



Human Resources
Professionals
Association

Professional regulation at HRPA

August 15, 2016

Agenda

- Self-regulation and HRPA's essential mandate and purpose
- An overview of HRPA's regulatory framework
- Key players



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



OOTR webinars



Monday, July 18, 2016	Introducing the Employment Law exams for the CHRP and the CHRL
Monday, July 25, 2016	Designation update
Monday, August 8, 2016	The HR curriculum: Today and tomorrow
Monday, August 15, 2016	Professional regulation at HRPA
Monday August 22, 2016	Introduction to regulatory decision-making and adjudication

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

Professional regulation

- ... is the Association's essential mandate
- ... is what HRPA was created to do
- ... is actually more than what we do, it's what we are!



Self-Regulation

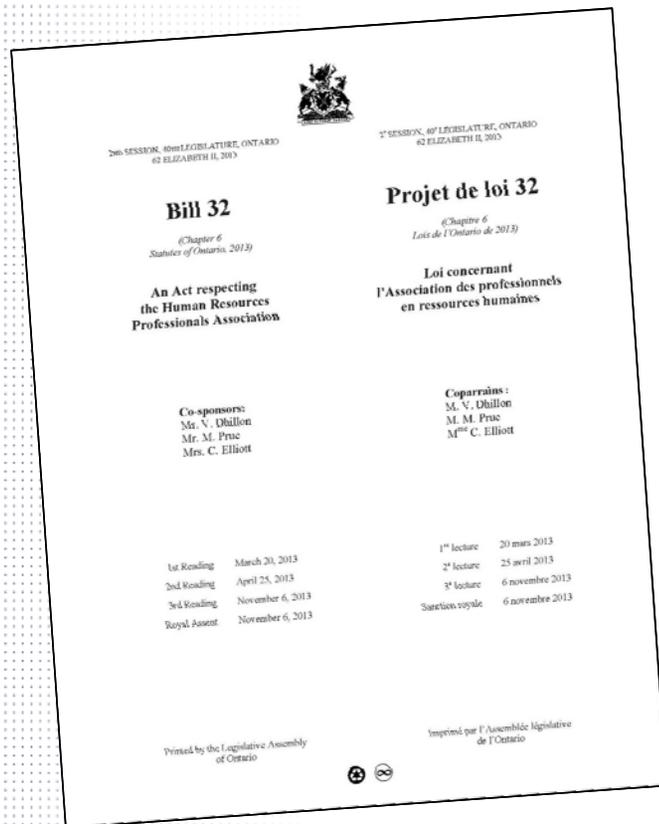


- In Canada, the regulation of trades and professions is done at the provincial level (it's one of those constitutional things)
- The most prevalent regulatory model for professions is *self-regulation*
- Self-regulation refers to an approach or system whereby regulatory powers are delegated by the state (in our case, the Ontario Legislature) to a body which is comprised of members of the profession (HRPA is one such body)



The Act:

- All professional regulatory bodies have an act
- That is because state powers of regulation are being delegated—professional regulatory acts are instruments of delegation
- The HRPA, as are all other professional regulatory bodies, is a creature of the legislature
- The *Act* sets out the core mandate (the ‘mission’) of the HRPA
- The *Act* provides a framework for the governance of the HRPA



New objects



- One thing that our new *Act* did was to give HRPA a new set of objects (a new mandate)
- The objects of an organization set out the fundamental purpose of the organization
- Our 2013 *Act* repealed our 1990 *Act*, and by doing so the Legislature repealed our old objects and replaced them with a new set of objects

Objects of the Association



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, including,
 - (i) establishing, maintaining, developing and enforcing standards of qualification,
 - (ii) establishing, maintaining, developing and enforcing standards of practice,
 - (iii) establishing, maintaining, developing and enforcing standards of professional ethics,
 - (iv) establishing, maintaining, developing and enforcing standards of knowledge, skill and proficiency, and
 - (v) regulating the practice, competence and professional conduct of members of the Association and firms;
- (b) to promote and increase the knowledge, skill and proficiency of members of the Association, firms and students;
- (c) to promote and protect the welfare and interests of the Association and of the human resources profession;
- (d) to promote inter-professional collaboration with other professional bodies;
- (e) to address any other matter that relates to the regulation of its members that the Board considers appropriate

