#26 Who are we protecting anyway?

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The essential mandate of professional regulatory bodies is to manage the risks of harm to the public stemming from the practice of the profession.

The usual explanation is in terms of direct service delivery. The consumer is in need of protection because (1) they are not in a position to judge the quality of the service they are receiving, (2) the consumer has no choice in the professional they will receive services from, or that (3) the consumer is in a vulnerable position and could be taken advantage from an unethical professional. Although some Human Resources professionals provide professional services directly to consumers, this is definitely the minority of situations. Does this mean that there is no good reason to regulate Human Resources professionals?

No, the other rationale for regulating professionals is the third party impact model (the ‘triangle’ model). This could be referred to as the triangle model. There is a triangle whenever there are significant third party impacts of the practice of the professional.

The classic example here is public accounting. Public accountants are regulated not so much to protect client firms from incompetent and unethical public accountants, but to protect the shareholders and potential investors (‘the public’) from a misrepresentation of financial affairs. Here the public interest is in the fair and accurate representation
of the financial status of public companies. The purpose of regulation is to keep auditors independent and required to resist any pressured to represent the affairs in a way that is favorable to management.

Another example is engineering. Professional engineers are regulated not so much to protect client firms from incompetent and unethical professional engineers, but to protect those who may be hurt if there were to be an engineering failure (‘the public’). The same rationale would apply to professional planners whose act is currently working its way through the Ontario Legislature.

Even some professions who deliver services directly to individuals can become ‘triangulated’ when the user of the professional service is not the payer.

Here, the purpose of regulation is to promote and protect the public interest by ensuring that professionals maintain their professional independence. The term ‘client capture’ has been used to describe “the propensity for a professional to be ‘captured’ by his or her client and render advice which has less to do with professional standards but which is more closely related to the commercial interest of both the client and the professional. Professionals who are ‘captured’ by their clients cannot then be relied upon to provide the advice their profession requires of them. That is not to say that the advice may necessarily encourage the client to break laws or otherwise behave unethically.1”

The regulation of Human Resources professionals follows mostly from the second rationale. Were it only a matter of protecting employers from incompetent or unethical Human Resources professionals, the Human Resources management profession would never have been regulated. The reason why the Legislature decided to regulate Human Resources management professionals was because of the public interest in the impacts of the work of Human Resources professionals upon third parties.

The basic idea is that the work of Human Resources professionals has an impact on employees and society as a whole. Because of these impacts, the practice of Human Resources cannot be considered as solely a matter between Human Resources professionals and their employers or clients. The reason why Human Resources professionals are regulated is to protect employees and the public from the actions or decisions of Human Resources professionals as they provide professional services to their employers and clients. In other words, there is a public interest in having Human Resources professionals who are not solely focused on serving the interests of their employers and clients but who are also concerned with the impact of their actions on other stakeholders (i.e., ‘society as a whole’).

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