#73 “What does regulation actually mean for us in plain language?”

Claude Balthazard, Ph.D., C.Psych., CHRL
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The starting point for this article is a comment made in response to a question on the recent HRPA Member and Student Survey.

“Although we get frequent emails about it, it is still confusing. What does it [regulation] actually mean for us in plain language? Case studies or examples of members being disciplined or how regulation actually impacts members would be helpful.”

Let’s tackle this question in two parts. Let’s start with what professional regulatory bodies do and then consider how this impact members.

**What professional regulatory bodies do?**

The question mentioned ‘discipline.’ Yes, discipline is part of professional regulation, but professional regulation is so much more than discipline.

HRPA is a professional regulatory body. As with all professional regulatory bodies, HRPA’s mission and mandate are to promote the public interest by governing and regulating the practice of members and firms in accordance with its enabling legislation (i.e., the *Registered Human Resources Professionals Act, 2013*) and its By-laws.
Although there is some latitude in how HRPA chooses to carry out its mission, there is a lot that the Act requires HRPA to do:

- HRPA is required to establish, maintain, develop, and enforce standards of qualification, standards of professional ethics, standards of knowledge, skill and proficiency.
- HRPA is required to regulate the practice, competence and professional conduct of members of the Association and firms.
- HRPA is required to establish and support various statutory committees which, nonetheless, are independent of HRPA and derive their authority directly from the Act.
- HRPA is required to review every complaint regarding the conduct of a member of the Association or a firm and, if the complaint contains information suggesting that the member or firm may be guilty of professional misconduct as defined in the by-laws, HRPA is required to investigate the matter.
- Upon investigation, and if warranted, HRPA is required to make a referral to the Discipline Committee.
- HRPA is required to maintain a public register.
- When conducting hearings, it is required that HRPA meets the standards of procedural justice set out in the Statutory Powers Procedure Act, 1990.
- In regards to its registration and certification processes, HRPA is required to abide by the Fair Registration Practices Code set out in the Fair Access to Regulated Professions and Compulsory Trades Act, 2006.
- And so on

But being a professional regulatory body is more than just doing these things. Here is what William Lahey, law professor at Dalhousie University put it:

“More broadly, the responsibility of SROs goes beyond their responsibility to diligently discharge discreet regulatory functions. Their responsibility is to proactively do what they can (subject to the limits of their legal authority) to ensure their profession is serving the public interest.”

HRPA’s responsibility is to do what it can to ensure that the public interest is protected. Previously, we defined professional regulation as:

“Anything and everything that is done with the genuine intent of promoting and protecting the public interest by reducing, suppressing, mitigating or eliminating harms or potential harms stemming from the practice of a profession.”

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Fulfilling this regulatory mandate might include all sorts of activities that are not specified in our Act. For instance:

- Conducting research to understand the harms that may come from the practice of the profession and the genesis of such harms,
- Educating members on matters that are related to risks of harm to the public,
- Offering support to members to assist them in resolving difficult issues that could lead to increased risk of harm to the public (e.g., ethics hotlines)
- Conducting public outreach programs to educate the public as to what is and is not competent and ethical behaviour on the part of registered Human Resources professionals and what to do when they believe that the actions or behaviours of a registered Human Resources professional may have fallen short of the standards of the profession

Also, it should be noted that HRPA’s mandate is to govern as well as to regulate. This means that it is also permissible to encourage excellence in professional practice. Nonetheless, just because there are many activities that can be linked to the promotion and protection of the public interest, it doesn’t mean that we can cherry-pick those activities that members want and disregard the rest. HRPA must still do all that is required of it by the Act, and everything we do should be genuinely motivated by the intent of our enabling legislation, which is to promote and protect the public interest. Genuineness is important here.

How regulation actually impacts members

The impact that professional regulatory bodies want to have is to influence the practice of the professionals they regulate in ways that reduce, suppress, mitigate or eliminate harms or potential harms stemming from the practice of a profession. The Ontario Legislature expects HRPA to use every tool at its disposal to achieve this end. What professional regulatory bodies want is not grudging compliance with rules, but an internalization of the values and behaviours of professionalism.

As a caveat, however, we should note that HRPA is just beginning to understand what it means to be a professional regulatory body and really hasn’t done much to fulfil its statutory mandate. As such, HRPA still doesn’t do all the things that established professional regulatory bodies do. For instance, HRPA has yet to conduct research into the nature of the harms posed by the practice of the profession, HRPA has yet to issue professional guidance on specific aspects of professional practice, HRPA has yet to implement a practice program, and HRPA has yet to implement robust verification mechanisms.

The member asking the question is not the only one who has not noticed any impact from HRPA’s regulatory activities. Consider the responses to the following question included in the HRPA Member and Student Survey.
“HRPA became a statutory professional regulatory body governed by public act on November 6, 2013—what level of impact had this had on your practice as an HR professional?”

Source: 2018 HRPA Member and Student Survey

So let’s rephrase the question in the future tense—what impacts might members notice as HRPA begins to fully assume its regulatory mandate?

- There will be less emphasis on the coloration of profession and more emphasis on the substance of profession\(^3\). HRPA will challenge the professionals it regulates to become more aware of their professional practice and to maintain high standards of competence and ethics.
- HRPA members and students need to become better informed about HRPA’s mission and mandate. HRPA members and students need to better appreciate the importance and implications of the passage of the *Registered Human Resources Professionals Act, 2013*. Members and students need to understand that the promotion and protection of the public interest is HRPA’s *raison d’être*. So one can expect more educational initiatives in this regard, but also mechanisms to verify that this is happening.
- Registrants will be asked to rethink their relationship with HRPA—one that is more about working together to ensure that the public is well served by the Human Resources profession.\(^4\)

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\(^3\) #72 What is the difference between a designation and a profession?, May 8, 2018, https://www.hrpa.ca/Documents/Regulation/LinkedIn-Articles/72-Difference-designation-profession.pdf