

Registrar’s Report for Q2 2022

May 31, 2022

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The Registrar’s Report is produced on a quarterly basis. The Registrar’s Report details regulatory activity for the previous quarter. In addition, the Registrar’s Report includes special reports on pertinent issues and reviews trends and issues in the professional regulation in the previous quarter. The sections relating to the activity of specific committees were reviewed for completeness and accuracy by the Chair of the respective committee.

Regulatory operations at-a-glance

Regulatory operations refer to the day-to-day workings of HRPAs's regulatory committees and Office of the Registrar staff.



Regulatory committees have no control over the volume of applications, complaints, or referrals. These volumes can fluctuate significantly. For professional regulatory committees, performance is measured by (1) the timely disposition of cases, and (2) the quality of the decisions. The latter can be assessed by the number of appeals which have overturned any decisions of the committee. The following is an overall assessment of committee performance – more details for each committee can be found below.

Regulatory committee performance overview

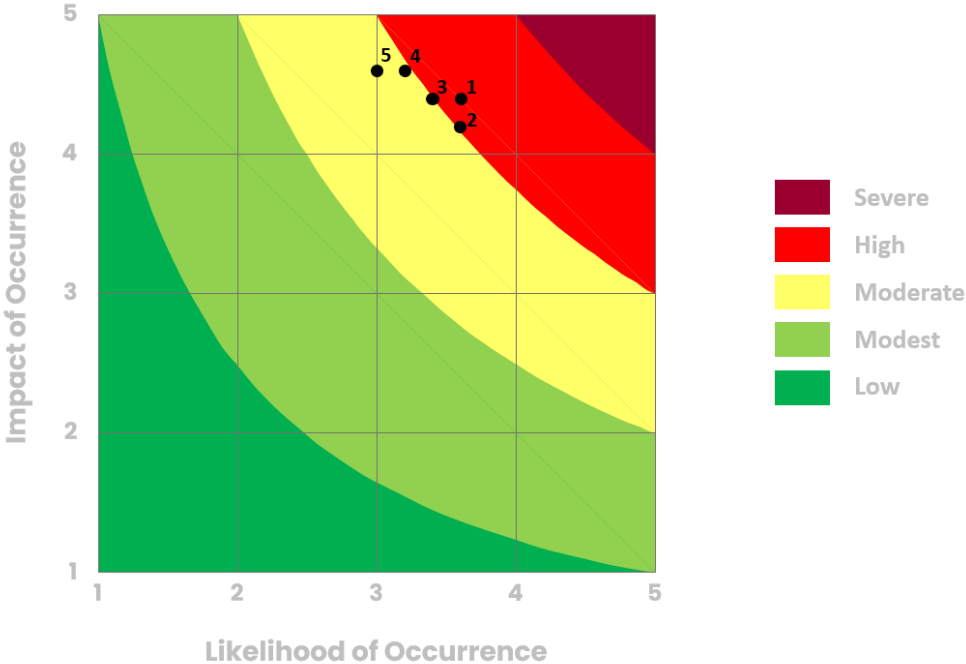
	Keeping up with referrals	No backlog	Decisions rendered in a timely manner	Decisions are upheld upon appeal
Registration Committee	●	●	●	●
Academic Standards (Diploma) Committee	●	●	●	●
Academic Standards (Degree) Committee	●	●	●	●
Experience Assessment Committee (Alternate Route)	●	●	●	●
Experience Assessment Committee (VOE Route)	●	●	●	●
CHRE Review Committee	●	●	●	●
Continuing Professional Development Committee	●	●	●	●
Complaints Committee	●	●	●	●
Discipline Committee	●	●	●	●
Capacity Committee	●	●	●	●
Review Committee	●	●	●	●
Appeal Committee	●	●	●	●

Public Register

Registration by class on May 31, 2022 (end of Q2)

	May 31, 2021	May 31, 2022	Net year-over-year gain/loss	% year-over-year gain/loss	% of total registration 2021	% of total registration 2022
Designated members	14,783	15,344	561	3.8%	61.7%	63.3%
CHRE (including CHRE retired)	261	255	-6	-2.3%	1.1%	1.1%
CHRL (including CHRL retired)	9,266	9,176	-90	-1.0%	38.7%	37.8%
CHRP (including CHRP retired)	5,256	5,913	657	12.5%	21.9%	24.4%
Undesignated Members	8,631	8,544	-87	-1.0%	36.0%	35.2%
Practitioner	8,405	8,296	-109	-1.3%	35.1%	34.2%
Allied Professional	226	248	22	9.7%	0.9%	1.0%
Total members	23,414	23,888	474	2.0%	97.7%	98.5%
Students (registered but not members)	544	367	-177	-32.5%	2.3%	1.5%
Total registrants	23,958	24,255	297	1.2%	100.0%	100.0%
Students as a proportion of registrants	2.3%	1.5%				
Designated members as a proportion of membership	63.1%	64.2%				
Designated members as a proportion of registration	61.7%	63.3%				

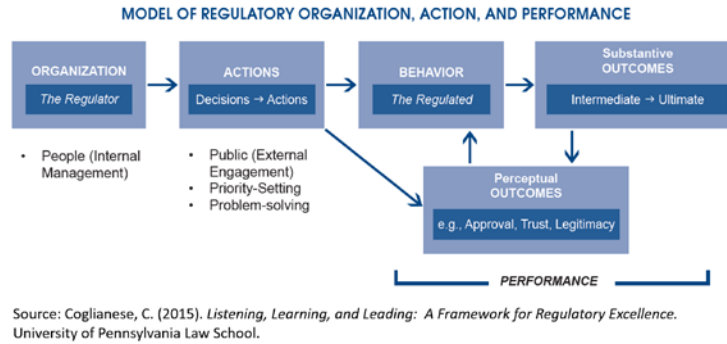
Top 5 risks to the public stemming from the practice of the profession



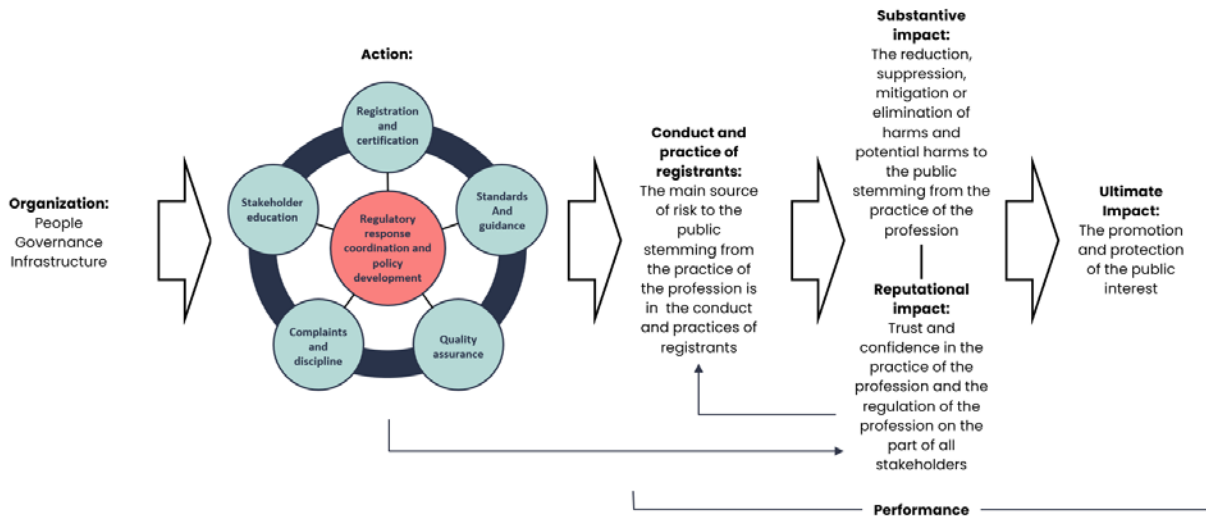
Risk	Likelihood	Impact	Severity
1. Ignoring mental health issues employees are experiencing	3.6	4.4	15.84
2. Unconscious biases impacting important HR decisions - like hiring and promotions (ex. Anchoring bias, halo effect, confirmation bias, self-serving bias and attentional bias)	3.6	4.2	15.12
3. Discrimination of any kind against others in the workplace	3.4	4.4	14.96
4. Enabling systemic racism in the workplace	3.2	4.6	14.72
5. Misunderstanding, and/or non-compliance/breach of applicable employment laws, such as Employment Standards Act, Personal Health Information Protection Act, Occupational Health and Safety Act	3	4.6	13.8

HRPA's model of regulatory performance

HRPA's model of regulatory performance is derived from Coglianesse's (2015) *Model of regulatory organization, action, and performance*.



HRPA's model provides more detail on the *action* aspect.



The model is best explained by working back from the ultimate objective or ultimate impact. The ultimate objective of HRPAs regulatory framework is the promotion and protection of the public interest.

The measure of success for professional regulation

The measure of success for a professional regulatory body is in the extent to which harms and risks of harms to the public stemming from the practice of the profession have been reduced, suppressed, mitigated, or eliminated by the decisions and actions taken by the professional regulatory body. The objective is to maximize the reduction, suppression, mitigation, or elimination of risks to the public stemming from the practice of the profession by minimizing the risks to the public stemming from the practice of the profession.

Risk-based regulation

Risk-based regulation is an approach to professional regulation that aims to maximize the impact of the professional regulatory body by focusing resources on those specific risks of harm which reduction, suppression, mitigation, or elimination would have the most benefit for the public.

Shift from passive regulation to proactive regulation



HRPA and the OOTR are shifting the emphasis from passive regulation to proactive regulation. This is in keeping with the idea of maximizing the reduction, suppression, mitigation, or elimination of harms to the public stemming from the practice of the profession. It is better to prevent a harm from happening than to mitigate the harm once it has occurred.

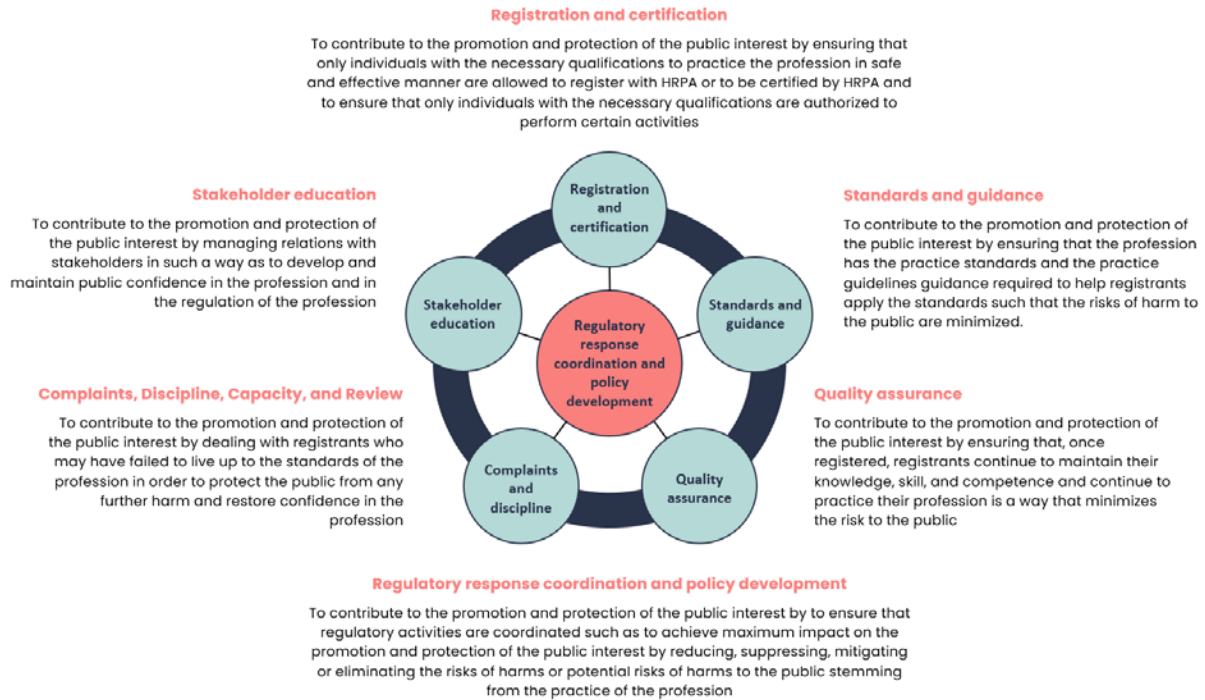
Proximal outcomes

Professional regulatory bodies minimize the risks to the public stemming from the practice of the profession mainly by having an impact on the conduct and practice of their registrants.

The 'levers' of professional regulation

There are five 'levers' to *regulatory action*, each is focused on having an impact on the conduct and practice of HRPA registrants, with the intent of protecting the public interest by reducing, suppressing, mitigating, or eliminating of harms or potential harms to the public stemming from the practice of the profession.

To the five 'levers' is a sixth function which is focused on ensuring that regulatory actions and decisions are coordinated such as to achieve maximum impact on the promotion and protection of the public interest by reducing, suppressing, mitigating, or eliminating the risks of harms or potential risks of harms to the public stemming from the practice of the profession.



Registration and certification

To ensure that only individuals with the necessary qualifications are allowed to register with HRP or certified by HRP and to ensure that only individuals with the necessary qualifications are authorized to perform certain activities

Standards and guidance

To ensure that the profession has the standards required to promote and protect the public interest and the guidance required to help registrants apply the standards.

Quality assurance

To ensure that, once registered, registrants continue to maintain their knowledge, skill, and competence and continue to practice their profession in a way that minimizes the risk to the public.

Complaints, Discipline, Capacity, and Review

To protect the public from any further harm and restore confidence in the profession by dealing with registrants who may have failed to live up to the standards of the profession.

Stakeholder education

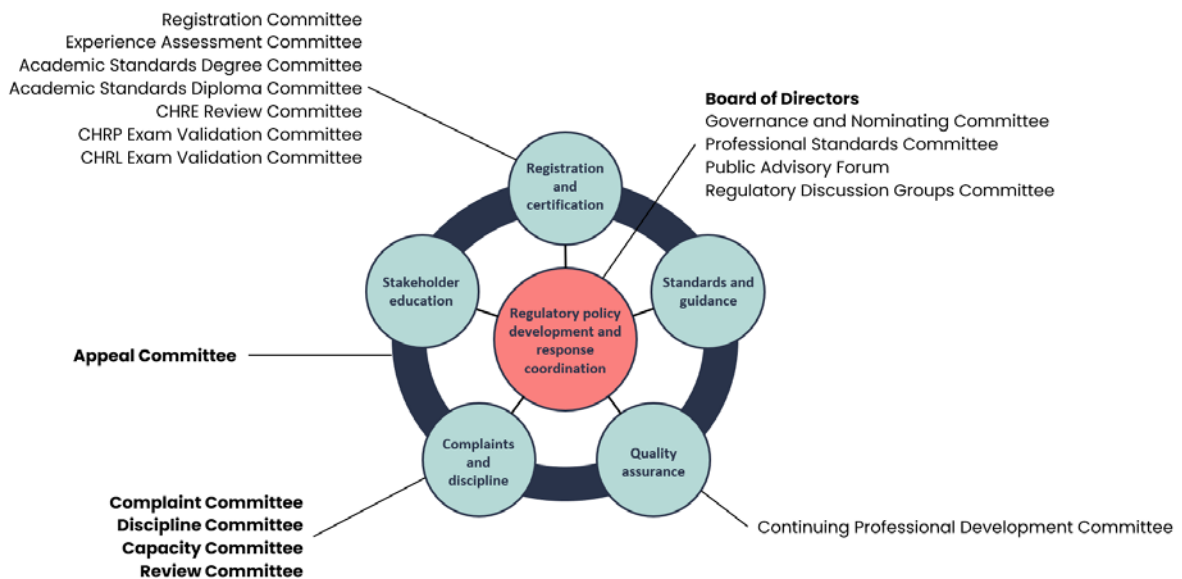
To develop and maintain public confidence in the profession and in the regulation of the profession by managing relations with stakeholders including educating all stakeholders on HRP's mandate and role as a professional regulatory body.

Regulatory response coordination and policy development

To ensure that regulatory are coordinated such as to achieve *maximum* impact on the promotion and protection of the public interest by *minimizing* the risk of harm to the public stemming from the practice of the profession.

