

HRPA Series on Governance for Professional Regulatory Bodies

## The public interest:

### What it means for HR professionals in Ontario

Understanding what is meant by the public interest is very important for registered Human Resources professionals in Ontario for many reasons. For one, promoting and protecting the public interest is the foremost statutory object of the Human Resources Professionals Association (HRPA)—the regulator of the HR profession in Ontario. Also, through the obligation to abide by the by-laws of the Association (which are established to promote and protect the public interest), individual members are required to practise their profession in a manner that is consistent with the public interest. But it goes deeper than that. Most discussions of the characteristics which differentiate professions from other occupations include some reference to ‘an ideology of service or serving the public good or public service. Indeed, the whole system of professional self-regulation is predicated upon the commitment of professionals to serve the public good.

But just what is this public interest? As an emerging profession—one that is still in the process of developing its identity as a profession—it is important for HR professionals to figure out what the public interest is.

However, the public interest is not easy to define nor is it always obvious or apparent to identify what is in the public interest. To complicate matters, it is also a concept that has been 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.”<sup>1</sup>*

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 are actually 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:

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<sup>1</sup> Institute of Chartered Accountants of England and Wales (ICAEW), 2012. *Acting in the public interest: A framework for analysis*. London, UK. p. 6.

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| <p>A. The given action, decision, or policy is genuinely in the public interest.</p> | <p>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 individual or agency making the claim is self-deceived or is making the claim without much thought)</p> | <p>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.</p> |
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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.

In 2012, both the International Federation of Accountants<sup>2</sup> (IFAC) and the Institute of Chartered Accountants of England and Wales<sup>3</sup> (ICAEW) published documents on the public interest. The focus of both documents was on providing a means for assessing the extent to which any action, decision, or policy is truly in the public interest. Interestingly, both documents are somewhat coy as to their intended audience and what this intended audience is to do with the information. These documents could have been written for one or more of the following purposes/audiences:

- Help those whose decisions, actions or policies are genuinely in the public interest understand and possibly overcome the prevalent cynicism about claims that such decisions, actions or policies are in the public interest,
- Help those who invoke the public interest when they should not become more self-aware of the true motivations behind their decisions, actions or policies,
- Help the rest of us decide whether an action, decision, or policy claimed to be in the public interest is actually in the public interest

The point here is that any serious discussion of the public interest must somehow contend with such issues. It cannot be assumed that simply stating that a given decision, action or policy is in the public interest to be the end of the matter.

### **The public interest and Human Resources management**

There is a public interest in Human Resources management being carried out professionally. If there were not such a public interest, the Ontario Legislature would not have passed the *Registered Human Resources Professionals Act, 2013*.

There are two basic public interest rationales for regulating a profession. One is a consumer protection rationale. Because the consumers of professional services are rarely in a position to judge the quality of the services they receive, or that in some cases the consumer has no choice in the professional they will receive services from, there is a need to protect the consumer from incompetent or unethical

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<sup>2</sup> *A definition of the public interest* (IFAC, June 2012).

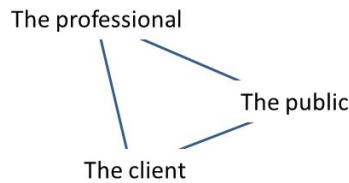
<http://www.ifac.org/system/files/publications/files/PPP%205%20%282%29.pdf>

<sup>3</sup> *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>

practitioners. Here the public interest is in the safe and effective delivery of professional services to users of the professional service.

The second rationale for regulating a profession is the public is seen as an interested third party. This can be referred to as the triangle model.



The classic example here is public accounting. Public accountants are regulated not so much to protect client firms from incompetent and unethical public accountants, but to protect the public (shareholders and potential investors) from a misrepresentation of financial affairs. Here the public interest is in the fair and accurate representation of the financial status of public companies.

The regulation of HR professionals follows mostly from the second rationale. Were it only a matter of protecting employers from incompetent or unethical HR professionals, the Human Resources management profession would never have been regulated. The reason why the Legislature decided to regulate Human Resources management professionals was because of the public interest in the impacts of the work of HR professionals upon third parties.

The basic idea is that the work of HR professionals has an impact on employees and society as a whole. Because of these impacts, the practice of HR cannot be considered as solely a matter between HR professionals and their employers or clients. The reason why HR professionals are regulated is to protect employees and the public from the actions or decisions of HR professionals as they provide professional services to their employers and clients. In other words, there is a public interest in having HR professionals who are not solely focused on serving the interests of their employers and clients.

