

HRPA Series on Governance for Professional Regulatory Bodies

The rationale for regulating HR professionals in Ontario

The passage of a professional regulatory statute is not an everyday occurrence. Governments don't regulate unless there is a good reason to do so. In regards to occupational regulation, it is not whether the occupation 'deserves' to be recognized as a profession that concerns government; rather, it is whether the public needs protection that will motivate a government to regulate a profession. The original idea for this article was to consider the arguments that were made from the floor of the Ontario Legislature before the final vote on the *Registered Human Resources Professionals Act, 2013*, to discern the actual reasons given for supporting the regulation of Human Resources professionals in Ontario.

It soon became clear that decoding the statements made by Members of Provincial Parliament (MPPs) would require a quick overview of the why, what, and how's of professional regulation. This article is therefore in two parts: a first part looks at the rationale for professional regulation and the specific sources of harm that professional regulation seeks to address, the second part analyses the arguments that were made from the floor of the Ontario Legislature using the concepts laid out in the first part.

It is taken for granted that there must be a compelling public interest for the establishment of any regulatory regime. There are, however, many possible ways to link professional regulation to the public interest.

Under what conditions will the government consider regulating a profession?

An interesting perspective on the question was put forth by Roger Martin in an Harvard Business Review blog¹.

“So my basic calculus is as follows: If quality can't be determined in advance and cost of failure is high, the market in question will attract regulation. And if the product/service is delivered by a single identifiable individual, it will become a regulated profession. If it doesn't attract regulation, it doesn't matter a whit whether an activity is deemed by its participants to be a 'profession.'”

Martin lays out a two-step model. The first step is whether a market (product or service) will attract regulation; then having determined that regulation is necessary or beneficial, the next

1 Blog can be found at <https://hbr.org/2010/07/management-is-not-a-profession.htm>

requirement is that the service must be delivered by a single identifiable individual. When all three conditions are met, the practitioner will be the subject of regulation and a regulated profession will follow.

When governments are aware of possible threats to the public, governments have a spectrum of options:

- No specific regulation (let the courts act as recourse and redress mechanisms)
- Regulate the activity or service rather than any individual practitioner
- Regulate practitioners but without creating a self-regulating organization (SRO)
- Regulate practitioners by creating a self-regulating organization (SRO)

So the question is not simply whether to regulate or not, but whether to regulate the individual practitioner in addition to any other regulation that may already be in place.

It is also the case that governments also have the choice to whether to introduce licensure or make regulation a choice. With licensure, individuals who are not authorized to do so are prohibited from practicing the profession or from carrying out certain protected acts. When there is no such prohibition, membership in the governing body is voluntary. Professionals in these occupations have the choice to submit themselves to professional regulation or not; conversely, the public has a choice to employ or engage regulated professionals or unregulated professionals. The rationale for voluntary self-regulation is to provide the public with a choice. Accounting in an interesting case—other than public accounting, the practice of accounting is not licensed, which means that there is no prohibition that bars individuals who are not registered accountants from practicing accounting. This gives the public a choice between regulated practitioners and unregulated practitioners. Public accounting, on the other hand, is licensed, which means that individuals who are not licensed as public accountants cannot practice as public accountants. In regards to public accounting, corporations can choose which public accountants they will use to conduct their audit, but they cannot choose to have their audit conducted by an unlicensed practitioner. At last count, only about seven percent of accountants registered in Ontario had a public accounting license.

HR professionals operate in an environment that is already heavily regulated. The *Employment Standards Act, 2000*, (ESA), the *Ontario Labour Relations Act, 1995*, (OLRA), the *Occupational Health and Safety Act, 1990*, (OHSA), and the *Accessibility for Ontarians with Disabilities Act, 2005*, (AODA) are just some of the important pieces of legislation that govern employment relationships and the workplace. Clearly, the government has seen that it is in the public interest to regulate employment relationships and the workplace; the question is why did the Legislature take the further step of regulating HR professionals in addition to regulating the activity?

To be clear, HR professionals in Ontario were already regulated by reason of the *Human Resources Professionals Association of Ontario Act, 1990*. This was a private act, however, as opposed to a public act. One quick way of describing the difference between a private act and a public act is that a private act is proposed by a private party and acquiesced to by the Legislature whereas a public act represents the will of the Legislature. In any case, in order to

be passed by the Legislature the proposed *Registered Human Resources Professionals Act* would need to stand on its own merits. In other words, the rationale for regulating HR professionals in Ontario would need to be made all over again.

The decision to regulate an occupation calls into play another set of questions—not only must there be a significant risk of harm, but those who use the service cannot otherwise adequately protect themselves, and, in addition, it must be felt that regulating the individual practitioner is necessary and practical.

Governments are less likely to regulate a profession when the clients of the professional service are mainly businesses. That is because there is an assumption that businesses have the wherewithal to look after their own interests. They can hire their own experts.

This latest point is interesting because HR professionals are employed or engaged almost exclusively by employers. Although HR professionals do provide some services directly to employees, they do so on behalf of the organizations that employ them. Some professions, like accounting and law, provide services to individuals as well as organizations. It is unclear whether these professions would have been regulated if they had operated exclusively in the business environment.

