



association of family  
health teams of ontario

## **Statutory Compliance Toolkit**

**For Boards of Family Health Teams and  
Nurse Practitioner-Led Clinics**

**Written by:**



**Kate Dewhirst and Sharon Walker**

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## Disclaimer

This Toolkit is for general information purposes only. It is not intended as legal or professional advice or opinion. Family health teams or nurse practitioner-led clinics that have specific concerns about their statutory obligations and compliance are advised to seek their own legal or professional advice based on their particular circumstances.

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## A COMMITMENT TO STATUTORY COMPLIANCE

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### STATUTORY COMPLIANCE IN THE PRIMARY CARE SECTOR

More than 50 major provincial and federal laws apply to Ontario Family Health Teams (**FHTs**) and Nurse Practitioner-Led Clinics (**NPLCs**). These laws (also known as “**acts**”, “**statutes**” or “**legislation**”) touch all aspects of the operations of a FHT or NPLC. For example, there are laws that apply to your FHT and NPLC because you operate as:

- A group of health care providers
- A corporation (and specifically a not-for profit corporation)
- An employer
- A recipient of public funds

And depending on your circumstances, there are additional laws that apply to your organization if you operate as a charitable organization, a building site (during construction) or a landlord or tenant.

These laws impose duties not only on your organization as a corporation, but also on your management team and your Board of Directors.

### THE ROLE OF THE EXECUTIVE DIRECTOR/ADMINISTRATOR

As an Executive Director or Administrator of a FHT or NPLC, you have the day-to-day responsibility of making sure your organization complies with tasks that are required by law and for reporting on your organization’s statutory compliance to your Board (from time to time and on request). You need direct familiarity with the laws that impact your FHT or NPLC even though you may have other staff members (such as human resources and finance staff) who assist you to discharge your organization’s duties. This Toolkit highlights the laws that you need to know and provides you with tools to assist you to report on your organization’s statutory compliance to your Board.

### THE ROLE OF THE BOARD

As a Board member of a FHT or NPLC, you are not expected to know the details of every law that applies to your organization. However, you should be sufficiently familiar with the relevant laws to be able to take at least the level of care that a reasonably prudent person would take in fulfilling the Board’s mandate to govern.

As a Board member you must (among other things):

- Act honestly and in good faith with a view to the best interest of the FHT or NPLC
- Ensure the integrity of the organization’s internal control systems
- Identify the principal risks of the organization’s business and ensure implementation of appropriate systems to manage those risks

As a Board member you should know that there are some laws that could impact you personally if your FHT or NPLC does not fulfil its legal duties. This Toolkit will highlight the key laws you need to know and the impact of those laws on your organization and on you personally.

## A COMMITMENT TO STATUTORY COMPLIANCE

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### TOOLKIT

This Toolkit has been subdivided into the following sections:

<b>Section I: The Big Picture</b>	Provides a one-page visual overview listing the major laws that apply to FHTs and NPLCs operating in Ontario. <sup>1</sup>
<b>Section II: The 5 Key Duties (and 10 Laws) That Impact You as a Board Member</b>	Discusses the <b>5 key duties</b> and <b>10 key laws</b> that expose Board members to personal liability for their own acts and omissions as Board members or expose Board members to personal liability for the acts and/or omissions of the FHT or NPLC. Penalties can include substantial fines and imprisonment.
<b>Section III: The Clinical Fundamentals</b>	Provides a health law primer, summarizing the <b>2 key clinical laws</b> that underpin care delivery at a FHT or NLPC. Penalties for non-compliance with these laws can include fines and imprisonment. Also provides a list of the mandatory reporting obligations of regulated health providers.
<b>Section IV: Other Important Laws</b>	Summarizes less critical laws that Board members and Executive Directors or Administrators should know about. For the most part, penalties for non-compliance with these laws are limited to corporate fines.
<b>Section V: Laws that Apply to Particular Kinds of FHTs and NPLCs</b>	Summarizes additional <b>key laws</b> that apply to FHTs or NPLCs that fall into one or more special categories. Penalties for non-compliance with these laws can include substantial fines and imprisonment for Board members. Therefore it is very important to review this section to see which are applicable to your FHT or NPLC (if any).
<b>Section VI: Tips for Executive Directors/ Administrators and Board Members</b>	Provides tips for Executive Directors/Administrators and Board members on how to fulfil your duties. The <b>Appendices</b> provide sample templates, such as an Executive Director/Administrator's compliance certificate to submit to the Board annually (Appendix 1) and a sample statutory compliance audit checklist for Executive Directors/Administrators to keep track of compliance activities and problems and report to the Board.

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<sup>1</sup> This list includes laws generally applicable to FHTs and NPLCs in Ontario; however, it may not be a complete list. For example, the unique circumstance of your FHT or NPLC or changes to the laws may render this list incomplete or over-inclusive. Please seek legal advice if you require a comprehensive list for your own purposes.

