



Winter Webinar Series
Building capacity across our member organizations for
organizational and governance excellence!

Our Vision

Provide equitable access
to excellent team-based
primary care for every
person in Ontario



Our Purpose

Empower primary care teams to be at the centre of a connected, comprehensive and effective health system

Advocacy

- Elevate AFHTO as trustworthy, credible and leading voice
- Engage members / build a movement
- Track progress and communicate

Support

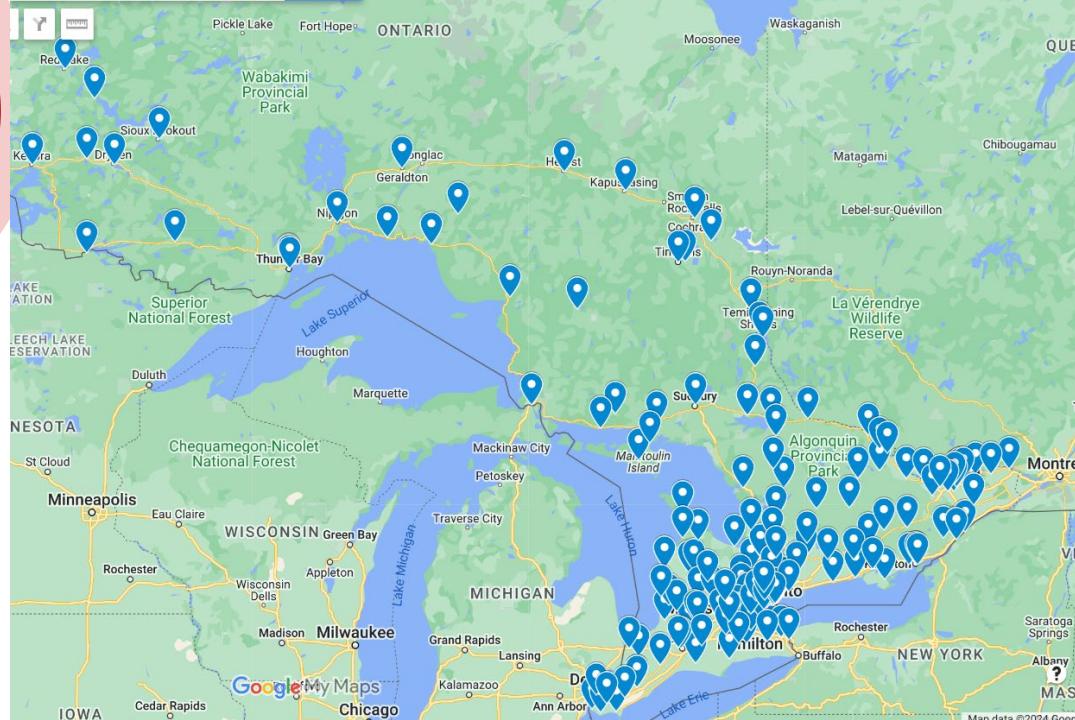
- Meaningfully engage members
- Improve timely and relevant communication
- Support teams through change
- Address needs through effective activities (tools, training, education)

Operational Excellence

- Achieve governance and operational excellence to demonstrate value to members and be better positioned to fulfill our purpose and drive toward our vision (governance model, staffing, resourcing, brand positioning, business model, mandate)

Member Engagement & Communications

189 members
in 2024



AFHTO & INQ LAW PRESENT

Lunch & Learn Webinar Series

Join AFHTO and INQ Law for an engaging webinar series designed to support and enhance your knowledge about information management and retention best practices.



