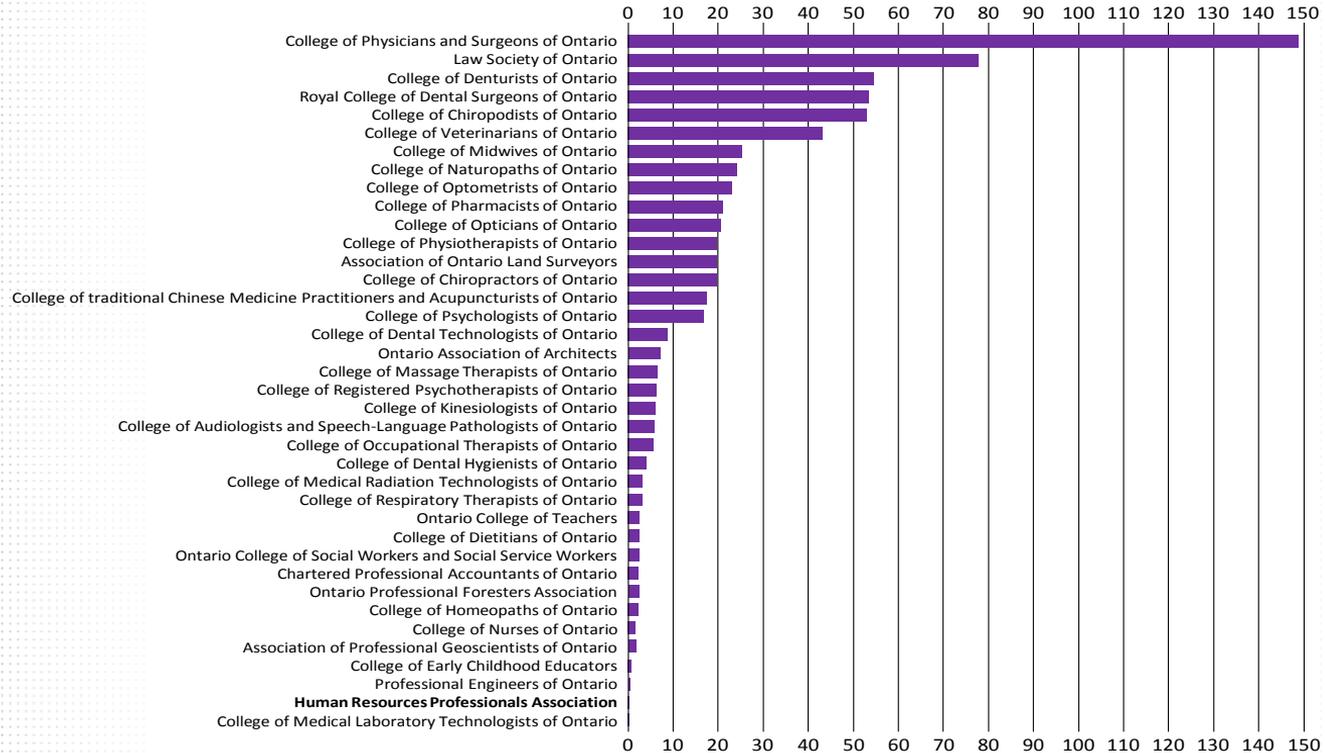


Number of Complaints Received Over the Years



Number of complaints per 1000 registrants for professional regulatory bodies in Ontario

2017



Agenda



- Context and overview
- The purpose of the complaints process and the mandate of the Complaints Committee
- A walk through the process
 - Intake and referral to committee
 - Initial review by panel
 - Investigation
 - Panel decision
- What the Complaints Committee can't do
- Complaints and Confidentiality
- Some interesting statistics
- What to do when the complaint is about you?
- Questions

