



Human Resources  
Professionals  
Association

# ***The Registered Human Resources Professionals Act, 2013: The first three years***

November 4, 2016



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# Office of the Registrar Fall 2016 webinar series



Wednesday,  
October 12, 2016

What to do When the Complaint is About You

Thursday,  
October 20, 2016

Let's Talk About... The Public Interest

Thursday,  
October 27, 2016

Self-regulation: Why it is important, why should you care, and what it should mean to you?

Friday,  
November 4, 2016

*The Registered Human Resources Professionals Act, 2013:*  
The first three years

Wednesday,  
November 9, 2016

The costs and obligations of professionhood

Thursday,  
November 17, 2016

Update on the new CHRP, CHRL, and CHRE certification processes

# Housekeeping

- Webinar will be recorded and posted online
- CPD code will be given at end of webinar
- Will post answers to questions that we could not answer in the webinar



## Questions involving specific individual circumstances



- This webinar is not the appropriate place and time to address specific individual circumstances
- Sometimes the correct answer depends on some details that are not provided with the question
- Please contact the Office of the Registrar with questions involving specific individual circumstances

# Happy birthday to you!



- The *Registered Human Resources Professionals Act, 2013* came into effect November 6, 2013, just about three years to the day
- What has been accomplished so far and what remains to be done?

# Agenda

- Why is the Act so important?
- Clearing up some misconceptions about the *Act*
- Act, regulations and by-laws
- A new act, a new mission
- What has happened in the last three years?
- What's next?





## Why is the Act so important?

- The *Act* is the foundation for everything at HRPA
- The *Act* actually creates the HRPA (it is our acticles of incorporation)
- The corporation known as the Human Resources Professionals Association of Ontario (HRPAO) was dissolved and replaced by a new corporation—the Human Resources Professionals Association (HRPA)

# Why is the Act so important?



## The Act...

- Creates HRPA as a corporation
- Sets out HRPA's mission (objects)
- Grants HRPA the powers the Legislature deemed necessary or beneficial for HRPA to have in order to fulfil its mission
- Sets out the governance structure for the Association
- Defines the role and authority of the Board
- Establishes title protection for HRPA designations
- Sets out the mandate and powers of the statutory committees
- Grants by-law making power and sets out the matters which may be specified by by-law



## A creature of the Legislature

- Typical not-for-profit corporations are created by incorporation under a federal or provincial corporations act
- HRPA is not one of those corporations
- HRPA was created by a general act of the Legislature
- HRPA is a creature of the Legislature
- HRPA does not have the power to modify the provisions set out in its *Act* (HRPA cannot add, subtract, or modify anything that is specified in the *Act*)

# Clarifying some confusions

- Bills and acts
- Private act v. public act
- Private bill v. private members bill





## Bills and acts

- Bills are proposed laws
- Once passed, a *bill* become an *act* or *statute*
- The terms *act* and *statute* have the same meaning and can be used interchangeably
- Some bills create new Acts, other bills modify existing acts, some do both

## From bill to act



- Our Act—the *Registered Human Resources Professionals Act, 2013*—was introduced three times in the Legislature as a private member’s bill:
  - Bill 138, 1<sup>st</sup> Reading November 23, 2010
  - Bill 28, 1<sup>st</sup> Reading December 7, 2011
  - Bill 32, 1<sup>st</sup> Reading March 20, 2013
- On November 6, 2013, Bill 32 was passed by the Legislature and received Royal Assent on the same date
- Having been passed by the Legislature, we should not refer to the ‘bill’ anymore—it is now an Act or statute



# Amendments

- Acts can be amended from time to time
- This does not change the date of the Act
- Our *Act* was amended on December 3, 2015, and again July 1, 2016, first to indicate the proposed amendments relating to the designations and then to indicate the new text of the *Act* once the amendments came into force
- The up-to-date text of the Act, as well as the text of all previous versions, can be found on the Government of Ontario web site:
- <https://www.ontario.ca/laws/statute/13r06/v2>

