#17 Does the practice of Human Resources pose risks to the public?

Claude Balthazard, Ph.D., C.Psych., CHRL  
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The answer is that we’d better hope it does. Here is why.

Risk management is the essence of professional regulation. Professional regulation is all about managing the risks of harm posed to the public stemming from the practice of a profession. When the Legislature considers regulating a profession, the first criterion it considers is the risk of harm to the public. It is called the ‘risk of harm threshold.’ Simply put, for a profession to be regulated there must be a significant potential for risk of harm to the public or segment of the public. If there is no significant risk of harm stemming from the practice of the profession, there is no reason to regulate a profession.

However, the Ontario Legislature did chose to regulate the Human Resources profession by passing the Registered Human Resources Professionals Act, 2013. The only reason the Ontario Legislature passed the Registered Human Resources Professionals Act, 2013, is because it believed that there is a significant risk of harm to the public stemming from the practice of the profession of Human Resources and that creating a professional regulatory body was the best approach to the management of such risks. Why? Because there is no other legitimate reason to pass an act that regulates a profession.

When the Legislature creates a professional regulatory body, risk management is not a sideline or something that the professional regulatory body should do when there is a problem, it is established as the core mandate of the organization. HRPA’s core mandate in law is to manage the risks of harm to the
public stemming from the practice of the Human Resources profession. Risk management is more than dealing with harms when they occur, it also means doing what one can to prevent harms from happening in the first place.

“There is no other legitimate reason to pass an act that regulates a profession other than to manage the risks of harm posed to the public stemming from the practice of the profession.”

But what if there is no significant risk of harm to the public stemming from the practice of Human Resources?

Then we are in a pickle.

First, it is saying to the Ontario Legislature that it really messed up because it passed legislation based on an incorrect assumption. It argues that the Registered Human Resources Professionals Act, 2013, is a fundamentally flawed and unnecessary piece of legislation. If there really isn’t any significant risk to the public stemming from the practice of the Human Resources profession, the Act should be repealed. We can’t argue that the Act should be kept because there are some parts that we like such as title protection, the Act is a package deal that comes with a core public protection mandate. (It is also the case that legislation is not needed to protect a title, this can be done through trademark registration.)

But if that were the case that there is no significant risk of harm to the public stemming from the practice of the profession, the problem is that the legislation was passed and that it is now law. We can’t get around the issue by thinking of the Act as simply granting powers that aren’t needed and can be ignored. The Act made public protection HRPA’s core mandate. If there is no risk of harm to the public no protection is needed, and HRPA’s core mandate is to do something that is not needed. If the protection of the public was a small part of the mandate, this could possibly be overlooked but managing the risks of harm to the public is HRPA’s core mandate.

Of course, the other approach is to take the Ontario Legislature and the Registered Human Resources Professionals Act, 2013, seriously. This means that instead of arguing that there are no significant risks of harm to the public stemming from the practice of Human Resources, we should do our best to identify such harms and to do all we can to reduce, suppress, mitigate or eliminate harms because that is the core mandate given to us by the Ontario Legislature.