HRPA's core mandate



- HRPA's core mandate is to “promote and protect the public interest” and to execute its affairs “in the public interest”
- This core mandate is shared with all other professional regulatory bodies



Enlightened self-interest

- Self-regulation is based on the concept of enlightened self-interest
- It is in the ultimate interest of the members of HRPA to put the interest of the public first
- But for the deal to work, we need to be true to our commitment (fully dedicated, genuine, steadfast) to put the public interest first even though, in the short run, this may not appear to be in the best interest of our members



Licensure and regulation

- HR is not a licensed profession in Ontario
- This does not mean that HRPA is not a 'regulated profession'
- These two concepts are often confused
- Licensing refers to exclusivity, that non-authorized individuals are prohibited from doing certain things (in some cases, the exclusivity is partial)
- Regulation does not require this exclusivity



Right-to-title profession

- HRPAs do not have ‘right-to-practice’ legislation but they do have ‘right-to-title’ legislation (a.k.a., ‘title protection’)
- In Ontario, a person or firm cannot use one of the protected titles that HRPAs have been given the power to grant
- Whether ‘right-to-title’ or ‘right-to-practice’ the essential mandate of professional regulatory bodies is the same—reduce or mitigate the risks posed to the public from the practice of the profession

A professional regulatory body



- The defining characteristic of regulated professions is the existence of a professional regulatory body
 - Which exercises powers delegated by law, and
 - Which core mandate is to promote and protect the public interest
- There are 39 regulated professions in Ontario which are governed by public act

Top 10 Professional Regulatory Bodies in Ontario by number of registrants (2014)



Professional Regulatory Body	Size
Ontario College of Teachers	239,356
Ontario College of Trades	232,131
College of Nurses of Ontario	168,116
Chartered Professional Accountants of Ontario	83,738
Professional Engineers of Ontario	78,809
Law Society of Upper Canada	54,141
College of Early Childhood Educators	52,529
College of Physicians and Surgeons of Ontario	39,423
Human Resources Professionals Association	21,219
Ontario College of Social Workers and Social Service Workers	17,534

HRPA's Regulatory Framework



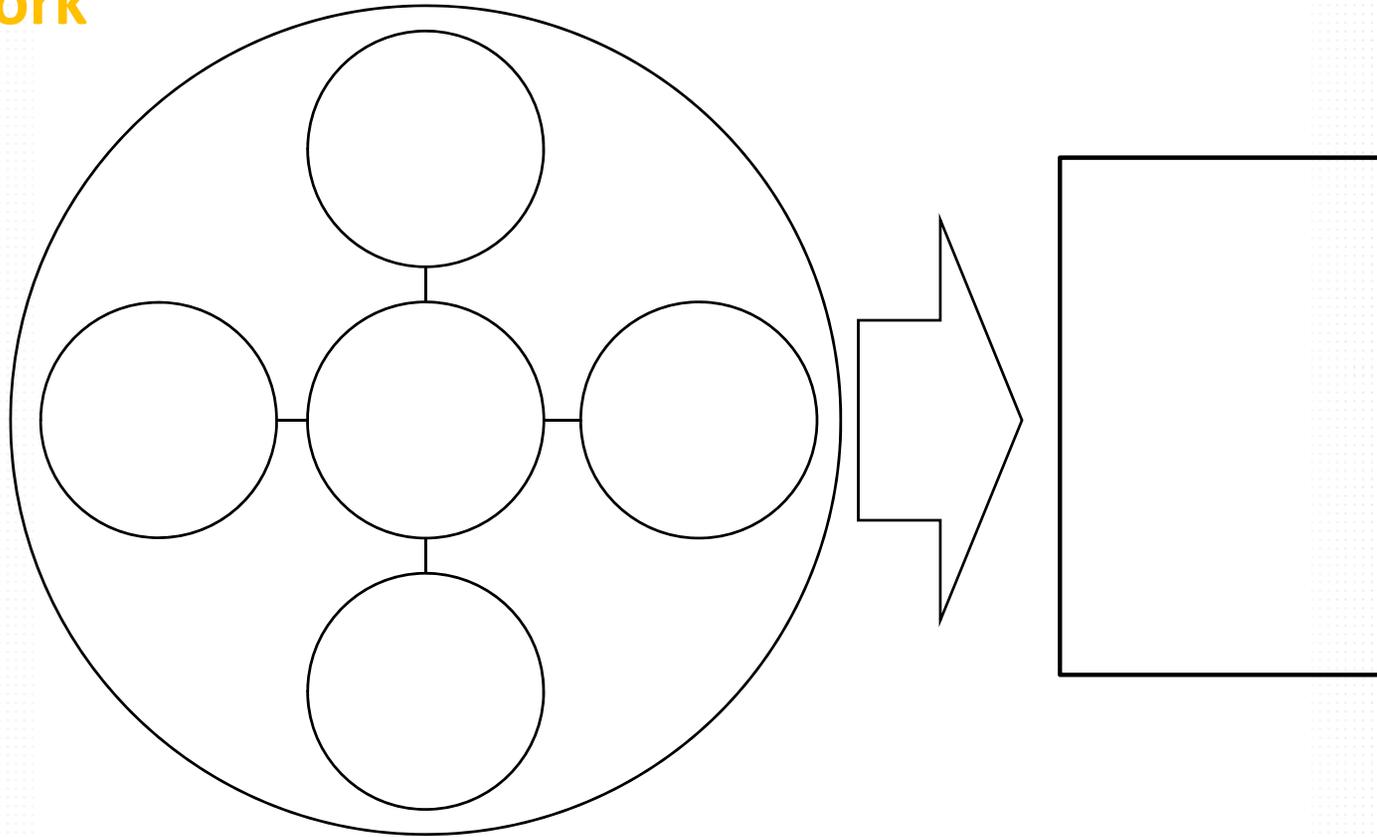
- HRPA's regulatory framework is still under construction
- Not all components have been fully implemented yet
- But we do have a vision of what HRPA's regulatory framework will look like once completed