### LAWS GENERALLY APPLICABLE TO ONTARIO FHTs and NPLCs†

#### CLINICAL

- Apology Act, 2009
- Canada Health Act
- Child and Family Services Act\*
- Controlled Drugs and Substances Act, 1996
- Coroners Act
- Healing Arts Radiation Protection Act
- Health Care Consent Act, 1996
- Health Insurance Act
- Health Protection and Promotion Act\*
- Mandatory Blood Testing Act, 2006
- Personal Health Information Protection Act, 2004\*
- Regulated Health Professions Act + health profession specific Acts
- Social Work and Social Service Work Act, 1998

#### TAX, CORPORATE & CHARITY

- Broader Public Sector Accountability Act, 2010 (only applies if the FHT received more than \$10 million dollars of public funding prior year)
- Canada Not-for-profit Corporations Act\*
- Canada Pension Plan\*
- Canada's Anti-Spam Legislation\*
- Charities Accounting Act (only applies if FHT/NPLC is a charitable corporation)
- Corporations Act (Ontario)\* (to be replaced for FHTs and NPLCs with the Not-for-Profit Corporations Act, 2010 (Ontario) - not yet in force)
- Corporations Information Act
- Corporations Tax Act
- Employment Insurance Act (Canada)\*
- Excise Tax Act (Canada)\*
- Income Tax Act (Canada and Ontario)\*
- Pension Benefits Act\*
- Retail Sales Tax Act\*

#### FACILITIES & ENVIRONMENTAL

- Accessibility for Ontarians with Disabilities Act, 2005
- Building Code Act, 1992\*
- Canadian Environmental Protection Act, 1999 & Environmental Protection Act (Ontario)\*
- Commercial Tenancies Act
- Fire Protection and Prevention Act, 1997\*
- Hazardous Products Act\*
- Occupiers' Liability Act
- Ontario Water Resources Act\*
- Pesticides Act\*
- Smoke-Free Ontario Act
- Technical Standards and Safety Act, 2000\*
- Trespass to Property Act

#### EMPLOYMENT

- Criminal Code (Canada)\*
- Employer Health Tax Act\*
- Employment Standards Act, 2000\*
- Human Rights Code\*
- Occupational Health and Safety Act\*
- Pay Equity Act\*
- Public Salary Disclosure Act, 1996 (only applies if the FHT receives more than \$1 million in government funding annually)
- Workplace Safety and Insurance Act, 1997\* (only applies if a FHT/NPLC registers to have it apply)

†This list includes laws generally applicable to FHTs and NPLCs in Ontario; however it may not be a complete list. For example the unique circumstance of your FHT or NPLC or changes to the laws may render this list incomplete or over inclusive.

\* Potential financial liability exposure for Board members **personally** and/or risk of imprisonment.

## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

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If you are a Board member of a FHT or NPLC, there are **5 key duties and 10 laws related to those duties** you must know.

These laws impose risks of liability, financial penalties and/or imprisonment on you personally (called “**Director Liability**” for members of a Board of Directors) or for the acts and/or omissions of the FHT or NPLC.

At a bare minimum, as a Board member you must know about the organization’s duty to:

- Remit taxes, CPP and EI Premiums
  1. *Excise Tax Act*
  2. *Income Tax Act*
  3. *Retail Sales Tax Act*
  4. *Canada Pension Plan Act*
  5. *Employment Insurance Act*
- Maintain minimum employment standards
  6. *Employment Standards Act, 2000*
- Provide a safe workplace
  7. *Occupational Health and Safety Act*
  8. *Criminal Code*
- Protect health records
  9. *Personal Health Information Protection Act, 2004*
- Avoid discharging contaminants into the environment
  10. *Canadian Environmental Protection Act, 1999 (Canada) or the Environmental Protection Act (Ontario)*

For each of the 5 key duties and 10 key laws in this Section, we have provided you with:

- The enforcement agency that oversees the law
- An explanation of to whom the duty is owed
- The compliance requirements
- An explanation of the potential liability for Board members
- The penalties
- The key questions Board members should ask of your Executive Director/Administrator
- Links to additional related resources



## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

### TAX, CORPORATE & CHARITY – Duty to remit

**Duty:** As a corporation and employer, every FHT or NPLC has a duty to remit its taxes as well as Canada Pension Plan and Employment Insurance premiums

**Laws:** The [Excise Tax Act](#) (Canada), [Income Tax Act](#) (Canada), [Income Tax Act](#) (Ontario), [Retail Sales Tax Act](#) (Ontario), [Canada Pension Plan Act](#) (Canada), [Employment Insurance Act](#) (Canada).

**Enforcement Agency:** The Canada Revenue Agency (federally) and the Ministry of Finance (provincially).

**To whom the duty is owed:** Federal and provincial governments.

**Compliance Requirements:** These laws require all businesses to collect and remit federal and provincial income taxes for employees; Canada Pension Plan and Employment Insurance premiums on behalf of the employer and the employee; Harmonized Sales Tax (HST) on non-medical taxable services, such as charging rent, uninsured services, and some administrative cost-sharing arrangements; and, if the FHT/NPLC self-administers an employee benefit plan, Ontario Retail Sales Tax for such plan.

FHTs/NPLCs must remit applicable taxes and premiums prior to the prescribed deadlines.

**Potential Liability for Board Members:** If the FHT/NPLC fails to remit the required taxes and premiums, its Board members will be jointly and severally liable for the total amounts owing under the *Income Tax Act*, the *Excise Tax Act* and/or the *Retail Sales Act*, *Canada Pension Plan Act* and the *Employment Insurance Act*, plus applicable interest and penalties.

**Penalties:** A variety of penalties are imposed by these laws for failure to file returns, failure to collect or failure to remit the full amounts owing. Daily financial penalties and interest may accrue on unpaid amounts, which may be significant. A FHT/NPLC may be dissolved if in default of complying with the *Retail Sales Act*. Board members who acquiesce or participate in the commission of an offence by the FHT /NPLC may be subject to stiff fines and/or prison terms of up to 2 years for serious offences.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- Has the FHT/NPLC remitted its most recent taxes/premiums owed and has a separate fund been established for tax/premium remittances?
- Does the FHT/NPLC remit its taxes/premiums and file its returns in a timely manner?
- Who is responsible for remitting taxes/premiums for the FHT/NPLC?
- Has the FHT/NPLC ever been cited for failure to pay its taxes/premiums? If yes,

what was the outcome and is any amount still owing?