Kathy O'Brien
INQ Law
Counsel



Simmie Palter
INQ Law
BA, LLB

**Information and Data
Retention**
Part 1: Corporate and
Financial Records

 Wednesday Jan. 22, 2025
 12-1pm EST

Governance 101
Update and Refresh

 March 6 ,2025
 12-1:30pm EST

**Information and Data
Retention**
Part 2: PHIPA and Patient
Records

 Wednesday Feb. 26, 2025
 12-1pm EST

 www.afhto.ca

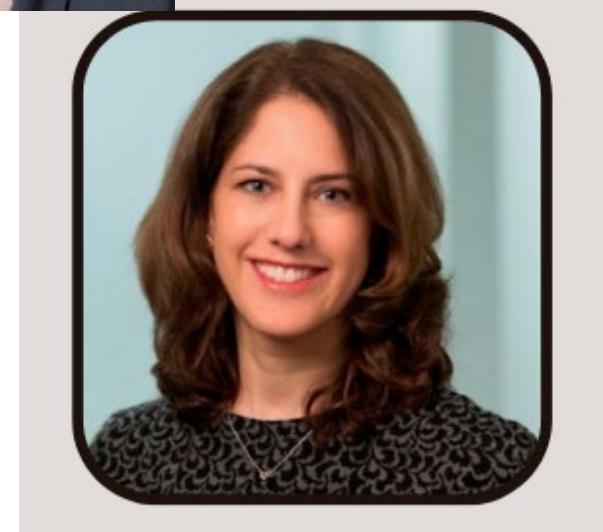
Welcome, Kathy O'Brien and Simmie Palter

Kathy's practice is focused on corporate and commercial matters. She regularly speaks to boards of not-for-profit and charitable corporations to advise them of their governance and charitable law responsibilities, including providing advice on hospital, foundation and association by-laws.

Kathy works with healthcare organizations and foundations to establish appropriate governance structures and policies to facilitate and maintain healthy, cooperative relationships.

Simmie is a partner of INQ Law, and over the last two decades, has built a diverse health law practice that includes governance, health privacy, clinical and records issues, data sharing, corporate/commercial agreements, freedom of information and risk management.

Simmie strives to give practical and timely solutions to legal problems. She enjoys building positive long-term relationships with clients that include hospitals, long-term care homes, health profession associations, community mental health agencies, family health teams, physician groups, community health clinics, agencies and disease charities.





**Governance 101:
For Ontario Primary Care Boards & EDs**

**Kathy O'Brien &
Simmie Palter**

March 6, 2025

Today's Agenda

- Snapshot - corporate structure of a **FHT****
- *Connecting Care Act (CCA)* – Ministry powers
- Responsibilities of the Board collectively
- Duties & liabilities of directors individually
 - Obligations imposed on directors by legislation
- Good governance practices
 - Takeaways – to take back to your Board

** For ease of reference, we'll be referring to FHTs in this presentation - but the content of this presentation applies equally to:

- Nurse practitioner-led clinics
- Aboriginal health access centres
- Community health centres
- Inter-professional primary care clinics



Ontario Family Health Team:
Corporate Snapshot

- Ontario corporation
- Non-share corporation (with members who elect directors)
- Governed by Ontario's *Not-for-Profit Corporations Act* and the *Connecting Care Act, 2010* amongst others
- May be a registered charity with Canada Revenue Agency – do you know?
- **Board governs corporation**
- Previously funding agreement may have required:
 - Community-governed Board
 - Physician-led Board
- Current funding agreement requires:
 - Skills-based Board

- **Who are the Members?**

- Often the directors and physicians in affiliated FHOs
- Sometimes only the directors

- **What do the Members do?**

- Meet once yearly at a minimum (annual meeting/AGM)
- Receive financials
- Elect directors
- Appoint auditors

- **Members also have approval rights over *out-of-ordinary course* decisions such as:**

- Confirmation of by-law changes
- Changes to incorporating documents
- Mergers (amalgamation, asset transfer)
- Finite list

- **Key governance documents:**

- Letters patent under old *Corporations Act*

- Legal name

- Corporate purposes

- *Articles of Amendment under Not-for-Profit Corporations Act*

- Size of Board

- Chair – casting vote rights – possibly

- Special provisions if a charity

- *By-laws compliant with Not-for-Profit Corporations Act*

- Board Exclusive Responsibilities (7 decisions only Board can make – no delegation possible)

- Director right of dissent

- No automatic removal of directors for failure to comply or attendance issues

- Etc.