The four things that professional regulatory bodies do

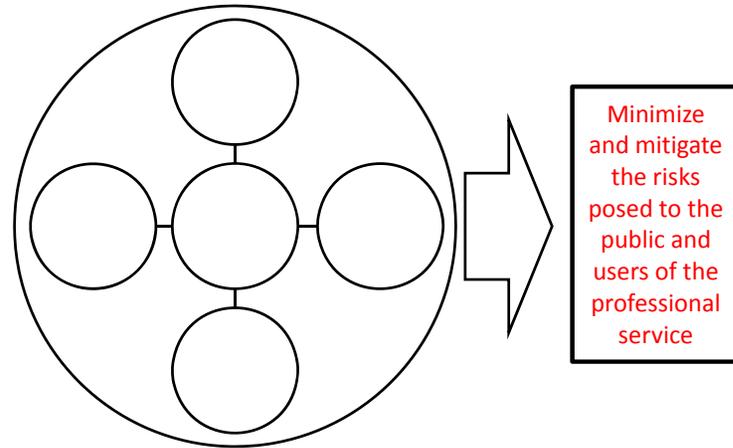


1. Ensure that only competent and ethical professionals are allowed into the profession
2. Ensure that, once in, members continue to maintain their competence and practice their profession in a way that minimizes the risk to the public
3. Deal with members that fail to live up to the standards of the profession
4. Manage relations with stakeholders in such a way as to develop and maintain public confidence in the regulation of the profession

HRPA's Regulatory Framework



HRPA's Regulatory Framework



The most important component of HRPA's regulatory framework is the 'why'
To promote and protect the public interest

Public protection



- What defines professional regulation is its purpose or intent or objective
- The purpose, intent, and objective of professional regulatory bodies is to minimize or mitigate the risks posed to the public or users of the professional service stemming from the practice of the profession
- There are many different activities that are undertaken with the intent of minimizing or mitigating the risks posed to the public or users of the professional service stemming from the practice of the profession

