



A webinar presented by the Office of the Registrar  
**Let's talk about... the public interest**  
 October 20, 2016

1. *The HR professional is only part of the equation, depending on the power and influence of HR at each given organization, ultimately managers or executives are making final decisions. These could go against the recommendation of the HR professional and harm or injustice can be done to the employee or "public". Managers and executives are not regulated professions...*

The fact that managers and executives are not regulated professionals does not change the fact that we are. In any situation, our accountabilities as HR professionals is commensurate with the degree of influence we could have had on the policy, decision, or action taken. Our responsibility and accountability as professionals is to do everything we can do to ensure that no harm or injustice is done. This is true of many professions. A lawyer may give good advice to a client, but the client may disregard the advice. Then again, if the policy, decision, or action was within the scope of authority for the individual to make, then the individual would be fully accountable for the policy, decision, or action.

2. *Are you able to speak to the types of complaints that the HRPA is receiving?*

Yes, HRPA now publishes a summary of complaints in its *Regulatory Affairs* newsletter. Below are summaries for the complaints disposed of between June 1 and August 30, 2016. The next *Regulatory Affairs* newsletter will be published on December 15, 2016, this newsletter will publish a summary of complaints disposed of between September 1 and November 30, 2016.

Case	Date complaint filed and nature of allegation(s)	Date of disposition of complaint and decision of Complaints Committee
C-2014-1	September 16, 2014 It has been alleged that the member created at least 26 false or misleading invoices totaling at least \$178,000 from two Human Resource recruiting firms over a period of about two years.	June 16, 2016 Referral to Discipline Committee (see below)
C-2016-1	March 16, 2016 Complainant alleged that the member breached the complainant's confidentiality and	June 9, 2016 Dismissed without further action

	exhibited unprofessional behaviour by discussing a matter in public that could result in negative actions towards the complainant.	
C-2016-2	<p>March 17, 2016</p> <p>Complainant alleged that the member:</p> <ul style="list-style-type: none"> <li>a. Did not complete a workplace harassment investigation in a timely manner,</li> <li>b. Lied on the investigation report,</li> <li>c. Intentionally omitting information on the investigation report,</li> <li>d. Did not respond to the complainant's email in an attempt to harass and intimidate the complainant.</li> </ul>	<p>July 13, 2016</p> <p>Dismissed without further action</p>

3. *What do you recommend doing if you think someone has acted or neglected the public interest?*

That is not quite how it works. The duty to promote and protect the public interest is a duty that belongs to the Association. Members do not have a duty to promote and protect the public interest. Members have a moral duty to practice their profession in a manner that is consistent with the public interest and a legal duty to abide by the Rules of Professional Conduct and any other professional guidance issued by the Association. Employers have a legal duty to abide by employment and workplace legislation. If you see a Human Resources professional registered with HRPA conducting themselves in a manner that is inconsistent with the Rules of Professional Conduct, you have a duty to do something about it. What that something is will depend on the situation at hand. The Rules of Professional Conduct do not require you to report possible breaches of the Rules of Professional Conduct by other members, although filing a complaint with HRPA may be the appropriate course of action.

4. *Has the stance of HRPA changed over time re: Public Interest?*

Yes.

Some legal scholars have argued that one can infer a public interest mandate from the very fact that regulatory powers have been delegated by statute. In other words, HRPA had a public interest mandate since 1990 with the passage of the now repealed *Human Resources Professionals Association of Ontario Act, 1990*. But clearly, if you go back to these years, there didn't seem to be any discussion or even awareness of this public interest mandate. The passage of *Registered Human Resources Professionals Act, 2013*, did change the landscape. Here the Associations duty to promote and protect the public interest is no longer implicit but very much at the center of it all. Our first object states:

- 4. *The objects of the Association are,*
  - (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*

With our new Act, there is no longer any doubt or ambiguity as to HRPAs public interest duty.

5. *Do you honestly think that HR professionals will stand up to their employer if the employer is not acting in the public interest? This is advocating "whistle blower" activity.*

First, employers are not required to act in the public interest. Employers are required to conduct their businesses within the law. HRPA does not expect the HR professionals it regulates to stand up to their employer if the employer is not acting in the public interest, it does expect the Human Resources professionals it regulates to abide by the Rules of Professional Conduct. When an employer is conducting their business in a way that is counter to the law, HRPA expects its members to do what they can to correct the situation. This will mean different things depending on the specifics of the situation.

At present, the HRPA Rules of Professional Conduct do not require HR professionals to report their employers who may be breaking the law to the relevant authorities (e.g., the Ministry of Labour, Canada Revenue Agency, or the police in the case of criminal activity).

6. *In order to care for the public interest is the HRPA conducting audits in companies where problems are detected that can cause risk or harm to the public?*

No, HRPA does not have the authority to conduct audits of companies where there may be workplace or employment issues. This is the role and mandate of the Ministry of Labour which may appoint inspectors under the Employment Standards Act, 2000, or the Occupational Health and Safety Act, 1990. HRPA only has the authority to regulate its members. HRPA does have the authority to conduct investigation into the conduct of one of its members when a complaint has been made to the Association. The Association also has the authority to carry out practice inspections.

7. *It's an observation and consideration for the government since this regulation won't catch all this "harm". A lot of small and medium size employers do not have professional HR support, they run their businesses and employees solo. Just a thought.*

Indeed, the Legislature does not expect that the regulation of HR professionals will ensure that all possible harms will be avoided or even that all employers will abide by the law. It is one aspect of the response that government has had to regulating workplaces and employment relations in Ontario. The regulation of HR professionals is not the whole answer, it is part of the answer.