- Have you completed the annual Statutory Remittance Certificate? (See [Appendix 1](#))

#### ADDITIONAL RESOURCES

- The Ontario Ministry of Finance website [Guides and Pointers to the Retail Sales Tax Act](#)
- The Canada Revenue Agency [Income Tax Information Circular on Director Liability under the Income Tax and Excise Act](#)

## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

### EMPLOYMENT – Duty to maintain minimum employment standards

**Duty:** As an employer, every FHT or NPLC has a duty to maintain minimum employment standards

**Law:** [Employment Standards Act, 2000](#) (Ontario) (ESA).

**Enforcement Agency:** Ontario Ministry of Labour.

**To whom the duty is owed:** Employees – unless the employee is excluded in whole or in part from the scope of the ESA.

**Compliance Requirements:** Among other things, employers have a general obligation to ensure that the FHT/NPLC meets the minimum ESA standards regarding hours, breaks, wages, termination, holidays, vacation, and leaves of absence. There are also record-keeping obligations.

The ESA applies to any Ontario business or activity that employs people. For example, in a FHT or NPLC, typically allied health professionals and administrative staff would be employees. With some blended salary model FHTs, physicians may also be employees.

The ESA prescribes minimum standards for employee wages, termination notice, entitlements to vacation and leaves, etc. Physicians, medical students, physiotherapists, psychologists, massage therapists and naturopaths are exempt from ESA coverage except for provisions regarding personal emergency leave, notice of termination and severance pay. Other allied health professionals may also have exemptions or special rules under the ESA. The Ministry of Labour has created a Special Tool\* for employers that provides information on exemptions and special rules that apply to various health care workers:

**Potential Liability for Board Members:** In the event the FHT/NPLC goes bankrupt or is sued and does not pay, FHT/NPLC Board members are liable to employees for up to 6 months' unpaid wages and 12 months' vacation pay under the *Employment Standards Act* (Ontario), *Corporations Act* (Ontario), and under the forthcoming *Not-for-Profit Corporations Act, 2010* (Ontario), or up to 6 months' unpaid wages under the *Canada Not-for-profit Corporations Act*. Wages may include amounts owing under pay equity or minimum wage laws, including overtime pay and statutory holiday pay.

**Penalties:** It is an offence for a Board member to contravene the ESA or to acquiesce or participate in the FHT/NPLC's contravention of the ESA. Penalties applicable to Board members include a fine of up to \$50,000 and/or up to 12 months in prison plus amounts owing to an employee. The FHT/NPLC could be subject to a fine up to \$100,000 for a first offence and up to \$500,000 for multiple offences, plus amounts owing to an affected employee.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- Does the FHT/NPLC have policies and procedures in place to ensure ESA compliance?
- Has the FHT/NPLC ever been cited by the Ministry of Labour?
- Have FHT/NPLC employees ever made complaints under the ESA? What was the outcome?
- What is the financial health of the FHT/NPLC?

#### ADDITIONAL RESOURCES

- [Your Guide to the Employment Standards Act](#)
- [Exemptions to the Employment Standards Act](#)
- The Ministry of Labour [Frequently Asked Questions](#)
- \*The Ministry of Labour [ESA - Exemptions or Special Rules – EMS, Healthcare, Health Professionals](#)

## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

### EMPLOYMENT – Duty to provide a safe workplace

**Duty:** As an employer, every FHT or NPLC has a duty to provide a safe workplace

**Laws:** [Occupational Health and Safety Act](#) (Ontario) (OHSA) and the [Criminal Code](#) (Canada).

**Enforcement Agency:** Ministry of Labour.

**To whom duty is owed:** “Workers”, which is broadly interpreted to include employees and some independent contractors. FHTs and NPLCs are workplaces and are subject to the safety requirements prescribed by the OHSA.

**Compliance Requirements:** To comply with the OHSA, workplaces must implement certain policies and programs to promote workplace safety and to respond appropriately when incidents occur. The OHSA requirements may vary depending on the size of your workplace.

**Potential Liability for Board Members:** Board members have a duty to ensure that their organization complies with the OHSA and its regulations. Board member liability can arise where the FHT/NPLC has failed to fulfill its duties.

Board members can be found criminally negligent under the *Criminal Code* where a workplace incident results in bodily harm or death.

**Penalties:** Non-compliance with the OHSA is an offense and, if the FHT/NPLC is convicted, it could be subject to a maximum fine of \$500,000. Stop work orders may be imposed until an unsafe worksite has been made safe. Board members who fail to comply with the OHSA may be personally liable for a fine up to \$25,000 and/or imprisonment to a maximum of 12 months.

Under the *Criminal Code*, an individual Board member could face imprisonment where a workplace accident has resulted in death or bodily harm.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- When was the last time occupational health and safety policies and programs were reviewed/audited?
- Has the FHT/NPLC had any workplace incidents recently/in the past year/ever? If so, what steps have been taken to prevent recurrence?

- In the past year, are there/have there been any new requirements of the FHT/NPLC under the OHSA? Has the FHT/NPLC met them?

