Identifying risks of harm stemming from the practice of Human Resources management

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In a previous article, we worked out that the only reason to regulate a profession is that there must be a significant potential for risk of harm to the public or segment of the public stemming from the practice of the profession. It was concluded 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. But what are those harms? Of course, that question cannot be answered without doing research that hasn’t been done yet, but we can give some examples that illustrate the point.

A good place to start is with known harms. The difference between a risk of harm and a known harm is that in the latter the risk has materialized. An identified harm is of interest to the extent that the harm is an outcome that could have been avoided by the actions of a Human Resources professional. Harms may come about from either the actions (commission) or lack of action (omission) on the part of a Human Resources professional.

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1 Does the practice of Human Resources pose risks to the public?
Sexual harassment in the workplace

The handling of sexual harassment allegations is usually a difficult matter that requires judgment and skill, and there is definitely harm caused when such allegations are not handled correctly. Should we expect our members to do more than just follow the law? Do we need to create practice standards around handling sexual harassment in the workplace?

Workplace harassment and bullying

Again, much harm can come from workplace harassment and bullying. This is a problem where the failure to act in a preventive manner may be the issue. Certainly, it can be expected that Human Resources professionals do all that would be reasonable to expect them to do to ensure that employees are free of workplace harassment and bullying. Can we define these expectations and hold Human Resources professionals accountable for doing what they could to manage that risk?

Employment tests

There is no doubt that the misuse of employment tests can cause harm to individuals and organizations. Are HRPA members sufficiently trained to use employment tests correctly? Do we need to develop practice standards to regulate the use of employment tests by Human Resources professionals?

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Workplace investigations

The conduct of investigations is a controlled act in Ontario. The Private Security and Investigative Services Act, 2005, (PSISA) prohibits non-authorized individuals from acting as a private investigator or hold himself or herself out as one unless the person holds the appropriate license under PSISA. The Ontario Legislature saw real risks of harm in allowing unlicensed persons from acting as private investigators. The Registered Human Resources Professionals Act, 2013, authorizes Human Resources professionals registered with HRPA to conduct workplace investigations. Have we done all we can as a professional regulatory body to manage the risks stemming from the conduct of workplace investigations?

Cybersecurity

On June 7, 2017, the disciplinary council of the Ordre des Conseillers en ressources humaines et en relations industrielles agréés issued a decision in a case that broke new ground. At issue was the duty of professionals to be technologically competent, and the security measures to be applied when transmitting documents with personal information. What are the duties and responsibilities of Human Resources professionals in these situations? Emerging technologies will require the ongoing development of new practice standards.

The list could go on. As noted above, these are just top of mind examples of risks of harm stemming from the practice of Human Resources. Of course, research would be required to determine if these are the risks of harm that should be focused on and which are the appropriate regulatory responses to effectively manage these risks of harm if any. Research is needed to understand how risks turn into
This what Malcolm Sparrow\(^2\) means when he refers to the work of regulators as the ‘sabotage of harms.’

The duty of professional regulatory bodies is not only to deal with harms once they have occurred but to identify the risks of harm before such risks turn into harm.