The deal

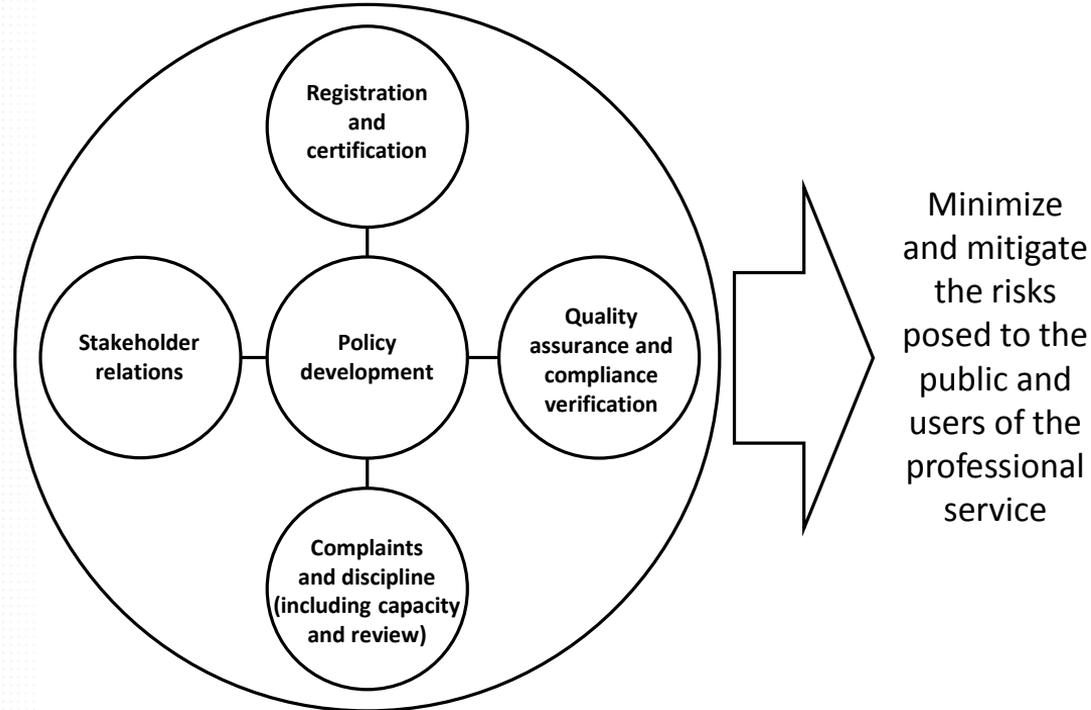


- The big picture here is ‘the deal’
- In exchange for the privilege of self-regulation, HRPA and its members agreed to certain terms and conditions
- The *Registered Human Resources Professionals Act, 2013*, is our contract with the Legislature—it spells out the terms and conditions of our ‘deal’ with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

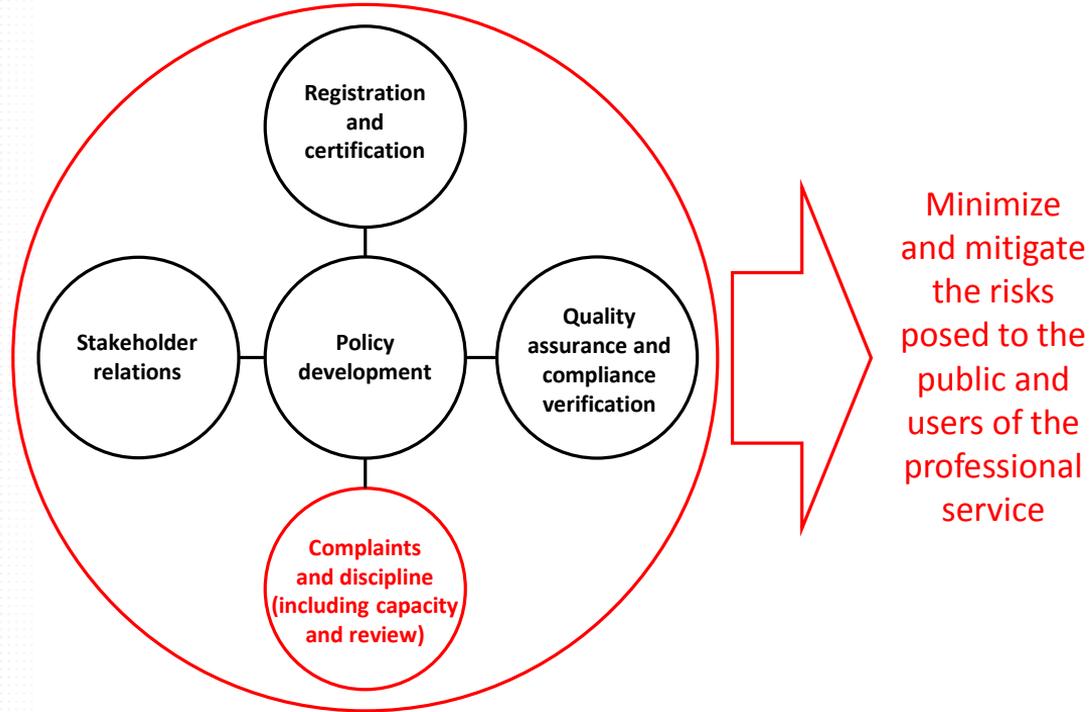
What did we agree to?