# Private vs. public acts



## PRIVATE

- Called 'private' because they originate from a private concern
- The private concern petitions the Legislature for some powers (or relief from some other statute) and the Legislature acquiesces

## PUBLIC

- Called 'public' because they originate from a member of the Legislature
- Public acts are 'the will of the Legislature'



## From private act to public act

- The *Human Resources Professionals Association of Ontario Act, 1990*, was a private act
- The *Human Resources Professionals Association of Ontario Act, 1990*, was repealed and replaced by the *Registered Human Resources Professionals Act, 2013*.
- The *Registered Human Resources Professionals Act, 2013*, is a public act

## Why a public act, then?



*“For many people a group becomes a true profession when it is regulated under a public statute (as opposed to a private statute which, to many, only creates the status of being a ‘club’).”*

Richard Steinecke, Partner, Steinecke Maciura LeBlanc

# Private bill vs. private member's bill



## PRIVATE BILL

- A private bill once passed become a private statute or private act

## PRIVATE MEMBER'S BILL

- The 'private' refers to the fact that the MPP sponsoring the bill is not a member of cabinet (a 'backbencher')
- A private member's bill once passed becomes a public statute or public act

## From private member's bill to public act



- The *Registered Human Resources Professionals Act, 2013*, was introduced into the Legislature as Bill 32, a Private Member's Bill
- Having been passed by the Legislature and having received Royal Assent, the bill became law and the *Registered Human Resources Professionals Act, 2013*, a public act, came into force

## True or false?

The *Registered Human Resources Professionals Act, 2013*, made HRPA a regulatory body?



# False



- The defining characteristic of professional regulatory bodies is the delegation of regulatory powers by the state (in this case, the Ontario Legislature) to the non-governmental body by way of a statute
- Our private act of 1990 did that
- HRPA has been a professional regulatory body since 1990
- But our new Act certainly kicked it up a notch or two!

## What did our new public *Act* do (that our old private *Act* did not do)?



- Made HRPA's public interest mandate explicit and much more front and center
- Was much more detailed about HRPA's regulatory processes
- Exempted HRPA from the *Ontario Not-for-Profit Corporations Act, 2010* (which has yet to enter into force)
- Made HRPA subject to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2005*.



# Act, regulations, and by-laws

- **Acts** are highest level of law. Act are passed by the Legislature and can only be changed by a further act of the Legislature
- **Regulations** are laws (rules) made pursuant to rule-making powers granted by an act. Regulations are sponsored by a Minister, approved by the Executive Council (Cabinet), and ratified by the Lieutenant Governor.
- **By-laws** are laws (rules) made pursuant to rule-making powers granted by an act. By-laws are made by the Board and ratified by the membership.

# By-laws



- The Act specifies where by-laws may be created
- Creating by-laws is the one responsibility that the Board cannot delegate
- By-laws must be within the scope specified in the *Act*
- By-laws cannot be used to give HRPA powers that are not granted in the Act or Regulations
- By-laws must be posted for 30 days before coming into effect
- By-laws are ratified by the Membership at the next Annual General Meeting of the members

# Precedence



- Not only our Act but any act takes precedence over regulations and by-laws
- Not only regulations made under our Act but any regulation takes precedence over by-laws
- Our By-laws must be consistent with all Acts and Regulations
- Also, a definition in one act applies to all other acts unless specified otherwise

# We now have a regulation



- Designations were added after November 6, 2013
- To protect these titles and corresponding initials the Legislature decided that the best approach would be to do this by regulation
- The advantage of regulations is that they are decisions made by Executive Council (Cabinet) as opposed to the Legislature
- But to do this, the Act needed to be amended to allow for the creation of regulations and a regulation approved by Cabinet



# Ontario Regulation 55-16

## Regulations

(4) The Lieutenant Governor in Council may make regulations prescribing designations and corresponding initials that may be used by members of the Association. 2015, c. 27, Sched. 4, s. 8 (2).

Regulation 55-16 prescribes the designations and corresponding initials that may be used by members of the Association as per the By-laws.