Indeed there are many specialisms within organizations: marketing professionals, project management professionals, supply chain management professionals, IT professionals, corporate secretaries, sales professionals, public relations and corporate communications professionals and so on. None of these specialisms has ever been governed by way of a public act. The question is why, of all these specialisms, did the Legislature support the creation of a self-regulating organization with regulatory powers delegated by law for Human Resources professionals?

The fact is that HR professionals were regulated despite the fact that employment relationships and workplaces are already subject to regulation and despite the fact that HR professionals work almost exclusively in the context of business. These are two factors that would have worked against the regulation of HR professionals. The reasons for regulating HR professionals needed to overcome the reasons for not regulating HR professionals.

This suggests that the rationale for regulating HR professionals is as follows:

1. there is residual risk, mostly to employees, that employment relationship and workplace legislation cannot entirely control;
2. this residual risk results in a potential for harm to individuals who do not have the means to protect themselves; and
3. HR professionals are understood to have a specific and identifiable role in managing employment relationships and the workplace such that there are specific and identifiable harms that may result from the practice of the HR profession.

It is this impact on employees who are seen to be in a vulnerable position that distinguishes HR professionals from other specialisms such as marketing, project management, supply chain

management, IT, sales professionals, public relations and corporate communications. If it were not for the impact on employees, it is unlikely that HR professionals would have been regulated.

Interestingly, the government does not entirely trust embedded professionals to fully ensure that things are done right.

In all likelihood, the preparation of financial statements in any public corporation was done by a regulated accounting professional. This professional is likely highly skilled and accountable to his or her professional governing body for upholding high standards of accuracy and integrity. The public should be able to trust the work of these accounting professionals. Nonetheless, there is the requirement for an independent audit of the financial statements to be carried out by independent public accountants. As Ronald Reagan once said: "Trust, but verify." The public audit could be seen as a fail-safe mechanism in case something goes awry with the work internal accounting professionals.

As noted above, employment relationships and the workplace are already heavily regulated and enforcement mechanisms are already in place. For instance, in regards to employment standards, the Ministry of Labour appoints employment standards officers whose role it is to inspect and investigate workplaces in regards to compliance with *Ontario's Employment Standards Act, 2000*. In addition, in regards to occupational health and safety standards, the Ministry of Labour appoints inspectors whose role is to investigate possible contraventions to the *Ontario Occupational Health and Safety Act, 1990*, and to issue remedial orders as may be required.

In this context, the regulation of HR professions makes sense in that it gets closer to the source of risk. The idea, supported by HRP data, is that the presence of competent and ethical HR professionals reduces the number of problems in the first place. On the other hand, just because Human Resources management is practiced by competent and ethical HR professionals, we should not expect the Ministry of Labour (MOL) to stop conducting inspections and investigations.

The regulation of HR professionals functions in a number of ways to protect the public interest.

1. Because professionals are often given a greater degree of independence, HR professionals who are less than competent or unethical could cause harm before management would become aware of it. The regulation of HR professions prevents these problems from happening in the first place.
2. Avoid HR professionals from providing poor advice to management which would lead the employer to unintentionally contravene laws that govern employment relationships and the workplace;
3. Given the increasing amount and complexity of legislation that applies to employment relationships and the workplace, HR professionals provide expertise that enables employers to effectively comply with legislation.
4. That HR professionals, because of their professional independence and commitment to fair and mutually beneficial employment relationships, provide some kind of resistance to those who would intentionally not comply with employment relationships and workplace legislation.

Other factors which influence whether or how to regulate an occupation

There are, of course, other factors that affect whether an occupational group will be regulated or not. Generally, there are two main ways in which occupational regulation happens. Sometimes the state acts to regulate an occupation on its own initiative out of concern for protecting the public. In other situations, the state will regulate a profession as a result of lobbying on the part of the profession.

Government will sometimes act to regulate an occupation on its own initiative as a response to abuses that have occurred. For instance, in Ontario, private investigators and security guards have been licensed since 2005 pursuant to the *Private Security and Investigation Services Act, 2005*. This is direct regulation by the state, however, as no self-regulatory body was created. Another interesting example are the real estate brokers who are regulated by the Real Estate Council of Ontario (RECO) which is a Delegated Administrative Authority (DAA) rather than a self-regulating organization (SRO).

In the case of HR professionals, it was clear that the HR profession wanted to be regulated under a public act. It was also the case that, under its private act, HRPAA had already put in place much of the infrastructure of self-regulation. Clearly, having decided that the Human Resources profession should be regulated, the quickest and most effective approach was simply to reinforce the existing professional governing body.

However, the Legislature did not go so far as to create any kind of licensing regime for Human Resources professionals. The Legislature is really reluctant to force businesses to use licensed professionals. For instance in regards to financial matters, the auditors who are external to the organization are licensed, but there is no requirement that those employees of the organization who prepared the financial statements be designated accountants. Even in regards to legal matters, employees or officers of a corporation who select, draft, complete or revise documents for the use of the corporation or to which the corporation is a party do not need to be lawyers or paralegals. For professions that work within organizations, the Legislature prefers a middle road, without resorting to licensing, the Legislature wants to encourage the use of competent and ethical professionals by creating a voluntary regulatory regime for these professionals and by making sure that organizations understand that there is a difference between regulated and unregulated professionals. Given this, it can be understood how licensing was not in the cards for Human Resources professionals.