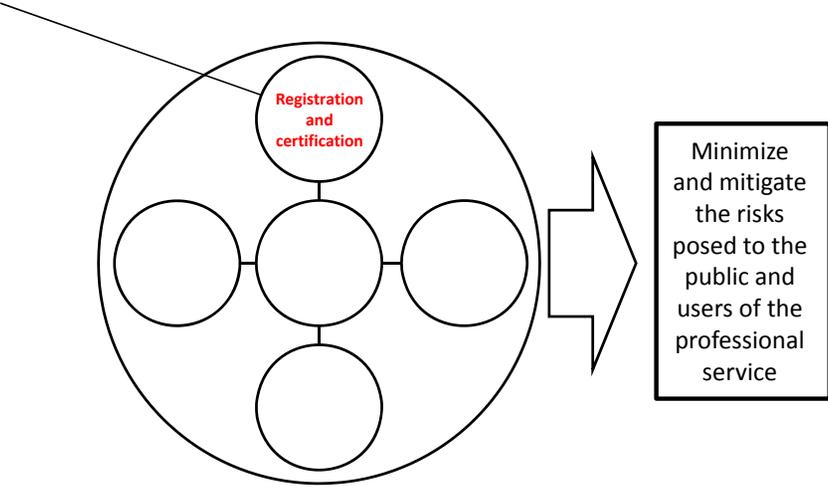
Risk management and risk mitigation



- Regulators are in the risk management business (a.k.a., harm avoidance)
- The risk we are referring to here is the risks posed to the public and users of the professional service stemming from the practice of the profession (not the risks posed to the regulator)
- The extent to which the public and users of the professional service have been kept safe from potential harms is the ultimate measure of success for any professional regulator
- It is recognized that this is not an easy thing to measure—nonetheless, it remains the ultimate measure of success for any and all professional regulators

Ensure that only competent and ethical professionals are allowed into the profession

HRPA's Regulatory Framework





Registration and certification

- Ensure that all applicants meet the qualification standards established by the Board for their respective categories of registration
- All applicants must be of *good character* to be registered with HRPA
- In addition, all registrants must agree to abide by the *Registered Human Resources Professionals Act, 2013*, the HRPA By-laws, and the HRPA Rules of Professional Conduct, and any other professional guidance issued by the Association

Registration and certification



- HRPAs registration and certification processes are also subject to oversight by the Office of the Fairness Commissioner
 - HRPAs registration and certification processes must be demonstrably transparent, objective, impartial, and fair
 - Each year, HRPAs must file with the Office of the Fairness Commissioner and publish on its web site its Fair Registration Practices Report
 - 2016 marks the start of our first assessment cycle. Every three years, the OFC must conduct an assessment of the compliance of each professional regulatory body with the Fair Registration Practices Code. This is separate from and in addition to the annual Fair Registration Practices Reports that HRPAs must file.



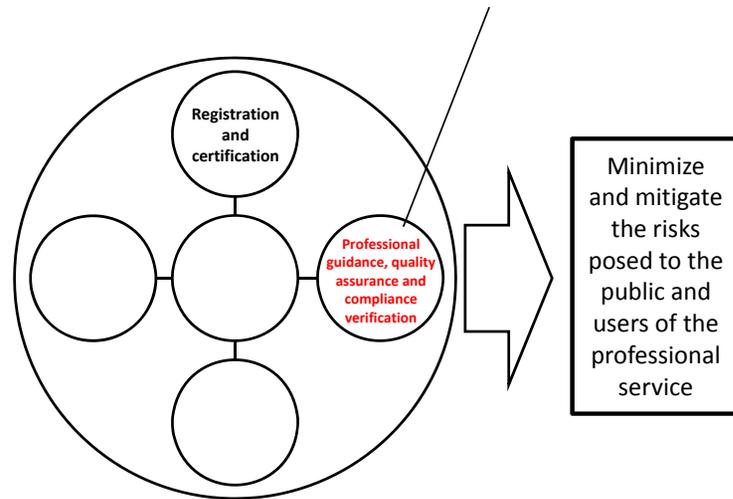
Registration and certification

- HRPA is introducing the registration of firms
- The *Act* requires HRPA to register firms in order to protect the public when members practice through firms
- The terms *firm* (47), *firms* (16), or *firm's* (11) appears 74 times in the *Registered Human Resources Professionals Act, 2013*.
- *Firms* include:
 - Sole proprietorships
 - General partnerships
 - Limited liability partnerships
 - Corporations (but not including professional corporations)



