#35 Who watches over HRPA?

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Posted on LinkedIn September 13, 2017

Professional regulatory bodies watch over their members, students, and firms, but who watches over professional regulatory bodies? The basis for professional self-regulation is trust. The Ontario Legislature grants the privilege of self-regulation to some professions because it trusts these professions to govern and regulate their members in the public interest, so it is not surprising that professions are given a fair amount of leeway in conducting their affairs.

Now many commentators have noted that the level of trust the government has in the professions has diminished over time. Nonetheless, self-regulation remains the primary approach to the regulation of professions in Ontario.

There are six entities or groups who watch over professional regulatory bodies:

- The Ontario Legislature
- Ministries
- Government agencies
- The courts
- The media
- The members

Let’s quickly look at how each applies to HRPA.
The Ontario Legislature

HRPA is a creature of the Legislature. Despite the fact that there are no mechanisms for the monitoring or enforcement of this accountability, HRPA and its Board of Directors are accountable to the Ontario Legislature for the fulfilment of its objects as spelled out in the Registered Human Resources Professionals Act, 2013. Of course, intervention by the Legislature is something that would only happen if matters went significantly sideways, and would certainly not be a good thing for HRPA or the profession; nonetheless, the Ontario Legislature our ultimate accountability is to the Ontario Legislature.

Ministry

An interesting fact is that HRPA is the only professional regulatory body governed by public act in Ontario which does not have ministerial accountability. Ministerial accountability requires the professional regulatory body to submit reports to the Minister but more importantly, it gives the Minister the power to intervene in the affairs of the professional regulatory body. This kind of ministerial accountability is spelled out in the enabling statute.

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Government agencies

The most well-known such agency is the Office of the Fairness Commissioner which derives its mandate from the Fair Access to Regulated Professions and Compulsory Trades Act, 2005, (FARPACTA). Each year, HRPA must file a Fair Registration Practices Report with the Office of the Fairness Commissioner, and every three years the Office of the Fairness Commissioner must conduct an assessment of HRPA’s compliance with the Fair Registration Practices Code. The purview of the Office of the Fairness Commissioner is narrow, however, it focuses solely on the transparency, objectivity, impartiality, and fairness of registration processes.

The Ministry of Advanced Education and Skills Development monitors HRPA’s compliance with the labour mobility provisions of the Canadian Free Trade Agreement (CFTA)—again, this is a complaints driven-process.

The courts and tribunals

Decisions made pursuant to authorities delegated by law are reviewable by Divisional Court, which is a branch of the Ontario Superior Court. When hearings are required by law, such hearings are subject to the minimum standards of procedural fairness set out in the Statutory Powers Procedure Act, 1990. The Human Rights Tribunal of Ontario will also consider complaints relating to discrimination on the basis of protected grounds.

Incidentally, as with other professional regulatory bodies, the Ontario Legislature has granted HRPA protection from liability, meaning that no action or other proceeding may be instituted against the Association, the Board or any committee, any member or former member of the Association, of the Board or of a committee, or any officer, employee or agent of the Association or of the Board for any act done in good faith in the exercise of any power under this Act.
The media
The media have become the watchdog for professional regulation. The Toronto Star regularly publishes articles on the actions professional regulatory bodies. Needless to say, these stories are invariably about perceived regulatory failures of one kind or another. There are many professional regulatory bodies for whom their worst nightmare is to wake up one morning to a front page story about them in the Toronto Star or Globe and Mail.

Members
The professional regulatory body as a corporation is comprised of its members. Members elect directors to sit on the Board and members ratify the By-laws of the Association. In some professions, the accountability to the membership has created problems. Although, in theory, members are to hold the Board accountable for fulfilling the objects of the corporation, in practice members, will often vote guided by self-interest.

As noted at the start, the grant of the privilege of self-regulation is predicated on the presumption that professions will do the right thing because of the ethos of the professions. In truth, this ethos is the most important mechanism that keeps professional regulatory bodies focused on doing what they were mandated to do.