- We agreed to make the promotion and protection of the public interest our paramount object (a.k.a., purpose, mission, raison d'être, etc.)
- We agreed to establish, maintain, develop and enforce standards of qualification, standards of practice, standards of professional ethics, standards of knowledge, skill and proficiency, and to regulate the practice, competence and professional conduct of members of the Association, students, and firms
- We agreed to abide by the Fair Registration Practices Code (FARPACTA, 2006), the Labour Mobility Code (OLMA, 2009), and the *Statutory Powers Procedure Act, 1990*.
- **We agreed to establish and support independent adjudicative committees whose duty is to be fair and impartial**

HRPA's Regulatory Framework



HRPA's Regulatory Framework



Self-regulation

- The rationale for self-regulation (as opposed to other forms of regulation) is that members of the profession are in the best position to sit in judgment of the conduct of other professionals

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 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 HRP, the Complaints Committee is independent of HRP and is not ‘under the control’ of HRP
- The Complaints Committee, like everything else at HRP, must have the public interest as paramount

Whose side is the Complaints Committee on?



- In the complaints process, the Complaints Committee is not on the side of the member, and it is not on the side of the complainant either
- The Complaints Committee is on the side of fairness and impartiality
- Fairness to the member against which allegations have been made and fairness to the complainant both are equally important

Disputes and misconduct

- These are different
- Misconduct is when a member has breached his or her covenant with the Association to abide by HRPA's Bylaws, HRPA's Rules of Professional Conduct, and other professional guidance issued by the Association
- A dispute is a disagreement between a member and any person impacted by the professional services (not only clients and employers)
- The breach of covenant is between the member and the Association (which is what the Complaints Committee is concerned with)

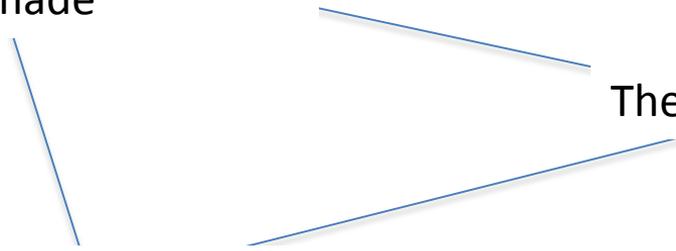
Disputes and misconduct

- The purpose of the complaints and discipline processes is not to resolve disputes between members and complainants (although this can be part of a separate process in some situations)
- The purpose of the complaints and discipline processes is to deal with situations where a members may have breached their covenant with the Association to uphold established standards of competence and conduct
- In the complaints process, the complainant is a witness
- HRPA has no restorative powers

The member for which
allegations of misconduct have
been made

The complainant

The Complaints Committee

A diagram consisting of three blue lines connecting the text elements. One line connects the bottom of the first text block to the top of the third text block. Another line connects the right side of the first text block to the left side of the second text block. A third line connects the bottom of the second text block to the top of the third text block.

What can the Complaints Committee do?



- Dismiss the complaint as frivolous & vexatious (prior to investigation)
- Issue a verbal or written caution
- Work out a resolution a resolution that it will put before the Discipline Committee (a joint submission to Discipline Committee)

The three criteria for referral to discipline



The three criteria for referral to discipline are:

1. If the allegations were true would the matter be serious enough to refer to discipline?
2. Should the matter be referred to discipline, is there enough evidence to make a case? (prosecutorial viability)
3. Is it in the public interest to make a referral to discipline, or is another course of action more appropriate

Referral to Capacity Committee

- If the Complaints Committee believes that the misbehaviour may have been the result of incapacity it may make a referral to the Capacity Committee
- A member of the Association is incapacitated if, by reason of physical or mental illness, condition or disorder, other infirmity or addiction to or excessive use of alcohol or drugs, he or she is incapable of meeting his or her obligations under the *Act*
- The capacity process is separate from the discipline process, it is more rehabilitative in its intent and outlook

Panels of the Complaints Committee

- The Complaints Committee sits in panels of three
- Panels of the Complaints Committee have all the powers and authorities of the Committee
- Decisions of a panel of the Complaints Committee are decisions of the Committee
- The term 'Complaints Committee' is often used instead of 'a panel of the Complaints Committee'

Who is the Complaints Committee?