Connecting Care Act, 2019:
Ministry Powers

- Minister of Health
- FHT = health service provider under CCA
- **Powers of Minister**
 - Appoint an investigator to investigate and report on any matter
 - Appoint a Supervisor to operate and manage the affairs of the FHT
- **Where the Minister considers it “in the public interest to do so”**
 - Taking into account quality of management
 - Availability of financial resources
 - Quality of care
- **Supervisor is an individual appointed by Minister to take over:**
 - Board
 - Members
 - Officers
- Board effectively serves at the pleasure of the Minister

- **Supervisors appointed today in Ontario**
 - Hospitals
 - London Health Sciences Centre (September 2024)
 - Financial mismanagement/deficit (\$150M)
 - Fraud allegations
 - Renfrew Victoria Hospital (June 2024)
 - Concerning financial practices
 - Strengthen and improve governance and accountability
 - Stevenson Memorial Hospital (September 2024)
 - Governance, accountability & quality of care
 - **Kawartha Haliburton Children's Aid Society (October 2024)**
 - Running a deficit
 - Quality issues
 - **Context:**
 - Over 25 hospital supervisors in past 24 years
 - CHCs:
 - South Riverdale Community Health Centre with limited scope (Fall 2023)

- **Integration Powers**

- Ontario Health (OH) has powers to mandate integrations
- MOH has powers to mandate more existential integrations
 - Cease operating
 - Transfer assets
- Voluntary integrations have to be run by (approved by) OH
 - At least 90 days' notice with a business case
 - If radio silence, integration approved on Day 91
 - OH can ask for more time and more information
- “Integrate” is very broadly defined
 - to co-ordinate services and interactions between different persons and entities
 - to partner with another person or entity in providing services or in operating
 - to transfer, merge or amalgamate services, operations, persons or entities,
 - to start or cease providing services
 - to cease to operate or to dissolve or wind up the operations of a person or entity

Other CCA Provisions of Note

- **Service Accountability Agreement (SAA)**
 - Any health services provider funded by OH must enter into a Service Accountability Agreement with OH (“SAA”)
 - If OH and a FHT cannot agree on the terms of the SAA by deadline set by OH, OH may unilaterally set the terms of SAA
- **Identify Integration Opportunities**
 - All health service providers must identify integration opportunities to provide “appropriate, co-ordinated, effective and efficient services”
 - **OHTs, partnering & collaborations, resource sharing**
- **Community Engagement**
 - Must have mechanisms for engaging with patients, families, caregivers, employees and others
 - Also required by the Funding Agreement

2018 FHT Funding Agreement (SAA)

- **Minimum expectations for good governance practice:**
 - FHT must have voting members – not prescriptive as to who these people are
 - FHT must be ‘affiliated’ with at least one Affiliated Physician Group (FHN, FHO, or Rural and Northern Physician Group Agreement)
 - Schedule A Governance Requirements:
 - Process for admitting and expelling members
 - Process for hiring and termination of personnel
 - Process for monthly review & assessment of the Service Plan to determine compliance with the Funding Agreement & an action plan for improvement when necessary
 - Process to identify and manage actual, potential or perceived Conflicts of Interest

2018 FHT Funding Agreement

- **Minimum expectations for good governance practice:**
 - Schedule A Governance Requirements:
 - Use best efforts to ensure Board has the following skillsets
 - Strategic planning
 - Clinical skills
 - Program development
 - Finance
 - Risk management
 - HR
 - Planning
 - If any gaps, address through:
 - Education
 - Retaining external expertise
 - **Community engagement** – persons and entities served
 - Consider results of community engagement when making decisions



What is the Board
Expected/Required To Do?

