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What licensure means for HR, and why it probably won't happen anytime soon

Editor's note: This is the second part of a two-part series. In the Sept. 8 issue, Claude Balthazard took a look at whether HR is ready for regulation. Now he turns his attention to the issue of licensure.

Last time, we discussed regulation — now let's tackle licensure. The essential feature of licensure is limitations on the rights of practice. Simply put, by law, licensed professionals can do some things non-licensed individuals cannot. There are different forms of licensure, however. It is rarely a blanket right to practice a profession; often licensing regulations define more specific "controlled acts."

For some professions, the controlled areas of practice are a small part of what a profession does. In accounting, only the "public accounting" area is regulated in this way. And the rights to practice need not be exclusive. Indeed, the right to practice in certain areas can be shared among different professions. In Ontario, the right to practice public accounting will soon be shared among the three accounting disciplines.

Although the argument for licensure is usually "protection of the public," there are many reasons why professions are interested in licensure. For one, it provides a greater level of control over the profession. And the interest in licensing is not entirely altruistic — a number of studies have found the incomes of members of professions with restrictions on entry are higher than the incomes of comparable professionals who do not face restrictions.

What the Competition Bureau thinks

But there are competing interests involved. Consider a 2007 study by the Competition Bureau on self-regulated professions (*Self-Regulated Professions: Balancing Competition and Regulation*). This took a look at the way regulation affects competition in self-regulated professions in Canada. The report provides an interesting analysis of the competing interests at play — specifically, the balance between the interests of the profession and the interests of the public.

In the end, the Competition Bureau was not against professional self-regulation but suggested that, in many cases, professional regulation had gone too far in the direction of serving the profession's interests. The regulatory restrictions that have the greatest potential to hamper competition are restrictions on market entry, including restrictions on entering the profession, mobility, overlapping services, scope of practice and market conduct, which includes rules controlling advertising, pricing and compensation, and business structure.

Significant hurdles to HR licensure

Licensure is not likely to happen soon for HR for a few reasons. The first has to do with the readiness of HR, the other with the disinclination of



GUEST COMMENTARY

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provincial regulators to restrict competition. The HR profession would need to be clear about those areas of practice it feels specially qualified to deliver and those areas for which regulation would be needed. The second step would be to convince the provincial government to enact legislation to bring about licensure. These are not insignificant hurdles.

In what areas are HR professionals particularly competent? There is no clear consensus as to what those "controlled acts" would be. It simply may be too early in the game for the HR profession to define these acts. It may be that the controlled acts for HR would be relatively narrow and reflect only a small part of what we do as HR professionals. On the other hand, all HR professionals would be required to be competent in performing those controlled acts in order to be licensed.

Protection of the public

Beyond defining these areas, the HR profession would need to argue that protection of the public requires licensure.

Protection of the public is the rationale for all forms of professional regulation. In the case of licensure, however, the argument needs to be strong. Demonstrating that incompetent HR professionals can do real harm to the organizations that employ them and their employees is not enough. The HR profession would need to demonstrate the public needs protection in this area.

Economists speak of "asymmetric information." Asymmetric information arises in professional services markets when consumers cannot accurately assess the quality of the services they need because they do not have the information to do so. For HR, the consumers are usually businesses. As such, they are likely to be more sophisticated or frequent purchasers of professional services and thus, over

time, may be able to discern service quality. The HR profession is not the only one that offers its services to businesses rather than individuals. For instance, professional engineers are also in this situation.

So the HR profession would need to demonstrate not only that incompetent HR practitioners can cause harm to their organization and their employees, but that their employers are not in a good position to judge the quality of the service provided until it may be too late.

A better argument for licensure?

Possibly a better argument for licensure for HR professionals would be the professional's ability to balance the interests of employees and employers. From the perspective of a provincial government that enacts workforce legislation, the HR professional is a key implementer. The provincial government could see the regulation of HR professionals as a means of ensuring the interests of employees or society as a whole are also considered, not just those of the employers. This would support a certain degree of independence of HR professionals vis-à-vis their employers.

In the case of the HR profession, the argument for licensure would also need to show certification is not enough to meet policy requirements. Certification is appealing to governments — the designation could signal quality to consumers while not preventing them from purchasing services or hiring HR professionals who do not have the certification.

With licensure also comes increased responsibility. In a licensing context, the designation is very much a "warrant of competence." It becomes paramount for the regulatory body to ensure those who are licensed are competent in those areas of restricted practice. Also, because there are restrictions on the rights to practice, the processes to appeal licensing decisions and discipline decisions need to be solidified.

All in all, there is a long way to go before the HR profession can make a serious bid for licensure for HR professionals. That doesn't mean the HR profession cannot learn from better understanding licensure and the regulatory frameworks involved. Indeed, one could define a continuum of "regulatory maturity" and think in terms of making progress along that continuum.

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