Specific risks associated with the practice of professions

There are many specific sources of risks associated with the practice of professions. It is possible to discern three sources of risk that are especially relevant to the practice of Human Resources management:

- Information asymmetry
- Client capture
- Employer capture

Information asymmetry

“In contract theory and economics, information asymmetry deals with the study of decisions in transactions where one party has more or better information than the other. This creates an imbalance of power in transactions, which can sometimes cause the transactions to go awry, a kind of market failure in the worst case.”—Wikipedia

The fact that professionals possess specialized knowledge and skill brings about an information asymmetry between professionals and their clients. Clients are not in a position to judge the quality of the service or advice that the professional is delivering until it is too late if at all. Clients are in a position to have to trust the professionals they are dealing with. This creates a vulnerability that an unscrupulous professional could exploit. One objective of professional regulation is to mitigate the risk posed by information asymmetry. Self-regulation is based on the idea that other professionals are in a better position to judge the conduct of another professional, certainly in a better position to do so than clients.

Information asymmetry is not enough in itself to create the need for regulation, however. It is in the nature of specialisms that individuals in such occupations know something that others do not; it is, rather, whether (1) the potential harm is significant enough, and (2) whether users of the professional service are in a position to protect themselves that makes the difference. The combination of information asymmetry with the inability to protect oneself is what creates the potential for significant harm.

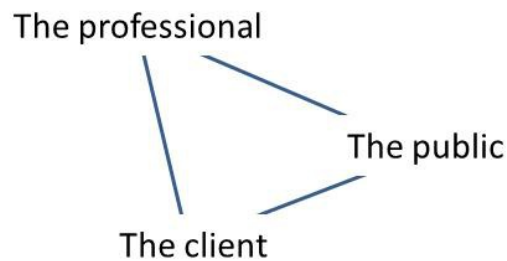
There are other power imbalances in addition to information asymmetry which bring about the potential for harm in relation to transactions with professionals. For instance, some professions deal with people who are emotionally vulnerable, or when services are delivered under situations where the individuals are stressed. Occupations whose members deliver services in situations where clients are in situations of heightened vulnerability are often the subject of some form of regulation.

Client capture

The simple model of professional regulation considered the situation as a dyadic relationship—the professional provides a service to a client. But this is not the context of professional practice for a number of professions. The idea is that the service provided by professionals for clients may cause harm to third-parties, and it is these third-parties which are in need of protection. Indeed, these third-parties do not have any say in the choice of the professional whose practice will have an impact on them.

A classic model here is that of auditors (public accounting). Auditors are paid by public corporations to certify financial statements as presenting a fair and accurate picture of the corporation’s financial situation. The purpose of regulating auditors is not to protect clients but to protect the public—especially shareholders and potential investors. Information asymmetry is not between the corporation and the auditor; it is between the public and the corporation. In fact the auditing process as carried out by competent auditors, who serve the public interest, is a

way of mitigating the information asymmetry between the corporation and the public. These three-way contexts have their own vulnerabilities.



The term 'client capture' has been used to describe "the propensity for a professional to be 'captured' by his or her client and render advice which has less to do with professional standards but which is more closely related to the commercial interest of both the client and the professional. Professionals who are 'captured' by their clients cannot then be relied upon to provide the advice their profession requires of them. That is not to say that the advice may necessarily encourage the client to break laws or otherwise behave unethically.²"

Indeed, client capture came to the fore in the wake of the Enron scandal where it appears to have played a role in the demise of Enron. Auditors at Arthur Anderson routinely succumbed to demands for certification from Enron management. Where the local auditors did not succumb directly, they were told to do so by their Chicago peers. When they refused, their advice was ignored. Professionals whose role was to act as watchdogs on behalf of the public failed to do what they were supposed to do, because they became more concerned about the commercial interests of their clients and firms. Client capture has also been described in corporate law firms.

The interesting aspect of client or employer capture is that it is insidious in the sense that the professional may not be aware that they have been 'captured.'

Employer capture

Now the concept of client capture was developed to apply to situations where the professional is practicing independently of the client either as a sole practitioner or as a member of a firm. The concept of client capture can be easily extended to situation where the professional becomes an employee of the organization. The professional-client relationship is replaced by a professional-employer relationship. The same three-way situation, with its inherent difficulties, can also arise. Indeed, the phrase 'employer capture' could be used for these situations. Professionals who practice their profession within organizations (as employees of the organization) are sometimes called 'embedded professionals.'

² Leicht, K. T., & Fennell, M. L. (2001). *Professional Work: A Sociological Approach*. Malden, MA: Blackwell.

There are a number of variations on the triangle model for embedded professionals. One situation is when embedded professionals provide a service to clients on behalf of their employer.

For instance, as reported recently in the media, pharmacists who are employees of large pharmaceutical retail firms might have been put in such a situation. Pharmacies receive payment from the provincial government for conducting medication reviews. Pharmacists were pressured by their employers to conduct these medication reviews whether they were called for or not.

Another situation, which is quite relevant to HR professionals, is where the decisions made by the professional have the potential to cause undue harm to group of individuals such as employees. Although, HR professionals can provide advice directly to employees, the impact on employees stems mostly from the decisions made by HR professionals.

Professionals are expected to provide *disinterested* advice—in the sense that the advice given by professionals is not supposed to be tainted by personal gain. Another term often used in this context is ‘professional independence.’ The idea is that professionals must be free to exercise their best judgment free of biasing influences.