The role of regulatory committees

Regulatory committees play a variety of roles in making HRPAs regulatory framework work. An essential aspect of self-regulation is that professionals are in the best position to make judgments on the conduct and practice of other professionals. Where such judgments are required, committees are struck. In the case of the statutory committees, the establishment of the committee and the powers and duties of the committee are set out in the Act.



The committees in **bold** are the statutory committees that the Board is requires to establish by law
 The Academic Standards Degree Committee and the Academic Standards Diploma Committee are soon to be merged into a single committee

Note that there is a difference between policy, and the application of policy. HRPAs regulatory committees (not counting the Board, the Governance and Nominating Committee, and the Professional Standards Committee) are not responsible for policy, HRPAs regulatory committees are responsible for applying policy in a diligent, conscientious, transparent, objective, impartial, and fair manner.

Although the work of HRPAs regulatory committees is essential to HRPAs performance as a professional regulatory body, there is much more to professional regulation than the work of HRPAs regulatory committees. This is a situation of ‘necessary but not sufficient’—effective decision-making by HRPAs regulatory committees is *necessary* for effective performance as a professional regulatory body, but it is not *sufficient* for effective performance as a professional regulatory body.

Organization

Finally, the actions and decisions of the professional regulatory body are supported by an infrastructure of governance structure, culture and skills, and information technology.



Regulatory activity coordination and policy formulation

The Policy Team continues to actively work on the shift towards risk-based regulation, reforming HRPAs' CPD requirements, and several other projects.

Q2 Highlights:

- Practice guideline regarding unconscious biases in the workplace drafted
- Practice guidance regarding workplace harassment and violence is being drafted
- Public Advisory Forum recruitment launched
- HRPAs staff training module on professional regulation completed
- Evaluation plan for measuring effectiveness of professional guidance continues to be refined and consulted on with evaluation experts
- Draft tools for revised CPD program are drafted: includes self-assessment tool, planning tool, CPD log and evaluation tool

Professional Guidance

Unconscious biases in the workplace were one of the top-ranking risks that the practice of HR can pose to the public in our risk roster. Working together with a few members of the Professional Standards Committee, a draft practice guideline for registrants on addressing unconscious biases in the workplace has been drafted. The draft will go before the entire Professional Standards Committee for approval in July.

In addition, practice guidance on workplace harassment and violence is in development and will undergo a similar process to the unconscious biases guidance for approvals.

Public Advisory Forum Recruitment

To maintain an ongoing Public Advisory Forum, a volunteer posting was launched and listed on several volunteer-related websites to recruit up to 15 members of the public. The mission of the Public Advisory Forum is to provide input and advice on matters brought forward to it by the HRPAs from a public perspective. Central to this mission is a focus on ensuring that regulatory responses are rooted in minimizing, mitigating, and reducing the risk or risks of harm posed to the public stemming from the practice of the HR profession.

HRPAs Staff Training

In collaboration with the HR & Learning Team, the policy team released its first staff learning module for all HRPAs staff on professional regulation. This is part of a series of short training modules that will be sent to staff throughout the year, with the core objective of increasing the knowledge among staff about professional regulation and what it means to be a regulatory body.



Registration and certification

The purpose of the registration and designations functions is to ensure that only competent and ethical professionals are registered and certified by HRP A.

Registration

HRPA is unique amongst professional regulatory bodies in Ontario in that it registers non-designated individuals. These individuals are registered in the Practitioner registration class.

Q2 Highlights:

- HRP A received 766 registration applications. This includes both initial registration as a member and as a student.
- Nine registration applications were flagged for review due to a positive response to a good character question.
- Out of the nine flagged applications, the Associate Registrar approved five applications for registration where a referral to the Registration Committee was not warranted upon review.
- 1 case was disposed of by the Registration Committee and still awaiting the decision.
- There are currently two applications that are in the information gathering stage and one individual withdrew their application for registration.
- In total, 766 applicants were approved for registration and added to the public register in Q2 2022.

Registration Committee

Chair: Agnes Ciesla, CHRL

Vice-Chair: Cindy Zarnett, CHRL

Staff Support: Melissa Gouveia

Independent Legal Counsel: Stephen Ronan, Lerner s LLP

Not all applications for initial registration with HRP A are automatically accepted. HRP A has a *good character* requirement that all applicants for initial registration must meet.

The Registration Committee is a standing committee established under Section 8.04 of the By-laws to review every application referred to it by the Registrar. The Registration Committee makes two kinds of decisions:

- a. Determining the suitability of an applicant for registration or the appropriateness of the category of registration being applied for.
- b. Considering applications for removal or modification of any term, condition or limitation previously imposed on a registrant's registration with HRP A.

The Registration Committee does not have the authority to deem that an applicant has met the requirements for registration where the registration requirement is prescribed as non-exemptible.

Less than 1% of applications indicate some event that would require further review.

Registration Committee Activity*

	2021	2022				2022
	Total	Q1	Q2	Q3	Q4	Total
Referral to Associate Registrar/Registration Committee	65	11	1			12
Approved for registration	47	6	5			11
Approved with conditions	7	0	0			0
Awaiting Panel Review	7	1	0			2
Awaiting supporting documentation	16	3	2			5
Withdrew application	7	1	1			2
Not approved	1	0	0			0

* The table above gives the activity and decisions of the Registration Committee in Q2 2022. It is to be noted that the numbers are a bit different than those related in Q2 Highlights because they include applications for initial registration which were received before Q2.

Initial Registration in Q2 2022

	Count	Percent
New registrations as a member	647	84%
New registrations as a student	119	16%
Total new registrations	766	100%

New Registrant Jurisdiction Q2 2022

	Count	Percent
Ontario	715	93%
International	17	>2%
Alberta	6	>1%
British Columbia	9	<1%
Manitoba	2	>1%
New Brunswick	3	>1%
Newfoundland and Labrador	2	>1%
Nova Scotia	2	>1%
Quebec	8	<1%
Total	766	100%

Not surprisingly 93% of initial registrations are from Ontario. Interestingly, initial registrations from out of Canada are about equal to initial registrations from other Canadian provinces.

Registration of Individuals Previously Registered with HRP

	Count	Percent
Previously registered with HRP	45	6%
Not previously registered with HRP	721	94%
Total new registrations	766	100%

Less than 6% of new registrations were from individuals previously registered with HRP but who had resigned or had been revoked for failure to renew their registration with HRP. These individuals must reapply for registration as new registrants.

Registration of Firms

The registration of firms has not yet been put into force.

Designations

HRP offers three designations - the Certified Human Resources Professional (CHRP), the Certified Human Resources Leader (CHRL) and the Certified Human Resources Executive (CHRE).

Course Approval

The CHRP and the CHRL have a coursework requirement. The coursework is approved by the Academic Standards Committees. There is an Academic Standards Committee for diploma-level coursework and an Academic Standards Committee for degree-level coursework.

The Academic Standards Committees (Diploma and Degree) make two kinds of decisions:

- a. Reviewing course information from academic institutions for inclusion on HRP's list of approved courses in fulfillment of HRP's coursework requirement,
- b. Reviewing course information for courses not included on HRP's list of approved courses on an individual basis in fulfillment of HRP's coursework requirement.

Applications for course approval can be submitted by academic institutions or individuals.

Individuals with coursework that has not been approved by HRP or that was completed outside of Ontario can apply to have their coursework approved in fulfillment of HRP's coursework requirement. This is done on a course-by-course basis.

For courses taken outside of Canada, HRP does require an original equivalency report from WES, ICAS or CES to confirm the institution is accredited and the level of the coursework.

Courses offered within programs under one of the standards (50223, 60223, and 70223) are approved and do not need to be reviewed by the Academic Standards Committee - Diploma. This has reduced the volume of submissions by institutions since 2017, when this was first introduced, and in Q1 there were no Ministry-approved non-degree HR courses submitted for review.

Academic Standards (Diploma) Committee

Chair: Michelle White, CHRP, CHRL

Vice-Chair: TBD

Staff Support: Thomas Callitsis

The Academic Standards (Diploma) Committee reviews all non-degree coursework (diploma, advanced diploma, post-diploma certificate, and not-for-credit coursework).

The standards for programs offered by colleges (i.e., Colleges of Applied Arts and Technology) are set by the Ministry of Colleges and Universities.

50223	The approved program standard for Business – Human Resources program of instruction leading to an Ontario College Diploma delivered by Ontario Colleges of Applied Arts and Technology
60223	The approved program standard for Business Administration – Human Resources program of instruction leading to an Ontario College Advanced Diploma delivered by Ontario Colleges of Applied Arts and Technology
70223	The approved program standard for Human Resources Management program of instruction leading to an Ontario College Graduate Certificate delivered by Ontario Colleges of Applied Arts and Technology

Although the Ministry approved program standards are not the same as HRPAs' course standards, to avoid duplication, courses offered within programs under one of the standards above will be approved and do not need to be reviewed by the Academic Standards (Diploma) Committee.

Institutional courses with Ministry approval

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Institutional courses with Ministry approval	18	27	0	0			

Reviews of institutional applications without Ministry approval by the Academic Standards (Diploma) Committee

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Institutional applications reviewed	0	3	0	1			
Institutional applications approved	0	3	0	1			

Reviews of individual applications by the Academic Standards (Diploma) Committee

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Individual applications reviewed	9	0	0	0			
Individual applications approved	9	0	0	0			

Academic Standards (Degree) Committee

Chair: Julie Aitken Schermer, PhD (member of the public)

Vice-Chair: Kate Toth, PhD, CHRP, CHRL

Staff Support: Thomas Callitsis

The Academic Standards (Degree) Committee reviews all degree-credit coursework. University courses are reviewed for a minimum 80% match with HRPAs standard course outlines.

Reviews of institutional applications by the Academic Standards (Degree) Committee

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Institutional applications reviewed	24	6	10	2			
Institutional applications approved	18	3	8	2			

Reviews of individual applications by the Academic Standards (Degree) Committee

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Individual applications reviewed	46	32	7	12			
Individual applications approved	15	26	2	5			

For each of the nine required courses, candidates may opt to write a Challenge Exam. Some use the Challenge Exam option instead of taking the course, others use the Challenge Exams to make up for a grade that was too low or for a course that has expired due to it having been completed more than 10 years ago.

- Challenge Exam were held from May 16th – 20th, 2022
- The next administration of Challenge Exams will be held from August 15th – 19th, 2022.

Challenge Exams Breakdown by Subject for the May 2022 Administration

Subject	Registrants	Pass	Pass Rate
Training and Development	7	6	86%
Compensation	7	2	29%
Organizational Behaviour	7	2	29%
Finance and Accounting	6	2	33%
Recruitment and Selection	8	4	50%
Human Resources Management	2	2	100%
Human Resources Planning	5	4	80%
Occupational Health and Safety	2	2	100%
Labour Relations	5	4	80%
Total	49	28	57%

Note: In addition to the 49 registrants, there was one registrant who was registered for a Challenge Exam, however, did not show up to write their examination. Thus, no score has been reported for this registrant.

Experience Requirement and Alternate Route

Experience Assessment Committee

Chair: Michelle Rathwell, CHRP, CHRL

Vice-Chair: Elizabeth Blunden, CHRP, CHRL

Staff Support: Rina Truong

The Experience Assessment Committee is a standing committee established under Section 8.04 of the By-laws to review every application referred to it by the Registrar. The Experience Assessment Committee makes two kinds of decisions:

- Determining the appropriateness and adequacy of the experience of each applicant to meet the experience requirement for the Certified Human Resources Leader (CHRL) designation.
- Determining the appropriateness and adequacy of the experience of each applicant to meet the coursework requirement for the Certified Human Resources Professional (CHRP) or the CHRL designation via the Alternate Route per the criteria as established by the Board.

Experience Assessment Committee Activity (Validation of Experience)

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Validation of Experience applications received	163	266	47	46			

Validation of Experience Results Released for Q2 2022

	Count	Percent
Successful	44	68%
Unsuccessful	21	32%
Total	65	100%

Alternate Route

Experience Assessment Committee Activity (Alternate Route)

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Alternate Route applications received	129	112	36	20			

Alternate Route Results Released for Q2 2022

	Count	Percent
Successful	30	69.8%
Unsuccessful	13	30.2%
Total	43	100%

Designation Exams

Q2 Highlights:

- HRPA continues to experience a strong number of candidates writing the CHRP Employment Law Exams (CHRP-ELE), the CHRL Employment Law Exams (CHRL-ELE), the CHRP Knowledge Exams (CHRP-KE) and the CHRL Knowledge Exams (CHRL-KE) in Q2.

Q2 2022 Exam Schedule

Exam	Window
CHRP-ELE	March 1 - 15, 2022
CHRL-ELE	March 16 - 30, 2022
CHRP-KE	April 4 -18, 2022
CHRL-KE	May 3 - 17, 2022

CHRP Exam Validation Committee

Chair: Claire Chester, CHRL

Vice-Chair: Roxanne Chartand, CHRL

Staff Support: Kelly Morris, CHRP, CHRL

The Certified Human Resource Professional Exam Validation Committee (CHRP-EVC) is a standing committee established under the By-laws to:

- a. Approve all examination content used to evaluate CHRP candidates and make recommendations to the Registrar as to appropriate cut-scores for the CHRP exams.
- b. Approve examination blueprints for the CHRP-KE and CHRP ELE.

In Q2, the CHRP-EVC held the following exam related activities:

- A two-day CHRP-KE Validation sessions was held in May 2022.
- A two-day CHRP-ELE Validation sessions was held in April 2022.
- A CHRP-ELE Key Validation and Pass Mark Approval session was held in March 2022.
- A CHRP-KE Key Validation and Pass Mark Approval session was held in April 2022.

The purpose of the Key Validation and Pass Mark Approval sessions is to obtain an agreement on the items that are appropriate for scoring and an agreement as to the appropriateness of the pass mark and pass rate for the CHRP Employment Law Exam written in March 2022 and for the CHRP Knowledge Exam written in April 2022. The CHRP-EVC makes a recommendation to the Registrar to approve the agreed-upon pass mark. The purpose of the Validation sessions is to review and validate items for future sittings of the CHRP Knowledge Exam and the CHRP Employment Law Exam. All items that the CHRP-EVC agreed on were fair, appropriate and were validated for the exam and the committee members were confident that the validated items would form a defensible exam. The Validation sessions were held over two days in April for the CHRP-ELE and in May for the CHRP-KE and were done virtually due to COVID-19.

CHRL Exam Validation Committee

Chair: Nancy Richard, CHRL

Vice-Chair: Jennifer King, CHRL

Staff Support: Kelly Morris, CHRP, CHRL

The Certified Human Resource Leader Exam Validation Committee (CHRL-EVC) is a standing committee established under the By-laws to:

- a. Approve all examination content used to evaluate CHRL candidates and make recommendations to the Registrar as to appropriate cut-scores for the CHRL exams.
- b. Approve examination blueprints for the CHRL-KE and the CHRL Employment Law Exams.

In Q2, the CHRL-EVC held the following exam related activities:

- The CHRL-ELE Validation sessions was held in March 2022.
- The CHRL-ELE Key Validation and Pass Mark Approval session was held in April 2022.
- The CHRL-KE Key Validation and Pass Mark Approval session was held in May 2022.

The purpose of the Key Validation and Pass Mark Approval sessions is to obtain an agreement on the items that are appropriate for scoring and an agreement as to the appropriateness of the pass mark and pass rate for the CHRL Employment Law Exam written in March 2022 and for the CHRL Knowledge

Exam written in May 2022. The CHRL-EVC makes a recommendation to the Registrar to approve the agreed-upon pass mark. The purpose of the Validation sessions is to review and validate items for future sittings of the CHRL Employment Law Exam. All items, that the CHRL-EVC agreed on were fair, appropriate and were validated for the exam and the committee members were confident that the validated items would form a defensible exam. The Validation sessions were held over two days in March and were done virtually due to COVID-19.

Technical Reports for Exams

HRPA publishes the technical reports for the CHRP-KE, CHRL-KE, CHRP and CHRL Employment Law Exams. Technical reports are published for each administration (e.g., exam window) of the exams. There were three technical reports published in Q2 2022.