Of course, professions will differ in balance between the two—for some professions the public interest is mostly the safe and effective delivery of professional services, in other professions the third party impacts will be a significant aspect of the public interest.

### **Public interest outcomes of the practice of Human Resources management**

The fact that Human Resources professionals are regulated by statute indicates that there is a public interest in the regulation of HR professionals simply because there is no other legitimate reason for the Legislature to delegate regulatory powers to a professional governing body. Nonetheless, the *Registered Human Resources Professionals Act, 2013*, does not define what the public interest is. This is not unusual. Acts rarely provide definitions to such principles, leaving them to be interpreted in each context.

Although the public interest in regulating Human Resources professionals has never been spelled out, a list of public interest outcomes can be pulled together. Some of these public interest outcomes are already the subject of employment and workplace legislation, which was enacted ‘in the public interest.’ The idea is that Human Resources professionals are often the primary implementers of the actions, decisions, or policies that impact these public interest outcomes:

- Safe workplaces
- Productive workplaces
- Fair and equitable workplaces
- Well-managed supply of talent
- Workplaces that are accessible for individuals with disabilities
- Workplaces that are free of discrimination and provide opportunities for all
- An adequate supply of competent and ethical Human Resources professionals

To this list could be added public interest outcomes that are more debatable depending on one's point-of-view:

- Employment that provides an adequate living wage to all employees
- Employers that are socially responsible

When the *Registered Human Resources Professionals Act, 2013* states that the foremost object of the Human Resources Professionals Association is to 'protect and promote the public interest,' it can be taken to mean that the Association is obligated to govern and regulate its members in such a way as to facilitate the achievement of these public interest objectives. How much of the attainment of these public interest outcomes can the professional regulatory body be held accountable for is another matter, however. Nonetheless, in the end, all regulatory actions, decisions, or policies should find their justification in the extent to which they further one or more of these public interest outcomes.

It is always difficult to make comparisons from one profession to the next, but it could be suggested that defining the public interest in relation to the practice of Human Resources management is value-laden. Public interest in Human Resources management brings into play concepts such as social justice, fairness and equity. Human Resources management practitioners have evolved from being administrators to being professionals (albeit that the evolution or transformation is not complete yet). As administrators, it might have been possible for Human Resources practitioners to avoid thinking about the public interest implications of their work, but as professionals, it may no longer be possible for Human Resources practitioners to do so. Indeed, one of the signs that Human Resources management has arrived as a profession is the concern for the public interest implications of the practice of Human Resources management.

### **Professional regulators and regulated professionals—different relations to the public interest**

Professional regulators and regulated professionals have different relations to the public interest.

For the professional regulator, protecting and promoting the public interest is the foremost object. Professional regulators exist to serve the public interest. For regulated professionals, serving the client is the primary object, but this must be done in a manner that is consistent with the public interest.

There are different approaches or interpretations of what it means to practice a profession in a manner that is consistent with the public interest. At one end of the spectrum, professionals are simply expected to obey the law. This is very much of a compliance perspective. From this perspective, HR professionals would be expected to forward the interests of their employers and clients, but stay within the boundaries of what is legal. Sometimes, this approach can also encourage a testing of limits—just how much is it possible to get away with? At the other end of the spectrum, there is a stronger

commitment to the public interest. Here HR professionals would want to take more of a leadership role in bringing about fair and equitable workplaces and employment relationships.

This spectrum or continuum applies to the regulator as well. Does 'protecting and promoting the public interest' mean simply ensuring that professionals practice their profession within the boundaries of the law or does it mean ensuring that professionals take an active role in promoting the public interest?

In those contexts where the third-party impacts are of public interest, the role of the professional regulator goes beyond ensuring that professionals provide services to their employers and clients in a competent and ethical manner—it also includes ensuring the impact on third-parties is consistent with the public interest. In fact, protecting and promoting the public interest is the *foremost* object of professional regulators. Of course, delivering professional services to employers and clients in a competent and ethical manner is also in the public interest, but it is too narrow a perspective.

### **Making the argument that a given action, decision, or policy is in the public interest**

As noted above, there is a fair bit of skepticism of claims that a given action, decision, or policy is in the public interest. The IFAC (2012) framework proposes two dimensions: outcome and process. The outcome dimension considers the extent to which, for society, as a whole, the benefits of the action, decision, or policy outweigh the costs (net benefit). The process dimension considers the extent to which the manner of considering the action, decision, or policy was conducted with the qualities of transparency, public accountability, independence, adherence to due process, and participation that includes a wide range of groups within society. The ICAEW (2012) for its part proposes a framework of seven matters to consider when justifying or challenging the justification of an action as being in the public interest.