How professional regulation minimizes or mitigates the risks posed to the public stemming from the practice of a profession

The purpose of professional regulation is to minimize the risk posed to the public by the practice of a profession. In fact, everything that a professional regulator does should relate to this core mandate in one way or another. Professional regulation legislation leaves it to the professional regulator to manage specific risks, rather the statutes give the professional regulator the tools to govern and regulate their profession. For example, professional regulation statutes do not deal with specific risk posed by the practice of the profession but give the professional regulator the authority to set standards for the practice of the profession.

At a broader level, there are two main purposes that the Legislature sees for introducing professional regulation: the enhancement of professionalism and the introduction of a system that holds professionals accountable for their conduct as professionals.

Professionalism

In creating a self-regulating organization the Legislature must be confident that there is already a sufficient level of professionalism in the profession. The reason is that self-regulation only works when the members of a profession are able to put aside their self-interest in favour of protecting the public interest. Consider, for instance, that private investigators and security guards are now required to be licensed under the *Private Security and Investigative Services Act, 2005*; however, no self-regulating organization was created. Instead, private investigators and security guards are regulated directly by the Ministry of Community Safety and Correctional

Services (MCSCS). This is likely because the Legislature did not think of private investigators and security guards as ‘professionals’ which could be entrusted with self-regulation.

Professionalism is than a desirable thing to have, it is the most important factor in the protection of the public. Professionals are often in a position where there is minimal supervision. Also, because of information asymmetry, those who oversee the activities of a professional may not be in a position to evaluate the quality of the professional service rendered. In such situations, the only factor that prevents a professional from abusing their position of power is *professionalism*. That is why one of the main objectives of professional regulation legislation is to enable professional regulators to establish and maintain high levels of professionalism among their members. From a regulatory perspective, fostering professionalism provides the best protection for the public.

Professionalism is seen as an ‘internal’ mechanism which mitigates risks to the public. Professionalism is seen as a prophylaxis against loss of independence, against taking advantage of vulnerable individuals, and against being ‘captured’ by interests that would not be consistent with professional values.

“The true test of a man’s character is what he does when no one is watching.”— John Wooden

Accountability

Accountability represents an ‘external’ mechanism which mitigates risks to the public. The idea is that professionals are accountable to their profession’s governing body for their conduct as professionals. This accountability is distinct and separate from any accountability professionals may have to their employers. This loop also addresses the information asymmetry aspect—other members of the profession are in a position to judge the competence and behaviour of other professionals. Accountability not only provides for means of redress but also acts as a deterrent.

In a nutshell, the purpose of professional regulatory legislation is to establish professional regulatory bodies which act to ensure that regulated professionals are competent and ethical and keep their members accountable for maintaining high levels of professionalism. As it relates to the practice of Human Resources management, the policy objective of the Legislature would be to enhance the competence and professionalism of HR professionals by establishing a professional regulatory body whose primary purpose would be to ensure that regulated HR professionals are competent and ethical and to hold regulated HR professionals accountable for maintaining high levels of professionalism.

Part II: What was said on the floor of the Legislature

The approach would appear straightforward—let’s consider the actual reasons for enhancing the regulation of HR professionals in Ontario by analysing what was said on the floor of the Legislature in relation to Bill 32. In reality, the approach is not as straightforward as it would appear to be. One cannot expect MPPs to use terms such as information asymmetry, client

capture, or employer capture; It take some interpretation and the making of some links to discern the rationale proffered to support the enhanced regulation of HR professionals.

The final debate on *Bill 32, An Act respecting the Human Resources Professionals Association*, was held on November 5, 2013. Hansard is the official, complete report of proceedings in a parliament or Legislature. Eight MPPs, from all three parties, spoke on behalf of the Bill. Fifty-three statements were identified as having relevance to the rationale for enhancing the regulation of HR professionals in Ontario. These fifty-three statements with commentary are given in Appendix A.

It should be notes that no MPP spoke against the Bill; all of the statements made were in support of the Bill.

1. The enhanced regulation of HR professionals by public act would lead to greater compliance on the part of employers with existing and future employment relationship and workplace legislation.
2. The enhanced regulation of HR professionals by public act would, by creating a robust professional regulatory body for the profession, foster a strong and professional HR profession—an outcome which serves all stakeholders.
3. The enhanced regulation of HR professionals by public act would support the ‘professional’ management of Human Resources which is not on the side of employers or employees but one guided by the objective of better employer-employee relations.
4. The enhanced regulation of HR professionals by public act would support the independence and integrity of HR professionals which will enable employers and employees to benefit from trustworthy advice and bring about enhanced public confidence in the management of Human Resources.
5. The enhanced regulation of HR professionals by public act would give a clear choice between regulated and unregulated professionals to those who employ or engage Human Resources professionals. (The assumption being that when given this choice most employers would opt for regulated professionals.)
6. The enhanced regulation of HR professionals by public act would also include some checks and balances to ensure that the professional regulatory body acts in the public interest.

It is not that the Legislature did not recognize that there were benefits to HR professionals that would follow from passage of the Bill; but these benefits to the profession were seen as instrumental in creating a benefit to the public. In other words, a strong HR regulatory body and a strong HR profession are in the interest of the public mainly because this leads to a higher standard of professionalism among HR professionals.

