#7 Let me talk to your manager: Escalation in matters of professional regulation

Claude Balthazard, Ph.D., C.Psych., CHRL
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Issues are escalated differently in matters of professional regulation than they are in business. Although this may appear to be a somewhat arcane topic, it actually explains a lot about the difference between professional regulation and business.

In dealing with a business of some kind and when unhappy with an answer from the front line, many will escalate the matter by asking to speak to a manager or send an email to the CEO, in hope or expectation that a more senior manager will resolve the matter to their satisfaction. This is not how professional regulation works. Although there is a management structure within professional regulatory bodies, this management structure does not have the authority to overturn decisions made by regulatory committees or the Registrar.

In fact, statutory committees are independent of HRPA, they derive their authority directly from the Registered Human Resources Professionals Act, 2013. Statutory committees do not ‘report to’ the Registrar, the CEO, or even the Board of Directors. Yes, statutory committees are established by the Board of Directors by by-law and are provided administrative support by staff, but the decisions made by these committees cannot be ‘reviewed’ by the Registrar, the CEO, or the Board of Directors. Similarly, the Registered Human Resources Professionals Act, 2013, assigns some powers and duties to the
Registrar. Decisions made by the Registrar in the exercise of these powers and duties are not reviewable by the CEO or the Board of Directors.

The Registered Human Resources Professionals Act, 2013, is actually quite clear about the escalation path for regulatory decisions. If one is unhappy about a decision, the first step is to file an appeal with the Appeal Committee. Note that the Appeal Committee is a statutory committee which is independent of HRPA. The Appeal Committee has the authority to make any decision that the original decision-maker had to make.

The Act mentions that the decision of the Appeal Committee is final. This means that there is no further review within HRPA. However, all decisions made in the exercise of a power granted by the Act is subject to review by Divisional Court, which is a branch of the Ontario Superior Court. From Divisional Court one could go to the Court of Appeal for Ontario, and ultimately to the Supreme Court of Canada. Needless to say that matters of professional regulation rarely make it to the Supreme Court of Canada, but occasionally they do as in the case of Green v. Law Society of Manitoba, 2017, SCC 20.

In matters of regulatory decisions, the role of the Board of Directors is oversight—making sure that the committees are duly constituted, staffed, trained, and supported—but the Board of Directors has no power to review any decision made by any committee (with one exception as per section 38 of the Act).

It should also be noted that no one is empowered to make exceptions to established rules or to waive non-exemptible requirements. No one can change exam scores, no one can grant a pass when a candidate has fallen short of the cut-score, even if by a small margin. One of the foundations of professional regulation is consistency and universality in the application of rules. No one is empowered to ‘cut a deal’ or disregard deadlines. Where the consistent and universal application of a rule would cause unfairness, as when accommodation is required, the parameters of such accommodations are set out—even exceptions follow rules.

Although ‘the squeaky wheel may get the grease’ in business, it’s just not how it works in professional regulation.