8. *The decisions aren't professional & when expressed I'm asked to leave the meeting. Then I'm held accountable.*

Held accountable by whom? And in what way?

If you are asking whether HRPA will hold you accountable for decisions that are made when you are not in the room and had no part in making the decision? Likely not.

The standard is whether you did all that was in your power to do to ensure that decisions made are legal and ethical. What that means will depend on the specific context and circumstances at hand.

9. *How does the legislation cover people who are working in HR but are not professionally educated in the field of HR?*

Depends what you mean by ‘the legislation.’

Most employment and workplace legislation refers to ‘the employer’ which covers people who are working in HR but are not professionally educated in the field of HR.

If you are referring to the *Registered Human Resources Professionals Act, 2013*, it assigns to the Board the authority to set the qualifications for membership in the Association. At the present time, the Board has not established any educational requirements for membership in the Association. The Board has established a good character requirement that applies to all applicants for membership in the Association. Nonetheless, all members, whether they are professionally educated in HR or not, are subject to the Act, the By-laws, the Rules of Professional Conduct and any other professional guidance set out by the Association.

10. *Has HRPA considered and addressed potential and specific consequences for HRPA individual member violations?*

I take it that ‘member violations’ refers to breaches of the HRPA Rules of Professional Conduct or other professional guidance issued by the Association.

Indeed, HRPA has detailed rules as to how to handle complaints about members. The first webinar in this series, entitled ‘what to do when the complaint is about you’ explains how complaints are handled at HRPA.

11. *In order to better serve the public interest, is HRPA going to offer services in both official languages?*

In regards to regulatory activities, HRPA will work in both official languages upon demand. All exams are available in both official languages upon demand. All processes relating to registration and certification are available in both official languages on demand. Arrangements are made such that all individuals, whether members, complainants, witnesses, counsel, or adjudicators, can fully participate in any proceeding undertaken by HRPA.

12. *Sometimes when we work within our HR ethics, and our employer trumps our decision, do we have any recourse?*

There are two ways of understanding this question, both were answered above.

The first has to do with the accountability of HR professionals when their advice, decisions, or recommendations are ignored by the decision-makers. The second has to do with what HR professionals are expected to do when their employers or clients disregard the advice take actions that are either illegal or unethical.

In regards to the first aspect, HR professionals are not accountable for policies, actions, and decisions that they did not make or could not influence. HR professionals are expected to do what they can to ensure that Human Resources policies, decisions, and actions are legal and ethical. However, the accountability of HR professionals will depend on the degree of influence they could have had on the policy, decision, or action.

In regards to the second aspect, at present, the HRPA Rules of Professional Conduct do not require HR professionals to report their employers who may be breaking the law to the relevant authorities (e.g., the Ministry of Labour, Canada Revenue Agency, or the police in the case of criminal activity).

13. *Even if HR Professionals within an HR Department and perhaps one step removed from ultimate HR decision-making, isn't there still a legal and moral responsibility to step up?*

Yes, the obligation is to do what one can to ensure that HR practices are legal and consistent with the public interest. This obligation is commensurate with the degree of influence one has over policies, decisions and actions of the organization.

14. *The cost of membership, getting and staying certified through HRPAC can be cost prohibitive, especially for new professionals just starting out and working for smaller companies. Is there any concern that the regulation process will inadvertently exclude some HR professionals?*

At HRPAC, the proportion of membership dues that go towards supporting regulatory activity is about 5.4%. The bulk of membership dues go towards providing member services and member advocacy initiatives.

The cost of regulation is a topic that deserves some consideration. In the webinar, reference was made to the criteria the Health Professions Regulatory Advisory Board (HPRAC) uses in deciding whether to recommend that a health occupation be granted self-regulation or not. One of the criteria is the economic impact of regulation, and one aspect of this criterion is the ability and willingness of the practitioners of the profession to support the full costs and responsibilities of regulation.

On the other hand, having chosen self-regulation it behooves us to support the full costs and responsibilities of regulation.

15. *Is there a, or who is the body that 'audits' HRPAC to ensure that they are acting or making decisions in the best interest of the public?*

No, not really.

The HRPAC does fall under the oversight of the Office of the Fairness Commissioner in regards to the transparency, objectiveness, impartiality and fairness of its registration and certification processes. But that oversight only applies to HRPAC's registration and certification processes, and only in regards to the compliance with the Fair Registration Practices Code. The Office of the Fairness Commissioner does not consider whether HRPAC's registration and certification processes are in the public interest and it does not consider other regulatory functions.

The fact that there are no robust mechanisms (e.g., a public interest audit) by means of which HRPAs must demonstrate or justify that its policies, decision, and actions are in the public interest does not mean that HRPAs are not accountable for such. HRPAs are accountable to the Ontario Legislature for fulfilling its objects under the *Act*. The fact that there is no robust mechanism by means of which HRPAs must demonstrate or justify that its policies, decision, and actions are in the public interest can be seen as a risk factor. Legislatures are slow to intervene, but when the Legislature do decide to intervene action is often swift and dramatic. The webinar began with the story of the Real Estate Council of British Columbia. The Council had failed to protect the public interest. The issues and evidence had been there for some time, but at some point the Government of BC had enough and took action. The point is that although there is no 'audit' to verify that HRPAs are acting or making decisions in the public interest, HRPAs should act as if there were.