- The Committee and its panels are comprised of:
 - Members of the profession who have the CHRL or CHRE designation
 - Public members
- Often public members will have experience in law or adjudication

A walk through the complaints process

- Intake and referral to committee
- Initial review by panel
- Investigation
- Panel decision

Intake and referral

- The Registrar (staff) does not filter or screen complaints
- The role of the Registrar is to assemble the background information that will then be passed on to the Complaints Committee panel
- The Registrar has no powers of investigation

Intake and referral



- HRP A has authority over its members.
 - A member who resigns or is revoked remains subject to the authority of HRP A in respect of a complaint arising from his or her conduct while a member (continuing jurisdiction)
 - Conduct must come to the attention of HRP A within six years of the individual ceasing to be a member (that is why information on past members remains on the public register for 10 years)
 - Except for unauthorized use of one of the designations, HRP A has no jurisdiction over non-members unless as noted above the breach occurred when the individual was a member and within 6 years of the breach

Who May Register a Complaint?

- A complaint about the conduct of an HRPA member may be registered by anyone, including:
 - A member of the public
 - A fellow HRPA member
 - The Registrar on behalf of HRPA



How to Register a Complaint with HRP

- To register a complaint with HRP about one of its members, a [Complaint Form](#) must be completed and submitted to the Office of the Registrar
- Complaints must be received in writing (letter mail, email or fax).

150 Bloor St. W. Suite 200
Toronto ON M5S2X9
registrar@hrpa.ca
416-923-8956

How to Register a Complaint with HRP



- Information requested on the Complaint Form includes:
 - Full name and contact information of individual registering the complaint
 - Name, info and relationship to the member who is the subject of the complaint
 - Description of the professional misconduct
 - Chronological history of the events
 - Contact information for any witnesses
 - Copies of any documentation that support the complaint
 - Whether the complaint has been (or will be) filed with an official legal body (e.g. the Ontario Human Rights Commission)

Does a complaint need to be in writing?

- Usually but not necessarily
- If the report is credible, the Registrar may proceed to assemble information
- Practically, this is not an issue

What About Anonymous Complaints?

- HRPA cannot act on an anonymous complaint. A complaint must include the name and contact information of the person making the complaint and the name of the HRPA member involved
- Because it is part of procedural fairness to the member against whom the allegations were made to know who made the complaint
- In exceptional circumstances, where revealing the identity of the complainant would put the safety of the complainant in jeopardy, the identity of the complainant may be withheld in early stages, but if the matter does go to discipline the identity of the complainant cannot be withheld at that point

Intake and referral



- What happens after the written complaint is submitted to HRPA?
 - Once received, the complaint form and supporting documentation are reviewed by the Office of the Registrar and, if necessary, the complainant will be contacted for clarification
 - Confirmation is sent to the complainant that the complaint has been received

Intake and referral

- Prior to receiving a copy of the complaint, the member will receive a phone call from Office of the Registrar staff advising that a complaint was registered against them and the next steps in the process

Intake and referral

- Once all information has been received from the complainant, a copy of the complaint and supporting documents are sent to the member
- The member is given 30 calendar days to respond to the complaint. The response must be in writing (letter mail, email or fax) and submitted to the Office of the Registrar

Intake and referral

- The complainant is provided with a copy of the member's response (if any) and is given an opportunity to respond (15 calendar days)
- This is not an opportunity for the complainant to restate their case, but instead for them to either refute statements made by the member, or address any new issue raised by the member

Intake and referral

- The member is provided a copy of the complainant's reply to their response, however will not be given another opportunity to respond
- In matters of regulation, this back and forth information gathering process is referred to as the "Rule of Three" (complainant-member-complainant)

Panel review and investigation

- The complaint and documentation are provided to the Chair of the Complaints Committee
- The Complaints Committee is composed of volunteer members who hold the CHRL and/or CHRE designations, as well as representatives of the public
- The Chair appoints members of the Complaints Committee to a Panel of three to review and consider the complaint.