[The CHRP Employment Law Exam – March 2022](#)

[The CHRL Employment Law Exam – March 2022](#)

CHRP-KE Knowledge Exam- April 2022

Examination Accommodations

HRPA's Examination Accommodations Policy identifies to candidates what types of documentation is required when submitting their request for accommodations and explains and defines what disabilities may be. Accommodated candidates are provided with a detailed step-by-step guide on what to expect during the process of reviewing and approving their requests. HRPA utilizes the Examination Accommodation Request Form and the Acknowledgement of the Accommodations Provided Form so that each candidate is made aware of the accommodations that HRPA has approved to be implemented.

In Q2, HRPA engaged the services of Allyson Harrison, a Neuropsychologist, to assist in the review and approval of accommodations that relate to ADHD, learning disabilities and mental health diagnosis.

In Q2, HRPA sought a legal opinion from Rebecca Durcan, HRPA's in-house legal counsel, on the risk to HRPA, when accommodations are denied. A summary of the advice is as follows:

"There is no way to entirely protect HRPA from a legal claim being made in connection with an accommodation request at the HRTO or in a court. However, if HRPA is evaluating accommodation requests with accommodation experts and can justify why a specific accommodation request is being granted or denied, and if HRPA can ultimately tie its reasoning to the integrity of the examination and its public interest mandate more generally, it will be in a good position to defend any challenge that may be brought."

“HRPA should provide clear reasons to any candidates whose accommodation requests are denied. That will promote transparency and help candidates understand HRPAs rationale. This may in turn make it less likely that a candidate will bring a claim against HRPAs in the event the request is denied (though again, there is no way to protect against that entirely).”

HRPA should make the deadlines to request accommodations and any relevant policies easily accessible on the website and through various other pieces of communication. In other words, it is okay to over communicate the deadline dates.

HRPA currently provides detailed reasoning and rationale when an accommodation request is denied and would not deny any request unless first consulting with our accommodation experts.

In Q2, the HRPAs reviewed and approved a total of 23 accommodation requests for the CHRP and CHRL Employment Law Exam.

The types of accommodations requested include:

- Additional time
- Flexible breaks (stop-the-clock breaks) for both breast feeding candidates and those with ADHD.
- Snacks, drinks, and medication available to test-taker while taking their exam
- Scrap paper in the remove environment
- Separate room
- Glucose monitor on a smart phone
- Memory aid

Job Ready Program

Completion of the Job Ready Program is required to earn the CHRP designation. The Job Ready Program is not graded but must be completed.

Between March 1, 2022 and May 31, 2022, 205 registrants completed the Job Ready Program and 204 were granted the CHRP designation. One registrant completed the Job Ready Program prior to completing the employment law exam and therefore was not granted the CHRP designation upon completing the Job Ready Program. The individual will be eligible for the CHRP designation after completing the employment law exam.

CHRE Review Committee

Chair: Dennis Concordia, CHRE

Vice-Chair: Janet Brooks, CHRL, CHRE

Staff Support: Margaret Wilson, CHRP, CHRL

The CHRE Review Committee is a standing committee established under Section 8.04 of the By-laws to review every application referred to it by the Registrar to determine whether an applicant meets the criteria for the Certified Human Resources Executive (CHRE) as established by the Board.

Q2 Highlights:

- At the end of Q2, 255 registrants held the CHRE designation.
- Six CHRE applications were referred to CHRE Review Committee in Q2, two of the six applications were submitted at the end of Q1, none were successful.

CHRE Review Committee Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Applications referred to Committee	39	31	5	6			
Designation granted by Committee	7	14	1	0			

The average time from HRPAs receiving a CHRE application to a decision being released was 29 business days in Q2. It should be noted that the application deadline is the end of each month and that the applications for a month are not actioned until that application deadline. This extends the average time for a decision to be released in the cases of individuals submitting applications at the beginning of a month.

Issuance of certificates

Certificates are issued for all three levels of designation: CHRP, CHRL, and CHRE. In Q2, the certificate issuance commenced in mid-May, and members are scheduled to receive their certificates in June. An email went out to members notifying them that they could expect to receive their certificate during this issuance.

Certificates Issued in 2022

	CHRP	CHRL	CHRE	Total
February 2022 (Q1)	72	58	0	130
May 2022 (Q2)	368	53	1	422
August 2022 (Q3)				
November 2022 (Q4)				
Total	440	111	1	552



Standards and guidance

Professional Standards Committee (PSC)

Chair: Claudine Cousins, CHRP, CHRL

Vice-Chair:Carolynn Jaye, CHRP, CHRL

Staff Support: Mara Berger

The Professional Standards Committee is a standing committee established under Section 8.04 of the By-laws. The Professional Standards Committee is a policy and oversight committee with the mandate to ensure, on behalf of the HRP Board, that HRP establishes, maintains, develops, and enforces the professional standards as it was tasked to do by its enabling legislation.

Q2 Highlights:

- The Professional Standards Committee met on March 28, 2022. At the meeting, a motion was passed to approve the final draft of the revised Code of Ethics and Rules of Professional Conduct. The Code of Ethics and Rules of Professional Conduct were subsequently submitted to the Governance and Nominating Committee, which requested a legal review by both regulatory counsel for HRP and an employment lawyer before submission to the Board for final approval. The legal reviews are currently underway.
- The Professional Standards Committee also reviewed the draft Practice Guideline on Racism and Racial Discrimination in the Workplace and approved it for submission to the Governance and Nominating Committee once feedback from the meeting has been incorporated.

The Professional Standards Committee held one meeting on March 28, 2022 in Q2. The focus of the meeting was the approval of the final draft of the revised Code of Ethics and Rules of Professional Conduct. Following a committee meeting in Q1, HRP staff made additional updates to the Code of Ethics and Rules to incorporate feedback from the committee. The updated version of the Code of Ethics and Rules were recirculated to the committee prior to the meeting, and the committee approved the revised Code of Ethics and Rules for submission to the Governance and Nominating Committee.

The committee also reviewed the draft Practice Guideline on Racism and Racial Discrimination in the Workplace. Overall, the committee liked the content of the Guideline but had some suggestions for further improvements. Specifically, the committee felt that the scenarios should be linked to specific groups of people that they are most likely to address. Additionally, the committee felt that restructuring the Guideline slightly would be beneficial, such as switching the overview chart and the introduction at the beginning and creating a glossary of terms at the end with appropriate hyperlinks. Once all the feedback had been noted, the committee voted to approve the Practice Guideline for submission to the Governance and Nominating once staff has been able to make the necessary revisions based on the feedback received.

With respect to the CPD Framework final revisions were made to the proposal in Q2 based on feedback from the Professional Standards Committee. The updated CPD Framework was recirculated to the committee and an electronic motion to approve the CPD Framework for submission to the Governance and Nominating Committee is currently being voted on.

Lastly, the Professional Standards Committee recruited two new public representatives, which were approved by the Governance and Nominating Committee and who will officially join the committee on June 1, 2022.



Quality assurance

Continuing Professional Development Committee

Chair: Serenela Felea, CHRP, CHRL

Vice-Chair: Sarah Bhairo, CHRP, CHRL

Staff Support: Alexia Moschetta

The Continuing Professional Development (CPD) Committee is a standing committee established under Section 8.04 of the By-laws to audit every continuing professional development log referred to it by the Registrar. The CPD Committee makes two kinds of decisions:

- a. Determining whether the continuing professional development requirement has been met per the criteria as established by the Board.
- b. Reviewing every extension request for a member's continuing professional development period referred to it by the Registrar to determine whether there are valid grounds to grant an extension per the Continuing Professional Development Extension Policy.

Q2 Highlights:

- There were 4255 designated registrants that were due to submit their CPD log by May 31, 2022. Of those 177 extensions have been granted to date and one designated registrant either resigned or retired.
- Therefore, the total number of those that were due to submit in Q2 was 4077, of those 3089 designated registrants have submitted their CPD log as of May 31, 2022 and the total number of extension granted was 142.

Summary of Continuing Professional Development (CPD) activity for 2022

	Due	Submitted		Extensions	
		Count	Percent	Count	Percent
CHRP	1503	1092	0.73%	64	4.3%
CHRL	2529	1964	0.78%	77	3%
CHRE	45	33	73%	1	2.2%
Totals	4077	3089	76%	142	3.5%

Continuing Professional Development (CPD) Committee Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
CPD logs due to be submitted	3500	5258	4255	4077			
CPD logs submitted	2920	4971	572	3089			

CPD Pre-Approval

For Q2, a total of 695 events were pre-approved for CPD. The events can be broken down into three categories:

- HSPA's Chapters
- HSPA's Professional Development and Learning
- Third-Party Contract and Program Providers



Complaints, discipline, capacity and review

Complaints Committee

Chair: Michael Burokas, JD (member of the public)

Vice-Chair: Jackie Chavarie, CHRL

Staff Support: Jenny Eum

Independent Legal Counsel: Lonny Rosen, C.S., Rosen Sunshine LLP

The Complaints Committee is a statutory committee established under Section 12 of the *Registered Human Resources Professionals Act, 2013* (the "Act") and the By-laws to every complaint referred to it under Section 31 of the Act and section 15.03 of the By-laws. If the complaint contains information suggesting that the member, student or firm subject to the complaint may be guilty of professional misconduct as defined in the by-laws, the committee shall investigate the matter. Following the investigation of a complaint, the Complaints Committee may:

- direct that the matter be referred, in whole or in part, to the Discipline Committee;
- direct that the matter not to be referred to the Discipline Committee;
- negotiate a settlement agreement between the Association and the member, student or firm and refer the agreement to the Discipline Committee for approval;
- or take any action that it considers appropriate in the circumstances and that is not inconsistent with the Act or the By-laws, including cautioning or admonishing the member, firm, or student.

Q2 Highlights:

- There are three new complaints filed.
- One decision was issued.
- One withdrew and accepted by the panel.
- There are five complaints still in progress that have been referred to the Committee prior to Q1.
- There is one case in a parallel proceeding.

Summary of Complaints Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Referrals to Complaints Committee	9	13	3	3			
Decision issued by Complaints Committee	2	8	5	1			
Average time to dispose of complaint (days)	154	153	226	71			

There were three referrals to the Complaints Committee in Q2. Two are currently in the information gathering stage and one has withdrawn. Details of these referrals are listed below:

Complaints Received in Q2 2022

Case	Date complaint filed	Nature of allegations	Date of disposition of complaint and decision of Complaints Committee
C-2022-04	March 10, 2022	<p>It is alleged that the member breached the following Rules of Professional Conduct:</p> <p>Division III–Dignity in the Workplace 1.(1) A registrant shall act in such a way as to respect the rights of all individuals involved. 4. Under no circumstances shall a registrant engage in or condone: (1) any acts of harassment or intimidation. (2) any acts of physical or psychological violence.</p> <p>Division V–Confidentiality (1) the handling and management of files and records related to the management of the human resources function; (2) the kind of information that is shared by employees of an organization in confidence; and (3) the respect of all laws pertaining to the protection of personal information. Registrants must treat the handling of confidential, personal, or privileged information with the utmost importance as it is core to the credibility of their profession.</p>	TBD
C-2022-5	March 21, 2022	<p>It is alleged that the member breached the following Rules of Professional Conduct:</p> <p>Chapter II – HRP Code of Ethics Division I – Competence 5. A registrant may not practice or perform certain professional acts under conditions or in situations which could impair the dignity of the profession or the quality of services the registrant provides.</p> <p>Division II – Legal Requirements 1. A registrant shall not act in a manner that is dishonest, fraudulent, criminal, or illegal, or with the intent of circumventing the law. 3. When advising an employer or client, a registrant shall not knowingly assist in or encourage dishonesty, fraud, crime, or illegal conduct, or instruct the employer or client on how to violate or circumvent the law. 4. A registrant who discovers that dishonesty, fraud, crime, or illegal conduct, has been occurring in an organization shall take every</p>	May 10, 2022 Withdrawal of complaint accepted, no need to further investigate.

		<p>appropriate step to attempt to stop the dishonest, fraudulent, criminal, or illegal conduct.</p> <p>Division III – Dignity in the Workplace</p> <p>4. Under no circumstances, in the practice of Human Resources Management, shall a registrant engage in, or condone: (1) any acts of harassment or intimidation; (2) any acts of physical or psychological violence; (3) any acts of discrimination on the grounds of age, ancestry, colour, race, citizenship, ethnic origin, creed, disability, family status, marital status (including single status), gender identity, gender expression, receipt of public assistance (in housing only), record of offences (in employment only), sex (including pregnancy and breastfeeding) and sexual orientation as noted in the Ontario Human Rights Code.</p> <p>5. A registrant shall not commit acts derogatory to the dignity of the profession. Specifically, registrants should avoid the following: (1) advising or encouraging someone to commit a discriminatory, fraudulent or illegal act.</p> <p>Division IV – Balancing Interests</p> <p>1. A registrant must understand that while they may be employed or retained by one concern, he or she has a duty to parties other than their employer or their client.</p> <p>(1) a registrant must respect the dignity of all individuals;</p> <p>(3) In adversarial situations or in situations with competing interests, a registrant is required to act in good faith towards all parties at all times;</p> <p>(4) when a registrant is engaged to act as a mediator, whether formally or informally, the registrant shall act in an impartial and unbiased manner;</p> <p>Division VI – Conflict of Interest</p> <p>1. A registrant shall safeguard his or her professional independence at all times. The registrant shall, in particular:</p> <p>(2) avoid carrying out a task contrary to his or her conscience or to the principles governing the practice of his or her profession; or (3) avoid any situation in which the registrant would be in conflict of interest.</p>	
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		<p>2. A registrant must not allow personal interest to cloud his or her judgment or to cause him or her to act in an unprofessional manner</p> <p>7. As soon as a registrant ascertains that the member is in conflict of interest, this member shall notify the employer or client of this conflict of interest and request his or her authorization to continue carrying out the engagement.</p> <p>Chapter IV – The Registrant’s Relations with the Association in the Practice of their Profession</p> <p>Division III – Compliance with the Regulatory Authority of the Association</p> <p>6. A registrant shall not interfere with any disciplinary process of the Association, or any investigation into possible misconduct on the part of either himself or herself or on the part of any other Registrant by the Association:</p> <p>(2) a registrant shall not attempt to intimidate or harass a person who has filed a complaint against the registrant or against another registrant of the Association;</p> <p>Chapter V – General Duties Towards Employers, Employees, the Profession, and the Public</p> <p>1. A registrant shall avoid any behaviour that would be unbecoming of a registrant of a profession. The registrant shall, in particular, act with courtesy and respect toward employers, employees, registrants of other professions, other registrants of the Association and the public.</p> <p>2. A registrant shall not, with respect to whomever is in relation with him or her in the practice of his or her profession, breach another person’s trust, voluntarily mislead another person, betray another person’s good faith or use unfair practices.</p> <p>3. A registrant shall avoid any attitude or method which could harm the reputation of the profession and his or her proficiency to serve the public interest. The registrant shall also avoid discriminatory, fraudulent or illegal practices and shall refuse to participate in such practices.</p> <p>Chapter VI – Specific Duties When Employed by Organizations</p>	
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		<p>1. A registrant shall, as far as the registrant is able, ensure the Human Resources policies and practices of the organization:</p> <p>(2) respect all applicable laws</p> <p>2. As an employee of an organization, a registrant shall not: (1) if it is within the registrant's jurisdiction to do so, falsify any statement or report or instruct someone else to falsify any statement or report; (2) if it is within the registrant's jurisdiction to do so, allow misleading statements or reports to stand uncorrected; (3) in cases where a registrant is aware that a statement or report has been falsified but for which the registrant does not have jurisdiction, the registrant must take steps reasonable in the circumstances to report the misleading statements or reports; (4) mislead any regulatory agencies by either including information known not to be true or by failing to include information known to be relevant.</p>	
C-2022-06	May 10, 2022	<p>It is alleged that the member breached the following Rules of Professional Conduct:</p> <p>Chapter IV – The Registrant's Relations with the Association in the Practice of their Profession</p> <p>Division I – Identifying Oneself as a Registrant of HRP</p> <p>6. A registrant shall reply as soon as possible to any correspondence from the Registrar of the Association, the Board of the Association, or an expert appointed by the Board or the Registrar.</p> <p>Division III – Compliance with the Regulatory Authority of the Association</p> <p>1. A registrant of the Association shall comply with the regulatory authority of the Association.</p> <p>8. A registrant shall promptly and faithfully abide by whatever sanctions may be imposed as a result of a disciplinary process.</p> <p>9. A registrant shall adhere to any undertaking or agreement that the member has made with the Association.</p>	TBD

Two complaints were disposed of in Q2, please refer to the table below for details.