Clearly, two stakeholder groups were identified: employers and employees. MPPs noted that there were risks to both employers and employees. The position that MPPs seem to take was that the professionalization of HR was to everyone’s benefit. One MPP saw a business environment characterized by “first-class employment employer-employee relationships” created a competitive advantage for Ontario. This is an interesting comment in that it puts HR professionals neither on the side of employers or on the side of employees but on the side of

“first-class employment employer-employee relationships.” This seems to be a reference to service of the ‘greater good’ that is characteristic of professions.

Some MPPs referred to the fact that HR professionals have access to a lot of confidential information and that it is important that all parties have trust in the professionalism of HR professionals in handling this kind of information.

One MPP did speak to ‘information asymmetry’ whereby employers who count on their HR professionals for advice on compliance with employment and workplace legislation might be misled by unregulated HR professionals and inadvertently breach the law leaving them exposed to fines by the Ministry. Interestingly, this example illustrates risk for both the employer (fines and reputational risk) and the employee (as a result of non-compliance with employment and workplace legislation) both the result of “ill-informed advice from unregulated HR professionals.”

One MPP referred to ‘employer capture’ although not using that terminology. This MPP related the story of how they had been cheated out of compensation down the road because they had been counselled not to report a work-related injury at the time. The advice he had been given was not in his interest but in the interest of the company. The idea here is that professional HR professionals would give trustworthy advice to employees—advice that would allow employees to make the right decisions to protect their own interests.

Most importantly the MPPs did touch upon the three conditions set out earlier in this article:

1. The MPPs saw that there was residual risk, to employers and employees, that employment relationship and workplace legislation cannot entirely control;
2. that this residual risk results in a potential for significant harm to individuals who do not have the means to protect themselves; and
3. that HR professionals have a specific and identifiable role in managing employment relationships and the workplace such that there are specific and identifiable harms that may result from the practice of the HR profession.

That, combined with the fact the proposed legislation did not prohibit anyone from practicing HR and that HR professionals had sought enhanced regulation, made a strong case for the enhanced regulation of HR professionals by public act in Ontario.

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Human Resources Professionals Association

January 1, 2016

Appendix A:

Transcripts of debate of Bill 32 from the floor of the Ontario Legislature, November 5, 2013

Eight Members of Provincial Parliament (MPPs) stood to speak to the bill on third reading.

- Mr. Vic Dhillon, MPP, Brampton West, Liberal Party
- Ms. Sylvia Jones, MPP, Dufferin-Caledon, Progressive Conservative Party
- Ms. Cindy Forster, MPP, Welland, New Democratic Party
- Hon. David Zimmer, MPP, Willowdale, Liberal Party
- Mr. Rick Nicholls, MPP, Chatham-Kent-Essex, Progressive Conservative Party
- Miss Monique Taylor, MPP, Hamilton Mountain, New Democratic Party
- Mr. Todd Smith, MPP, Prince Edward-Hastings, Progressive Conservative Party
- Mr. Paul Miller, MPP, Hamilton East-Stoney Creek, New Democratic Party
- Ms. Laurie Scott, MPP, Haliburton-Kawartha Lakes-Brock, Progressive Conservative Party
- Ms. Teresa J. Armstrong, MPP, London-Fanshawe, New Democratic Party

	Excerpt from Hansard, November 5, 2013	Commentary in regards to the relevance of the statement in justifying the regulation of HR professionals
1.	This act will better safeguard the public interest by enhancing its regulatory and oversight powers to ensure that their members' workplaces are fully compliant with existing and future provincial workplace legislation.	Implicit in this statement is the idea that HR professionals are in a position to ensure that their workplaces comply with workplace and employment legislation. (This is somewhat of a double-edged sword for HR professionals. It is because HR professionals can be held responsible for the compliance of their organization with workplace legislation that it makes sense to regulate them. However, many HR professionals do not feel that they can ensure the compliance of their organization with workplace legislation.
2.	Bill 32 will assist HRPA and its members to evolve into a strong and credible tier-one profession. This is because there are risks to consumers and businesses that are not fully addressed in the 1990 act.	If it were only for the benefit of the members of a profession, a strong and credible profession would not be sufficient reason to regulate a profession. Here the linkage is made between a strong and credible profession and the ability to minimize or mitigate risks to consumer and businesses. A strong and credible profession is instrumental in protecting consumers and businesses from harm.