It should be noted that these frameworks were not intended specifically for assessing the actions, decisions, and policies of professional regulators but of any person or agency making the claim that their action, decisions, or policies were in the public interest. The argument becomes more important for professional regulators because their *raison d'être* is to protect and promote the public interest.

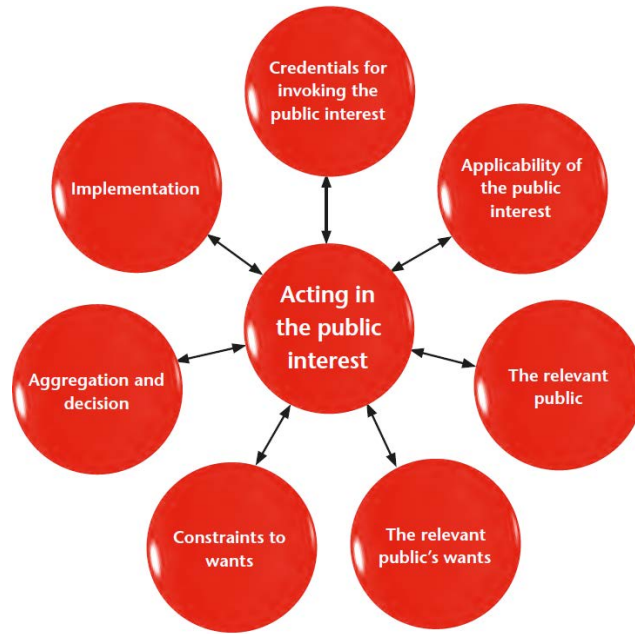


Figure 1: The ICAEW Public interest framework

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. Let’s look at each in turn with reference to how it is applied to the regulatory body for Human Resources in Ontario—the Human Resources Professionals Association.

Interestingly, the ICAEW framework starts with the credibility of the person or agency making the claim that an action, decision, or policy is in the public interest. Then the framework considers the quality or persuasiveness of the argument that a given action, decision, or policy is in the public interest. The next facets deal with the sophistication of the analysis of the public interest, and finally the implementation of the actions, decisions, and policies.

A few key ideas emerge.

Professional regulatory bodies need to be concerned about their credibility. Unfortunately, this seems to be an uphill battle for professional regulators—especially under self-regulation. The public has become increasingly skeptical of the willingness or ability of professional regulators to protect the public interest.

The implications for professional regulatory bodies is that simply making assertions that a given action, decision, or policy is in the public interest is not enough; professional regulatory bodies must first ensure that actions, decisions, and policies are in the public interest, then they must put the argument forward in a convincing manner.

What does this mean for HRP, as the Human Resources profession’s governing body in Ontario?

- HRP must work at gaining the trust of the public in its role as professional regulator

- As a professional regulator, HRPA needs to be self-aware of its motivations and put in place and follow processes that ensure that regulatory actions, decisions, and policies are in the public interest
- The understanding and analysis of the public interest needs to be sophisticated. Regulatory actions, decisions, and policies should reference the whole public and not only a subset of this public. This is not incompatible with the fact that some subsets of the public will be impacted more directly than others.
- It is not enough just to assert that a given regulatory action, decision, or policy is in the public interest. HRPA must assume that the default is not trust--the link to the public interest and the process followed in arriving at the action, decision, or policy needs to be made explicit.

### **What about the members?**

So far the discussion has focused on the professional regulator because it has the statutory obligation to protect and promote the public interest—but what is the role of the members?

It was noted above that although the professional regulatory body has an obligation to protect and promote the public interest, members do not have the same obligation. Members are obligated to abide by the rules set out by the Association for the practice of Human Resources management. But there is more to it than that.

In self-regulation regimes, the professional regulator is comprised of members of the profession. Regulation is not something that is done to members, it is something that members do to themselves. By becoming members of the Association, HR professionals agree to promote the objects of the Association of which the prime object is to protect and promote the public interest by governing and regulating the practice of Human Resources management. Of course, members can choose not to participate in self-regulation beyond compliance with the rules set out by the Association, but even if passively, members need to be aware and support the work done by their professional regulatory body to protect and promote the public interest.

Nonetheless, it could be hoped that members could go beyond simple compliance with the rules established by their regulatory body and consider the public interest implications of their work. The professional regulator will have a role to play in helping members in considering the public interest implications of their work.

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