#### ADDITIONAL RESOURCES

- The Ministry of Labour’s Health and Safety portal accessible [here](#)
- The Ministry of Labour’s portal [FAQ section](#)
- *A Guide to the Occupational Health and Safety Act*, available [here](#)

## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

### CLINICAL – Duty to protect personal health information

**Duty:** As a health information custodian (or agent), every FHT or NPLC has a duty to protect personal health information

**Laws:** [Personal Health Information Protection Act, 2004](#) (Ontario) (PHIPA).

**Enforcement Agency:** Office of the Information and Privacy Commissioner of Ontario (IPC).

**To whom the duty is owed:** Patients and any other individuals whose personal health information you hold.

**Compliance Requirements:** Among other things, PHIPA establishes rules for health information custodians (HICs) to protect the personal health information they hold. Depending on your arrangements with your affiliated physicians or nurse practitioners, FHTs/NPLCs will either be HICs in their own right or agents of affiliated physicians under PHIPA. PHIPA requires that HICs implement policies and practices to prevent privacy breaches arising from the theft or loss of, or unauthorized access to, personal health information. Agents must follow those policies and practices.

**Potential Liability for Board Members:** A Board member may be held liable for his or her own offence under PHIPA or for the acts and/or omissions of the FHT/NPLC if the Board member authorized an offence or had the authority to prevent the offence from being committed but knowingly refrained from doing so.

**Penalties:** The FHT or NPLC may be fined up to maximum of \$250,000 for an offence under PHIPA, while an individual Board member may face a maximum fine of up to \$50,000. There may also be monetary awards to harmed individuals as a result of non-compliance.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- Are we a HIC? Or are we an agent of a HIC – such as the FHO/FHN or our affiliated physicians?
- Does the FHT/NPLC have a Privacy Officer?
- What steps has the FHT/NPLC taken to ensure that it is PHIPA compliant?
- How does the FHT/NPLC ensure and monitor third party access to personal health information?
- When was the last review/audit of the FHT/NPLC's privacy policy and/or procedures?

- When did the FHT/NPLC last train the staff on privacy issues?
- Has the FHT/NPLC had any privacy breaches? If so, what steps have been taken to prevent recurrence?

#### ADDITIONAL RESOURCES

- [AFHTO Privacy Toolkit for the QIDSS Program in Family Health Teams](#)
- The Information and Privacy Commissioner of Ontario's [A Guide to the Personal Health Information Protection Act](#)
- The Information and Privacy Commissioner of Ontario's [website](#)

## SECTION II: THE 5 KEY DUTIES (AND 10 LAWS) THAT IMPACT YOU AS A BOARD MEMBER

### FACILITIES & ENVIRONMENTAL – Duty to avoid discharging contaminants into the environment

**Duty:** As a corporation, every FHT or NPLC has a duty to avoid discharging contaminants into the environment

**Laws:** [Canadian Environmental Protection Act, 1999](#) (Canada) or the [Environmental Protection Act](#) (Ontario) (EPA).

**Enforcement Agency:** Ministry of Environment (Ontario) (it is more likely that a FHT/NPLC would encounter the Ontario EPA than the federal EPA unless your FHT/NPLC operates on federal lands or under federal jurisdiction such as at an airport or on aboriginal lands or you release “toxic substances” into the environment).

**To whom the duty is owed:** The public and the environment.

**Compliance Requirements:** Both the Ontario EPA and federal EPA apply to any person (including a FHT or NPLC) who discharges a contaminant into the environment above an allowable limit.

**Potential Liability for Board Members:** The Ontario EPA makes Board members liable where they have failed to take all reasonable care to prevent the organization from breaking the law. Board members can be fined or imprisoned, depending on the severity of the organizational breach.

Under the federal EPA, Board members who acquiesce or participate in the commission of an offence are liable to the penalty applicable to an individual for such offence.

**Penalties:** Under the Ontario EPA, The FHT or NPLC can be fined up to \$250,000 per day for a first conviction of an offence.

Under the federal EPA, individual penalties for first offences are up to \$1 million. Corporate penalties for first offences are up to \$6 million.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- Is the FHT/NPLC at low or high risk for non-compliance with EPA laws?
- Does the FHT/NPLC have policies and procedures in place to ensure compliance with EPA laws?
- Has the FHT/NPLC ever been cited for violations under act of the EPA laws? If so, what action was taken?
- How does the FHT/NPLC dispose of toxic substances? Human waste? Hazardous materials?

#### ADDITIONAL RESOURCES

- [The Ontario Ministry of the Environment website](#)
- Regarding the federal EPA: [A Guide to Understanding the Canadian Environmental Protection Act, 1999](#)

## SECTION III: THE CLINICAL FUNDAMENTALS

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The primary business of FHTs and NPLCs is to provide clinical health care services to patients/clients. If you are an Executive Director or Administrator or a Board member of either a FHT or NPLC, you should know about **2 key laws** that are fundamental to health care delivery in Ontario:

- *Health Care Consent Act, 1996*
- *Regulated Health Professions Act, 1991*

### **Health Care Consent Act, 1996 (HCCA)**

Among other things, the [Health Care Consent Act, 1996](#) (Ontario) governs a patient's/client's right to consent to health treatment. These rules apply to all types of treatment, no matter where the treatment is given, including treatment offered in FHTs or NPLCs by regulated health professionals.