Complaints Disposed of in Q2 2022

Case	Date complaint filed	Nature of allegations	Date of disposition of complaint and decision of Complaints Committee
C-2022-3	February 14, 2022	It is alleged that the member breached the following Rules of Professional Conduct: 1) confidentiality, 2) dignity in the workplace.	May 17, 2022
C-2022-5	March 21, 2022	<p>It is alleged that the member breached the following Rules of Professional Conduct:</p> <p>Chapter II – HRP Code of Ethics Division I – Competence</p> <p>5. A registrant may not practice or perform certain professional acts under conditions or in situations which could impair the dignity of the profession or the quality of services the registrant provides.</p> <p>Division II – Legal Requirements</p> <p>1. A registrant shall not act in a manner that is dishonest, fraudulent, criminal, or illegal, or with the intent of circumventing the law.</p> <p>3. When advising an employer or client, a registrant shall not knowingly assist in or encourage dishonesty, fraud, crime, or illegal conduct, or instruct the employer or client on how to violate or circumvent the law.</p> <p>4. A registrant who discovers that dishonesty, fraud, crime, or illegal conduct, has been occurring in an organization shall take every appropriate step to attempt to stop the dishonest, fraudulent, criminal, or illegal conduct.</p> <p>Division III – Dignity in the Workplace</p> <p>4. Under no circumstances, in the practice of Human Resources Management, shall a registrant engage in, or condone: (1) any acts of harassment or intimidation; (2) any acts of physical or psychological violence; (3) any acts of discrimination on the grounds of age, ancestry, colour, race, citizenship, ethnic origin, creed, disability, family status, marital status (including single status), gender identity, gender expression, receipt of public assistance (in housing only), record of offences (in employment only), sex (including pregnancy and breastfeeding) and sexual orientation as noted in the Ontario Human Rights Code.</p>	<p>May 10, 2022</p> <p>Withdrawal of complaint accepted, no need to further investigate.</p>

		<p>5. A registrant shall not commit acts derogatory to the dignity of the profession. Specifically, registrants should avoid the following: (1) advising or encouraging someone to commit a discriminatory, fraudulent or illegal act;</p> <p>Division IV – Balancing Interests</p> <p>1. A registrant must understand that while they may be employed or retained by one concern, he or she has a duty to parties other than their employer or their client.</p> <p>(1) a registrant must respect the dignity of all individuals;</p> <p>(3) in adversarial situations or in situations with competing interests, a registrant is required to act in good faith towards all parties at all times;</p> <p>(4) when a registrant is engaged to act as a mediator, whether formally or informally, the registrant shall act in an impartial and unbiased manner;</p> <p>Division VI – Conflict of Interest</p> <p>1. A registrant shall safeguard his or her professional independence at all times. The registrant shall, in particular:</p> <p>(2) avoid carrying out a task contrary to his or her conscience or to the principles governing the practice of his or her profession; or (3) avoid any situation in which the registrant would be in conflict of interest.</p> <p>2. A registrant must not allow personal interest to cloud his or her judgment or to cause him or her to act in an unprofessional manner</p> <p>7. As soon as a registrant ascertains that the member is in conflict of interest, this member shall notify the employer or client of this conflict of interest and request his or her authorization to continue carrying out the engagement.</p> <p>Chapter IV – The Registrant’s Relations with the Association in the Practice of their Profession</p> <p>Division III – Compliance with the Regulatory Authority of the Association</p> <p>6. A registrant shall not interfere with any disciplinary process of the Association, or any investigation into possible misconduct on the part of either himself or herself or on the part of any other Registrant by the Association:</p> <p>(2) a registrant shall not attempt to intimidate or harass a person who has filed a complaint</p>	
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		<p>against the registrant or against another registrant of the Association;</p> <p>Chapter V – General Duties Towards Employers, Employees, the Profession, and the Public</p> <p>1. A registrant shall avoid any behaviour that would be unbecoming of a registrant of a profession. The registrant shall, in particular, act with courtesy and respect toward employers, employees, registrants of other professions, other registrants of the Association and the public.</p> <p>2. A registrant shall not, with respect to whomever is in relation with him or her in the practice of his or her profession, breach another person’s trust, voluntarily mislead another person, betray another person’s good faith or use unfair practices.</p> <p>3. A registrant shall avoid any attitude or method which could harm the reputation of the profession and his or her proficiency to serve the public interest. The registrant shall also avoid discriminatory, fraudulent or illegal practices and shall refuse to participate in such practices.</p> <p>Chapter VI – Specific Duties When Employed by Organizations</p> <p>1. A registrant shall, as far as the registrant is able, ensure the Human Resources policies and practices of the organization:</p> <p>(2) respect all applicable laws</p> <p>2. As an employee of an organization, a registrant shall not: (1) if it is within the registrant’s jurisdiction to do so, falsify any statement or report or instruct someone else to falsify any statement or report; (2) if it is within the registrant’s jurisdiction to do so, allow misleading statements or reports to stand uncorrected; (3) in cases where a registrant is aware that a statement or report has been falsified but for which the registrant does not have jurisdiction, the registrant must take steps reasonable in the circumstances to report the misleading statements or reports; (4) mislead any regulatory agencies by either including information known not to be true or by failing to include information known to be relevant.</p>	
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Discipline Committee

Chair: Lynne Latulippe, (member of the public)

Vice-Chair: Steven Lewis, LL. B, Allied Registrant

Staff Support: Margaret Wilson, CHRP, CHRL

Independent Legal Counsel: Luisa Ritacca, Managing Partner, Stockwoods LLP

The Discipline Committee is a statutory committee established under Section 12 of the *Registered Human Resources Professionals Act, 2013* (the "Act") and the By-laws to hear every matter referred to it by the Complaints Committee under Section 34 of the Act and section 15.03 of the By-laws. The Discipline Committee shall:

- a. Determine whether the member, student or firm is guilty of professional misconduct as defined in the by-laws.
- b. If the Committee finds a member, student or firm guilty of professional misconduct, exercise any of the powers granted to it under Subsection 34(4) of the Act.

Q2 Highlights:

- There were no referrals to the Discipline Committee in Q2.
- The Committee is currently working with independent legal counsel to update their Rules of Procedure.

Discipline Committee Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Referrals to Discipline Committee	2	0	0	0			
Decision issued by Discipline Committee	1	1	0	0			

Capacity Committee

Chair: Lynne Latulippe, (member of the public)

Vice-Chair: Steven Lewis, LL. B, Allied Registrant

Staff Support: Margaret Wilson, CHRP, CHRL

Independent Legal Counsel: Luisa Ritacca, Managing Partner, Stockwoods LLP

The Capacity Committee is a statutory committee established under Section 12 of the *Registered Human Resources Professionals Act, 2013* (the "Act") and the By-laws to hear every matter referred to it by the Association under Section 47 of the Act and section 15.03 of the By-laws. The Capacity Committee shall:

- a. Determine whether a member or student is incapacitated.
- b. If the Committee finds a member or student is incapacitated, exercise any of the powers granted to it under Subsection 47(8) of the Act.

Q2 Highlights:

- There were no capacity hearings conducted in Q2.

Capacity Committee Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Referrals to Capacity Committee	0	0	0	0			
Decision issued by Capacity Committee	0	0	0	0			

Review Committee

Chair: Damienne Lebrun-Reid, LL. B (member of the public)

Vice-Chair: Graham Stanclik, CHRP, CHRL, CPM

Staff Support: Carolyn Lepera

Independent Legal Counsel: John Wilkinson, Partner, WeirFoulds LLP.

The Review Committee is a statutory committee established under Section 12 of the *Registered Human Resources Professionals Act, 2013* (the "Act") and the By-laws to review every matter referred to it by the Registrar under Section 40 of the Act. The Review Committee may:

- a. Determine whether the member or firm's bankruptcy or insolvency event may pose a risk of harm to any person;
- b. Direct the Registrar to investigate the matter;
- c. Determine whether a hearing is warranted and, if so, to conduct hearings when warranted to determine whether the member or firm's bankruptcy or insolvency event poses a risk of harm to any person;
- d. Upon a determination that there are reasonable grounds for believing that the member or firm's bankruptcy or insolvency event poses or may pose a risk of harm to any person following a hearing, exercise any of the powers granted to it under Subsection 41(8) of the Act.

Q2 Highlights:

- There was one disclosure of a bankruptcy or insolvency event in Q2.
- The panel issued two decisions in Q2. One confirmed no further action of an insolvency event that had been fulfilled from a review disclosed in 2017. The other was a review of an insolvency event disclosed in 2021. The panel's review culminated in the Review Committee requesting additional information. The requested additional information was received in Q2 and will be reviewed in Q3.

- There was a case referred to the Committee in Q1, which required consultation with independent legal counsel in Q2, the consultation is ongoing. A panel anticipates meeting in Q3 to review the matter further.

Review Committee Activity*

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Notices of bankruptcies or insolvency events	3	4	1	1			
Decisions issued by the Review Committee	1	4	2	2			

*While the Review Committee reviews all bankruptcy or insolvency events involving members of HRP, the Registration Committee is seized with considering bankruptcy or insolvency events of applicants for registration as part of the Good Character requirement.



Appeal

Appeal Committee

Chair: Melanie Kerr, CHRP, CHRL

Vice-Chair: Maureen Quinlan, LL. B (member of the public)

Staff Support: Stephanie Jung

Independent Legal Counsel: Luisa Ritacca, Managing Partner, Stockwoods LLP

The Appeal Committee is a statutory committee established under Section 12 of the *Registered Human Resources Professionals Act, 2013* (the “Act”) and the By-laws to review every request for appeal filed under the Act and the By-laws by registrants of HRPA or members of the public. The Appeal Committee shall determine whether there was a denial of natural justice or an error on the record of the decision of the committee or the Registrar and to exercise any of the powers granted to it under the Act and Section 22 of the By-laws.

Q2 Highlights:

Two decisions were issued in Q2:

- One decision overturned the original decision of the Experience Assessment Committee (EAC) regarding a Validation of Experience application. The application is ordered to be reassessed by a new panel of the EAC.
- One decision upheld the original decision of the EAC.

An appeal that was filed in Q2 will be undergoing a jurisdiction review. Upon initial review of the appeal, the Committee Chair can order a jurisdiction review to determine if the appeal can move forward in the appeal process. A panel of the Appeal Committee is then struck to determine whether the appeal falls within the Committee’s jurisdiction. The Committee’s jurisdiction is outlined in the *Registered Human Resources Professionals Act, 2013* and in HRPA’s By-laws. If the panel determines that the appeal falls within the Committee’s jurisdiction, then the appeal will continue its way through the appeal process. If the panel determines that the appeal doesn’t fall within the Committee’s jurisdiction, a *Notice of Intention to Dismiss* is sent to the appellant and HRPA. Both parties (Appellant & HRPA) will then have the opportunity to submit written arguments against dismissal. The panel will then meet again and determine whether the Committee does or does not have jurisdiction over the appeal. The panel will be meeting in June 2022 for the jurisdiction review.

Appeal Committee Activity

	2020	2021	2022				2022
	Total	Total	Q1	Q2	Q3	Q4	Total
Number of appeals filed*	11	12	1	1			
Settled via the Alternate Resolution Process	8	0	0	0			
Decisions issued by the Appeal Committee	5	12	0	2			

*Please note: The number of appeals filed will not necessarily be equal to the number of appeals settled or decided by the Appeal Committee, since appeals filed in one year may be resolved in the following year.

Alternate Resolution Process

One factor that influences the number of appeals that are heard by the Appeal Committee is the HRPAs alternate resolution process for appeals. If the Registrar believes that the appellant has shown in their Request for an Appeal that something may have gone wrong with the process or that there may have been a denial of natural justice, the Registrar may extend an offer to the appellant to settle the appeal. Under those circumstances, the appellant has three options:

1. Accept the offer and withdraw the appeal,
2. Accept the offer with the provision that a panel of the Appeal Committee review and sign off on the agreement between the appellant and HRPAs, or
3. Reject the offer, which means the appeal will proceed as an uncontested appeal.

Appellants are never pressured to choose one option or another. The benefit for appellants and HRPAs is a quicker resolution of the matter. Concerning appeals of decisions of the Experience Assessment Committee (EAC), the settlement usually involves having the Validation of Experience (VOE) or alternate route application reviewed by a second independent panel. Most appellants who are appealing a decision by the EAC want a 'second opinion' on their application. As noted above, the Appeal Committee was not established to give second opinions but to review the process by which the decision was arrived at.

The impact of the alternate resolution process is that most of the decisions of the (EAC) where the facts suggest that an appeal might be warranted, never make it to being reviewed by a panel of the Appeal Committee as the VOE or Alternate Route application is sent to a new Experience Assessment Committee (EAC) panel for review.

Q2 2022 Appeal Committee Activity

	Date Appeal Filed	The Nature of the Appeal	The Outcome of the Appeal
A-2021-12	November 26, 2021	The Experience Assessment Committee made an error in assessment on a Validation of Experience application.	A decision was issued in April 2022 upholding the Experience Assessment Committee's decision.

A-2022-01	January 12, 2022	The Experience Assessment Committee failed to consider the correct documents for Position Two in the Validation of Experience application.	A decision was issued in March 2022 overturning the Experience Assessment Committee's decision. The Validation of Experience application is to be reassessed by a new panel of the Experience Assessment Committee.
A-2022-02	May 4, 2022	The Registrar did not consider extenuating circumstances in the designation reinstatement requirements. CHRL designation should be reinstated without meeting any additional requirements.	The Committee Chair decided to strike a panel to review whether the Committee had jurisdiction over the appeal. A panel will meet in June 2022.

Breakdown of Appeal Decisions

Appeal Outcomes	Count
Total number of requests for appeal received March 1, 2022 and May 31, 2022	1
Total number of appeals settled via the Alternate Resolution Process	0
Total number of final appeal decisions released March 1, 2022 and May 31, 2022	2
Decisions upholding the original decision	1
Decisions overturning the original decision	1
Appeal declined on jurisdictional grounds	0

*In Q2, the average time to decision was 85 days.



Stakeholder education

Regulatory Affairs Newsletter

The *Regulatory Affairs* newsletter is published under By-laws 13.06 and 13.07.

As set out in the By-laws, the *Regulatory Affairs* newsletter shall include but not be limited to:

- (a) Notices of annual meetings.
- (b) Election results; and
- (c) All information as set out in Section 21.03 and Section 21.08 concerning discipline or review proceedings. Where there is a dissenting opinion prepared by a member of the panel and the decision, finding or order of the Discipline Committee or the Review Committee is to be published, in detail or summary, any publication will include the dissenting opinion.

In Q2, a *Regulatory Affairs* Newsletter was published on March 28, 2022. The next publication will be in Q3 on June 27, 2022.

Trend and Issues in Professional Regulation

The Professional Governance Act (Alberta)

On May 2, 2022, the Alberta Government introduced Bill 23, the *Professional Governance Act*. Bill 23 represents a major overhaul for professional regulatory legislation in Alberta. The Bill would repeal the governing statutes for 22 non-health professions and replace them with one umbrella statute. The *Professional Governance Act* (Alberta) would affect all professions except for the health professions, teachers, and law. This development may be relevant to HRP. But to explain the relevance, we need to review the context of Bill 23, the *Professional Governance Act*.

Context

Professional regulation is not only a provincial matter, it still mostly a ministerial matter. Professional regulatory bodies are governed by statutes which fall under different ministries. The health professions are somewhat different in that there are many professions that fall under the same ministry. As such, there exists for health professions umbrella legislation in addition to profession-specific statutes. Then again there are the professional regulatory bodies governed by private act. These private act regulators control occupational titles and are thus subject to the *Ontario Labour Mobility Act, 2006*, but are not subject to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*. There are also other occupations that are regulated through Delegated Administrative Authorities (DAAs) (e.g., Funeral Directors, Real Estate Brokers) and by direct government regulation (e.g., private investigators). Although these statutes share some common elements, that are all somewhat different in their specifics.