Ensure that, once in, members continue to maintain their competence and practice their profession is a way that minimizes the risk to the public

HRPA's Regulatory Framework



Professional guidance, quality assurance and compliance verification



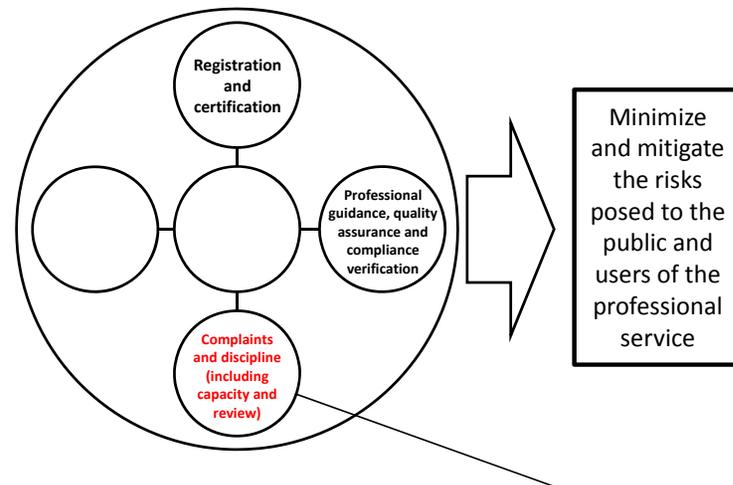
- This is the core of risk management
- Quality assurance is all about avoiding problems before they happen (stopping risks from becoming harms)
- It is not good enough to have registrants promise that they will ‘be good,’ as responsible regulators we need to put in place mechanisms that verify and ensure that registrants are abiding by the standards set by HRP.
- There are a number of activities that fall under quality assurance.
 - Issuing guidance to members (at whatever level of prescriptiveness is appropriate)
 - Conducting practice assessments and continuing professional development (CPD)
 - Verifying compliance and conducting practice inspections
 - Supporting the professionalism of HRP members (e.g., ethics hotlines)

Compliance



- Without compliance, professional regulation becomes a hollow endeavor
- Signing off on the Act, By-laws, and Rules of Professional Conduct means little if there are no mechanisms in place to assess compliance and introduce corrective action if needed
- Compliance means ensuring that professionals are abiding by the rules established by the professional regulatory body
- ‘Trust, but verify’

HRPA's Regulatory Framework



Deal with members, students and firms which fail to live up to the standards of the profession

Complaints and discipline (including capacity and review)



- From a quality assurance perspective, complaints and discipline processes deal with 'failures' of the registration and certification and quality assurance processes (although a certain amount of such 'failures' is inevitable)
- The capacity process and the review processes also deal with matters when things go wrong
- Although the registration and certification and quality assurance processes likely contribute more to the protection of the public interest than complaints and discipline, in the eye of the public it is the handling of complaints that seems most tied to public confidence in the work of the regulator
- How complaints are handled is a key driver of public confidence in the work of the regulator

Complaints and discipline (including capacity and review)



- Complaints and discipline are actually two separate processes
- The purpose of the complaints process is not to determine whether a member is guilty of misconduct or not, but to decide whether the matter should be forwarded to discipline or what other appropriate measure should be taken
- The Complaints Committee must investigate all complaints referred to it by the Registrar, and the Registrar must refer all credible complaints to the Complaints Committee
- As appropriate, the Complaints Committee will appoint an investigator to with all the powers and duties set out in the *Act*

Complaints and discipline (including capacity and review)



The three criteria for referral to discipline are:

1. If the allegations were true would the matter be serious enough to refer to discipline?
2. Should the matter be referred to discipline, is there enough evidence to make a case? (prosecutorial viability)
3. Is it in the public interest to make a referral to discipline, or is another course of action more appropriate