Complaints without merit

- If the complaint appears to be without merit, the panel may decide to dismiss the complaint without investigation ('intent to dismiss')
- Before this decision is made, the member and the complainant given an opportunity to make a submission with respect to the intent to dismiss
- The decision to dismiss a complaint either at this point in the process or later is appealable to the Appeal Committee by the complainant

Panel review and investigation

- After reviewing all the information provided in the complaint, the Complaints Committee panel may decide that the matter requires further investigation
 - The Panel may interview witnesses
 - The Panel may appoint an investigator

Investigation



- 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)

Investigation: No obstruction

- As articulated in the *Registered Human Resources Professionals Act, 2013*:
 - A member shall not obstruct an investigator executing their duties or withhold from them or conceal, alter or destroy any document or thing relevant to the investigation

Who are investigators?

- When HRP A 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 will appear as a witness
- Also, if an investigation is poorly done it can jeopardize the whole case at discipline

Panel decision

Once the investigation is complete, the Panel considers all of the evidence and may decide upon one or more of the following:

- Direct that the matter not be referred to the Discipline Committee
- Take any action that it considers appropriate in the circumstances, including requiring the member to attend before one or more members of the Panel to receive a caution or admonishment
- Negotiate a tentative settlement agreement between HRPA and the member and refer the agreement to the Discipline Committee for approval
- Direct that the matter be referred, in whole or in part, to the Discipline Committee

Prosecutorial viability assessment

- Before a referral to discipline is made, it is HRPAs policy to get a legal opinion as to whether there is a viable case for conviction based on the evidence
- It is in no one's interest to go to discipline with a weak case that cannot be won

How long does the complaints process take?

- The timeline for the resolution of a complaint depends on the complexity of the case. Once all information relevant to the complaint has been received, the Committee makes every effort to reach a decision within 150 calendar days

Is it possible to appeal a decision of the Complaints Committee?



- If the panel of the Complaints Committee does not direct that a matter be referred to the Discipline Committee, the complainant may request a review of the decision by the Appeal Committee (there is no appeal if the decision is to refer the matter to discipline)
- The reason is that if a matter is referred to discipline, the member will 'get their day in court'
- Complaints Committee does not have to give reasons for its decision to refer to discipline (since this decision is not appealable)

Is it possible to appeal a decision of the Complaints Committee?



- The request for an appeal must be made within 30 calendar days of the Panel's decision and reasons letter being provided to the complainant and the member

Confidentiality

- Complaint matters are confidential meaning that the information is not made public (although the health professions will soon be required to publish cautions)
- Discipline proceedings are public however
- If a referral is made to discipline, previously confidential information may be made public

How are complaint matters kept confidential?



- All members of the Complaints Committee, Office of the Registrar staff, and any other participants in the proceedings, are bound by a confidentiality requirement which is embedded in the *Act* (with a \$25,000 fine upon conviction)
- Information regarding individual complaints cases provided to Panel members is destroyed when it is no longer needed

What the Complaints Committee can't do?



- HRPA has no authority to provide a financial remedy to the complainant
- The Complaints Committee cannot award any damages
- The Complaints Committee cannot dictate that an individual be rehired once they have been terminated by their employer

Matters that are subject to other adjudicative processes



- If a complaint is before another adjudicative board, the Complaints Committee panel may stay proceedings pending resolution of other adjudicative process.
- If the Complaints Committee defers to the resolution of another adjudicated process, they reserve the right to reopen any matter if there are issues not dealt with through the other adjudicated process
- It is the obligation of the member to advise HRPA of the nature of any settlements

What happens if the complainant withdraws the complaint?



- As noted earlier, misconduct is a matter of a breach of a covenant the member or student has made with the Association, the complainant is a witness
- Often, when a complainant chooses to no longer participate in the process, there isn't a viable case to pursue
- However, just because a complainant chooses to withdraw their participation in the process does not mean that the Complaints Committee has to abandon the case, it can choose to continue its investigation of the matter

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

Where to send a complaint

- Written complaints may be submitted to the Office of the Registrar by email, mail or fax:
- registrar@hrpa.ca
- 150 Bloor St. W. Suite 200
Toronto, ON
M5S 2X9
- 416-923-8956 (fax)



**Suggestions for webinar topics?
Feedback?**

registrar@hrpa.ca



Questions