#### **KEY FACTS:**

- With the exception of certain emergency situations, every health care provider **must** obtain the consent of a patient/client prior to administering treatment
- Treatment means anything done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose
  - Treatment does not include assessments, examinations, or history-taking, or admission to hospital (or other facility) or personal assistance services
  - The HCCA does not apply to “a treatment that poses little or no risk of harm to the person”
- Consent to treatment must be informed (with adequate information about the nature, expected benefits, material risks, and material side effects of the treatment and any alternative courses of action, and the likely consequences of not having the treatment) and must be voluntary and not obtained through misrepresentation or fraud
- There is no age for consent to treatment in Ontario
- Everyone is presumed to be capable of making treatment decisions (unless it is unreasonable to make that presumption – such as for infants, very young children or people who are unconscious)
- A person is capable with respect to a treatment if the person is:
  - Able to understand the information that is relevant to making a decision about the treatment AND
  - Able to appreciate the reasonably foreseeable consequences of a decision or lack of decision about the treatment
- If the patient/client is incapable of making his/her own decisions about treatment, the decision must be made on his or her behalf by a substitute decision-maker, chosen from a ranked list under the HCCA
- Penalties include fines of up to \$10,000 for individuals who commit an offence under the HCCA

#### **ADDITIONAL RESOURCES:**

- College of Physicians and Surgeons of Ontario, Consent to Medical Treatment  
<http://www.cpso.on.ca/uploadedFiles/policies/policies/policyitems/Consent.pdf>
- College of Nurses of Ontario, Consent  
[http://www.cno.org/Global/docs/policy/41020\\_consent.pdf](http://www.cno.org/Global/docs/policy/41020_consent.pdf)

## SECTION III: THE CLINICAL FUNDAMENTALS

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### ***Regulated Health Professions Act, 1991 (RHPA)***

The [\*\*\*Regulated Health Professions Act, 1991\*\*\*](#) (Ontario) governs delivery of health care to patients by self-regulated health professionals. For a list of self-regulated health care providers click [here](#).

Each regulated health profession is overseen by its own professional college, which develops and enforces standards of qualification, professional practice and ethics for its members.

#### **KEY FACTS:**

- ❑ The RHPA requires FHTs or NPLCs to report an employed regulated health professional to his or her regulatory College in certain circumstances.
- ❑ The RHPA requires regulated health professionals to either self-report or to report another health provider to the appropriate regulatory College in certain circumstances.
- ❑ Penalties for a first offence under the RHPA include individual fines up to \$25,000 and for certain offences, up to 1 year in prison and corporate fines up to \$50,000.

#### **ADDITIONAL RESOURCES:**

Every health professional regulatory college has its own website such as the [College of Physicians and Surgeons of Ontario](#) and the [College of Nurses of Ontario](#).

Please note, the [\*\*\*Social Work and Social Service Work Act, 1998\*\*\*](#) (Ontario) creates similar self-regulatory obligations relating to social workers.

## MANDATORY DISCLOSURES

Executive Directors/Administrators and Board members of FHTs/NPLCs should understand that all regulated health professionals (including physicians, nurses and all the interdisciplinary allied health care professionals) have mandatory reporting obligations they must fulfill.

The following is a quick reference table of the mandatory reporting obligations required in law.

Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
Child in need of protection	Information about a “child in need of protection” (e.g., suffering abuse or neglect). Only information that is reasonably necessary to make the report should be shared. Ongoing information sharing after the report has been made should only be done with express consent or as permitted or required by law (such as a court order for the patient health record)	All health professionals who work with children	Relevant Children’s Aid Society	<a href="#">Child and Family Services Act</a> , ss. 72(1) and 72(2).
Sexual abuse	Where there are reasonable grounds to believe a health care professional has sexually abused a patient, details of the allegation, name of the health care professional and name of the allegedly abused patient <ul style="list-style-type: none"> <li>• The patient’s name can only be provided with consent</li> <li>• You must include your name as the individual filing the report</li> </ul>	All regulated health care providers	Registrar of the suspected health care professional’s regulatory College	<a href="#">Regulated Health Professions Act</a> , Schedule 2, ss. 85.1, 85.3. See also, <a href="#">Social Work and Social Service Work Act, 1998</a> ss. 43 and 44
Safe driving	Name, address and condition of a person (over the age of 16) who has a condition that may make it unsafe for them to drive	Physicians	Registrar of Motor Vehicles	<a href="#">Highway Traffic Act</a> , s. 203(1).



Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
Air crew	Information about flight crew members, air traffic controllers or other aviation license holders who have a condition that may impact their ability to perform their job in a safe manner (likely to constitute a hazard to aviation safety)	Physicians and optometrists	Medical advisor designated by the Minister of Transport	<a href="#">Aeronautics Act</a> , s. 6.5(1)
Seaman	Information about a seaman	Physicians	If requested by the seaman's employer	<a href="#">Merchant Seamen Compensation Act</a> , s. 48
Railway workers	Information about patients who work in the railway industry who have a condition that may put the safety of rail travel at risk	Physicians and optometrists	A railway designated physician	<a href="#">Railway Safety Act</a> , s. 35(2)
Fraud	Information about health care fraud, including an ineligible person receiving or attempting to receive an insured service; an ineligible person obtaining or attempting to obtain reimbursement by the Ontario Health Insurance Plan (OHIP) for money paid for an insured service; or an ineligible person in an application, return or statement made to OHIP or the General Manager giving false information regarding his or her residency	Physicians and registered nurses in the extended class	General Manager of OHIP	<a href="#">Health Insurance Act</a> , s.43.1(1) and <a href="#">Health Fraud Regulation</a> , s.1
Queue-jumping	Information about an individual offering to pay, confer, charge or accepting a benefit in exchange for improved access to health care	Physicians and registered nurses in the extended class	General Manager of OHIP	<a href="#">Commitment to the Future of Medicare Act, 2004</a> , ss. 17(1) and 17(2) and <a href="#">General Regulation</a> , s 7(1)
Reportable or communicable disease	Information about a patient who has (or may have) either a "reportable" or "communicable" disease. The report should include the patient's:	Physicians and registered nurses	Medical Officer of Health of the	<a href="#">Health Protection and Promotion Act</a> , s. 26 and <a href="#">Reporting Regulation</a> , s.1(1)

Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
	<ul style="list-style-type: none"> <li>Name and address in full,</li> <li>Date of birth in full,</li> <li>Sex, and</li> <li>Date of onset of symptoms</li> </ul>	in the extended class	appropriate health unit	
Communicable disease	Name, address of a patient receiving care and treatment for a communicable disease but who is neglecting or refusing to comply with the treatment regime	Physicians and registered nurses in the extended class	Medical Officer of Health	<a href="#">Health Protection and Promotion Act</a> , s. 34(1)
Rabies	Animal bites or animal contact that may result in humans contracting rabies	Physicians and registered nurses in the extended class (and other persons with information about animal bites)	Medical Officer of Health	<a href="#">Health Protection and Promotion Act</a> and <a href="#">Communicable Diseases Regulation</a> , s. 2(1)
Immunizations	Instances of adverse reactions to immunizations	Physicians, nurses, and pharmacists	Medical Officer of Health of the appropriate health unit	<a href="#">Health Protection and Promotion Act</a> , s.38(3)
Immunizations	Information about a child whose eye has become reddened, inflamed or swollen within two weeks of birth possibly due to a communicable disease. Report must be in writing and include: <ul style="list-style-type: none"> <li>The name, age and home address of child (or if not at home, where the child can be located)</li> </ul>	Physicians or other health care professionals who have attended the birth of a child	Medical Officer of Health	<a href="#">Health Protection and Promotion Act</a> , s. 33(1) and <a href="#">Communicable Diseases Regulation</a> , s. 1 para. 2)

Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
	<ul style="list-style-type: none"> <li>The conditions of the eye that were observed</li> </ul>			
Birth	Births	Physicians and midwives (or nurses if neither of the above are present at birth)	Registrar General	<a href="#">Vital Statistics Act</a> , ss. 8, 9.1 and <a href="#">General Regulation</a> , ss. 1(1) and 19(1)
Death	Facts surrounding the death of an individual in prescribed circumstances (e.g. violence, negligence or malpractice). Information requested for the purpose of an investigation	Any person with information about the circumstances of the death	Coroner or designated Police Officer	<a href="#">Coroners Act</a> , s. 10(1)
Death	Deaths	Physicians and registered nurses in the extended class		<a href="#">Vital Statistics Act</a> , s. 21(1) and <a href="#">General Regulation</a> , ss. 35(2) and 35(3)
Occupational assessments	Reasonable conclusions of an occupational illness	Physicians who conduct medical examinations or supervise clinical tests for workplace safety	The worker's employer, the joint health and safety committee and the Provincial Physician	<a href="#">Occupational Health and Safety Act</a> and the <a href="#">Designated Substances Regulation</a> , ss. 29(2), 29(3), 29(6) and 29(7)
WSIB	Information requested by the WSIB about workers claiming benefits under the <i>Workplace Safety and Insurance Act</i>	All health care providers	Workplace Safety and Insurance Board (WSIB)	<a href="#">Workplace Safety and Insurance Act, 1997</a> , s. 37(1)

Quick reference	What information must be disclosed	Who must disclose	To whom disclosure must be made	Authority
Self-report of offence	<p>Information if you yourself are found guilty of an offence to include</p> <ul style="list-style-type: none"> <li>• Your name</li> <li>• The nature and description of the offense</li> <li>• The date you were found guilty of the offense</li> <li>• The name and location of the court where you were found guilty of the offence</li> <li>• The status of any appeals</li> </ul>	All regulated health care providers	Registrar of your regulatory College	<a href="#"><u>Regulated Health Professions Act</u></a> , Schedule 2, ss. 85.6.1(1) – (3)
Self-report of professional negligence or malpractice	<p>Information if you yourself are found guilty of professional negligence or malpractice to include</p> <ul style="list-style-type: none"> <li>• Your name</li> <li>• The nature and description of the finding</li> <li>• The date the finding was made</li> <li>• The status of any appeals</li> </ul>	All regulated health care providers	Registrar of your regulatory College	<a href="#"><u>Regulated Health Professions Act, 1991</u></a> , Schedule 2, ss. 85.6.2(1) – (3)
Employer report if end of professional relationship	A written report, within 30 days, regarding revocation, suspension, termination or dissolution of a health care professionals' privileges, employment or practice for reasons of professional misconduct, incapacity or incompetence	Employer or person who offers privileges to a member	Registrar of the college of the regulated health care professional	<a href="#"><u>Regulated Health Professions Act, 1991</u></a> , Schedule 2, s. 85.5(1), 85.5(3)

## SECTION IV: OTHER IMPORTANT LAWS

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Many laws other than those detailed in Sections II and III will be of concern to FHTs or NPLCs from time to time. Executive Directors/Administrators and Board members should have a general understanding of the other laws that apply to FHTs and NPLCs.