The situation in Alberta is similar to that of Ontario with one interesting difference. In Alberta, while 9 professional regulatory organizations (PROs) have individual separate acts, thirteen PROs are registered under the *Professional and Occupational Associations Registration Act* (POARA).

POARA is an “umbrella act” that regulates professions and occupations that are not regulated under other Alberta statutes. The purpose of POARA is to protect the public interest and public safety by ensuring that members of registered professions and occupations meet certain standards. POARA is “title protection” legislation – it is designed to protect the professional titles of members in registered associations. The act does not restrict practice rights or the right to work in any way. The decision to register a profession or occupation under POARA is not made by the Alberta Legislature but by the Minister of Labour and Immigration under the advice of the POARA Registrar. The Registrar is responsible for conducting investigations into each application and provides advice to the Minister regarding registration under POARA. If an association is registered under POARA, the Registrar monitors its performance to ensure it fulfills its responsibilities in the public interest and public safety.

What is the problem that the Professional Governance Act (Alberta) is trying to solve?

All legislation is remedial—the purpose of any legislation is to solve a problem. So, what is the problem the Professional Governance Act (Alberta) is trying to solve? Often changes to professional regulatory

regimes are driven from the perception that some professional regulatory bodies had strayed from focusing on the public interest, but this does not appear to have been the driver here.

“Our professional regulatory organizations do an excellent job and the proposed act will make it easier for them to do their important work of safeguarding the public interest and public safety of Albertans. Streamlining Alberta’s professional laws reduces red tape and helps attract job-creating investment to support the province’s economic recovery.” Kaycee Madu, Minister of Labour and Immigration

What appears to have been the driver here is that the fractured nature of professional regulation is making it difficult for government to implement policies and initiatives.

The objectives of the Alberta government are to ‘*attract job-creating investment to support the province’s economic recovery.*’ The Alberta government website states as an outcome of the proposed legislation:

“Align with the Labour Mobility Act (awaiting proclamation) and the Fair Registration Practices Act. This will reduce barriers for regulated professionals from outside Alberta and allow their credentials to be recognized more quickly and efficiently. Credentials can also be recognized on a temporary basis to allow out-of-province professionals to work in Alberta on short-term projects or during emergencies.”

Implementing labour policies is all the more difficult in a fractured professional regulation landscape. This is the problem the *Professional Governance Act* (Alberta) is designed to fix.

The *Professional Governance Act* (Alberta) will introduce more consistency in how core regulatory functions are carried out, more consistency in the processes for amalgamating or deregistering existing professional regulatory organizations and creating new ones, and more consistent and efficient processes for the appointment of public members to the organizations to ensure the public’s interest is represented, but to do so it will also introduce considerable government oversight and control.

For instance, the *Professional Governance Act* (Alberta) provides for the appointment of Professional Governance Officers. Professional Governance Officers will be empowered to oversee the Professional Regulatory Organizations. These Professional Governance Officers can make inquiries of Professional Regulatory Organizations to determine if the Professional Regulatory Organization is complying with the Act, the regulations, and appropriately governing itself. This includes whether the Professional Regulatory Organization has effective rules of professional conduct, codes of ethics, practice standards, whether it is establishing and verifying continuing competence, whether it has taken appropriate measures to avoid and detect unprofessional conduct, whether registrants are held accountable for their professional conduct and whether the Professional Regulatory Organization is maintaining public confidence. Professional Governance officers will have the power to require Professional Regulatory Organization is to comply with their directions.

In what may be disconcerting to some, the Act provides for consistent processes for amalgamating or deregistering existing professional regulatory organizations and creating new ones.

Finally, the Act provides for the appointment of a public administrator when a professional regulatory organization is no longer fulfilling its obligations, acting in good faith, or serving the public interest and public safety; although the government releases are quick to point out that this provision would only be used in exceptional circumstances when there is a clear threat to the public interest or the interest of public safety.

Other provinces?

Quebec has had an oversight body for its professions since the early 1970's. The Professional Code established an Office of Professions to supervise professional bodies or 'orders' to ensure that they meet their mandate to protect the public interest by monitoring the conduct of practitioners. Notwithstanding, the Quebec approach never had much influence on the structure of professional regulation in other provinces.

More recently, in BC, various high profile environmental protection and natural resource management failures, including the 2014 Mount Polley Tailings Storage Facility breach and the contamination of the 2014 Hullycar Aquifer, drew public scrutiny and clearly evidenced low public confidence in some of the professional reliance regulatory regimes in effect at the time. Responding to a clear need to strengthen the professional reliance model, Minister of Environment and Climate Change Strategy George Heyman announced in October 2017 that the provincial government would review professional reliance in the natural resource sector to ensure that the highest professional, technical, and ethical standards are being applied to resource development in British Columbia. This review was conducted by Mark Haddock and submitted to the Ministry of Environment and Climate Change Strategy in June 2018.

The *Professional Guidance Act* (BC) was drafted in response to recommendations made in the Haddock Report. The PGA implements two of the Review's recommendations by legislating best practices for professional governance and establishing the Office of the Superintendent of Professional Governance (OSPG) for consistent and independent oversight of the professional regulators. The PGA received Royal Assent on November 27, 2018. Although the *Professional Guidance Act* (BC) was put in place to address problems in the natural resources sector, the BC government has indicated that all new professions would fall under the oversight of the Office of the Superintendent of Professional Governance (OSPG).

It is interesting how very different concerns led to similar solutions. The Alberta government is concerned about competitiveness and economic recovery, the BC government was concerned about regulatory failures, yet both opted for the establishment of robust oversight mechanisms to bring about greater consistency and control over the activities of non-health professional regulatory bodies.

Two important points

There are two important points to be made:

1. Both the *Professional Guidance Act* (BC) and the proposed *Professional Guidance Act* (Alberta) are systemic or structural responses as opposed to specific responses that to a single regulator.

In the past, some regulators did get into trouble for failing to fulfil their regulatory mandates. Now the responses are more systemic and structural and impact multiple regulatory bodies.

2. Both the *Professional Guidance Act* (BC) and the proposed *Professional Guidance Act* (Alberta) deal with non-health professions. In the past, the health professions have been at the forefront of regulatory change. This is facilitated by the fact that health professions report to a single ministry. The non-health professions report to various ministries and had escaped significant regulatory change... no more.

Could this happen in Ontario?

- Is the Ontario government concerned about competitiveness? Yes.
- Is the government looking to attracting foreign professionals and professionals from other provinces to meet labour shortages in Ontario? Yes.
- Is there a lack of consistency in how different professions are regulated in Ontario? Yes.
- Is the confidence of the public in the ability and/or willingness of professional regulatory bodies to put the public interest first at an all-time low? Yes.

All the ingredients are there for systemic and structural change.

In recent years, lack of public confidence in the ability and/or willingness of professional regulatory bodies to put the public interest first seemed to be the primary driver of change in professional regulatory regimes in Canada. However, it may be the economic arguments for greater oversight over professional regulatory bodies that may be the drivers of change.

What are HRPAs duties as set out in the *Regulated Human Resources Professionals Act, 2013*?

May 9, 2022

Usually, professional regulatory bodies think in terms of *mandate* rather than *duties*. Mandate and duties are related but they are not quite the same thing. The *Registered Human Resources Professionals Act, 2013*, gives HRPAs a mandate and also assigns specific duties to HRPAs.

A mandate is a mission or authority granted by a superior power or authority. In the context of professional regulatory bodies governed by statute, a *mandate* is the official mission given to the organization by the Legislature. Mandates are directional and open-ended. A duty is defined as 'a moral or legal obligation; a responsibility' or 'a task or action that someone is required to perform.'

Working through the *Act* and flagging all the sentences which contain the word 'shall' will identify some of HRPAs obligations under the *Act* but it will not define HRPAs mandate under the *Act*.

The Ontario Legislature grants powers and duties to professional regulatory bodies which are deemed necessary or beneficial for the professional regulatory bodies to have to fulfil their mandate. In doing so, the Ontario Legislature has set out several activities that HRPAs must carry out. By way of the *Registered Human Resources Professionals Act, 2013*, the Ontario Legislature has delegated legislative (i.e., making by-law) and judicial (i.e., adjudicative) powers to HRPAs. As any delegator, the Ontario Legislature has set certain limits or stipulations to its delegation of powers. Abiding by these requirements should not be confused, however, with the fulfilment of the mandate.

Although HRPAs has many specific duties under the *Act*, its overarching duty under the *Act* is to fulfill its mandate.

HRPAs mandate is most closely identified with the objects of Association spelled out in section 4 of the *Act*. However, HRPAs objects, as any other legislative text, are to be given a purposive, contextual, and harmonious interpretation. The objects are to be interpreted in a manner that is harmonious with what the *Act* does and how it operates, with the apparent purpose of the *Act*, with the problem(s) the *Act*

intended to fix, and with the intention of the Legislature in enacting the Act¹. Beyond the Act itself, there are other sources to be considered in understanding HRPAs mandate: one is the explanatory note which was attached to the Bill, the other are the statements made by the sponsors of the Act and other members of the Legislature in introducing and supporting the passage of the Act.

What does the duty to fulfill the mandate entail?

William Lahey said it best:

“The many responsibilities of SROs [self-regulating organizations] fall under one comprehensive responsibility: to administer their enabling statutes so as to achieve or advance the underlying purpose of public protection.”

“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.”

Even the wording of the Objects in the Act echoes this. Consider Object (a):

“(a) 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...”

The important word here is ‘including.’ The use of the word ‘including’ means that the Association must do what is included in that clause, but it also means that there is more to ‘governing and regulating the practice of members of the Association and firms in accordance with this Act and the by-laws’ than what is listed in the ‘including’ clause.

There is also Object (e):

“(e) to address any other matter that relates to the regulation of its members that the Board considers appropriate.”

To put it another way, HRPAs duty is about working towards the achievement of certain objectives more than it is about carrying out certain activities. Fulfilling a mandate is an open-ended commitment. Open-ended also means that the mandate is never fully captured by a ‘to-do’ list.

Best efforts v. reasonable efforts

The Ontario Legislature expects that the promotion and protection of the public interest would be HRPAs paramount concern.

¹ Office of Legislative Counsel, Ministry of Justice, Province of British Columbia. (August 2013). *A Guide to Legislation and Legislative Process in British Columbia, Part 2: Principles of Legislative Drafting.*

Contracts require the performance of certain obligations. These obligations can be in the form of mandatory obligations which are referred to as covenants. Covenants are usually drafted with imperative language such as “shall” or “must”. There are also contingent obligations which arise upon certain events occurring. They are usually drafted with “If...then” clauses. There can also be obligations that are based on an objective standard. An example of those types of obligations in a contract would be if the contract stipulated a party to use its “best efforts”, “reasonable efforts” or “commercially reasonable efforts”.

One looking at a contract would not probably put much thought into the implications of the words “best efforts” and “reasonable efforts”. However, at law there is a legally significant difference between these standards. In general, the case law has established that an obligation to use “best efforts” imposes a higher standard than some of the other common phrases found in contracts such as “reasonable efforts”.

This is what Lahey meant by “*their responsibility is to proactively do what they can*”—HRPA’s responsibility is not “*to do the minimum required,*” or even to “*do a decent job,*” but “*to do what it can*” or “*give it its best effort*” to ensure that the profession is serving the public interest.

A ‘mandate mindset’ rather than a ‘compliance mindset’

The point of this section is that ‘compliance’ is not the correct mindset that HRPAs should have in relation to the *Registered Human Resources Professionals Act, 2013*.

The following discussion was included in the ‘Gaps’ report which was put before the Governance and Nominating Committee (GNC) on January 30, 2018, and which the GNC put before the Board on April 5, 2018:

“Underlying the practice gaps and the activity gaps seem to be a ‘mindset gap.’ HRPAs approaches regulatory matters from a compliance mindset rather than a mandate mindset.

A compliance mindset is the kind of mindset that one might have when one is forced to do something one doesn’t really want to do. A compliance mindset will often focus on the minimum needed to get by. A mandate mindset relates to fulfilling a mission. Fulfilling a mission, on the other hand, is open-ended.

The checklist approach goes with a compliance mindset. The real question we should ask ourselves is whether HRPAs are proactively doing all it can to ensure that the Human Resources professionals it regulates are practising the profession competently and ethically. Or another way of putting it is: is HRPAs proactively doing all it can to ensure that the harms, or risks of harm, to the public stemming from the practice of the profession are reduced, suppressed, mitigated, or eliminated?

The idea here is that the Act can be seen as setting up some kind of checklist of ‘must dos,’ and that once HRPAs has placed a check in each of the boxes, it is free to do whatever else it wants to do.”

The relationship that HRPAs has with the *Registered Human Resources Professionals Act, 2013*, is not the same as the relationship it has to other statutes. HRPAs *complies* with the *Employment Standards Act, 2000*; HRPAs *complies* with the *Statutory Powers Procedure Act, 1990*; HRPAs *complies* with the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, but HRPAs fulfils the mandate given to it by the Legislature by way of the *Registered Human Resources Professionals Act, 2013*. For HRPAs, the *Registered Human Resources Professionals Act, 2013*, is not like any other statute. The *Registered Human Resources Professionals Act, 2013*, creates the HRPAs and comprises HRPAs’s articles of incorporation. The *Registered Human Resources Professionals Act, 2013*, gives HRPAs a mandate, which no other statute does.

How do we get a handle on HRPAs’s overarching duty to fulfill its mandate?

The Act does not provide much guidance as to what it means to promote and protect the public interest by governing and regulating the practice of members, firms, and students.

Let’s go back to Lahey’s statement:

“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.”

Measuring the extent to which a professional regulatory body has diligently discharged its discrete regulatory functions is what is usually done. For example, the prominent assessment framework for the measurement of performance as a professional regulatory body is the *Standards of Good Regulation* from the Professional Standards Authority takes this approach for the most part. This framework assesses the extent to which a professional regulatory body has diligently discharged its discrete regulatory functions.

But, if the responsibility of SROs goes beyond this, this means that a professional regulatory body could diligently discharge its discreet regulatory functions but still miss the mark by failing to do what it can (subject to the limits of their legal authority) to ensure their profession is serving the public interest.

In his paper, Lahey rephrases this broader responsibility in a number of ways:

- to administer their enabling statutes so as to achieve or advance the underlying purpose of public protection
- to proactively do what they can (subject to the limits of their legal authority) to ensure their profession is serving the public interest
- not only to regulate but to regulate in such a way as to achieve desirable outcomes

- To push itself to think strategically about how it can use its resources (including its statutory powers and its relationships with others) to incapacitate or disable the systemic conditions that cause the harms that regulators otherwise deal with individually and usually reactively.

What is the public interest that we are promoting and protecting?

One reason defining public interest is challenging is that legislation does not provide much guidance as to what the public interest is or should be. The *public interest* is one of those constructs for which *'the legislation is always speaking'*—meaning that the interpretation of the words *public interest* would be constantly renewed and contextualized.

The difficulty here is that lack of definition around the construct of public interest opens the door to interpretations of the *public interest* that may not be in the *public interest* at all.

In 2012, the Institute of Chartered Accountants of England and Wales² (ICAEW) published an interesting paper on the public interest. The ICAEW document took the skeptical position that invoking the public interest was often not genuine.

'Indeed, there is academic evidence to support a presumption that invoking the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously.'

The focus of the ICAEW paper was on providing a means for assessing the extent to which any action, decision, or policy is truly in the public interest. It is also interesting to note that confusing self-interest and public interest may be subconscious.

In his report, *'An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act'* Harry Cayton sets out the argument that the duty to serve and protect the public is just too vague:

"The Health Professions Act charges the colleges established under it with the duty to 'serve and protect the public'. Despite the 15 objects which fall under this general duty, I consider it too vague to ensure that a regulatory college is fully accountable for the wellbeing of patients. 'Serving and protecting' the public can be widely interpreted in ways that meet the interests of a profession."

More recently, there has been a 'back to basics' movement in professional regulation. Although, the multidimensional nature of the public interest is recognized, a priority is given to the protection of the public from harms that may arise from the practice of the profession.

