#74 Who said education can’t be regulation?

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Here is a comment from the recent HRPA Member and Student Survey:

“I believe that the regulatory body should be more of a pro-active educational body than a regulatory heavy hand.”

Here is another:

“I believe most resources should be directed to education and policies/practices that prevent problems. When we are effective, efficient, as well as forward-thinking in these areas, our need for regulation decreases.”

In both these comments, education is positioned as a preferred alternative to regulation. But where does this either/or come from? Actually, education is one of the core functions of professional regulation, and most professional regulatory bodies spend a significant amount of resources on education.

Consider HRPA’s statutory objects as set out in section 4 of the Registered Human Resources Professionals Act. 2013. The first object is that HRPA is “to promote and protect the public interest by governing and regulating the practice of members of the Association and firms in accordance with this Act and the by-laws, including, establishing, maintaining, developing and enforcing standards of qualification, standards of practice, standards of professional ethics, standards of knowledge, skill and
proficiency, and regulating the practice, competence and professional conduct of members of the Association and firms." But the second object is “to promote and increase the knowledge, skill and proficiency of members of the Association, firms and students.”

Now, given the tenets of statutory interpretation, the Ontario Legislature did not understand or intend, these two objects to compete with each other. Rather, these two objects were intended to work with each other harmoniously. A harmonious interpretation means that HRPA objects as a whole, or any single object for that matter, must be interpreted “harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

The Ontario Legislature did not see, or intend, an either/or approach to establishing, maintaining, developing and enforcing standards on the one hand and promoting and increasing the knowledge, skill and proficiency of members of the Association, firms and students on the other. The Ontario Legislature saw these working together.

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.”

In this definition, professional regulation includes educating members, firms, and students. It also includes educating the public.

An important principle, however, is that everything a professional regulatory body does is, or should be, guided by this promotion and protection of the public interest (viz. ‘harmonious interpretation’). When professional regulatory bodies think of education they think in terms of reducing the risk of potential harms to the public. Educational activities must be genuinely linked to sabotage of harms. Professional regulatory bodies are in the harm-avoidance business, not the education business. For professional regulatory bodies, education is a means to an end, not an end in and of itself—there needs to be a link to some reduction in harm or risk of harm to the public. Professional regulatory bodies don’t determine educational priorities based on what members want but what is needed in regards to the protection of the public. In fact, one can imagine situations where some educational initiative could be made compulsory because it was deemed necessary for the protection of the public. Also, education does not mean that there is no accountability. In fact, some educational initiatives may well include some kind of verification that learning has occurred.

That “most resources should be directed to education and policies/practices that prevent problems” is another matter, however. Professional regulation includes proactive aspects and reactive aspects, and as noted in one of the above comments proactive regulation reduces the need for reactive regulation. But it is not as if education will obviate the need for the reactive aspects of regulation. The Registered Human Resources Professionals Act, 2013, does set out some things that HRPA must do. It just wouldn’t fly for HRPA to say “we know the Act requires us to regulate the practice, competence and professional

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conduct of members of the Association and firms, but we just didn’t do it because most of our resources were directed to education.”

There is more to proactive regulation than just education. William Sparrow, one of the big thinkers of regulation, talks about the sabotage of harms\(^3\). The idea is to intervene as early as possible before risks turn into harms. To do this there needs to be a deep understanding of the harms to the public that may come about from the practice of the profession and especially the genesis of those harms. This comes before educational initiatives are developed and launched. Unless based on a solid understanding of the root cause of harms, educational initiatives can be very inefficient (viz., ‘spray and pray’). Also, not all early interventions are educational. For instance, a practice inspection initiative could be undertaken to identify practices that could turn into harms unless corrected. Education is one among many proactive regulation initiatives available to professional regulatory bodies.

“There are proactive regulation initiatives available to professional regulatory bodies. Usually how it goes is that professional regulatory bodies take care of what their enabling legislation requires them to do first and then they start to work at developing a better understanding of the harms that come from the practice of the profession and from there devising initiatives to sabotage the harms before they turn into harms. HRPA is just not there yet.

Nonetheless, we agree wholeheartedly with the spirit of the comments. There may come a time where we understand the harms that stem from the practice of the Human Resources profession and their genesis well enough that an increasing proportion of our resources are dedicated to sabotaging harms before they turn into actual harms.

But the main point here is that regulation is more than the ‘heavy hand’ of enforcement, education and other proactive initiatives are not the opposite of regulation, but part of regulation.