### CLINICAL

NAME OF LAW	BRIEF DESCRIPTION
<a href="#"><u>Apology Act, 2009</u></a> (Ontario)	Allows professional organizations and individuals such as physicians and nurse practitioners to apologize in most but not all circumstances without the apology being used as evidence of fault or liability.
<a href="#"><u>Canada Health Act</u></a> (Canada)	Federal law governing Canada’s national medicare program. It creates rules relating to its public administration, comprehensiveness, universality, portability and accessibility.
<a href="#"><u>Controlled Drugs and Substances Act</u></a> (Canada)	Federal law governing the ordering and dispensing of narcotics and other controlled substances.
<a href="#"><u>Coroners Act</u></a> (Ontario)	Sets out the types of deaths that must be reported to the Coroner. For more information, click <a href="#"><u>here</u></a> .
<a href="#"><u>Healing Arts Radiation Protection Act</u></a> (Ontario)	This law regulates the use of x-ray machines (and CT scanners), and outlines safety information for use. This would only apply if your FHT/NPLC operates these machines.
<a href="#"><u>Health Insurance Act</u></a> (Ontario)	This law outlines the rules governing the Ontario Health Insurance Plan (OHIP). For more information, click <a href="#"><u>here</u></a> .
<a href="#"><u>Mandatory Blood Testing Act, 2006</u></a> (Ontario)	This law establishes a process for persons who may have been exposed to a communicable disease to be treated and to get access to a blood sample of the person who they believe may have infected them (in certain circumstances).
<a href="#"><u>Social Work and Social Service Work Act, 1998</u></a> (Ontario)	Similar to the <i>Regulated Health Professions Act, 1991</i> for other regulated health professionals, this law imposes reporting and other duties on social workers and social service workers.

## SECTION IV: OTHER IMPORTANT LAWS

### EMPLOYMENT

NAME OF LAW	BRIEF DESCRIPTION
<p><a href="#"><u>Employer Health Tax Act</u></a> (Ontario)</p>	<p>This law establishes the payroll tax on remuneration paid to current and former employees by eligible employers. For more information click <a href="#"><u>here</u></a>.</p> <p>* Board members and officers who directed, authorized, assented to, acquiesced in or participated in the commission of an offence by the FHT/NPLC under this law are themselves guilty of an offence and are liable to the punishment provided for the offence. Directors may be liable on conviction to pay a fine of not less than the greater of \$500 and 25% of the amount of the tax that should have been shown to be payable and not more than double the amount of the tax which should have been shown to be payable. Directors may also face imprisonment for a term of not more than 2 years.</p>
<p><a href="#"><u>Human Rights Code</u></a> (Ontario)</p>	<p>This Code obliges FHTs and NPLCs to provide equal rights and opportunities without discrimination in areas such as employment, services, and contracts, including keeping the workplace free of discrimination and harassment on prohibited grounds (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability).</p> <p>* There are no limits on the monetary penalties that can be imposed by the Human Rights Tribunal for breach of the Code. The Tribunal can also make non-financial orders such as mandatory and public apologies and reinstatement of employee.</p>
<p><a href="#"><u>Pay Equity Act</u></a> (Ontario)</p>	<p>Creates rules and a complaints process to ensure equity in remuneration of employees. Further information can be found <a href="#"><u>here</u></a>.</p> <p>* Board members may be fined up to \$5,000 if they authorize, permit or acquiesce in the contravention of the Act, including a reprisal against an employee who attempted to exercise rights under the Act, a contravention of confidentiality obligations, interference with an investigation or failure to comply with an order.</p>
<p><a href="#"><u>Public Salary Disclosure Act, 1996</u></a> (Ontario)</p>	<p>This Act requires the disclosure of names, positions, salaries and taxable benefits of employees who are paid \$100,000 or more annually.</p> <p>This applies to organizations receiving \$1 million in government funding or more. Organizations receiving between \$120,000 and \$1 million in government funding are included if the funding they receive is 10% or more of their gross revenues.</p> <p>More information on this law can be found <a href="#"><u>here</u></a>.</p>

## SECTION IV: OTHER IMPORTANT LAWS

### EMPLOYMENT (cont'd)

NAME OF LAW	BRIEF DESCRIPTION
<p><a href="#"><u>Workplace Safety and Insurance Act, 1997</u></a> (Ontario)</p>	<p>Establishes a “no-fault” insurance scheme for employees injured on the job. Under the WSIA certain workplaces, including hospitals, must register under the WSIA and pay employer premiums. Other workplaces, including private health care practices, such as most FHTs and NPLCs, are <u>not required</u> to register under the WSIA. FHTs and NPLCs may voluntarily apply for coverage under WSIA. Consult legal counsel for advice to assess the risks of participating prior to applying.</p> <p>In addition, if the FHT or NPLC hires a contractor to undertake construction work, it must obtain a clearance certificate number from the contractor to minimize exposure to liability if a worker is injured. Failure to do so is an offence, and the FHT or NPLC could be subject to a fine of up to \$100,000.</p> <p>*A Board member who acquiesces or participates in the commission of an offence under the WSIA by the FHT or NPLC that has registered under the WSIA is guilty of an offence. Offences include making false representations and non-compliance with certain other provisions and are subject to fines of up to \$25,000 for individual Board members and/or 6 months imprisonment, or up to \$100,000 in fines for the FHT/NPLC.</p>

### TAX, CORPORATE & CHARITY

NAME OF LAW	BRIEF DESCRIPTION
<p><a href="#"><u>Canada Pension Plan</u></a> (Canada)</p>	<p>This law requires the employer to deduct Canada Pension Plan (CPP) contributions from remuneration or other types of income paid to employees and to pay its own portion of CPP contributions.</p> <p>* Where the FHT/NPLC fails to remit or pay these contributions, individuals who were Board members at the time that the failure occurred are jointly and severally liable with the FHT/NPLC to pay the unremitted amount plus any interest or penalties.</p>
<p><a href="#"><u>Corporations Information Act</u></a> (Ontario)</p>	<p>This law obliges corporations such as Clinics to submit annual filings of certain prescribed information.</p> <p>* Board members who make false or misleading statements in the information are liable under this law.</p>