If we take the broader responsibility Lahey is talking about as the *'reduction of the harms to the public stemming from the practice of the profession'*, and if we replace *'promoting and protecting the public interest'* with *'minimizing the harms to the public stemming from the practice of the profession'*, we get

² *Acting in the public interest: A framework for analysis* (ICAEW, 2012).
<http://www.icaew.com/~media/corporate/files/technical/ethics/public%20int%20rep%20web.ashx>

a better idea of what the duty to fulfill one's statutory mandate is all about. The essential duty of a professional regulatory body is to maximize public protection by minimizing the risks to the public stemming from the practice of the profession.

Assessing impact or outcomes is not a viable option. As Malcolm K. Sparrow in his book *The Character of Harms*³ put it "If your business is harm-control, show me harms you have controlled" but then went on to discuss how this was very difficult to do. Professional regulatory bodies have, for the most part, adopted a practice-based approach. This approach is based on the idea that if professional regulatory bodies do the right things right, the results will happen.

So, what are the practices associated with the overall responsibility of protecting the public from harm beyond the ones associated with the diligent discharge of discrete regulatory functions?

The Professional Standards Authority (PSA) is well known for its *Standards of Good Regulation*; however, the PSA has a lesser known performance measurement framework which was developed for voluntary professional regulatory bodies. The *Standards of Good Regulation* were developed for bodies with licensing authority, however, the *Standards for Accredited Registers* were developed for voluntary professions, like HRP. Interestingly, the *Standards for Accredited Registers* are less focused on discrete regulatory functions and more focused on the overarching aspects of focus and integration. 'Focus' meaning that all decisions and actions are focused on reducing the risks to the public stemming from the practice of the profession, and 'integration' means that all functions are informed by this overarching objective.

Below are 'standards' adapted from the PSA's *Standards for Accredited Registers*. This provides an initial definition of what is entailed by the duty to fulfill one's statutory mandate.

1. The organisation demonstrates that the protection of the public is its paramount concern.
2. The organisation demonstrates that its purpose and directives are focused on public protection.
3. The organization will have a process to ensure that interests other than the public interest do not limit or interfere with the organizations ability or willingness to protect the public.
4. The organization is focused on maximizing the protection of the public by minimizing the risks stemming from the practice of the profession.
5. The organization is vigilant in identifying, monitoring, reviewing, and acting upon risks associated with the practice of its registrants.
6. The organization's approach to risk identification will include all manner of risks including persistent risks, catastrophic risks, emerging risks, invisible risks, and so on.

³ Malcolm K. Sparrow (2008). *The Character of Harms*. Cambridge University Press. P. 123.

7. The organization actively uses information regarding the risks posed to the public stemming from the practice of the profession to inform all of its functions.
8. Registrants are willing to provide the organization with financial support sufficient for it to carry out all regulatory functions without compromise.
9. The organization inspires confidence on the part of all stakeholders in its ability and willingness to carry out its regulatory functions effectively.
10. The organization ensures that its governance is directed toward protecting the public and promoting public confidence in the occupation it regulates.
11. The organization carries out its governance in accordance with good practice.
12. The organization seeks, understands, and uses the views and experiences of service users and the public to inform key decisions about its regulatory activities.
13. The organization ensures that in carrying out its regulatory functions it is fair, effective, proportionate, and transparent so that it is respected and trusted.
14. The organization ensures that the information it provides about its registrants helps service users to make informed decisions.
15. The organization sets admission standards which prioritize the protection of the public and only allows those who meet these standards to join and remain on/be on the register.
16. The organization sets educational standards that are driven by the protection of the public and which enable its registrants to practise competently the occupation(s) covered by its register.
17. The organization requires registrants to keep their practice up to date and checks at appropriate intervals that registrants continue to meet its standards.
18. The organization's arrangements for handling complaints are guided by the protection of the public interest.
19. The organization keeps under review and evaluates its standards, considering whether they are achieving the outcomes it intends for service users and the public.

Of course, this is on top of the diligent discharge of discrete regulatory functions.

This is just a start, however. The bigger challenge with practice-based measurement is not so much to define 'standards' but to identify indicators (viz. evidence) on which to make a judgment as to whether the standard was met. More on that later.

What is '*regulatory excellence*'?

April 21, 2022

In some form or another, professional regulation and/or the protection of the public has been part of HRPAs strategy since 2009. In HRPAs 2019-2021 strategic plan, *regulatory excellence* was one of four strategic themes (the other three being *operational effectiveness*, *exemplary people practices*, and *service leadership*). Regulatory excellence was continued as a theme in HRPAs 2022-2023 strategic plan. Interestingly, although initiatives were identified with the goal of achieving *regulatory excellence*, *regulatory excellence* itself was never defined or described. What is *regulatory excellence*? What does *regulatory excellence* look like?

This project asked six top thinkers and doers in professional regulation to define *regulatory excellence* in five hundred words or less. These top thinkers and doers were not given any further direction as to what HRPAs might want them to say or not to say.

Our six top thinkers and doers in professional regulation were (in alphabetical order):

- Lise Betteridge, Registrar & CEO, Ontario College of Social Workers and Social Service Workers
- Rebecca Durcan, Co-Managing Partner, SML Law
- Jan Robinson, Registrar & CEO, College of Veterinarians of Ontario
- Richard Steinecke, Counsel, SML Law
- Shenda Tanchak, Magnetic North Consulting
- Deanna L. Williams, Dundee Consulting Group Ltd.

To members of the professional regulation community, these six thinkers and doers need no introduction (although short biographies are provided with the responses below).

Let us start with the responses and follow with a brief discussion of the responses.

Lise Betteridge, MSW, RSW, Registrar & CEO, Ontario College of Social Workers and Social Service Workers

Lise was appointed Registrar and CEO of the Ontario College of Social Workers and Social Service Workers in September 2015, after serving for the previous 5 ½ years as Director of Professional Practice, Deputy Registrar and Acting Registrar. Prior to working in a regulatory role, Lise held management and clinical positions in diverse healthcare settings. She is currently a member of the CLEAR Board of Directors, President of the Canadian Council of Social Work Regulators (CCSWR) and an active member of the Association of Social Work Boards (ASWB). Lise has been a faculty member for the CLEAR Executive Leadership Program (including two pilots of the virtual program in 2021) for a number of years.

Lise has presented widely to social workers and social service workers, students, educators, regulators, and others on a range of ethical, practice, and regulatory issues. Committed to ongoing growth as a leader, she continues to value opportunities to engage with regulatory colleagues.

As Registrar and CEO of the Ontario College of Social Workers and Social Service Workers, I can say without hesitation that regulatory excellence is central to our vision and always top of mind. It is something that we strive for in all we do – and yet something which is never quite fully achieved. The College regulates over 26,000 social workers and social service workers in Ontario, with an ongoing mandate to serve and protect the public from unqualified, incompetent and unfit practitioners.

There are many elements that must come together to achieve regulatory excellence. Above all, it is important to be a responsive and relational regulator, ensuring that public protection is at the forefront of all decision-making. This includes: implementing fair registration processes to ensure that only those who meet specific requirements are able to register with the College; providing guidance and resources to support our members so that they can practise ethically and professionally while providing care for the diverse clients and communities that they serve; requiring, through continuing competence programs and currency requirements, that members remain competent throughout their careers; and maintaining rigorous complaints and discipline processes which are fair to all parties.

It is incumbent upon us as a regulator and as an organization to consider and reflect upon our role with respect to important and emerging societal issues, while at the same time carefully examining our own organizational processes, resources and materials.

Communication with stakeholders and public outreach are also essential elements in regulatory excellence. A consistent and tailored communication strategy – always striving for transparency and accountability – is the foundation upon which regulatory excellence is built. Every communication that regulators have with their stakeholders, whether large or small-scale, must be informed by the same careful consideration of these guiding principles.

Effective governance also plays a key role in achieving regulatory excellence. For regulators, governance oversight steers and guides policy processes: “right touch regulation” ensures that the level of regulation is proportionate to the level of risk to the public, and over-regulation or disproportionate effort in areas of low risk to the public are avoided.

Society in general, the Ontario public, the College and our members have faced many challenges the past few years. These challenges have required the College to be adaptable, flexible, and open to change. These too are qualities that are central to regulatory excellence. We must regularly reflect on our role as a regulator through the lens of ongoing systemic changes and public expectations.

Everything we do as a regulator comes down to safeguarding the public from unqualified, incompetent and unfit practitioners. If we are to achieve regulatory excellence, we must face many challenges head on and commit to an ongoing journey.

Rebecca Durcan, Co-Managing Partner, SML Law

Rebecca Durcan is a co-managing partner at Steinecke Maciura LeBlanc. Rebecca attended Queen's University to study history and obtained her law degree from the University of Windsor in 2000. In 2006, Rebecca completed her Masters in Health Law from Osgoode Hall. Rebecca's practise is dedicated solely to professional regulation. Rebecca acts as general counsel, and prosecution counsel to numerous professional regulators, and as independent legal counsel to discipline committees. In 2016, Rebecca co-authored the Annotated Statutory Powers Procedure Act. In 2019, Rebecca also co-authored the text Prosecuting and Defending Professional Regulation Cases. Rebecca regularly speaks about regulatory issues at the Canadian Network of Agencies for Regulation (CNAR), Council on Licensure, Enforcement and Regulation (CLEAR), Ontario Bar Association, Advocates Society, and Continuing Legal Education of British Columbia.

In my experience, it is rare. This is due to the fact that it requires the right people, making the right decisions, for a significant period of time. For example:

- Council or the Board must be populated with people who are mindful of the mandate, resist creep into operations, focus efforts on regulatory work rather than being re-elected, repeatedly approve policy decisions that examine trends, risks and outcomes, and truly appreciate the role and function of the operational arm. In my experience, this is a difficult cocktail to (a) create and (b) sustain. One healthy Council/Board does not create regulatory excellence. It requires a sustained period of such Councils/Boards so that the foundations of regulatory excellence can be built.
- The Registrar/CEO must be able to have a frank relationship with their Council/Board so that true advice can be provided. However, because of the governance model that is set out in most statutes, the Registrar can feel beholden to the Council/Board as they can fire the Registrar/CEO. I have witnessed such advice being provided and then the Registrar/CEO being rewarded by being fired. This is a discussion that is likely more appropriately contained within the bullet above (healthy Council) but I see the issue as a barrier to truly achieving regulatory excellence.
- The profession must want it (or at least not actively campaigning against it). Regulatory excellence will require hiring staff, conducting studies, and providing programs to the registrants. This is not inexpensive and could result in an increase of fees. The profession needs to be prepared and willing to get there. They need to understand the desired outcome. In my experience, it is rare for a profession to fully appreciate the nuance and steps that must be taken in order to achieve such excellence.

I said that regulatory excellence is rare – not impossible. I query if the Ontario College of Teachers and the College of Naturopaths of Ontario are on their way. I look to the Professional Standards Authority and believe that they have achieved the moniker. I hope to see other regulators join the list.

Jan Robinson, Registrar & CEO, College of Veterinarians of Ontario

A recognized leader in the field of profession-based regulation, Jan Robinson has over 25 years of experience providing vision and direction to regulatory and public policy organizations. She is a keen strategist with the ability to build partnerships and engagement at the provincial, national and international levels. Jan's position enables her to bring innovative approaches to the delivery of regulatory programs. Key contributions include the development of a framework to establish governance excellence, implementing an accountability, risk and evidence based approach to regulation at all levels of the organization, and leading legislative change that promotes public access and safety. Jan is a trusted advisor and is frequently consulted on varied organizational and regulatory matters. She is a sought after speaker and has had the privilege of teaching and presenting around the world.

Regulatory excellence is not a destination or a pinnacle, it is a continuous journey based on a clear mindset and a vigilant focus on key elements that keep a regulatory organization agile, relevant and striving to make a meaningful difference within its mandate. A commitment to regulatory excellence is intentional and must begin with senior leadership and a strategic partnership between the Board Chair and the Chief Executive Officer (Registrar; Executive Director). To be impactful, a focus on regulatory excellence must permeate all of the work of the Board, its committees and its staff.

While these key elements could be bundled differently, from my perspective and my journey, these include:

- Creating a governance culture that is relentless in its continuous orientation and education of its councillors, to maintain alignment with mission,
- Strategic attention to understanding the risks of the profession or occupation being regulated – monitoring those identified as current risks, and seeking to appreciate those that are emerging,
- Using data, no matter how imperfect, to inform decisions and striving to seek methods of measurement that demonstrate the impact of our decisions, and
- Appreciating that good regulation is not a siloed activity, but better accomplished in partnership and collaboration with stakeholders relevant to solutions.

Regulatory excellence is about a willingness to lead and to constantly recalibrate and assure that the public interest is front and center. Maintaining attention to a set of pillars that act as guideposts for the journey helps sustain the shifts that inevitably come with changes in Board composition, senior staff and government agendas. Regulatory organizations do not exist for the excellence objective alone, however, striving for excellence is an unarguable imperative that can only strengthen good outcomes for society.

Richard Steinecke, Counsel, SML Law

Richard is counsel to Steinecke Maciura LeBlanc. Richard Steinecke practises law exclusively in the area of professional regulation. He is the editor of the widely read Grey Areas newsletter commenting on recent developments in professional regulation. Because of its comprehensive nature, courts and tribunals have cited his book “A Complete Guide to the Regulated Health Professions Act” dozens of times, even in cases dealing with non-health professions. The book is updated twice a year. Today he spends most of his professional life teaching, writing, speaking, training and consulting on professional regulation issues. A life-long learner, Richard reads every Canadian common law court decision on professional regulation he can find and has a Certificate in Risk Management from the University of Toronto. In 2015 he received the Regulatory Excellence award from the Council on Licensure, Enforcement and Regulation (CLEAR) and in 2019 he received the Tom Marshall Award of Excellence for the Public Sector from the Ontario Bar Association.

Regulatory excellence occurs when a regulator continuously identifies its specific mandate for that time and context, prioritizes the best means for achieving those outcomes, and effectively measures, analyzes and modifies its performance.

Mandate

While the general mandate of regulators is usually set out in their enabling legislation (e.g., public protection or public interest), there is a need to define the specifics of that mandate for the current circumstances of the profession it regulates. There are multiple tools that excellent regulators use to identify their particular mandate including:

- Environmental scans,
- Strategic planning,
- Risk management,
- Focus groups, and
- Surveys.

The result is a clearly identified list of significant harms to those being protected by the regulator, benefits that regulated practitioners are expected to provide to those being protected, and broader societal enhancements (e.g., equity, diversity and inclusion) that the profession can advance. This process includes identifying the most significant barriers to success (e.g., wellness of practitioners). The desired outcomes will evolve over time.

Means for Achievement

Regulators have an overabundance of means to achieve these outcomes. The task is to prioritize which of them will be the most effective for that profession at the current stage of its development.

Some of the means are necessary preconditions to effective regulation, such as:

- Selection and training of Board members, committee members and staff for essential competencies to perform their functions well,
- Quality infrastructure for the regulator such as information technology, communications skills, governance approach, updated legislation, and professional advisors, and
- A state-of-the-art policy-making processes.

The focus then shifts to identifying which types of strategies should be employed, such as:

- Registration requirements,
- Standards and guidelines,
- Complaints and discipline,
- Quality assurance,
- Inspections,
- Partnering with stakeholders and other regulators,
- Engaging and educating the profession, and
- Engaging and educating clients and consumers.

Excellent regulators not only choose the most appropriate strategies, they also develop the best possible form of each selected strategy for the profession at that period of time. For example, right touch regulation principles may ensure more appropriate standards and guidelines. A sensitive and compassionate complaints and discipline system can assist in better outcomes for both complainants and respondents. Researched profiles of practitioners who are more likely to provide lower quality services can facilitate a more targeted and useful quality assurance program.

Measures of Performance

Excellent regulators measure the performance of every aspect of their function. All components of the organization are reviewed (e.g., staff members, CEO, committees, committee members, Board, Board members). Multiple forms of measurement are used (e.g., self-evaluation, qualitative and quantitative reports, 360 surveys, external reviews). Measurements are made of compliance, processes, and outcomes. Key performance indicators are developed. Measurement reports are published.

Comparisons to past measurements and to other analogous regulators are made. Best practices from other regulators are evaluated for relevance. External accountability (e.g., to the Fairness Commissioner, the courts) are analyzed. Results then inform the next mandate identification process.

An excellent regulator uses the three M's described above.

