#31 Why is professional regulation provincial?

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It’s a constitutional thing.

Section 92 of the *Canadian Constitution Act, 1867*, assigns to the provinces the authority to make laws in relation to property and civil rights in the province. The Supreme Court of Canada and other courts have interpreted property and civil rights under s. 92 of the *Canadian Constitution Act, 1867* to include regulation of professions.

The Supreme Court of Canada and other courts have on many occasions upheld the authority of the provinces to regulate professions, including establishing restrictions on the entry to practice, prescribing rules of professional conduct, and self-administration by a governing body.

Although some would like to see a national regulatory body for the Human Resources profession in Canada, it is not likely to happen anytime soon as this would require a constitutional amendment. In 2011, the Harper Government made plans to establish a single national securities regulator. The Government referred the proposed Act to the Supreme Court of Canada for its opinion as to whether the proposed act fell within the legislative authority of the Parliament of Canada. The Supreme Court stated that it was not.

The confusion for some is that some designations are offered by national entities. How can that be? One does not need to be a professional regulatory body to offer a designation. In fact, anyone can offer a designation. Indeed, there are two ways of protecting a title, one is statutory title protection. Here,
there is a statute which prohibits the use a title by anyone not authorized to do so. The other is to register the initials as a certification mark. A certification mark is a kind of trade-mark but where the mark is not intended to be used by the certification mark owner but licensed to users that meet criteria set out by the certification mark owner. Certification marks are registered under federal trade-mark legislation.

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The essential difference is that national entities which offer designations are not professional regulatory bodies for the simple reason that provincial legislatures will not delegate their provincial powers of regulation to national or international entities. It’s the delegation of provincial powers that makes all the difference.

There are all sorts of differences between entities that offer designations and professional regulatory bodies—one important one being that professional regulatory bodies will have statutory mandates to promote and protect the public interest whereas entities that offer designations will not. In turn, professional regulatory bodies enjoy the support or backing of government in ways that entities that offer designations do not. For instance, the provincial government through the courts will enforce decisions made by professional regulatory bodies.

There is nothing stopping professional organizations that do not exercise authorities delegated by law from being national or international entities. Member-benefit associations and certifying bodies can be national or even international, but as soon as provincial regulatory powers are at play, the entity exercising these delegated provincial powers must be provincial.

It is not that the provincially-based system doesn’t have its challenges. One such challenge is telepractice, or internet practice. A practitioner registered in Province A provides a professional service in Province B, something goes wrong which regulatory body does what? It is simple enough to say that the professional is accountable to the professional regulatory body with which he or she is registered, but what if the practice standards are different in the two provinces? Will the professional regulatory body in Province A enforce the standards in place in Province B? Can the professional regulatory body in Province B accept that the standards of practice in their province be set by the professional regulatory body in another province?