Duty to Govern

- The Board's duty is to **govern** the FHT
- What is **governance**?
 - Not defined in the *Not-for-Profit Corporations Act*
 - Look to key governance reports to identify key governance duties
 - National Policy 58-201 (Ontario Securities Commission): “**Effective Corporate Governance**”, dated June 17, 2005
 - [National Policy: NP - 58-201 - Effective Corporate Governance | OSC](#)

Board of Directors – 7 Key Duties

- ***“Effective Corporate Governance”***

1. **Satisfying itself as to the integrity of the ED and other senior officers, and that the ED creates a culture of “integrity”**
 - Performance reviews, setting goals and measuring performance against those goals
2. **Adopting a strategic planning process**
 - Approving a strategic plan on a regular basis (goals, priorities, programs, numbers)
 - Monitoring progress against the strategic plan
 - Making decisions to move forward with the strategic plan

Board of Directors – 7 Key Duties

- ***“Effective Corporate Governance”***
- 3. **Succession planning**, including appointing, training and monitoring senior management and successors to the Board
 - Board orientation
 - ED succession plan
 - Election of skills-based Board
- 4. **Adopting a communication policy** for the Corporation
 - Website
 - Annual reports to the community
 - Updates to the Ministry
 - Realistically, rely on ED/senior leadership team – but key crisis messages must be approved by Board

Board of Directors – 7 Key Duties

- ***“Effective Corporate Governance”***
- 5. **Ensuring integrity** of the FHT’s internal control and management information systems
 - Auditors, meetings with Finance/Audit Committee
 - Rely on Executive Director and senior leadership team

Board of Directors – 7 Key Duties

- **“Effective Corporate Governance”**
- 6. **Identifying principal risks** of the FHT’s business and ensuring the implementation of appropriate systems to manage these risks (e.g., monitoring of quality issues, complaint patterns)
 - Dashboards/tools including financial, quality, staffing key performance indicators
 - Where benchmarks are not being met, Board demands reason for variance and remediation plan
 - Approve Funding Agreement
 - Understand and monitor accountabilities under Funding Agreement

Board of Directors – Key Duties

- **“Effective Corporate Governance”**
- 7. **Developing an approach to corporate governance**, including a set of corporate governance principles and guidelines (*see next slide*)

Develop Governance Mandate

- The governance mandate should set out:
 - Measures for receiving feedback from stakeholders
 - Expectation and responsibilities of directors, including basic duties and responsibilities with respect to attendance and advance review of meeting materials
 - Position descriptions for Chair, committee chairs
 - Terms of reference for Board committees
 - Goals/objectives for ED, with performance review
 - Orientation/continuing education for Board members
 - Nomination of directors based on skills matrix
 - Regular board and director assessments

When to Involve Board – Advice for the ED

- **7 Questions to determine whether to involve the Board in decision-making (American Hospitals Association newsletter *Great Boards*)**
 - Is it big?
 - Is it about the future?
 - Is it core to the mission?
 - Does a policy need to be developed/approved?
 - Is a red flag flying?
 - Is the Minister/regulator involved?
 - Does the ED need Board support (e.g., a career-limiting activity)?



Board Mandate vs.
ED Mandate

- **Noses In, Fingers Out**
- Board should ask insightful questions and demonstrate good judgement
- BUT stay out of the management of the business

Statement of Board's Role

- **Board: Strategic Planning**
 - Participates in formulation of mission, vision, values
 - Adopts it
 - Participates in strategic planning process
 - Approves strategic plan
 - Oversees implementation of strategic plan
 - Monitors FHT operations
 - Ensures Board decisions are consistent with mission, vision and values and strategic plan
- **ED: Strategic Planning**
 - ED researches mission, vision, values trends and present to Board
 - ED conducts strategic planning, prepare strategic plan in draft for input and ultimate approval of Board
 - ED advises Board of SWOT
 - ED recommends goals and policies to Board with support of background info

Statement of Board's Role

- **Board: Quality and Performance Mgmt**
 - Oversees quality of services, management performance, financial performance, external relations
 - Identifies appropriate performance standards and indicators **[dashboard]**
 - Reviews FHT performance against standards and indicators
 - Ensures ED has plan in place to address variances
- **ED: Quality and Performance Mgmt**
 - Assists Board with identifying appropriate performance standards and indicators **[dashboard]**
 - Recommends new indicators from time to time
 - Reports to Board regularly on performance against standards and indicators
 - Establishes plan to address variances