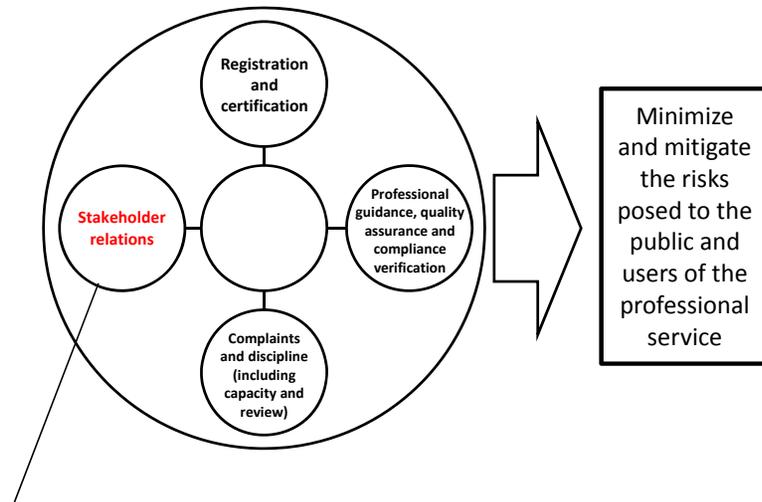
Complaints and discipline (including capacity and review)



- In law, committees such as the Discipline Committee, the Review Committee, the Capacity Committee and the Appeal Committee are administrative tribunals
- When hearings are called for, such hearings are subject to the *Statutory Powers Procedure Act, 1990*
- Although established and supported by HRPA, these committees are independent of HRPA. These committees derive their authority directly from the Act.
- Unless there is a good reason to close a hearing, hearings are public

HRPA's Regulatory Framework

Manage relations with stakeholders in such a way as to develop and maintain public confidence the regulation of the profession





Stakeholder relations

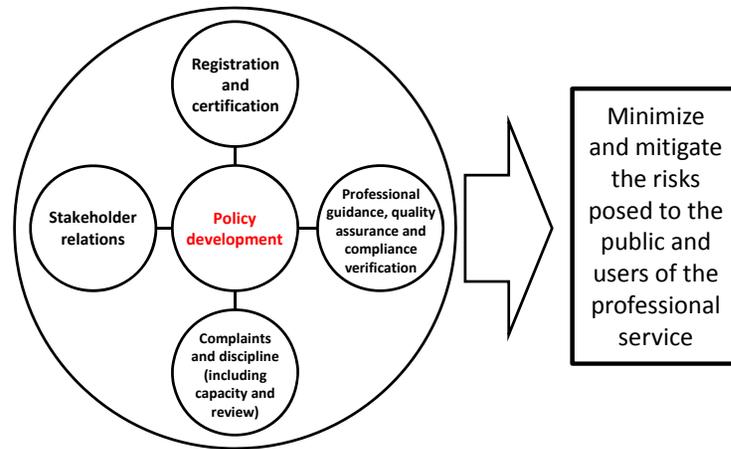
- Public confidence in the regulator's willingness and ability to make decisions in the public interest is key
- Professional regulation is one of those endeavors where perception is as important as reality
- Understanding stakeholders, engaging stakeholders, and educating stakeholders in regards to the regulation of HR professionals
- The Office of the Registrar has recently launched its regulatory newsletter and a blog on the professionalization of HR

Public Register



- The Public Register is one of those points of contact between the public and HRPA. (An applicant is not a member until their name is placed on the Public Register)
- Across the regulatory community, there are increasing pressures from government and the public to include more information about professionals under regulation on the public register

HRPA's Regulatory Framework



Pulling it all together
Identifying and
quantifying risks to
the public and users
Developing the
appropriate
regulatory response
Monitoring impact