	Excerpt from Hansard, November 5, 2013	Commentary in regards to the relevance of the statement in justifying the regulation of HR professionals
3.	These include harm to the public. In 2010 and 2011 alone, more than one in seven former HRPAs members continued to use the CHRP designation without authorization.	Unauthorized use of designation is identified as a source of harm to the public. The inability to enforce authorized use of designation allows unqualified and unregulated professionals to pose as qualified and regulated professionals. This removes ability of the public to make informed decisions about the professionals they deal with.
4.	There is harm to business. Unregulated persons may not know the laws regarding workplace safety, violence and discrimination and the Employment Standards Act, in which businesses could be fined by the Ministry of Labour as a result of ill-informed advice from unregulated HR professionals. In many cases, businesses relied on these persons to provide them with advice on employment standards and proper accommodations for employees.	This is a classic information asymmetry argument. Businesses are not always able to determine the quality of the service being provided to them. Unregulated HR professionals are more likely to provide ill-informed advice which would cause employers to run afoul of the law. Regulating HR professionals provides a way for employers to know that they are getting sound advice in regards to the application of workplace and employment law. The regulation of HR professionals is linked to the enablement of workplace and employment legislation.
5.	Bill 32 will also add HRPAs to the Fair Access to Regulated Professions Act, 2006.	The <i>Fair Access to Regulated Professions Act, 2006</i> , was enacted so as to ensure access to career opportunities for all qualified Ontarians. Regulating HR professionals by public act ensures that all qualified Ontarians would have fair access to HR certification. The risk or source of harm being managed here is the damage to the economy that results from unfair barriers to entry into professions.
6.	Another distinction would be that HRPAs's board would include three individuals who are not members of the association or a self-regulated human resources body, and who are appointed by the Lieutenant Governor in Council	Regulating the HR profession would enhance public protection by having public members on the profession's regulatory body. The rationale here is that public members on the board of the governing body reduce the chances that decisions made by the governing body will serve the interests of the profession instead of the interests of the public. This is not a justification for regulation <i>per se</i> ; but it removes a reason not to regulate.
7.	The public can enjoy greater confidence in regulated. HR professionals who are HRPAs members.	Regulation is linked to greater trust on the part of the public. Greater confidence in the administration of Human Resources is seen as a benefit for the public; in the same way that uncertainty about the qualifications and ethicality of HR professionals is a source of harm for the public.
8.	This new act gives consumers and businesses a fair and transparent vehicle to make complaints about HR professionals	Strong complaints processes are good for consumers and businesses. Recourse is seen as a way of balancing to a degree information or power asymmetry.

	Excerpt from Hansard, November 5, 2013	Commentary in regards to the relevance of the statement in justifying the regulation of HR professionals
9.	It will protect consumers and businesses from unregulated HR professionals	Although not a licensing act, voluntary regulation provides consumers with a choice between regulated and unregulated HR professionals. It is thought that consumers and employers will have a preference for dealing with regulated HR professionals.
10.	...will provide a practical way to achieve the goals set out in the Accessibility for Ontarians with Disabilities Act and the Employment Standards Act.	Again the idea is that regulated HR professionals are either implementers, or at least key influencers, in the implementation of workplace legislation. Regulating HR professionals and strengthening the professionalism of HR professionals makes it more likely that workplace legislation will be properly implemented.
11.	Ultimately, strengthening the protection of the public is what Bill 32 is all about. As the Ontario workplace evolves and as the government continues to introduce legislation to govern the workplace, organizations need professionals who can interpret and implement these rules for the benefit of employers and employees	Again the idea that regulated HR professionals are key to the implementation of workplace legislation. Again, the idea is that regulation will make it more likely that HR professionals will implement workplace legislation properly.
12.	Bill 32 provides a framework for membership in the association and prohibits the use of specified designations and initials by unauthorized individuals or entities.	As noted above, enforceable title protection is seen as safeguarding the consumer's choice.
13.	It also sets out procedures for dealing with complaints against the association's members, establishes a disciplinary process and authorizes practice inspections.	Again the availability of recourse is seen as a benefit to the public.
14.	Bill 32 will also establish procedures for determining whether a member of the association is incapacitated and creates accommodation in cases where incapacity affects a member's practising ability.	Incapacity of HR professionals is also a risk factor for the public.
15.	Bill 32 will therefore mean that HRPAs will be better able to ensure the quality of the HR profession in Ontario	Professional regulation is seen as bringing about higher standards of competence and ethics, which is good for the public.
16.	Bill 32 is also important because it will provide more regulatory strength for HRPAs, which will allow the organization to better protect the public, employers and employees.	The Legislature does not look at 'regulatory strength' as a benefit to either the professional regulatory body or its members; regulatory strength is seen by the Legislature as providing the governing body with the appropriate tools to get the job done—which is to protect the public, employers and employees.
17.	I support Bill 32 because I feel that by providing a necessary, fair and strong regulatory structure to the HR profession in Ontario, we are achieving a win-win for business, the public and Ontario's HR professionals	Note that in this comment, regulation is seen as a win-win for business (employers), the public (employees), and HR professionals.

	Excerpt from Hansard, November 5, 2013	Commentary in regards to the relevance of the statement in justifying the regulation of HR professionals
18.	We are finally getting that much closer to passing Bill 32, protecting employers and employees and ensuring that the HR Professionals Association gets what they need to service Ontario.	Again, regulation is seen as providing the Association with the means to protect employers and employees. Note the interesting turn of phrase whereby the HRPA is in the 'service of Ontario.'
19.	But as legislation has grown in this province, you really have to have people with credentials, people with a designation, to be able to deal with employees in an appropriate way.	There is reference to 'growing' legislation. The idea is that although we might have been able to do without the regulation of HR professionals in the past, this is no longer the case. This answers the 'why now' question.
20.	The Ontario disabilities act has been in the forefront in the last few years, so human resource people need to ensure that employers across this province, whether they're in the public sector or the private sector, are actually complying with the rules as they start to get implemented.	Again, the idea is that a key role of 'human resource people' is to ensure that employers comply with workplace legislation.
21.	If you have good HR people who are designated and trained, they can give some advice to employees about how to manoeuvre their way through those systems.	Here, regulation is seen as ensuring that HR professionals are competent and ethical which allows them to provide good advice to employees as to how to navigate the system. This is one of the few mentions of HR as providing a direct service to employees.
22.	Why is this a good piece of legislation? What will it do for Ontario? Why is it that all members of all political parties have gotten behind this bill? I think it's a realization that in Ontario, we are trying to build an economy which will be one of the leading economies in the world, certainly in the country.	This is an interesting 'macro' argument; essentially, competent and ethical human resources management leads to a better economic environment. The unstated link is that the regulation of HR professionals will bring about more competent and ethical Human Resources professionals, which in turn will lead to better workplaces.
23.	It's the role of HRPA to assist in building that relationship between employer and employee. The members of HRPA have got all of the skill sets to make that kind of a contribution so that, at the end of the day, everybody wants to do business in Ontario. It becomes the place of choice to start business, to continue business and to relocate business.	This is a very interesting comment. It certainly goes beyond the traditional view of professional regulators as 'gatekeepers and policemen.'
24.	"Ontario is our number one choice to locate our businesses"-one of the reasons they'll do that is because organizations like HRPA have created a first-class employment employer-employee relationship	Same as above. The regulation of HR professionals is seen as leading to 'first-class' employer-employee relationships. Note that this statement does not put HR professionals either on the side of employers or on the side of employees—it puts HR professionals on the side of 'first-class' employer-employee relationships.

