

Regulatory HR bill reintroduced in Ontario

If passed, Bill 28 would increase protections for HR professionals, public

BY AMANDA SILLIKER

A BILL THAT WOULD regulate HR professionals who are members of Ontario's HR association in a manner similar to accountants has been reintroduced in the provincial legislature.

Bill 28, an Act respecting the Human Resources Professionals Association (HRPA), is a private member's bill sponsored by three MPPs — David Zimmer (Liberal), Michael Prue (NDP) and Christine Elliott (Progressive Conservative). It underwent first reading on Dec. 7.

The previous legislation — Bill 138 — was introduced by Zimmer alone in November 2010 and wasn't passed before the legislature adjourned for last year's election.

Bill 28 is "virtually identical" to Bill 138, with only minor grammar changes, said Paul Broad, a partner at Hicks Morley in London, Ont. If passed, the bill would repeal the private act currently in force — the Human Resources Professionals Association of Ontario Act, 1990 — and enact a new public act, the Registered Human Resources Professionals Act, 2011.

The new act would allow the HRPA to clarify and monitor standards and practices of the profession and of the Certified Human Resources Professional (CHRP) designation in Ontario.

"The profession feels very strongly that they are a professional body and they want to make sure they have practice standards that are maintained by all of their members and the public can have confidence in the work that they do," said Elliott.

"It's important both in terms of the public interest as well as the standards the association wants to maintain internally."

But not everyone is endorsing the proposed legislation.

"The question is: Where was the crying

need for this legislation?" said Gary Luftspring, a senior partner at Ricketts, Harris in Toronto. "I certainly can't think of a whole lot of disciplinary issues or a lot of HR people who have been front and centre in the news, so I look at it and I say, 'Before governments intervene and regulate, one should have a very clear idea of what the need is. Otherwise, why is the government even involved?'"

The notion of a public act was introduced by the HRPA in 2008. Over the years, the association has published various studies, including a recent report that looked at 489 violations of the Employment Standards Act (ESA) between October 2008 and January 2010.

The study determined none of the names on the list of violations were members of the HRPA, said Bill Greenhalgh, CEO of the HRPA in Toronto.

"So we went to the government and said, 'Look, this is really important here. This is a really good indicator if you're a member of HRPA you've signed a code of professional conduct and companies they work for don't violate employment standards,' so the government said 'My God, this is incredible' and they moved very quickly," he said.

One benefit of the new public act is it gives the profession a better opportunity to influence public policy, said Greenhalgh. When the government is looking at legislation, it calls upon primary associations that may be affected and gives them an opportunity to talk to their members and provide feedback on the policy, he said.

The new bill would also provide backup for HR professionals when faced with tough decisions, said Broad.

"Every professional ends up in situations where you don't know what to do and it's complex, so it's always good to have a strong support network behind you to assist you," he said.

Complaints, discipline and appeal process

There is already a complaints, discipline and appeal process in place for HRPA members but Bill 28 would entrench it in statute, said Scott Allinson, HRPA's vice-president of public affairs.

And while the association already has the power to fine members through its by-laws, the new legislation would also allow it to fine individuals who are not HRPA members but are falsely using the CHRP designation, said Allinson.

Under the current legislation and by-laws, the amount of the fines isn't defined. Under Bill 28, the maximum fine HRPA could impose is \$25,000 per complaint. That's the standard amount prescribed in similar acts, said Greenhalgh.

Instead of only having a disciplinary process for complaints in place — as in the current bill — the new bill would allow for an investigations process that may involve medical examinations and practice inspections to determine if an individual has the capacity to act as an HR practitioner, said Broad.

"For example, the contract they have is not being fulfilled — is it because of their performance or is it because of some disability of some kind? It could be alcoholism or drugs, it could be stress, it could be many, many things but the old bill doesn't allow us to attribute anything to that," said Greenhalgh. "This one is a more modern bill and more reflective of what is in the workplace."

As part of the investigation, HRPA would have the ability to enter business premises, question individuals and require documents believed to be relevant to the investigation to be produced.

"What does bother me as a lawyer is there are powers of search and seizure into private businesses," said Luftspring. "So, is

that going to have an effect on businesses who don't want (the HRPAs) to come in and, therefore, won't hire (HRPA members) or won't encourage people to join?"

Another component of the bill is it would allow for custodianship of a member's practice, including certain property related to that practice in a variety of situations such as termination of membership, death and incapacity. This allows the HRPAs to make sure clients aren't left high and dry by appointing someone in the interim, said Greenhalgh.

'Overwhelming response' from members

Bill 138 received written support from 23 of the HRPAs's 28 chapters, representing 85 per cent of members, said Greenhalgh. Most of the remaining chapters had an individual on the board who wrote in support of the bill simply because the chapter didn't have a chance to get its members together and vote, he said. And Greenhalgh said he is "absolutely confident" that level of support is still there.

"We had a conference call with the chapter presidents (when Bill 28 was being introduced) and I got an overwhelming re-

sponse from them — 'This is great, it's fantastic, what can we do to help, let us know, we want to know when can we accelerate it.' They were very, very enthusiastic about moving it forward," he said.

The HR profession has grown so much over the years, from just requiring basic skills to now needing complex expertise, and this legislation is one way to keep up with that growth, said Rick Webb, director of HR at Sault College and past president of the HRPAs's Algoma chapter, both in Sault Ste. Marie, Ont.

"I think the profession has grown to a point where this is just a natural evolution — this is the next right step to recognize not only the work we do but also to protect our profession," he said. "In the long run, it helps us even economically because the more recognized you are as a profession, you're paid for that expertise — it's not just something anyone can do."

Greenhalgh said the HRPAs will be communicating with and engaging members on Bill 28 over the coming months by:

- creating a dedicated website for the act (www.hrpaact.com)
- hosting local chapter town hall meetings and webinars

- providing an information session at the annual conference in February
- communicating regular status updates on the act to members.

"We want to get input from members... we want this discussion to take place," he said. "If people are confused or concerned, we want to be able to address that and if there's anything left over that they're still worried about, we want to make sure it is represented to the committee when the committee sits."

Bill 28 is expected to receive second reading in April 2012, said Elliott. If it passes second reading, the bill will go into the committee stage where the public can express concerns. Then it would have to go through third reading — which will happen "sometime hopefully in the next 12 months," said Greenhalgh, and be given royal assent to become law.

"Historically, not many private member's bills get passed," said Broad.

"But one advantage is it's being supported by three MPs, one from each party, so that's clearly going to show there is a lot broader support than maybe there was last time. It's probably more likely to be passed than last time."