<https://www.ontario.ca/laws/regulation/160055>

# A new act, a new mission



- Our new *Act* clarified and sharpened the mission of the Association
- These are called the ‘objects’ of the Association

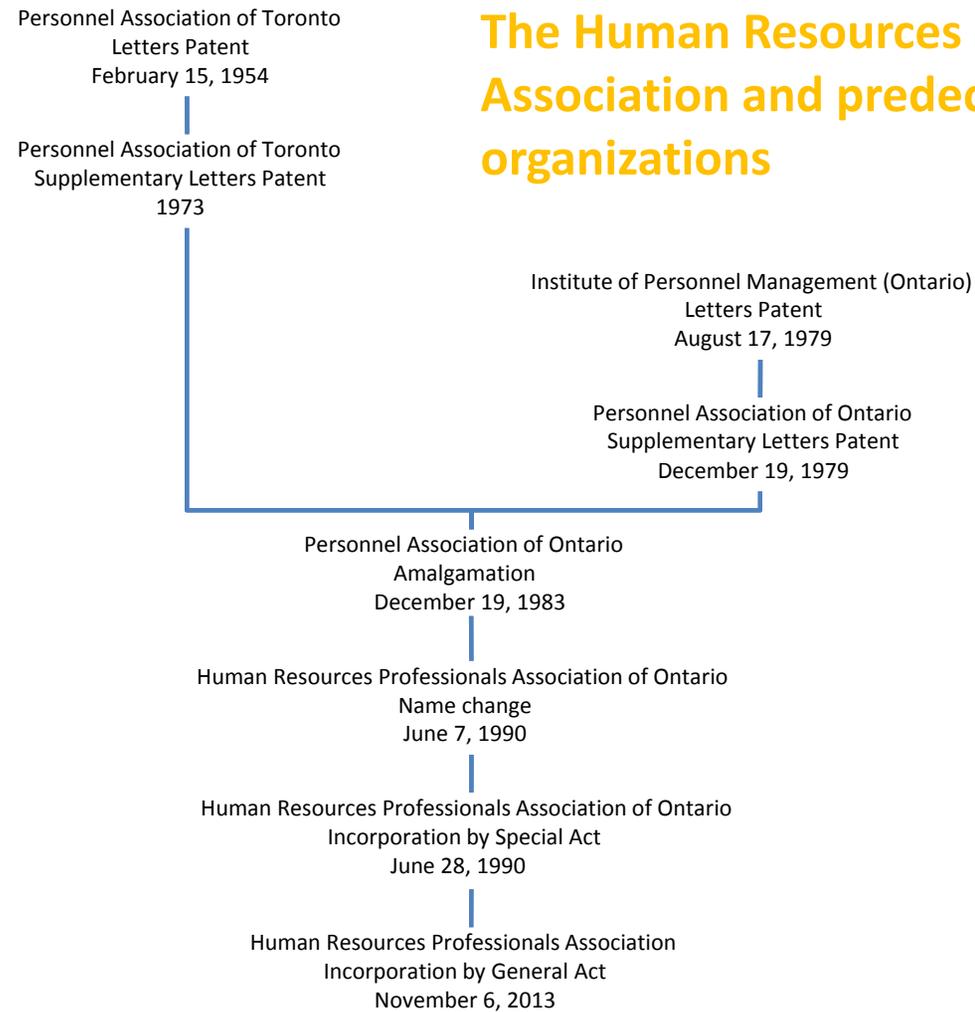


# Revolution or evolution?

- HRPA's mission can be traced back to the mission of the Institute for Personnel Management (Ontario) set out on August 17, 1979
- Within months the Institute for Personnel Management (Ontario) was renamed the Personnel Association of Ontario (PAO)
- The objects were tweaked in 1990 with the passage of the *Human Resources Professionals Association of Ontario Act, 1990* (disciplining members was added)
- The objects were rewritten with passage of the *Registered Human Resources Professionals Act, 2013*



## The Human Resources Professionals Association and predecessor organizations



## Rather than creating a new organization, the Legislature decided to repurpose an existing organization



### 1973

“To provide leadership and assistance to members and to improve their competence in the field of personnel and industrial relations; and to promote social intercourse and good fellowship among its members.”

