Measuring the performance of HRPA as a professional regulatory body

Part 4: Analysis and discussion of the low number of complaints at HRPA
June 30, 2017

In 2016, HRPA received nine complaints. Nine complaints corresponds to a per 1000 rate of .39. This means that for every 1000 registrants, HRPA received .39 complaints in 2016. This is the lowest rate of complaints across all professional regulatory bodies in Ontario. In 2015, HRPA received five complaints. This corresponded to a per 1000 rate of .23. In 2015, this was the lowest rate of complaints across all professional regulatory bodies in Ontario.

The median rate of complaints per 1000 registrants for all professional regulatory bodies in Ontario was 5.35. At a rate of 5.35 per 1000, HRPA would have received 124 complaints in 2016.

So it is not that HRPA’s rate of complaints is low, it is really low. But what should we make of it? Is this a good thing, or is this a bad thing? What we should make of this low rate of complaints depends on what we think the reasons are for such a low rate. Here are three possible explanations:

• Is it that HRPA is doing such a good job of managing the risks posed by the practice of the profession that the incidence of actual harms is very low?
• Is it that the actual incidence of professional misconduct or incompetence in the human resources profession is very low (nothing to do with the actions of the professional regulatory body)?
• Is it that the incidence of professional misconduct or incompetence is actually significantly higher but that such professional misconduct or incompetence is under-reported for any of a number of reasons?

The implications of each of these explanations are quite different. It is important to think this through.

There are two mechanisms lead to complaints

Many hearing the word ‘complaint’ will think of a complaint by an individual who believes that they have suffered some manner of harm as a result of the conduct or practice of a professional. This is not the only meaning of ‘complaint’ however.
Let’s define a ‘complaint’ and ‘any performance or conduct issue that is brought to the attention of the complaints committee.’ There are two main mechanisms by means of which complaints are initiated: *external complaints* and *internal complaints*.

The table below gives some of the differences between the two mechanisms.

<table>
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<tr>
<th><strong>External complaint</strong></th>
<th><strong>Internal complaint</strong></th>
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<tr>
<td>Initiated by a recipient of the professional service (the public)</td>
<td>Initiated by an inspector, auditor, or the Registrar as a result of a quality assurance process, a practice inspection, an audit process, or some other compliance verification process, or initiated by some mandatory self-reporting process</td>
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<tr>
<td>Reactive</td>
<td>Proactive</td>
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<tr>
<td>The harms will have already occurred</td>
<td>No significant harm may have yet occurred, but the practices or conduct of the professional put the public at risk such that harm would likely occur if the practices or conduct were to be allowed to continue</td>
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<td>The fear of retaliation or other negative repercussions is a significant factor influencing the likelihood that a complaint will be initiated</td>
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<td>Also, there are alternative recourse mechanisms that the harmed parties may feel preferable (internal grievance process, civil litigation, Human Rights complaint, complaint to Ministry of Labour, etc.)</td>
<td>Complaints are initiated by experienced or trained individuals (inspectors, auditors, Registrar) using defined criteria; as well</td>
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<td>Complaints may be quite variable as the complainants may have a poor understanding of what constitutes misconduct of incompetence</td>
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Is it that HRPA is doing such a good job of managing the risks posed by the practice of the profession that the incidence of actual harms is very low?

The gist of this explanation is that the risk factors are there, but that HRPA is very effective at ‘sabotaging harms.’ This way of looking at things harks back to Sparrow’s harm avoidance model. In Sparrow’s model, the ultimate in regulatory effectiveness is when a regulator is so on top of their area that they identify issues (risks) well before they become harms, and intervene early to prevent these risks from becoming harms.

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Although this is the explanation that would be the most flattering to HRPA, there really is no evidence that this is the situation. To make this kind of argument, HRPA would need to point to some kind of risks that were identified early and how a given intervention mitigated the risk.

Alternately one could argue that professionals registered with HRPA behave better because they know that they are regulated and therefore subject to discipline by the Association. Again, one would need to explain why this mechanism would be so much more effective for human resources professionals than it is with any other profession.

**Is it that the actual incidence of professional misconduct or incompetence in the profession is very low (nothing to do with the actions of the professional regulatory body)?**

Another possibility is that the incidence of misconduct or incompetence amongst human resources professionals is very low. So why could this be?