Statement of Board's Role

- **Board: Financial Oversight**
 - Approves financial policies
 - Approves Funding Agreement
 - Approves annual capital and operating budget consistent with those policies (e.g., no deficit)
 - Monitors financial performance against approved budget
 - Approves audited financial statements
 - Ensures management addresses auditor's concerns re: controls
- **ED: Financial Oversight**
 - Recommends financial policies with background information
 - Takes Funding Agreement to Board when complete
 - Establishes annual capital and operating budgets consistent with policies
 - Presents financial statements and variances to Board with plan for rectifying
 - Presents trended info
 - Works with auditor to address internal controls

Statement of Board's Role

- **Board: Succession Planning**
 - Selects, supervises and evaluates the ED
 - Determines ED position description
 - Determines annual goals
 - Evaluates performance against annual goals
 - Determines compensation (or via Board committee)
 - Ensures succession plans are in place for both ED and Board itself (constant recruitment of new Board members per skills-based needs)
- **ED: Succession Planning**
 - Needs to understand performance evaluation process & criteria
 - Recommends performance goals to the Board that are consistent with strategic plan
 - Reports on results to the Board
 - Takes steps to respond to recommendations re: ED development
 - Creates succession plan for ED

Statement of Board's Role

- **Board: Risk Identification & Oversight**
 - Identifies risks to the FHT with ED input – brainstorming session (SWOT)
 - Ensures plans are put in place to mitigate and minimize risk
- **ED: Risk Identification & Oversight**
 - Assists Board in identifying risks (e.g., quality issues, funding issues, staffing recruitment/retention issues, etc.)
 - Takes direction from Board to put processes to mitigate risk
 - Responds to Board requests for additional information
 - Advises Board on insurance coverage
 - Assures Board of statutory compliance, compliance with policies and processes

Statement of Board's Role

■ Board: Communications

- Ultimately responsible for reporting to its stakeholders and approving a communications policy
- Identifying stakeholders
- Ensuring appropriate reporting and communication mechanisms, both internally and externally
- Signing off on significant messages
- External advocates/diplomats in public policy, fundraising, stakeholder relations
- Chair as spokesperson to media when required

■ ED: Communications

- Recommending a communications policy/plan for stakeholder engagement
- Creating communications for approval of Board
- Organizing community engagement
- Managing media relations as needed
- Keeping website up-to-date

Statement of Board's Role

- **Board: Governance**
 - Ensuring a Board mandate/statement of Board's role exists
 - Ensuring by-laws, committee terms of reference are appropriate and up-to-date
 - Assessment of Board performance and its own members
 - Arranging for education of its directors
- **ED: Governance**
 - Preparing a statement of Board's role for input and approval of Board
 - Facilitating review of by-laws, committee terms of reference
 - Engaging experts to provide advice
 - Engaging educators



What is a Director Obligated To Do?

Duties of Directors

- Legal obligations under *Not-for-Profit Corporations Act*
 - In carrying out their governance responsibilities, each director shall:
 - act honestly and in good faith with a view to the best interests of the corporation (*fiduciary duty*)
 - exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (*duty of care*)

Fiduciary Duty – Best Interests

- How does a director know what is in the *best interests* of the Corporation?
 - Corporate purposes (incorporating document)
 - Mission, vision
 - Strategic plan
 - Funding Agreement

Fiduciary Duty – Best Interests

- Board is obligated to serve as agents of their stakeholders as a whole:
 - Patients and families
 - Affiliated physician group
 - Staff
 - Volunteers
 - Ontario Health
 - CRA (especially if a charity)
- A director breaches their fiduciary duty if they represent only a narrow interest or interest group (e.g., physicians)
- A director breaches their fiduciary duty if they make decisions in their own personal interest – i.e., conflict of interest