Policy development

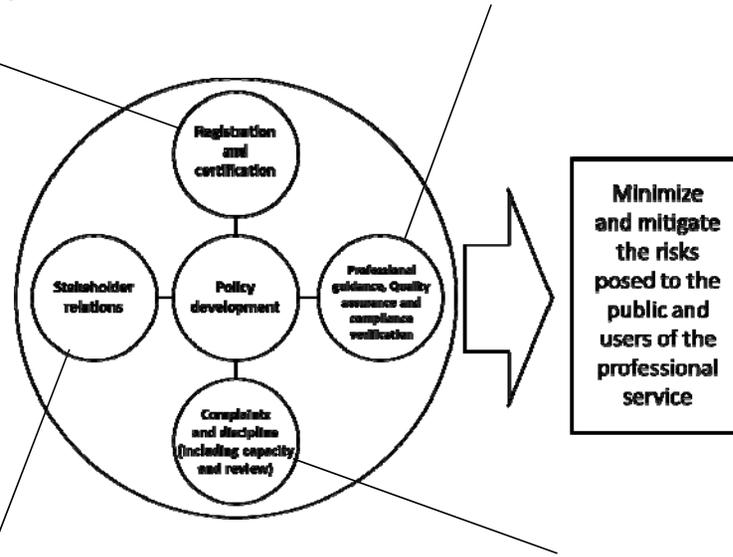
- This is the core planning and coordination process
- This involves the identification of risks and working out the most effective regulatory response to manage or mitigate the risk
- To manage risk, one must understand the risks posed to the public and users of the professional service stemming from the practice of the profession
- Developing rules and putting in place the programs to implement or enforce the rules

Ensure that only competent and ethical professionals are allowed into the profession

Ensure that, once in, members continue to maintain their competence and practice their profession in a way that minimizes the risk to the public

HRPA's Regulatory Framework

Manage relations with stakeholders in such a way as to develop and maintain public confidence in the regulation of the profession



Pulling it all together
Identifying and quantifying risks to the public and users
Developing the appropriate regulatory response
Monitoring impact

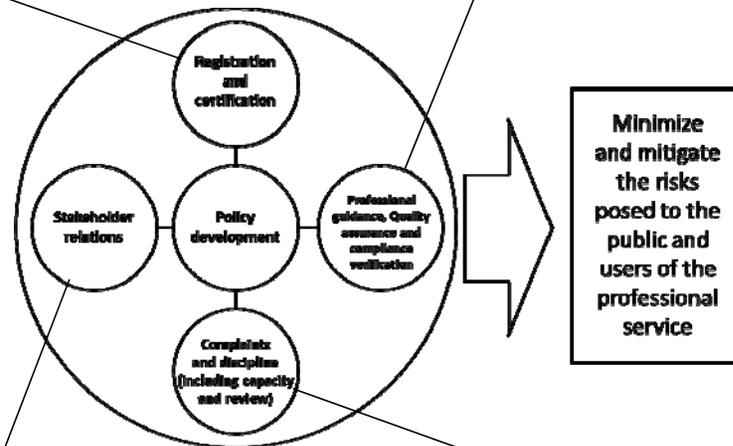
Deal with members, students and firms which fail to live up to the standards of the profession

Establishing, maintaining, developing and enforcing standards of qualification

Linking HRPAs Regulatory Framework to the objects of the Association

To promote and increase the knowledge, skill and proficiency of members of the Association, firms and students

Establishing, maintaining, and developing and enforcing standards of practice, standards of professional ethics, and standards of knowledge, skill and proficiency



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

Enforcing standards of practice, standards of professional ethics, and standards of knowledge, skill and proficiency

'Old school' vs. 'new school' regulation



Old school

- 'Gatekeeper and enforcer' paradigm
- Reactive--once individuals were allowed into the profession, the regulator would only intervene when things went wrong
- Focus on registration/certification, complaints, and discipline

New school

- Proactive—the idea is to prevent problems from happening in the first place
- Quality assurance, requirements for continuing professional development, providing guidance to members, educational initiatives, and public outreach initiatives

Appeals



- Any decision of a committee or the Registrar can be appealed
- The purpose of the Appeal Committee is to act as a failsafe mechanism in case something has gone wrong in the making of the original decision
- Although the Appeal Committee has all the decision-making authority of the original committee, it is not there to 'retry the case,' it is there to ascertain whether there was a flaw in the original decision
- The standard of review is reasonableness

Key players

- The Board of Directors
- Staff
- Regulatory decision-making and adjudicative committees
- Regulatory counsel
- Independent legal counsel





Role of the HRPA Board

- The Board is accountable to the Legislature for the proper administration of the Act (the fulfilment of the Associations objects)
- The role of the Board is to enact policy that is implemented by the various regulatory decision-making and adjudicative committees
- The Board has the responsibility to ensure that the adjudicative committees have all the 'conditions for success'
- Oversight
- However, the Board cannot interfere with the decisions of adjudicative committees