### 1979

*“To establish and encourage the acceptance and maintenance of uniform province-wide standards of knowledge, experience and ethics for all persons engaged in the field of human resources management”*

### 1990

*“To maintain discipline among members of the Association”* is added

### 2013

*“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”*



# Revolution or evolution?

- HRPA (and predecessors) always had ‘regulatory’ objects (improve competence, province-wide standards of knowledge, experience and ethics, to maintain discipline among members)
- With the latest iteration, the Legislature went all the way, making the promotion and protection of the public interest by governing and regulating the practice of members of the Association and firms the essential mandate of the Association

# What has happened in three years?



- Appointment of Order-in-Council directors
- By-law amendments
  - Implementation of bankruptcy and insolvency notification requirement
  - Making hearings public including notice and publication of outcomes
  - Continuing Professional Development
  - The registration and regulation of firms
- New regulation mechanism to give statutory title protection to our new designations
- Office of the Fairness Commissioner reports and assessments



## Order-in-Council appointees

- The Act provides for the appointment of three Order-in-Council appointees to the HRPA Board
- These directors are identified by the Public Appointments Secretariat
- The Public Appointments Secretariat puts forward the candidates for approval by Cabinet
- The appointments are signed off by the Lieutenant Governor
- The terms of office for Order in Council appointees are three years



## Order-in-Council appointees

- Although Order-in-Council appointees bring an ‘outside-the-profession’ perspective, they are not there to ‘represent’ the public
- All Board members, including Order-in-Council appointees, are there to serve the public



# By-law amendments

- The *Act* provides a framework but the details are filled out by by-laws
- The passage of our new Act required many updates to our By-laws
  - Implementation of bankruptcy and insolvency provisions in the Act
  - Making hearings public including notice and publication of outcomes
  - Continuing Professional Development
  - The registration and regulation of firms

# Implementation of bankruptcy and insolvency provisions in the Act



- The Act is very clear on this matter:

*40 (2) A member who or firm that experiences a bankruptcy or insolvency event shall notify the Registrar in accordance with the by-laws.*

- The relevant by-law is now in place, the Review Committee has been duly established, the process and procedures for reviews has been worked out, and the requirement has been communicated to our members

# Making hearings public including notice and publication of outcomes



- One aspect of the *Statutory Powers Procedure Act, 1990*, is that hearings are public
- The *Statutory Powers Procedure Act, 1990*, also spells out the conditions under which a hearing may be closed
- For hearings to be public, there needs to be public notice of hearings
- Also, the outcomes of hearings must be made public

# Continuing professional development



- HRPA has a continuing professional development (CPD) requirement since 2003
- However, this requirement and the rules that pertain to CPD had never been entrenched in the By-laws

# The registration and regulation of firms



- If there is one aspect that is most misunderstood, it is the registration and regulation of firms
- HRPA does not regulate how employers manage their Human Resources, HRPA regulates members and students when they practice 'through firms'
- Too big a topic to be dealt with here, it will be the subject of its own webinar in the new year

## New regulation mechanism to give statutory title protection to our new designations



- The Act was passed before HRPA launched its new designation framework
- This time, the Legislature decided to establish the list of protected titles by regulation
- The Act now gives the authority to the Minister to make regulations in regards to protected titles and initials under the *Act*
- Ontario Regulation 55/16 defines a new table of protected titles and initials
- Ontario Regulation 55/16 came into force July 1, 2016

# Office of the Fairness Commissioner reports and assessments



- Bill 32 also made changes to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (FARPACTA) by placing HRPA on Schedule 1 of that Act.
- This means that HRPA is subject to the Fair Registration Practices Code and the reporting requirements as set out by the Office of the Fairness Commissioner
- HRPA must forward its annual Fair Registration Practices Report to the Office of the Fairness Commissioner by March 1 of each year for the before
- These Fair Registration Practices Reports are published on both the HRPA and the Office of the Fairness Commissioner web sites