Conflicts of Interest

- What is a conflict of interest?
 - It is a conflict when the Board member cannot vote *exclusively and objectively* in the best interests of the corporation/FHT
 - Conflicts are not illegal – but they must be managed
- By law:
 - Conflicts of interest need to be identified, declared and acted on
 - At a minimum conflicts are where the director has an interest in a contract or transaction before the Board
 - Conflicted directors cannot participate in discussions, must excuse themselves from meeting (“recuse”), cannot vote or attempt to influence voting
 - Conflicts can be broader – and Funding Agreement includes:
 - Perceived
 - Potential
 - Should be a process for one director to call out another’s potential COI

Duty of Loyalty – Two Elements

■ Confidentiality

- Information learned at the Board is confidential and proprietary and not to be shared without Board consent
- Reminder of confidential nature of all Board business at the beginning of each meeting
- Discussion at end of Board meeting – is there anything we discussed that should be communicated to stakeholders/staff (internally? Press release? Website?)

■ Board Solidarity

- Frank debate and discussion
- Majority governs
- Duty to respect and adhere to that decision
- Board speaks with “one voice”

- **Personal Obligation**

- Being a director is a personal obligation
- No delegation, no proxies
- No leave of absence
- Attendance is the ONLY way to fulfill these obligations
 - Failure to do so is a breach of fiduciary duty and duty of care

Duty of Care

- “Each director will have to establish that he/she exercised the *care, diligence and skill* that a reasonably prudent person would have done if he or she had been a director of the Corporation with the skills and experience of the director”
 - *Re Soper*, Federal Court of Appeal
 - *Wheeliker v. Canada*, Federal Court of Appeal

Duty of Care

- This is an individual test – *care, diligence and skill*
 - The concept of ***diligence*** implies attentiveness and vigilant activity
 - Vigilant activity:
 - Attend Board and committee meetings regularly
 - Read management and committee reports in advance
 - Ask questions where applicable
 - Educate yourself; participate in Board learning
 - Learn and understand key performance indicators; financials – ask for education if you need it (likely others do too)
 - Benchmark; identify variances; demand remediation plan

- **Courts are more concerned about process than results:**
 - Did the Board have sufficient information?
 - Did the Board examine the information critically?
 - Was appropriate time allocated to make the decision?

Other Potential Director Liabilities - Legislation

- Imposed by statute creating **personal liability**
 - Unpaid wages (6 months)
 - Unpaid and accrued vacation pay (1 year)
 - Amounts the corporation has failed to deduct, withhold, and remit under the *Income Tax Act*, Canada Pension Plan
 - Liability for non-compliance with specific statutes (200+) including *Environmental Protection Act*, *Occupational Health and Safety Act*, *Employment Standards Act*
- Check directors & officers liability insurance to ensure that it covers statutory liabilities

Defences to Board Liability

- Due diligence (attending meetings, being vigilant)
- D & O insurance
- Business judgment rule (courts won't second guess, typically, provided process is followed)
- Reliance on expert advice (lawyer, auditor)



Good Governance Practices

Good Governance Practices/Takeaways

- Review Funding Agreement requirements at slides 12 & 13
 - What's done vs. anything missing?
- Review governance checklist at slide 21
 - What's done vs. what's missing?
- Ensure Board knows FHT's corporate purposes (incorporating documents)
- Ensure by-laws were updated to comply with the *Not-for-Profit Corporations Act* (October 2024)
- Ensure Articles of Amendment were filed to comply with the *Not-for-Profit Corporations Act*

Good Governance Practices/Takeaways

Skills-based boards

- Nominations should be based on competencies and skills the Board requires
- Evaluate competencies and skills of candidates – CV, interview
- Assess past performance of existing directors
- Never nominations from the floor at the AGM

Director time commitment

- Attendance record
- No director leaves of absence

Director satisfaction survey

- What can the Board improve?
- What information does the Board need from the ED?
- What education is required?

Top 5 Qualities of Directors

The Most Effective Directors have the ability to:

- *Focus* on material issues and not sweat the small stuff
- *See* the big picture
- *Deal* with external pressures
- *Influence* effectively at the Board table
- *Respect* alternate viewpoints

Australian Institute of Company Directors



Thank you

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For questions
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