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Balancing regulation and competition

Why should provincial governments regulate the HR profession?

Editor's note: This is the final in a series of commentaries looking at regulation. To read the previous three articles on this important topic, see the information at the bottom of this article.

At a recent chapter meeting of the Human Resources Professionals Association (HRPA), a member asked the following question: "I would hope that the government would be more supportive of our designation. They should make it mandatory for all those who are responsible for HR in organizations. What are the chances of this happening?"

To answer that question, we must first answer the following question: Why should the government make our designation mandatory? Indeed, looking at a government perspective there are many reasons not to increase the amount of regulation in the area of HR management, or any other area for that matter. That's because the only reason to legislate is to serve the public interest.

In regards to professional regulation, serving the public interest is not so simple. The government needs to balance two policy objectives — protecting the public from incompetent or unethical professionals and maintaining access and lowest cost for consumers.

Before a government gives a particular profession a monopoly over an occupational area, it needs good reasons to do so. Enhancing the careers of HR professionals is not a compelling reason from a government perspective.

An interesting perspective on the competing interests at play is contained in the recent report tabled by the Competition Bureau, entitled *Self-regulated Professions: Balancing Regulation and Competition* (the report can be downloaded from www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html.) It puts forward its guidelines for effective



■ GUEST COMMENTARY

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professional self-regulation. Now, the Competition Bureau is not the agency that regulates professions — it's a federal agency and professions are, in most cases, regulated provincially. Nonetheless, the guidelines give a good idea of what governments would look for before considering an enhanced level of regulation in the area of HR, such as making the Certified Human Resources Professional (CHRP) designation mandatory.

6 guidelines for professional regulation

The Competition Bureau identified six guidelines for effective professional regulation:

- Regulation should have clearly defined and specific objectives.
- Restrictions should be directly linked to clear and verifiable outcomes.
- Regulation should be the minimum necessary to achieve stated objectives.
- The regulatory process must be impartial and not self-serving.
- A regulatory scheme should allow for periodic assessments of its effectiveness and be subject to regular reviews.
- A primary objective of the regulatory framework should be to promote open and competitive markets.

It is not that enhanced regulation of the HR profession may not be possible, but the onus will clearly be on the profession to

make a good case for it. It should also be noted that the approach deals with specifics rather than generalities. At issue here is not regulation of the profession but rather specific restrictions. Each restriction would stand or fall on its own merits. These may be restrictions on entry to the profession, or on the behaviour of regulated professionals.

For one, the HR profession will be expected to articulate exactly why specific regulations are necessary. Statements such as "to protect employers and employees from incompetent or dishonest HR professionals" are too general. It will be necessary to document the specific problems that arise from a lack of regulation.

It is also clear the Competition Bureau suggests a minimalist approach to regulation. Specific restrictions should be directly linked to intended outcomes. Regulation should only comprise what is reasonably required to protect the public and should not restrict competition any more than necessary to achieve the desired objectives. In addition, restrictions should be subject to ongoing review — what was justifiable yesterday may no longer be justifiable today.

Governments skeptical of motivation

Governments are somewhat distrustful, and probably justifiably so, of the motives of professional associations and regulatory bodies in asking for more protection of their privileged position in the marketplace. In exchange for greater self-regulation powers, governments often require changes to governance structure in the form of requiring more representation from the public on the boards of professional associations or professional regulatory bodies.

At the end of the day, decisions about professional self-regulation are political. The interests of other regulated professions also need to

be taken into account, as well as the public interest. In considering a change such as making a particular designation mandatory, the government will also consider those who might oppose such a proposal. Consider Ontario's Bill 14 — the Access to Justice Act. In allowing the Law Society of Upper Canada to regulate paralegals, legislators took into account the existing interests of other regulated professions already acting in the area.

The Competition Bureau was not impressed by Bill 14. One of its recommendations reads as follows: "To the extent that paralegals need to be regulated, the proper avenue for this is not through the law societies, given the obvious conflict of interest that arises from having one competitor regulate another. Alternative means of regulatory oversight should be explored."

Changes to professional self-regulation do not occur overnight. It took years of intense lobbying for the Certified Management Accountants and the Certified General Accountants to be granted access to public accounting, an area that had previously been the exclusive right of Chartered Accountants. Here, the rationale for the change was to increase competition by increasing the choices available to consumers. Obviously, introducing changes that increase competition will be easier than introducing changes that reduce competition.

As a profession, we need to understand the perspective of legislators and make arguments that are persuasive from that perspective. We also need to work towards a much broader awareness on the part of the public of the specific problems that a lack of adequate regulation bring about.

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