The mission and mandate of the HRPA
September 30, 2017

With the passage of the Registered Human Resources Professionals Act, 2013, the Ontario Legislature gave HRPA a brand new set of objects. These Objects define the mission and mandate of HRPA. Although there is some continuity with HRPA’s previous objects and those of HRPA’s predecessor organizations, these latest Objects also represent a significant change in HRPA’s mission and mandate. Instead of creating a new organization, the Ontario Legislature decided to repurpose an existing one.

HRPA, like the other 38 professional regulatory bodies created by public act of the Legislature, is not an ordinary not-for-profit corporation. Its mission and mandate are set by the Legislature—HRPA is a ‘creature of the Legislature.’ The mission and mandate of the HRPA was given to HRPA by the Ontario Legislature. HRPA does not have the choice of defining what it wants to be.

This means that the role of the Board of Directors is not to set the mission and mandate of HRPA, but to see to it that HRPA fulfils the mission and mandate that was given to it by the Legislature.

This mission and mandate of the HRPA is set out in Section 4 of the Act as the Objects of the Association. In fact, the official translation of the term ‘objects’ is English is ‘mission’ in French. Section 4 is possibly the most important section of the Act. The Act is not about delegating regulatory powers to HRPA, it is about giving HRPA a mission and mandate. The powers granted to HRPA are the powers that the Legislature deemed necessary or beneficial for HRPA to have to accomplish its mission and mandate.

The important thing to realize about objects is that they limit as much as they permit. HRPA is not permitted to act outside the boundaries of its Objects. In fact, HRPA has no legal existence outside the carrying out of its Objects.

As a component of the fiduciary duties of members of the Board and other officers of the Association is the duty of obedience—meaning that Board directors and other officers must, in good faith, guide the HRPA towards the fulfilment of its objects. Operating beyond what is permitted by the Objects (“ultra vires”) is dangerous and exposes the HRPA and its Board of Directors to liability issues.

As with any other written document, there is some room for interpretation, but only some and there are established rules of statutory interpretation. This room for interpretation should not be abused however.
Based on the rules of statutory interpretation, it is clear that the Legislature intended HRPA to be a professional regulatory body which purpose is to promote and protect the public interest and not an advocacy body or ‘association’ which purpose is to serve the interests of its members.

There is no language in HRPA’s Objects that would support the idea that HRPA can serve the interests of its members (which does not mean, however, that members cannot also benefit from actions taken in the service of the public protection mandate.)

HRPA does not have a ‘dual mandate’—it does not exist to serve the interests of both the public and the members. Dual mandate professional organizations do exist in some provinces—but not in Ontario. The dual mandate professional organization is not a regulatory model used in Ontario. HRPA’s objects do allow HRPA to promote and protect the interests of the profession, but this is not the same as serving the parochial interests of the members of the profession. Protecting the interests of the profession refers to maintaining the confidence of the public in the profession and its governing body.

The fact that HRPA has the word ‘association’ in its name doesn’t mean that HRPA is an ‘association’ in the meaning that is usually given to the word. Over time and in common usage, the word ‘association’ has come to refer to the professional organization that serves the interests of the members—but that is not necessarily the case. For instance, the statutory name of Professional Engineers Ontario (PEO) is the Association of Professional Engineers of the Province of Ontario. The fact that HRPA has the word ‘association’ in its name is an historical artifact, it does not mean that HRPA is an ‘association’ in the sense that it exists to serve the interests of its members.

Just because there is no separate ‘association’ for Human Resources professionals does not mean that HRPA can fill that void and do things that are not otherwise permitted by the Objects. HRPA is not permitted to act outside the scope of its objects.

As a statutory professional regulatory body, HRPA’s measure of success is the degree to which it has promoted and protected the public interest by ensuring that the professionals it regulates practice the profession in a competent and ethical manner and not the degree to which it creates value for its members (in the narrow self-interest definition of value).

The idea that HRPA does not exist to serve the interests of its members may come as a surprise to some but this is what HRPA agreed to when it went for a public act, and it is also what Board members have a duty to uphold. This is the deal HRPA made with the Ontario Legislature—in exchange for the authority to self-regulate (with its consequential benefits for members), HRPA agreed to make the promotion and protection of the public the paramount concern and focus of the organization.
Now just because HRPA’s core mission and mandate is to promote and protect the public interest and not to serve the interests of the members does not mean that there is no value for members. By having a professional regulatory body which mission and mandate is to promote and protect the public interest increases the confidence the public has in the profession and its members, and this increase in confidence creates all sorts of benefits for members such as increased status and better remuneration. But to get these benefits, HRPA must be genuine and committed to its role as a professional regulatory body.

HRPA does not exist to create value for its members—this does not mean that membership in HRPA does not create value for members. In fact, having a professional regulatory body which mission and mandate id to manage the profession in the public interest bring about a level of legitimacy to the profession that no association could ever bring about.

There are a few ways of thinking about HRPA’s mission and mandate that are not correct. Here are four common misconceptions:

1. **HRPA is an association but with ‘extra powers’ as a result of the Act.**

   When the Act was passed, the Ontario Legislature also gave HRPA a brand new set of objects, a new mission and mandate. The objects and the powers go hand in hand. The Legislature would not have delegated these powers unless HRPA also accepted the promotion and protection of the public interest as its core mission. It is not correct to think of HRPA as having new powers bolted on to an old mission and mandate. HRPA is not an association with extra powers, it is a professional regulatory body.

2. **HRPA can serve its members as long as it doesn’t conflict with the interests of the public.**

   The idea here is that HRPA can serve its members as long as it doesn’t conflict with the interests of the public—that when there is a conflict the interests of the public must come first. That is not a correct way of looking at things. HRPA does not have any mandate to serve the interests of its members, even if doing so does not conflict with the interests of the public. HRPA’s mission and mandate is a positive one and not a negative one—that is, HRPA’s mission and mandate is to promote and protect the public interest not to do nothing that would conflict with the public interest.
3. **HRPA is free to do whatever else it wants to do as long as it does what it is required to do by the Act.**

Again, HRPA is not permitted to act outside the boundaries of its objects. Compliance with the Act does not free HRPA to do other things which would fall outside the scope of the Objects—no other things are permitted. HRPA’s mission and mandate is to do the best it can to see to it that the potential harms to the public stemming from the practice of the profession are minimized, not to do the minimum it has to comply with the Act. A public protection mandate

4. **The key is to find the right balance between the interests of the public and the interests of the members.**

Again, it is not a matter of balance, HRPA does not have a mandate to serve the interests of its members. This doesn’t mean that HRPA does not have to juggle priorities and resources, but in regards to mission and mandate promoting and protecting the public interest is paramount.

The passage of the *Registered Human Resources Professionals Act, 2013*, with its new mission and mandate for HRPA represents a *paradigm shift* for the profession, HRPA, and its members.

An ‘association’

A professional regulatory body

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<th>WHAT</th>
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<td>Establishing, maintaining, developing and enforcing standards of qualification, standards of practice, standards of professional ethics, standards of knowledge, skill and proficiency</td>
<td>• by governing and regulating the practice of members of the Association and firms in accordance with this Act and the by-laws</td>
<td>To serve the public good by assisting the profession and its members in living up to the social contract the profession and its members have made with society</td>
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This will require an ‘inside-out’ transformation.