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25.	Bill 32 seeks to repeal the Human Resources Professionals Association of Ontario Act, 1990, and replace it. What is more important to note is that it would be a public bill, while the previous legislation is a private act. This confers status and recognition to the act by declaring it as the will of the Legislature. It also sends a clear message to the HR professionals around the province that their role is absolutely taken seriously.	Again, the argument here is that a strong HR profession is in the public interest. This is because the Legislature sees HR professionals as being 'mediators' or 'brokers' in between employers and employees and whose objective is to create fair and productive workplaces. (This could be seen as a hint to the higher purpose of the HR profession. In essence, HR professionals serve the greater good by creating fair and productive workplaces.)
26.	Human resources professionals are given an enormous amount of responsibility and require a great amount of trust from their employers and fellow employees. They're asked to handle a wide variety of situations. It's great to know that your HR professional is acting competently and ethically.	This statement suggests that HR professionals need to be regulated because of the high standard of professionalism required because of the nature of R work.
27.	Designated human resources professionals do a great job to make sure the companies they work for are compliant with legislation and regulations as they change over time. The HRPAs help keep them updated on any changes, through educational programs that detail how new laws impact the workplace.	Again, the idea that regulation supports HR professionals in making their organizations compliant with workplace legislation.
28.	As HR professionals are given very personal information-for example, financial or health information of individuals-we must establish an adequate mechanism to handle complaints. By establishing a procedure for such matters, it depoliticizes what can often be a heated issue.	Regulation is necessary because HR professionals have access to confidential information of employees. Regulation makes HR professionals accountable for maintaining confidentiality. The professionalism of HR professionals is what makes this access to confidential information acceptable to management and employees alike. This special role within organizations needs to be protected.
29.	Under the new bill, three members of the association's board would be non-members. These independent board members will increase the accountability of the HRPAs moving forward.	Again, the appointment of Order in Council appointees to the Board of the governing body is not a reason for regulating HR professionals but removes a reason for not regulating HR professionals.
30.	This bill modernizes a professional statute, increases oversight and accountability, and puts mechanisms in place to establish ethical standards in an incredibly important profession	The Legislature seems as concerned about ethical standards as about competence. Professional regulation is seen as particularly relevant to matters of character and conduct.
31.	It is important that we recognize the professionalism required in human resources and that the people in those positions are treated as professionals and also that they be required to act as professionals	The argument here is that professional regulation supports and enforces professional attitudes, values, and conduct.

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32.	The bill will allow the HRPAs to take a much more hands-on approach to training, monitoring and disciplining its members, to ensure that a higher standard is expected and delivered in the field	Professional regulation is required to enable the professional regulatory body to do what it needs to do to establish and enforce high standards of competence and ethics.
33.	Sometimes those contracts can be very detailed, and it requires a significant degree of professionalism to work with them, both on the union side and on the side of management. Thankfully, as contract language has developed, professionalism has developed along with it	The argument is that HR work requires a high degree of professionalism, and professional regulation is the best approach to ensure this high level of professionalism.
34.	Human resource personnel need to understand these laws, which requires a good degree of professionalism, whether it's in a workplace that is unionized or not	Same as above
35.	This act will allow the HRPAs to build upon their credibility, giving increased confidence to the public	Public confidence was mentioned before. Public confidence is often seen as an essential condition for regulators to be able to do their work. The passage of a public act increases the confidence of the public in the profession.
36.	That's what this bill does for human resources professionals. Those human resources professionals who have been pushing for this for years are proud of the work they do. They've taken the time to get trained and keep themselves updated on the changes in legislation and in the workplace. They want those high standards that they set for themselves to be the expected standard across their profession, and they should be commended for that.	Regulation entrenches high standards.
37.	All it takes is one bad apple to ruin the whole lot, and this is what these organizations want to protect against.	Regulation enables the Association to deal more effectively with the 'bad apples.'
38.	They ask us, as legislators, to ensure that members of their profession are held to a higher account, that they're held to a higher standard, that we're raising the bar for their profession. That's because we all should believe in higher standards,	Professional regulation raises the bar on professionalism and competence—that is good for all concerned and hold professionals accountable to that standard.
39.	By giving the association the ability to govern, regulate and, most importantly, discipline its members, we've empowered this organization to uphold the integrity of the profession	Again, we see an emphasis on <i>integrity</i> . Regulation enables the Association to establish, maintain, and enforce high standards of professional conduct.

