When professional regulatory bodies fail to act

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When the question ‘what are the harms to the public stemming from the practice of the profession’ is asked of many Human Resources professionals the response if often blank stares, as if there are no such harms. Perhaps the question should be rephrased ‘what issues would the public want their Human Resources professionals to handle appropriately?’ and ‘on what issues would the public expect the governing body for Human Resources professionals to provide guidance to its members and to take action when its members do not conduct themselves in line with this guidance?’

For both Human Resources professionals and their professional regulatory body, the failure to take action when the public would expect some kind of action to be taken will often be the issue—it’s not commission but omission that will often get HR professionals and their governing body in trouble.

Regularly in the news are stories of executives who abused their employees in some way. I am sure that there are many employees who, upon reading such stories, wonder ‘If this were to happen to me, would my Human Resources professional provide me with support and assistance? Would the Human Resources professional take the appropriate steps to report and address my complaint? Would I trust my Human Resources professional to do so?’

What I am proposing here is that in the eyes of the government, the media, and the public, protecting employees from harm is an important expectation. And this works at the level of the individual practitioner and at the level of their professional regulatory body. First, ‘can I count on my Human Resources professional to implement measures so that such conduct is clearly identified as wrong? If
such conduct occurs and I report it will the Human Resources professional provide me with support and assistance? Will the Human Resources professional follow up on my complaint and ensure that it is investigated?’ And then, ‘did the governing body for Human Resources professionals do all it could to identify these potential harms, to provide guidance to its members as to what is the appropriate thing to do, and whether the professional regulatory body dealt with Human Resources professionals who failed in their duty to protect?’

Sound somewhat familiar? This is what happened to the real estate brokers in BC. In a hot real estate market, home buyers and home sellers in BC were subject to practices such as ‘shadow flipping’\(^1\) and ‘double ending.’\(^2\) Neither of these practices was illegal, nonetheless, there was a clear expectation on the part of the BC government, the media, and the public that the governing body for real estate brokers had a duty to act to protect the public from such practices. The governing body, the Real Estate Council of BC, didn’t act. In February 2016, the Real Estate Council of British Columbia asked the Superintendent of Real Estate to convene and chair an independent review process in response to concerns raised about real estate licensee conduct reported by the media. The report of the Independent Advisory Group (IAG) was published on June 17th, 2016.\(^3\) Interestingly, it was not only the professional regulatory body that came in for criticism, the whole culture of the profession was found to be problematic.

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“A self-regulatory regime works when members of the profession hold themselves, and each other, to an ethical standard that is higher than anyone else does. It is not enough for individual licensees to act ethically; they must also hold each other to a high standard. Each member of a self-regulating industry needs to be part of the compliance regime and report misconduct promptly. The IAG found this culture is lacking in the real estate industry and that more needs to be done to reinforce the obligation for licensees to report misconduct.”

The next day the then Premier of BC, Christy Clark, announced the end of self-regulation for the real estate industry in BC.

“The real estate sector has had 10 years to get it right on self-regulation and they haven’t,” Clark told a news conference. “So we are going to end the right of the real estate sector to self-regulate.”

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\(^1\) Shadow flipping is a controversial sales technique in which realtors reassign the sale to different owners at ever higher prices allowing realtors to score two or even three times their standard commission on a single house.

\(^2\) A double ended commission is where the real estate agent represents both the buyer and seller in a sale and receives both ends of the commission.

The duty of professional regulatory bodies is not to wait passively for problems to arise before acting but to proactively do what they can to protect the public from the harms that may arise from the practice of the profession. In the eyes of government, the media, and the public, the failure to act when actions would have been required is deadly. It is important that the professional regulatory bodies, including their boards and councils, be concerned with the risks of harm to the public that may arise from inaction.