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Is HR ready for regulation?

Editor's note: In the Aug. 11 issue, Claude Balthazard discussed the difference between a professional association and a regulatory body. Now he turns his attention to whether or not HR is ready for regulation. This is the first of a two-part series. The second, which will be published in the Insight section of the Sept. 22 issue, takes a look at licensure.

Before we start the conversation on whether HR is ready for regulation, let's clear one thing up: There is a difference between professional regulation and the right to practice a profession, and it's an important nuance.

Regulation can refer to the right to practice a profession, in which case it's called "licensure," but it also applies to "restrictions on the use of a professional title," in which case it's called "certification."

The confusion between regulation and licensure runs deep, however. Many people will use the word regulation or self-regulation when they are actually referring to licensure. In this article, the term regulation is not taken to be synonymous with licensure but refers to all manners of professional regulation. It could be noted, in passing, that the confusion of regulation and licensure has often hindered HR's ability to make progress on this important agenda.

How self-regulation works

The usual model of professional regulation is self-regulation. In Canada, the authority to regulate trades and professions belongs to the provinces. In the self-regulation model, the province delegates some of its authority to a regulatory body or professional association. Self-regulation is based on the concept of an occupational group entering into an agreement with government to formally regulate the activities of its members.

Why the interest in self-regulation? Simply, there are significant benefits to the profession and its members. When an occupational group is granted the privilege of self-regulation, it gains a great deal. This includes greater autonomy and control, professional prestige and, in many cases, financial rewards. Under professional self-regulation, the regulatory body for a profession is able to set entry requirements and standards for practicing the profession, rather than having government — or another profession — impose requirements. In short, through self-regulation a profession is better able to determine its own future.

The essential feature of self-regulation, and the biggest hurdle for a profession wishing to join the ranks of the regulated professions, is this delegation. There needs to be some form of legislation through which a provincial government delegates some of its authority to regulate the profession to the regulator or professional association. Without this legislation, a profession is not truly regulated.

It is possible for an association to perform many of the functions of a regulatory body. Indeed, on the surface, there is no great difference between organizations that "manage a designation" and those



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that are "professional regulatory bodies." But there is a difference, in the sense that the government, through this act of delegation, has recognized the importance of the profession and has provided official sanction to the provincial association or regulatory body to regulate the profession within its jurisdiction. Without this essential delegation of regulatory authority, this profession is not truly a regulated profession.

HR regulated in Ontario, Quebec

Legislation that grants the statutory right to regulate the HR profession exists in two provinces. In Quebec, legislation under l'Office des Professions grants l'Ordre des CHRA et CRIA du Québec the authority to regulate the HR profession. In Ontario, the Human Resources Professionals Act of Ontario (1990) gives the Human Resources Professionals Association the exclusive right to grant the Certified Human Resources Professional (CHRP) designation in the province, to set the requirements for the designation, to maintain a register and to discipline its members. In Quebec and Ontario, legislation only provides for title protection — only the use of the title is restricted, not the right to practice.

There is no enabling legislation in other jurisdictions in Canada. This does not mean any organization can grant the CHRP designation in other provinces. In these jurisdictions, the CHRP is covered by trademark legislation. Many of the same objectives can be accomplished through such broader commercial legislation.

The fact that trades and professions are regulated at a provincial level means the question of whether HR is ready for regulation will have as many answers as there are applicable provincial jurisdictions. Indeed, the frameworks for professional regulation differ significantly from one province to the next. In Quebec, all professions are regulated by means of umbrella legislation. In Ontario, professions are managed at the ministerial level. This means the regulation picture is complex and not necessarily consistent. Professional regulation is not consistent from one province to the next and, quite often, not consistent within a provincial ju-

risdiction.

Consider the following. The Forum of Labour Market Ministers sponsors a website called Work Destinations (www.workdestinations.org). The website is a comprehensive source of information on regulated trades and professions in Canada and a search on human resources returns only one entry — "industrial relations consultant" in Quebec. And yet, in Quebec, the industrial relations designation is interchangeable with the HR designation and, in theory, transferable to and from other provinces.

Why would it be, then, that a government agency would include the HR profession among the regulated only in Quebec and not in Ontario? An act of legislation delegating provincial powers makes a profession regulated. Not being listed as a regulated profession on a government website does not mean the HR profession is not regulated in Ontario. It does speak to inconsistencies in the system, however. In Ontario, the answer may have more to do with effective lobbying than anything else. The fact there is legislation that delegates some regulatory powers to the Ontario association makes for a foundation but is not enough to ensure the profession will be included among the ranks of the regulated professions in all contexts.

Status as a regulated profession is also a matter of profile in the eyes of the public, media, stakeholders and government. At the end of the day, regulation is more of a political matter than a rational one.

Self-regulation comes with responsibilities

There are significant responsibilities that come with self-regulation. The regulatory body of a profession has significant autonomy from government in regulating its profession. Nonetheless, since a regulatory body's legal authority is delegated from government, there needs to be some mechanism to ensure public accountability. Self-regulated professions accept greater government scrutiny of their affairs.

And the interests of the profession can no longer be the only interests served. The expectation is the regulator will use its delegated authority in the public interest. Protection of the public becomes its *raison d'être*. Protection of the public and advancing the interests of the profession are not necessarily opposite objectives but there can be tension between the two. Many professions have dealt with this tension by separating the professional association from the regulatory body, but this is not always the case — architecture is one example.

So is HR ready for regulation? HR is already a regulated profession in two Canadian jurisdictions. It is solidly established in Quebec and Ontario. At the end of the day, it is up to each provincial designation-granting association to decide where it wants to be with regards to regulation. This is an agenda that cannot be driven nationally, as it is deeply rooted in the political context of each provincial jurisdiction.

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