The number of complaints could be taken as an indicator of the level of risk the practice of the profession poses to the public.

There are many possible arguments—here are two. One could argue that human resources professionals are, as a group, more ethical and/or competent than other professional groups. Again, there is no evidence to support or dispute this hypothesis; although it does seem unlikely that Human Resources professionals are, as a group, inherently more ethical than other professional groups.

One could argue that there is something intrinsic to human resources work that makes it more unlikely that Human Resources professionals could or would exhibit misconduct or incompetence. In other words, that in actuality the practice of Human Resources poses little risk to the public because of the nature of the work itself.

If it is true that the practice of human resources management poses little or no risk to the public, we would have bigger issues than a low complaint rate. First, it would mean that Human Resources management is in no need of regulation, and would mean that the Ontario Legislature made big mistake in passing the *Registered Human Resources Professionals Act, 2013*. 

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**Fig. 6.1 Unfolding chronology of a harm**
That professional regulation exists primarily to manage risks to the public is also embedded in the Health Professions Regulatory Advisory Council (HPRAC) criteria for deciding whether an unregulated health professions should be regulated. To this end, HPRAC has developed a two part assessment to decide whether it will recommend that a health profession be regulated or not. In the first part, the profession wishing to be regulated must demonstrate that there is a significant potential of risk of harm occurring within the professional duties and activities. If the profession cannot demonstrate that there is a significant potential of risk of harm, there is no second part.

HPRPA’s primary mandate is to promote and protect the public interest by governing and regulating the conduct/practice of students, members and firms. If the conduct/practice of students, members and firms doesn’t need to be governed and regulated, what reason does HPRPA have for being? It is not as if HPRPA can say ‘well if HR professionals don’t need to be regulated, we’ll keep ourselves busy doing other things’—the public protection mandate is HPRPA’s reason for being. There is no other mandate.

If the risk posed to the public is so low that there are only a handful of complaints per year, the burdens imposed by statutory self-regulation on the members of the profession would be difficult to justify. Offering designations does not require statutory self-regulation.

Of course, as noted earlier, there is no data available at this time to provide a definitive answer to the issue but the implications are important. Arguing that the practice of human resources management poses little or no risk to the public would have serious implications for the profession.

Is it that the incidence of professional misconduct or incompetence is actually significantly higher but that such professional misconduct or incompetence is under-reported for any of a number of reasons?

Of the three proposed possibilities, this would appear to be the most likely. There are, many reasons why there would be a significant under-reporting of professional misconduct or incompetence on the part of human resources professionals:

- The public doesn’t know that (some) human resources professionals are regulated and that HPRPA is the professional regulatory body that will hear their complaint,
- The public doesn’t understand what constitutes misconduct or incompetence for a human resources professional,
- The public doesn’t think of HPRPA as a statutory regulatory body but rather as an association,
- The public doesn’t know how to file a complaint against a member of the profession, or that the process appears to be difficult,
- The fear that the human resources professional against whom the complaint was made would retaliate against the complainant,
- Potential complainants feel that filing a complaint is just not worth the hassle,
- The public has little or no confidence that the HPRPA will act in the public interest but that the professional it will act to ‘protect its own,’
- Complainants prefer to prosecute their claim in another venue (e.g., civil suit, Ontario Human Rights Tribunal),
- As many human resources professionals work in an organizational context, misconduct or incompetence may be dealt with by management rather than the professional regulatory body,
- In many instances, human resources professionals do not deliver their service in a ‘one-to-one’ context, the parties harmed by the actions of a human resources professional may not know
who was responsible or in some cases the parties harmed by the actions of a human resources professional may not even know that they have been harmed.

All of the above would explain why rates of complaints at HRPA could be expected to be low. Some of these issues apply to all professional regulatory body, some would apply to some regulatory bodies, and some appear to be more specific to HRPA.

Some of these explanations are related to the third-party protection model pictured below. These causes of a low external complaint rate are unlikely to change.

It is also possible to understand the low rate of complaints as a developmental issue. Although HRPA has been a regulatory body since 1990, it could be argued that HRPA did not truly become a professional regulatory body until 2013 with the passage of the Registered Human Resources Professionals Act, 2013. Accordingly, one could attribute this extremely low rate of complaints to ‘new regulator’ issues. In this case, it may be that HRPA has a bit of time before questions are asked, but in time for the rate of complaints would be expected to rise.