# Office of the Fairness Commissioner reports and assessments

- Every three years the Office of the Fairness Commissioner conducts an assessment of each regulators registration practices—HRPA's first assessment will be initiated in 2016



# What is next?

- Dealing with 'New regulator' issues
- Moving from reactive regulation to proactive regulation
- The public perception of HR as a regulated profession



# Challenge #1

## 'New regulator' issues



- We are not alone—all newly regulated professions go through an adjustment period
  - Changing mindsets
  - Increasing the awareness on the part of members and students of what it means to be regulated
  - Increasing the level of compliance with professional obligations among members and students
- HRPA has stepped up its education efforts (of which this webinar is part of)

## Challenge #2

# From reactive to proactive regulation



*“More broadly, the responsibility of SROs [self-regulating organizations] 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.”*

William Lahey, Law professor

## Challenge #2

# From reactive to proactive regulation



- Compliance with our Act was a necessary first step, but it is not the endgame
- We need to go beyond ‘compliance with the *Act*’ to ‘fulfilment of the mandate’



# The proactive-reactive balance

- It used to be that regulators were relatively passive, waiting for something to go wrong before doing something
- Increasingly, the nature of regulation is to intervene before problems surface—identifying issues early on
- That is why the *Act* deals with matters such as inspections—the idea is to everything is on-track before problems arise

# Identifying risks



- Part of becoming more proactive is the identification of risks
- We need to get a better handle on the risks posed to the public stemming from the practice of the profession
- HRPA cannot protect the public unless we have a good handle on what we are protecting the public from

# A risk-based approach to regulation



- Many regulators have begun to implement a risk-based approach to regulation
- Instead of focusing on functions, the focus is on risks and what needs to be done to minimize or mitigate such risks
- This promotes a more holistic problem-solving approach to professional regulation

# Example



## Employment tests

- Are HRPA members sufficiently trained to use employment tests at a professional level?
- If not, do we develop practice standards for using them and/or require mandatory post-designation training?

# Example



## Employment contracts

- Are employment contracts well written—protecting the interests of both employer and employee?
- Do we need to create practice standards around employment contracts?



## Example

### Handling sexual harassment allegations in the workplace

- Should we expect our members to do more than just 'abide by the law?'
- Do we need to create practice standards around handling sexual harassment in the workplace?

# Example



## Workplace investigations

- HR professionals registered with HRPA will be exempt from licensing requirements but what risks was the Legislature aiming to manage when it passed the *Private Security and Investigative Services Act, 2005*?
- Is HRPA doing what it can to minimize or mitigate those risks?

## Challenge #3

### Public perception



- The broader public needs to understand that Human Resources is a regulated profession in Ontario
- Many other professional regulators speak of '*maintaining public confidence in the work of the regulator*,' we need to create awareness amongst the general public that we are a regulated profession
- Being a regulated profession but that the public would not be aware that this is the case just doesn't make sense