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40.	Without really thinking about it, we trust them completely with this very personal information. More importantly, Speaker, we trust them to advise us about how to plan for our future, how to enhance our pension planning, when to think about retiring, and how to protect our families with insurance and health plans. Really, they are the professionals who advise us through life's sometimes biggest decisions	Interestingly, providing advice to employees on matters of pension planning, retirement planning, health benefit planning is not what most HR professionals think of as core to the HR role. Yet the core issue here is trustworthiness, which is a hallmark of professionalism. Essentially, HR professionals should be professional enough to set aside their personal self-interest, and the interest of the employer who employs them, in order to give objective advice which puts the interest of the employee first. This is sometimes called independence.
41.	Right now, the 47 non-union staff at Stelco/US Steel who are going to be let go will need extreme compassion from the HR people and the best advice possible given by professionals concerned with their welfare and not necessarily just their employer's goals and bottom lines.	Again, this is the direct service aspect. Professionals are supposed to put the interests of the users of their professional services first.
42.	Having a registered professional designation with the force of an association to govern, regulate and discipline the practice provides that extra assurance that we need to rely on information given and advice provided	Professional regulation supports the independence of HR professionals. HR professionals should be trusted to provide good advice (independent and in the best interest of those served by HR professionals), and not necessarily what is in the interest of the employer. (For instance, as seen recently, pharmacists who are employees of large pharmaceutical retail firms are expected to do what is best for clients not to push product or deliver unnecessary services to boost the profits of their employers.)
43.	One of the areas that is of high concern to me is the advice that an HR professional gives to an injured worker.	Here again is the idea that in dealing with injured employees, there may be a conflict between the interests of the employee and the interests of the employer. The concepts here are independence and information asymmetry. HR professionals should not use their expert knowledge of the rules and the system to persuade employees to act in ways that would not be in the best interest of the employee but in the best interest of the employer. The unstated link here is that professionalism is linked to independence, integrity, and trustworthiness. By strengthening the professionalism of HR professionals, it makes it more likely that HR professionals will act with independence.

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44.	So I'm glad this is being looked at. I'm glad that these people will be held accountable by themselves, by their own organization-to work to benefit the employees as well as the management and the companies you're going to work for.	Regulation is necessary to bring about accountability--but note that the accountability is to work to the benefit of employees as well as employers. The Legislature does not see Human Resources professionals simply as employees or consultants who serve only the interests of the organization that hire or engage them. The Legislature
45.	Speaker, in a non-union environment, you don't have much say. You rely on these people. If they let you down or mislead you, you have no grievance procedure; you have no arbitration; you have no one to go to to fight for you. If you try to take them to court or try to go into a situation where you're trying to retrieve some kind of benefits or coverage, good luck, because they've got big lawyers-you're in trouble	This is an interesting comment. It suggests that in a unionized environment, there would be less need to regulate HR professionals because of the existence of grievance and arbitration procedures. In a non-unionized environment, employees must rely on HR professionals to do the right thing. This argument points to the vulnerability of employees in a non-unionized environment—all that protects employees from being taken advantage of is the professionalism of HR professionals. Therefore, anything that supports the independence, integrity, and trustworthiness of HR professionals is important in minimizing or mitigating risk to employees.
46.	Because of this access to very personal, private information, I would hope that those hired as inspectors are also required to hold the same HR designation and oath and commitment to the same standards of confidentiality as the HR professionals	Interesting comment. One idea is that professional regulation holds HR professionals accountable for high standards of confidentiality. The other idea, is that others who conduct workplace inspections under other acts would be required to hold the HR designation.
47.	I'm pleased to support a bill to ensure that those HR professionals, who can significantly impact the lives of so many of us unknowledgeable employees who need their knowledge to get them through tough times, who are unskilled in many details of their employment lives-these people are the guides through that maze	Again, the idea is to protect employees on which HR professionals have a significant impact and for which there is information asymmetry. Again, the notion of HR professionals as providing advice to employees, and that this advice must be trustworthy.
49.	This bill provides the extra security to reduce errors that can impact significantly the lives of so many everyday workers	The regulation of HR professionals leads to a reduction in errors that impact workers.
50.	With such an extensive reach, it's important that they are properly accredited and held accountable, so the Human Resources Professionals Association grants the certified human resources professional designation-that's a lot of language	The idea is that HR professionals can cause harm if not properly accredited and held accountable for their conduct.
51.	They're exposed to some very sensitive and confidential information about a business's employees. As such, they may be held to a very high ethical standard concerning treatment and protection of this information.	Again, the idea is that HR professionals have access to sensitive and confidential information about employees, and that professionalism (ethical standards) is often the only thing that prevents abuse of this access.

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52.	That's good to know, but this bill, of course, is going to strengthen that record.	The reference here was to the finding that none of the convictions under the Employment Standards Act (ESA) occurred in workplaces where there was a Human Resources professional registered by HRP. The regulation of HR professionals is linked to a reduction in ESA convictions.
53.	It's just going to make things better for the workplace in general, on both sides.	Again the 'both sides' are employees and employers. The belief is that more professional HR professionals is good for employers and employees alike.