On the other side of the argument, it is also possible to argue that because of factors inherent to the human resources profession, the rate of complaints will always be relatively low.

A key idea here is that the rate of complaints may be a poor indicator of the rate of misconduct and incompetence amongst registered human resources professionals. In other words, the low rate of complaints at HRPA does not mean that there is a low rate of misconduct and incompetence among registered HR professionals. Unfortunately, there is no existing data that would allow us to estimate the actual rate of misconduct and incompetence among registered HR professionals.

On the other hand, even if there are good reasons why the rate of complaints for human resources professionals may always be on the low side, it may still be the case that the current rate of complaints is lower than it should be, and it would still make sense for HRPA to remove all the barriers to making complaints that it can.

Discussion

Why should we care if the rate of complaints at HRPA is low?

The handling of complaints is what the public and media seem to pay the most attention to when it comes to the activities of professional regulatory bodies. When professional regulatory bodies are in the news, it is almost invariably in relation to a complaint or discipline case. It was concern over their complaints process that led the Ontario College of Teachers to commission a report from retired judge Patrick LeSage. It was also the concerns over the complaints process that led the Minister of Health and
Long-Term Care to require all professional regulatory bodies under the *Regulated Health Professions Act, 1991*, to develop and implement transparency strategies.

So the first reason why HRPA needs to pay attention to its low rate of complaints is that it doesn’t look good to the public and to the media. The public and the media are already suspicious of professional regulatory bodies. Some might assume, based on the low rates of complaints, that HRPA is really not interested in pursuing complaints against its members. As noted above, there may be good reasons why the rate of complaints at HRPA will be low, but that doesn’t change the fact that this may not look good in the eyes of the public and media—and for professional regulatory bodies being seen to promote and protect the public interest is an important component of the ability to promote and protect the public interest. This would imply that HRPA may need to make an extra effort to explain why rate of complaints is low and the efforts it has taken to make its complaints process accessible.

Because the complaints process is one that readily lends itself to quantification, reporting on complaints is one way that professional regulatory bodies have of documenting how they are protecting the public. With a low rate of complaint, HRPA cannot use these numbers to support the claim that it is doing a good job of protecting the public.

A certain amount of complaints legitimizes the work of professional regulatory bodies because they provide ready examples of the harms that may come about and why a professional regulatory body is needed to keep these problems to a minimum. Of course, if the rate of complaints is too high the professional regulatory body may well come into criticism for its inability to prevent misconduct and incompetence, but on the whole a reasonable number of complaints allows a professional regulatory body to simultaneously make the argument that (1) the profession needs to be regulated because of the risks posed to the public stemming from the practice of the profession, and (2) that the professional regulatory body is ‘on the job’ protecting the public. Because of its low rate of complaints, it can be argued demonstrating both of these will be a bit more difficult at HRPA.

Specifically, the low rate of complaints at HRPA does make it somewhat more difficult for HRPA to document how the practice of human resources brings with it significant risks to the public; it also makes it somewhat more difficult for HRPA to demonstrate that it is ‘on the job’ in regards to protecting the public.

The low rates of complaints simply means that HRPA cannot count on complaints to make the argument that it is an effective professional regulatory body. It would need to make this argument based on other functions such as quality assurance, inspections, verification, etc. It also mean that as a professional regulatory body HRPA cannot depend on the ‘passive’ functions of complaints and discipline, and would need to focus more on the ‘active’ functions. (If the complaints don’t come to HRPA, then HRPA will need to go to where the problems might be in order to acquit itself of its public protection mandate.)

Of course, it remains that HRPA should do what it can to make its complaints process accessible and visible.

**But what should our rate of complaints eventually be?**

This is a not an easy question to answer. The median rate of complaints *per 1000* registrants for non-health professions was 2.49 complaints *per 1000*, would it make sense to make this a target? Maybe, maybe not.
There are so many factors that impact the rate of complaints, it is hard to predict. For instance, if HRPA were to do its best to eliminate or mitigate the issues that operate to suppress the rate of complaints, what level of complaints would we have? Obviously, given that HRPA has not yet done much to eliminate or mitigate the issues that operate to suppress the rate of complaints, it is very likely that we would see an increase in the number of complaints. But how much of an increase is anyone’s guess. It could be that 2.49 complaints per 1000 is actually lower than what we could or should expect.