Shenda Tanchak, Magnetic North Consulting

Shenda has 25 years of experience in the regulatory sector. She is an experienced leader both in appointed and elected positions. In addition to working as a CEO and Registrar of the College of Physiotherapist of Ontario, Shenda was President of the Federation of Health Regulatory Colleges of Ontario and Chair of a pan-Canadian Registrar's Committee. She is a sought-after speaker and educator, with dozens of presentations and workshops to her credit. Among these, she co-chaired a Masterclass in Regulation for the Canadian Network of Agencies for Regulation and is a past keynote speaker at that conference. Shenda has addressed international audiences on the future of health professional regulation. Shenda began offering a wide range of consulting services in the regulatory sector in 2019 and in that capacity has reviewed the governance and decision-making processes of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario on behalf of the Ministry of Health and assisted a variety of regulators with strategic planning, governance review and process reviews.

As occupational regulation has expanded, so has the literature related to its analysis. I have not aimed to summarize this important body of work, but instead to interrogate the question from first principles.

What is the purpose of regulation? What does it look like when it is done well?

Regulation's purpose is solely to protect the health, safety, and wellbeing of the public. The primary regulatory mechanisms for providing these protections are ensuring that only competent practitioners are able to enter into practice; ensuring those practitioners behave ethically in the provision of services; and ensuring all practitioners deliver services to acceptable quality standards.

Regulatory excellence must lie in the achievement of this regulatory purpose, but defining achievement is difficult because the enterprise does not lend itself to universal standards of measurement. What appears to be excellence in the regulation of one occupation may be quite wrong for others. Regulatory oversight must balance intervention in the occupation against the benefits of permitting individuals to pursue their occupation without undue encumbrance or expense: this is 'right touch' regulation. But right touch is context specific. For example, adequate regulation of the production of nuclear energy must result in elimination of 100% of the risk to the public, but in most occupations the level of risk the public will tolerate is higher. Regulatory excellence demands identification of risk tolerance and adjustment of the specific regulatory interventions required to mitigate risk to the tolerated level.

Many things can impose complication in the delivery of regulatory interventions. Some of these include, the regulated activity may not be amenable to regulatory control; the regulator may be poorly designed to achieve its function; it may be vulnerable to the self-interest of the regulated group leading it to make decisions that do not support its regulatory mandate (which could be considered a subset of the design problem); it may lack the necessary resources to perform its function, or it may be subject to external requirements (such as legislation or regulation) that restrict its activities, preventing optimal functioning.

Given these variables, if we are called on to identify regulatory excellence, it may be preferable to consider measurement against principles, rather than evaluation against a standard model. Principles of regulatory excellence have been articulated by many writers, the following seem to be key: the regulator is free from undue influence by stakeholders, is consistently fair in its dealing with those it regulates, effectively focuses its activities to eliminate or mitigate risk to the public and can demonstrate efficiency in its processes.

Fairly recently, regulators have begun to identify and report on progress against specific objective performance measures based on these principles. While identifying a standard model of excellent regulation is impossible, it may be possible to identify standard measurements for delivery on the principles and to benchmark regulatory performance against a range of regulators.

At last, we come back to the question: what is regulatory excellence? It appears to be the efficient and effective delivery of just enough oversight to keep the public as safe as the public demands.

Deanna L. Williams, Dundee Consulting Group Ltd.

Deanna Williams is known nationally and internationally for her work in professional and occupational regulation. She spent 18 years at the Ontario College of Pharmacists, Canada's largest pharmacy regulatory authority, retiring as its Registrar in 2011. The Minister of Health and Long Term Care appointed Deanna as Supervisor to the College of Denturists of Ontario during the loss of its regulatory privileges in 2012 and 2013 and she also served as Risk Officer, for the Retirement Homes Regulatory Authority (RHRA) from 2014 through 2018. Since 2011, Deanna has been consulting in areas relating to professional and occupational regulation in Canada, the US and abroad, through Dundee Consulting Group Ltd. Most recently, from 2017-2018 Deanna served as Expert Technical Advisor to Ontario's Minister of Health and Long Term Care, providing advice on best regulatory practices across professions and international jurisdictions respecting processes for complaints, investigations and discipline of matters related to sexual abuse of patients by regulated health care practitioners. In 2010, Deanna was recognised by the international regulatory community as the recipient of the CLEAR International Award for Regulatory Excellence. Deanna received her designation as a Certified Association Executive (CAE) from the Canadian Society of Association Executives (CSAE) and her Corporate Director (C. Dir.) designation from the Chartered Director program, DeGroote School of Business, McMaster University. She has served on the Finance and Audit Committee of the University of St Michael's College, University of Toronto, and was the Chair of the Board of Directors of Haldimand War Memorial Hospital in Dunnville, Ontario. She currently serves as a member of the Board of Directors at Joseph Brant Hospital in Burlington, Ontario.

Defining 'excellence' in relation to almost anything can be challenging given the deficiency in articulated standards that must be met to demonstrate it. Many descriptors for 'excellence' can be found- 'quality of being outstanding or extremely good' and 'superiority' are two favorites.

I have been involved in professional regulation for almost thirty years and have worked closely with regulators across professions and jurisdictions in the past decade. Without exception, regulators who are *not* seen to demonstrate regulatory excellence are most easily identified; one cannot, however, assume that because no one has implied otherwise, that they are seen to be 'excellent' regulators.

The path to achieving excellence begins by ensuring one has the competence and the capacity to do the right things, and then does them right. As regulators, every decision and action taken must demonstrate that the public's interest is truly put above all other interests, including self-interests. How else would our publics know how our regulatory decisions benefit them?

How we are perceived is of key importance. The saying "we each have the reputation we deserve" is worth contemplating; can we achieve regulatory excellence in the absence of such recognition by our key publics? If viewed as competent (know our business and do it well); honest (genuine, open, and

transparent) and reliable (consistently makes good decisions and communicates well), then our publics, including registrants, will have confidence and consider us trustworthy. Regulatory excellence cannot be achieved if our publics lose trust and confidence in what we do, and why.

Regulatory excellence, in my view, is also demonstrated by regulators who choose 'courage' over 'complacency'; in other words, those who regulate within, but 'to the edge of' the law. 'Excellent' regulators question whether laws, regulations or past precedents pose barriers to regulation in the public interest. Several health regulatory Colleges, for example, have challenged their own disciplinary panels' decisions that, while following past precedents, were not seen as appropriate decisions today, given changing public and societal expectations.

'Courageous' regulators will view the lists setting out the minimum requirements for registrant information that must be included on the Public Registers as just that- minimums. They consider what additional information might also be included- without compromising any confidentiality provisions. 'Complacent' regulators, on the other hand, view such lists of minimum requirements as maximums- taking the position that the law sets out the amount of information they must currently provide, and they go no further.

In summary, regulatory excellence is as much about how a regulator is seen to do its work and why, as it is about what the regulator does within the wider regulatory system in which it exists. Necessary and appropriate relationships are built and maintained; principles of good governance and good regulation are embraced; and courage is chosen over complacency.

Discussion

The responses focused on various aspects but they were quite consistent with one another. Importantly, there was one common thread that ran across all responses and that was that *regulatory excellence* requires the public interest to be paramount focus of the organization:

"As regulators, every decision and action taken must demonstrate that the public's interest is truly put above all other interests, including self-interests."

"Regulatory excellence is about a willingness to lead and to constantly recalibrate and assure that the public interest is front and center."

"Above all, it is important to be a responsive and relational regulator, ensuring that public protection is at the forefront of all decision-making."

"While the general mandate of regulators is usually set out in their enabling legislation (e.g., public protection or public interest), there is a need to define the specifics of that mandate for the current circumstances of the profession it regulates."

"Regulation's purpose is solely to protect the health, safety, and wellbeing of the public."

The hidden challenge here is that defining the public interest is something that most professional regulators have struggled with. One reason defining public interest is challenging is that legislation does not provide much guidance as to what the public interest is or should be. The *public interest* is one of those constructs for which *'the legislation is always speaking'*--meaning that the meaning of the words *public interest* would be constantly renewed and contextualized--as pointed out by Richard Steinecke.

The difficulty here is that lack of definition around the construct of public interest opens the door to interpretations of the *public interest* that may not be in the *public interest* at all.

In 2012, the Institute of Chartered Accountants of England and Wales⁴ (ICAEW) published an interesting paper on the public interest. The ICAEW document took the skeptical position that invoking the public interest was often not genuine.

'Indeed, there is academic evidence to support a presumption that invoking the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously.'

The focus of the ICAEW paper was on providing a means for assessing the extent to which any action, decision, or policy is truly in the public interest. It is also interesting to note that confusing self-interest and public interest may be subconscious.

⁴ *Acting in the public interest: A framework for analysis* (ICAEW, 2012).
<http://www.icaew.com/~media/corporate/files/technical/ethics/public%20int%20rep%20web.ashx>

In his report, 'An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act' Harry Cayton sets out the argument that the duty to serve and protect the public is just too vague:

"The Health Professionals Act charges the colleges established under it with the duty to 'serve and protect the public'. Despite the 15 objects which fall under this general duty, I consider it too vague to ensure that a regulatory college is fully accountable for the wellbeing of patients. 'Serving and protecting' the public can be widely interpreted in ways that meet the interests of a profession."

More recently, there has been a 'back to basics' movement in professional regulation. Although, the multidimensional nature of the public interest is recognized, a priority is given to protecting the public from harms that may arise from the practice of the profession. This comes through in the response of Jan Robinson, Richard Steinecke, and Shenda Tanchak.

Tying this back to *regulatory excellence*, it suggests that defining the public interest (1) should not be taken for granted, and (2) is more difficult to do than at first appears, but (3) that doing this well is something that doing so is key to achieving *regulatory excellence*.

Extrapolating from Deanna Williams' response, one might suggest that the claim that a decision or action was taken in the *public interest* should be apparent to the public. Similarly, to the concepts of bias or conflict of interest, it is not so much what the regulator thinks but what 'a reasonable person with no interest in the matter' would think that matters. Given that defining the public interest is susceptible to unconscious biases, regulators figure out ways of overcoming those unconscious biases.

Beyond the paramountcy of the public interest, however, the responses were more varied and identified many facets to *regulatory excellence*.

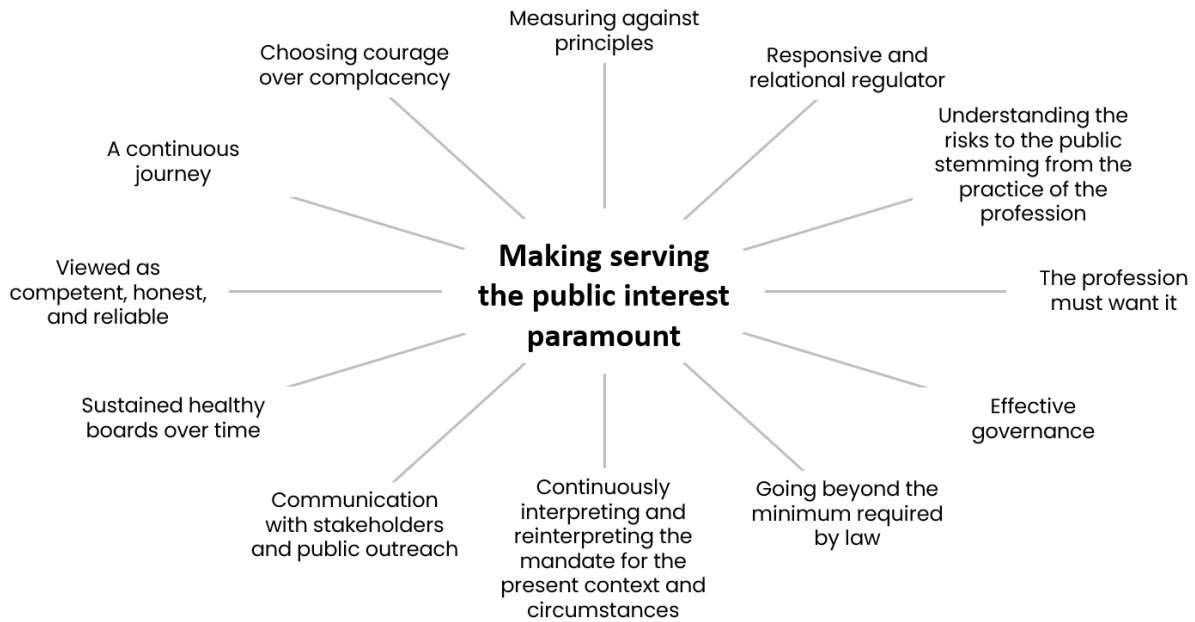
What is also interesting is what was not mentioned. The '*diligent discharge of discrete regulatory functions*' seemed assumed but did not appear to be what distinguishes *regulatory excellence*. William Lahey wrote in a paper for CPA Canada in the context of the unification of the accounting disciplines:

"More broadly, the responsibility of SROs [self-regulating organizations] goes beyond their responsibility to diligently discharge discrete 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."

This is echoed by Deanna Williams--"*regulatory excellence, in my view, is also demonstrated by regulators who choose 'courage' over 'complacency'; in other words, those who regulate within, but 'to the edge of' the law.*"

The idea here is that regulatory excellence is about "*proactively doing what one can to ensure their profession is serving the public interest*" rather than simply complying with legislation⁵.

⁵ A point that is also central to the work of Malcolm Sparrow.



A checklist?

Would it be possible, then, to develop a *regulatory excellence* checklist based on the responses to the question 'what is regulatory excellence'?

The checklist in the appendix was constructed by pulling sentences from the responses. Some alterations were made for grammar and consistency of style.

As noted by Shenda Tanchak:

"Regulatory excellence must lie in the achievement of this regulatory purpose, but defining achievement is difficult because the enterprise does not lend itself to universal standards of measurement... Given these variables, if we are called on to identify regulatory excellence, it may be preferable to consider measurement against principles, rather than evaluation against a standard model."

Rather than measure outcomes, professional regulatory bodies have focused on practices. As Deanna Williams put it, it is a matter of *doing the right things and then doing these things right*.

The challenge is that these 'right things' tend to be defined at an elevated level. Just like the public interest requires contextualization and recalibration, the elements on this regulatory excellence checklist require contextualization and recalibration. Practice-based measurement frameworks, like the Standards of Good Regulation and the College Performance Measurement Framework, require expert judgment to go from evidence to a judgment as to whether a standard has been met. For instance, if we take a statement like *'demonstrating a willingness to lead and choosing courage over complacency'*, there is quite a gap between the standard and the evidence that would be used to make a judgment as to whether the standard was met.

It would be interesting to see whether the checklist would lead to consistent ratings if used by experts.

Summary

A notable result of this exercise was the congruence amongst the responses. Although each contributor had their own perspective on what *regulatory excellence* looks like, the composite picture was compelling.

As noted by Rebecca Durcan, *regulatory excellence* is rare. What makes *regulatory excellence* difficult to achieve is that it requires all those facets to be in place.