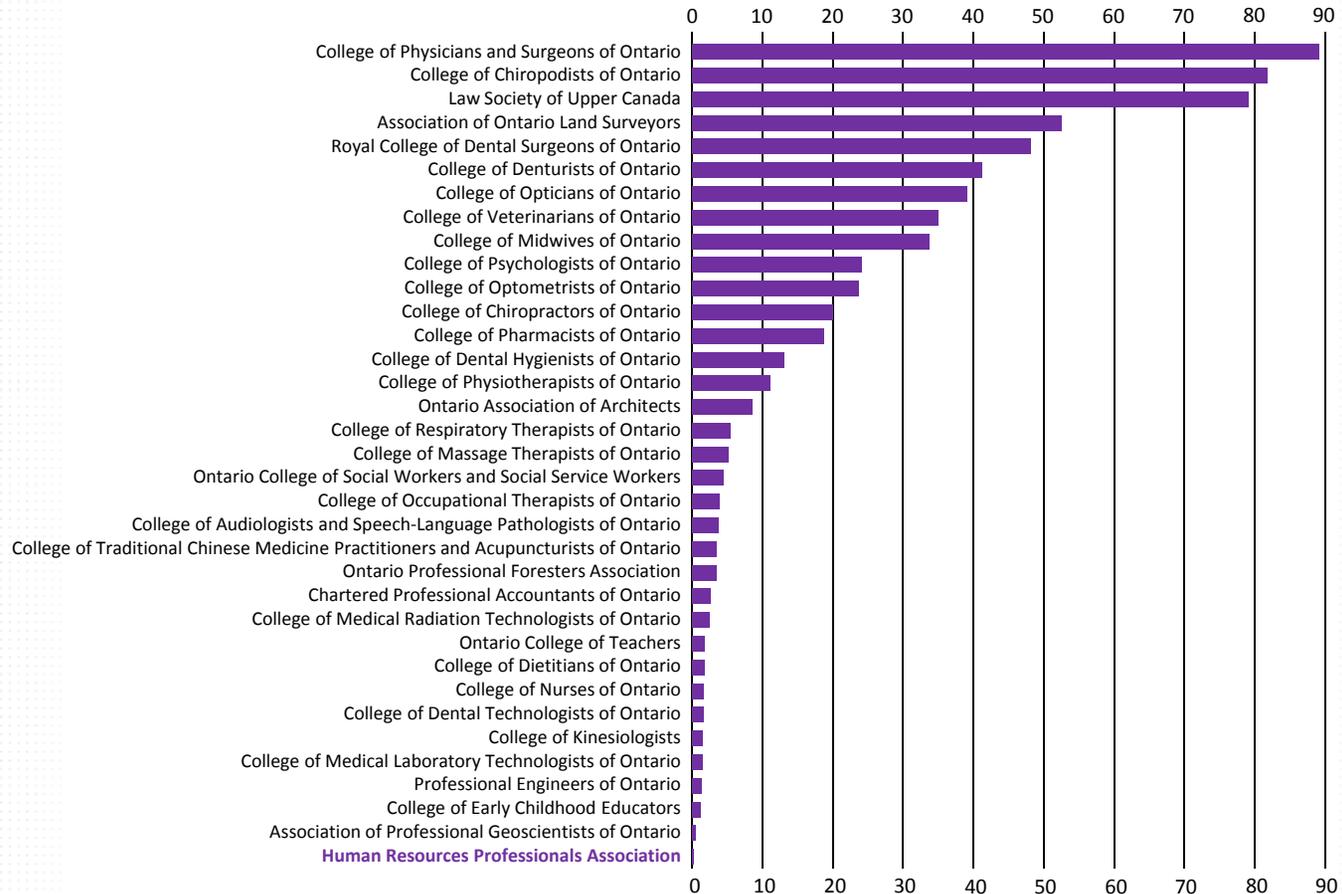


# Changing public perceptions

- Changing public perceptions is not an easy thing to do
- It takes time and progress is not always evident
- But it is something we must do
- One measure of the degree to which the public perceives Human Resources to be a regulated profession may be the number of complaints the Association receives



## Number of complaints per 1000 registrants for professional regulatory bodies in Ontario



# Complaints



- In 2015, HRPA received 5 complaints; in 2016, the number may be 7
- The median number of complaints per 1000 registrants among non-health professions was 3.9
- If the Human Resources profession were at the median of non-health professions we would have approximately 94 complaints per year
- We still have some way to go, it will take time

# Summary



- Passage of the *Registered Human Resources Professionals Act, 2013*, is arguably the most important event in the evolution of the Human Resources profession in Ontario
- Three years in, we have made a great deal of progress in implementing the Act, but there is still a fair bit left to do
- The three key challenges at this point are:
  - Overcoming ‘New regulator’ issues
  - Moving from reactive to proactive regulation
  - Changing public perceptions

# Questions





**Suggestions for webinar topics?  
Feedback?**

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