Board oversight



- Ensure that committees are duly established
- Clear and effective policies, guidelines, and frameworks for committee decision making
- Support for committee recruitment
- Support for committee member orientation and training
- Ensure that all members of adjudicative committees sign off on Code of Conduct
- Ensure that necessary by-laws are in place to support the work of adjudicative committees
- Provide for administrative support for adjudicative committees
- Provide for access to Independent Legal Counsel (ILC)
- Monitor the performance of adjudicative committees (procedural fairness, backlogs, issues)
- From time to time commission external on some aspect of the work of adjudicative committees

Staff



- Provide policy support by conducting research into risk and various policy options
- Provide administrative support for regulatory decision-making and adjudicative committees
- Make administrative decisions
- Manage registration and certification processes
- Administer exams
- Manage the public register

Committees

- Most of the regulatory decisions are made by committees made up of volunteers
- The Registrar will make decisions of a more administrative nature
- Committees have mandates set out either in the *Act* or the By-laws



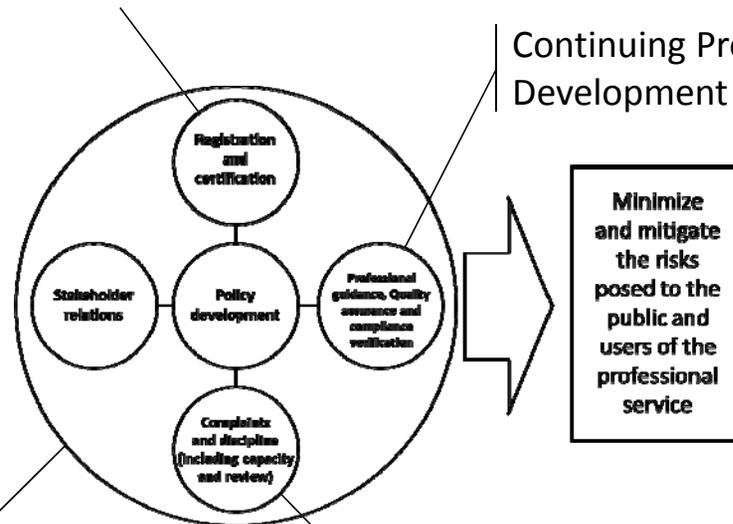


HRPA's Regulatory Committees

Registration Committee
Experience Assessment Committee
Academic Standards Committee
CHRE Review Committee

Continuing Professional Development Committee

Statutory committees in red



Appeal Committee

Complaint Committee
Discipline Committee
Capacity Committee
Review Committee





Statutory committees

- As required by the Act, HRPA must establish the following committees:
 - Complaints Committee
 - Discipline Committee
 - Capacity Committee
 - Review Committee
 - Appeal Committee
- Although these committees are established by HRPA, they are independent of HRPA and derive their authority from the *Act*
- These statutory committees do not 'report to' the Board in any conventional sense



Non-statutory committees

- The other non-statutory committees deal with various aspects of registration and certification
 - Registration Committee
 - Experience Assessment Committee
 - Academic Standards Committee
 - CHRE Review Committee
 - Continuing Professional Development Committee
- These committees derive their authority from the authority of the Board to set standards of qualification

Regulatory Counsel



- Regulatory counsel assists the HRPA with the correct interpretation and application of its *Act* and other acts which apply to professional regulation
- Review of proposed by-laws
- Provides advice to the Association in regards to establishment of proper regulatory procedures
- Prosecutorial viability assessments before referrals to discipline



Independent legal counsel (ILC)

- One thing that regulatory counsel does not do, however, is to give advice to adjudicative committees
- Because the Association is one of the parties to such proceedings, there would be a conflict of interest in providing legal advice to both the Association and the adjudicative committee. For this reason, adjudicative committees have access to independent legal counsel (ILC)

High standard of procedural fairness



- Whenever the *Act* permits or requires a committee to conduct hearings, such hearings are subject to the *Statutory Powers Procedure Act, 1990*.
- This *Act* sets out minimum standards of procedural fairness that all such proceedings must adhere to.
- Also, all regulatory decisions at HRPA are subject to review by Divisional Court, so it is important to get things right

Which brings us back to the essential purpose and mandate of the Association



- 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

Questions