Appendix: A regulatory excellence checklist

1.	The specifics of what fulfilling the mandate means are defined and redefined for the current circumstances of the profession.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
2.	The definition of the public interest is constantly recalibrated.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
3.	There is a process of mechanism to ensure that the definition of public interest used by the regulator is not unduly influenced by other interests including self-interest.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
4.	The regulator has mechanisms in place to ensure that actions and decisions are true to the public interest (i.e., mechanisms in place to ensure that actions and decisions have line of sight to the public interest).	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
5.	The public interest is front and center and at the forefront of all decision-making.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
6.	Every decision and action taken must demonstrate that the public's interest is truly put above all other interests, including self-interests.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
7.	Knowing professional regulation well and doing it well, being genuine, open, and transparent, and consistently making good decisions and communicating them well.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
8.	There is a clearly identified list of significant harms to those being protected by the regulator and this list informs how resources are allocated by the regulator.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
9.	Being effective at safeguarding the public from unqualified, incompetent, and unfit practitioners.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
10.	Having mechanisms in place to ensure that governance is healthy and continues to be healthy over time.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
11.	Demonstrating a willingness to lead and choosing courage over complacency.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
12.	Going beyond the minimum required by law (i.e., mandate mindset rather than compliance mindset).	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
13.	Implementing fair registration processes to ensure that only those who meet specific requirements are able to register with the regulator.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
14.	Providing guidance and resources to support our members so that they can practise ethically and professionally while providing professional services for the diverse clients and communities they serve.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
15.	Requiring, through continuing competence programs and currency requirements, that members remain competent throughout their careers.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
16.	Maintaining rigorous complaints and discipline processes which are fair to all parties.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
17.	Having a consistent and tailored communication strategy which is always striving for transparency and accountability.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
18.	Council or the Board must be populated with people who are mindful of the mandate, resist creep into operations, focus efforts on regulatory work.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
19.	The Registrar/CEO must be able to have a frank relationship with their Council/Board so that true advice can be provided.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
20.	The regulator must work to get the professionals under regulation to support regulatory excellence.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet

21.	There is a clear mindset and a vigilant focus on key elements that keep a regulatory organization agile, relevant, and striving to make a meaningful difference within its mandate.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
22.	The focus on regulatory excellence permeate, all of the work of the Board, its committees, and its staff.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
23.	The governance culture is relentless in its continuous orientation and education of its councillors, to maintain alignment with mission	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
24.	Maintaining an understanding of the risks stemming from the practice of the profession, monitoring those identified as current risks, and seeking to appreciate those that are emerging risks.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
25.	There is a clearly defined list of benefits that regulated practitioners are expected to provide to those being protected.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
26.	There is a clear understanding of the broader societal enhancements (e.g., equity, diversity, and inclusion) that the profession can advance.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
27.	To maximize the on the public interest, processes are in place to not only choose the most appropriate strategies, but also develop the best possible form of each selected strategy for the profession at that period of time.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
28.	Regulatory oversight balances intervention in the occupation against the benefits of permitting individuals to pursue their occupation without undue encumbrance or expense.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
29.	The regulator is free from undue influence by stakeholders.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
30.	The regulator is consistently fair in its dealing with those it regulates.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
31.	The regulator effectively focuses its activities to eliminate or mitigate risk to the public.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
32.	The regulator can demonstrate efficiency in its processes.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
33.	The regulator measures the performance of every aspect of their function.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
34.	The regulator uses multiple forms of measurement to assess performance.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
35.	Measurements are made of compliance, processes, and outcomes.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
36.	Key performance indicators are developed.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet
37.	Measurement reports are published.	<input type="checkbox"/> Meets <input type="checkbox"/> Does not meet

How to tell if an activity is 'regulatory' or not?

May 24, 2022

This can be trickier than at first appears.

What do most think about when the word *regulation* is used? registration, certification, codes of ethics, continuing professional development, complaints, discipline, appeals... The interesting thing is that HRPA had all these activities *before* it ever used the word regulation. The words '*regulate*,' '*regulation*,' '*regulator*,' and '*regulatory*' were simply not used at HRPA before 2008, and yet before these words were ever used, HRPA did have registration, certification, codes of ethics, continuing professional development, complaints, discipline, and appeals. How is that? Was it that HRPA did all these things but simply didn't use the word 'regulation?' or was it that HRPA didn't think of these activities as regulatory? The answer, as it turns out, is both subtle and profound.



What defines an activity as *regulatory* is not so much the label or name that is given to the activity but the *intent* of the activity. The confusion comes when professional regulation is defined as a set of activities rather than an intent. What makes an activity 'regulatory' is when it is genuinely undertaken with the primary intent of promoting and protecting the public interest.

It should be noted that, before 2008, along with 'regulate,' 'regulation,' 'regulator,' and 'regulatory,' the words 'public interest' were not used at HRPAs either. So, if registration, certification, codes of ethics, continuing professional development, complaints, discipline, appeals were not undertaken with the primary intent of promoting and protecting the public interest, why was HRPAs doing all these things?

Here is a possible explanation—as part of the process of professionalization, associations that offer designations carry out many of the same activities that professional regulatory bodies do, at least in name, but with the intent of serving the interest of their members rather than the interest of the public.

Many occupations have associations⁶. Sometimes, these associations decide to offer designations. When this happens, associations do this for the benefit of the members or the profession but not with the public interest in mind. For instance, when associations introduce designations, it is with the intent of (1) enhancing the status of members by providing a mechanism by means of which members can validate their knowledge, skills, and competence and (2) elevating the profession by introducing a professional title. The promotion and protection of the public interest are rarely if ever mentioned. Designations are seen as career enhancement products for the members of the profession rather than a mechanism to keep the public safe from incompetent professionals.

The interesting thing is that this is not unique to HRPAs but may be an intrinsic feature of the process of professionalization. Sociologists use the term 'professionalization' to refer to the efforts by an occupational group to raise its collective standing by taking on the characteristics of a profession. Some sociologists have referred to this process as emulating or mimicking established professions. Essentially, occupational groups that want to be seen as professions begin by imitating established professions. This imitation, however, is superficial at first. This was noted a long time ago by Forsyth & Danisiewicz (1985). These authors coined the term '*mimic professions*' to refer to occupations that aspired to be seen as professions by imitating established professions. Forsyth & Danisiewicz refer to this as "*taking on the coloration but not the substance of profession.*"

The imitation of established professions goes beyond just offering designations, although the designations are key aspect mainly because these are the externally visible features of professions.

Table 1 below describes how the same term for an activity means different things for an association that is emulating established professions but which intent is still to serve the interests of its members and a professional regulatory body which intent to serve the interests of the public. These can be thought of two different mindsets.

⁶ The term 'association' is ambiguous. From a legal perspective, the term 'association' simply means a group of individuals with a common purpose. In professional circles, the term 'association' has come to refer to the organization that serves the interests of the members of a profession. The confusion stems from the fact that some professional regulatory bodies have the term 'association' in their name. Here, the term 'association' will be used to refer to organizations that do not have a public interest mandate, and the term 'professional regulatory body' to refer to organizations that do have a public interest mandate.

Activity or function	Intent is to serve the interests of the members (aka. association mindset)	Intent is to promote and protect the public interest (aka., professional regulatory body mindset)
Membership and registration	<p>Associations refer to ‘members’ rather than ‘registrants.’ Associations tend to use the term ‘membership’ rather than ‘registration.’ Associations prefer to have ‘open’ membership policies to maximize the number of individuals who might be interested in becoming a member.</p> <p>Associations will often have a member registry. The purpose and intent of the registry is to facilitate networking and/or provide an opportunity for members to market their services.</p>	<p>Professional regulatory bodies will tend to use the term ‘registrant’ rather than ‘member.’ Because professional regulatory bodies have a duty to protect the public from incompetent and unethical practitioners, they tend to be very careful about who they allow into the profession.</p> <p>Professional regulatory bodies will have a public register. The purpose and intent of the public register is to inform the public so that the public may make informed decisions about or be aware of information about the professionals who serve them.</p>
Designations	<p>Associations can offer designations. When associations offer designations, they do so as a member benefit or member service (i.e., a career enhancement product) and they are marketed as such. When associations offer designations, these are ‘on top of’ membership.</p>	<p>The purpose of designations is to inform the public that an individual has met the standards of qualification for the designation. Designations are foremost a service to the public.</p> <p>Other than student categories used by some professional regulatory bodies for individuals who have not yet completed their professional training, professional regulatory bodies will not register non-certified individuals.</p>
Member services	<p>Association exist to provide services and benefits to their members. Member benefits and services are the main selling point for membership in professional associations.</p> <p>A popular offering for associations is professional liability insurance.</p>	<p>Professional regulatory bodies also use the term ‘member services’ but here it is usually used in a much narrower sense—referring to providing assistance with registration, or assistance with exam registration.</p> <p>Professional regulatory bodies will offer ‘practice support’ to their registrants. Again, this practice support is driven from the intent of protecting the public.</p> <p>Finally, professional regulatory bodies will maintain ‘ethics hotlines’ or ‘practice consultations.’ The purpose of these hotlines is not to be a consultant to the registrants, but to help registrants understand how standards and guidelines apply to their context and situation.</p>
Code of ethics	<p>Associations may have a code of ethics as well—but these will typically be aspirational—more high-level and less specific—because there is no real intention on the part of the Association to hold members accountable to the code of ethics.</p>	<p>Professional regulatory bodies have codes of ethics, rules of professional conduct, and guidance on specific matters of concern. These are often quite specific and detailed because they are meant to be followed and enforced.</p>

<p>Practice standards</p>	<p>Professional associations tend to have a minimalistic approach any rules. Often the rules will be about how members are to treat other members. This is because (1) professional associations have no accountability for the behaviour of their members, and (2) such requirements would be seen as burdens that would drive away members.</p> <p>Associations typically shun any form of 'enforcement.'</p> <p>Associations will create whitepapers or provide tools for their members to use, but theses are seen as product or services for their members. Members are under no obligation to read or apply the information in these whitepapers or use these tools.</p>	<p>Because they are, in some way, accountable for the behaviour of their registrants, professional regulatory bodies will set practice standards and guidelines that are deemed necessary to protect the public.</p> <p>Registrants are accountable for considering this professional guidance and to abide by this guidance where applicable.</p> <p>Also, professional regulatory bodies will enforce such practice standards and guidelines to the extent such enforcement needs to be done. Professional regulatory bodies will put in place mechanisms and processes to verify compliance with professional guidance.</p>
<p>Practice inspections and other quality assurance programs</p>	<p>This is one area where professional associations will stay clear of for the same reasons as above: (1) professional associations have no accountability for the behaviour of their members, and (2) such practice inspections would be seen as intrusive on the part of members.</p>	<p>As part of a proactive approach to regulation. Many professional regulatory bodies will conduct practice inspections or will have peer review processes. Again, these are seen as required to ensure that professionals maintain the standards of practice necessary to ensure the safe and effective delivery of professional services.</p>
<p>Professional development</p>	<p>Associations will offer all sorts of professional development programs. The topics are guided by the interests of the members. The intent of professional development is career advancement.</p>	<p>Professional regulatory bodies also offer professional development programs. The difference is that for professional regulatory bodies, the backdrop for professional development is public protection. The intent of these programs is to reduce the risk of specific harms to the public.</p>
<p>Complaints and discipline</p>	<p>Many professional associations will have complaints and discipline processes 'on the books' but they are rarely if ever used. (Even golf and country clubs have processes to kick out members who have been abusive to other members.)</p>	<p>For professional regulatory bodies, complaints and discipline matters are serious matters. Proceedings are quasi-judicial and are reviewable by the courts.</p> <p>The intent is to prevent any further harm to the public as well as to re-affirm standards of conduct and practice.</p>
<p>Advocacy and lobbying</p>	<p>Associations pride themselves on their 'clout'—the ability to influence legislation in ways that serve the interests of their members. The term 'advocacy' is often used.</p>	<p>Professional regulatory bodies can lobby government but <u>only</u> when doing such is in furtherance of the public interest. Regardless of the true motives for lobbying government, the probability that any lobbying would be seen a conflict of interest has led many regulatory bodies to stay clear of any lobbying.</p>

Research	Research is done for one of two reasons: (1) to enhance the reputation of the Association, or (2) as a product or service for members.	When professional regulatory bodies conduct research, it is with an eye towards better understanding the harms that may come from the practice of the profession. The idea is that the research would lead to better regulation.
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It can be seen that the same activity, at least in name, is operationalized differently depending on the intent. From a distance, and to many observers, the differences may not be apparent. In fact, it would appear that many members of the public are confused about the difference between an association and a professional regulatory body. Nonetheless, using the expression coined by Forsyth & Danisiewicz (1985), the activities in the first column have the *“coloration but not the substance of profession.”*

The key idea here is not to go by the label given to the activity, but to go by the *intent* of the activity. If the intent is to serve the interests of the members, it is not regulatory; if the intent is to promote and protect the public interest, it is regulatory.

Intent, however, is something than can be difficult to pin down.

Intent

An activity is ‘regulatory’ when the purpose and intent of the activity is primarily and genuinely to promote and protect the public interest. But just what is this public interest?

However, the public interest is not easy to define nor is it always obvious or apparent what is in the public interest. To complicate matters, the public interest is also a concept that has been abused and this has led to it being the subject of skepticism or even outright cynicism. For many, the claim that some action, decision, or policy is in the public interest is actually thinly veiled self-interest:

“Indeed, there is academic evidence to support a presumption that invoking the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously.”⁷

This is of real concern to professional regulators whose *raison-d’être* is to protect the public interest. Also, this same skepticism begins to eat at the trust in the profession itself. What adds another dimension to this discussion is the idea that those who invoke the public interest may not be aware that their actions or decisions are driven by self-interest. For instance, when a claim is made that a given action, decision, or policy is in the public interest there are three possibilities:

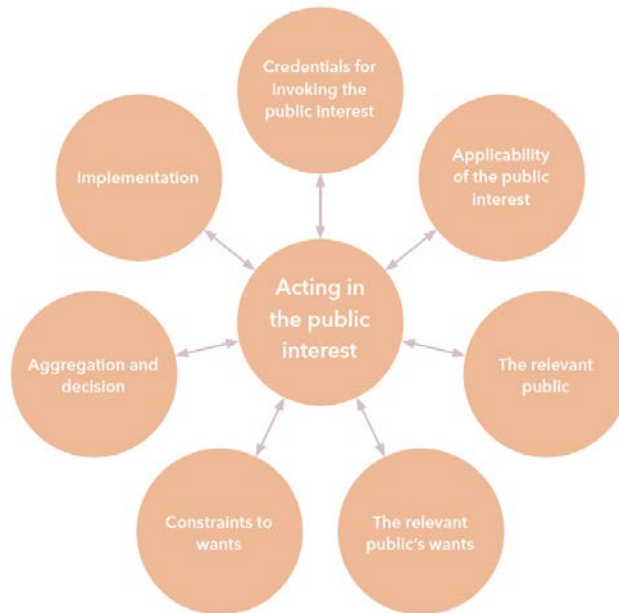
- A. The given action, decision, or policy is genuinely in the public interest.
- B. The individual or agency making the claim that a given action, decision, or policy is in the public interest believes the claim to be true but upon closer analysis it can be shown that it is not (the
- C. The individual or agency making the claim that a given action, decision, or policy is aware that it is not in the public interest but makes the claim to deliberately disguise self-interest.

⁷ Institute of Chartered Accountants of England and Wales (ICAEW), 2012. *Acting in the public interest: A framework for analysis*. London, UK. p. 6.

individual or agency making the claim is self-deceived or is making the claim without much thought)

Setting aside the third possibility—that the claim of serving the public interest is made in bad faith—there remains the possibility that those who are making the claim that a given action, decision, or policy is in the public interest are genuine in their belief that this is so but are not aware of the influence of self-interest on their action, decision, or policy.

Even when the claim that a given action, decision, or policy is in the public interest is genuine, it does not mean that it will be perceived as such by the public. The ICAEW framework sets out seven aspects that should be considered in making an assessment as to whether an action, decision, or policy is in the public interest.



Perhaps, one can invoke the same ‘reasonable person with no interest in the matter’ which is used in law in matters of bias. Professional regulatory bodies must be concerned with how an action, decision, or policy would be perceived by a ‘reasonable person with no interest in the matter.’

What is learnt from the ICAEW framework is that it is not enough to simply claim that some action or decision is in the public interest, there needs to be a credible process and evidence that links the action, decision, or policy to the public interest. It cannot be after the fact. The link between an action or decision and the public interest must be documented. Preferably, it is based on evidence and analysis.

Intent and impact

It is important not to confuse intent with impact. Actions and decisions that are taken with the intent of promoting and protecting the public interest can also have a positive benefit for registrants. Conversely,

actions and decisions that are taken with the intent to serving the needs and wants of members can also have a positive benefit for the public. No doubt, many actions, decisions, or policies will have a positive impact for both registrants and the public. At question is whether it is possible to maximize the promotion and protection of the public interest if the underlying intent is to serve the needs and wants of registrants. Conversely, it is possible to maximize the benefits to registrants if the underlying intent is to promote and protect the public interest.

Summary

To summarize, in deciding whether an activity is 'regulatory':

1. One cannot depend on the label that is used for the activity, it is the intent of the action or decision that matters—for an activity of decision to be considered 'regulatory,' the intent needs to be the promotion and protection of the public interest.
2. As for intent, it is not enough to simply claim that an action or decision is in the public interest, there has to be a credible process and evidence that links the action or decision to the public interest. It cannot be after the fact.