<p><a href="#"><u>Corporations Tax Act</u></a> (Ontario)</p>	<p>This law mandates payment of taxes by federal and provincial corporations such as Clinics.</p> <p>* There is potential liability for Board members where the FHT/NPLC fails to pay its taxes.</p>
<p><a href="#"><u>Employment Insurance Act</u></a> (Canada)</p>	<p>This law requires employers to deduct Employment insurance (EI) contributions from remuneration or other types of income paid to employees and to pay its own portion of EI contributions.</p> <p>* Where the FHT/NPLC fails to remit or pay these contributions, individuals who were Board members at the time that the failure occurred are jointly and severally liable with the FHT/NPLC to pay the unremitted amount plus any interest or penalties.</p>
<p><a href="#"><u>Pension Benefits Act</u></a> (Ontario)</p>	<p>For Clinics that offer pension plans to their employees, this law sets out the minimum standards for administering and funding pension plans and pension benefits.</p> <p>* Every director, officer, official or agent of a corporation is guilty of an offence, if he or she causes, authorizes, permits or acquiesces in the pension plan or pension fund: (a) not being administered correctly; (b) not complying with the Act and the regulations; or (c) does not take reasonable care in the circumstances to prevent the corporation from contravening the Act or regulations. Punishment on a first conviction is a fine of not more than \$100,000, and \$200,000 on each subsequent conviction, whether or not the corporation has been prosecuted or convicted of an offence arising from the same facts or circumstances.</p>



## SECTION IV: OTHER IMPORTANT LAWS

### FACILITIES & ENVIRONMENTAL

NAME OF LAW	BRIEF DESCRIPTION
<p><a href="#"><u>Accessibility for Ontarians with Disabilities Act, 2005</u></a> (Ontario)</p>	<p>This law outlines the province-wide mandatory standards on accessibility for persons with disabilities in five areas: customer service, employment, information and communications, transportation and design of public spaces. For more information on this law and its requirements, click <a href="#"><u>here</u></a>.</p>
<p><a href="#"><u>Commercial Tenancies Act</u></a> (Ontario)</p>	<p>This law sets out rights and obligations between commercial landlords and tenants. However, it is important to note that a lease agreement may take precedence over the law. For more information, click <a href="#"><u>here</u></a>.</p>
<p><a href="#"><u>Hazardous Products Act</u></a> (Canada)</p>	<p>Clinics may use potentially dangerous substances in the course of providing care. This law applies to FHT/NPLC suppliers and defines which materials (i.e., controlled products) are included in the Workplace Hazardous Materials Information System (WHMIS). This law also mandates what information those suppliers must provide to employers for controlled products used in the workplace.</p>
<p><a href="#"><u>Occupiers Liability Act</u></a> (Ontario)</p>	<p>Clinics that are either landlords or tenants in a building may be “occupiers”, depending in part on who is responsible for repair and maintenance. The OLA defines an occupier as a person who is either in physical possession of premises or has the responsibility for and control over the condition of the premises, the activities carried on there, or the entry of persons onto the premises (includes land). The FHT/NPLC would be the “occupier” of premises which would include at minimum its office space but which could extend to area around the FHT/NPLC (such as sidewalks and parking lots). The OLA outlines the occupier’s duty to ensure that persons entering the premises are reasonably safe while on the premises.</p>
<p><a href="#"><u>Ontario Water Resources Act</u></a> (Ontario)</p>	<p>This law prohibits discharge of materials into bodies of water, including groundwater, in a manner that would contaminate them. May be of limited application to Clinics.</p> <p>* There is potential liability for Board members who do not exercise reasonable care in preventing the FHT/NPLC from causing or permitting discharge of contaminants.</p>

## SECTION IV: OTHER IMPORTANT LAWS

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### FACILITIES & ENVIRONMENTAL (cont'd)

NAME OF LAW	BRIEF DESCRIPTION
<a href="#"><u>Pesticides Act</u></a> (Ontario)	<p>This law regulates the use of pesticides. May apply to a FHT/NPLC where it has oversight of landscaping and maintenance of premises.</p> <p>* There is potential liability for Board members who do not exercise reasonable care in preventing the FHT/NPLC from causing or permitting adverse effects contrary to the Act.</p>
<a href="#"><u>Smoke-Free Ontario Act</u></a> (Ontario)	<p>This law prohibits smoking in all enclosed workplaces and enclosed public places in Ontario. In addition, it imposes certain obligations on employers and workers. For more information on the Act, click <a href="#"><u>here</u></a>.</p>
<a href="#"><u>Technical Standards and Safety Act, 2000</u></a> (Ontario)	<p>This law establishes minimum operational and maintenance standards for specific devices including elevators, boilers and pressure valves, among others. This law is enforced by the Technical Standards and Safety Authority. For more information, click <a href="#"><u>here</u></a>.</p> <p>* Every Board member has a duty to take all reasonable care to prevent the FHT/NPLC from committing an offence under the Act.</p>
<a href="#"><u>Trespass to Property Act</u></a> (Ontario)	<p>This law prohibits unauthorized entry onto private and public property.</p>

## SECTION V: KEY LAWS THAT APPLY TO PARTICULAR KINDS OF FHTs AND NPLCs

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Below are **additional key laws** that apply to particular kinds of FHTs and NPLCs. These rules do not apply broadly – but if they apply to your FHT/NPLC, you must be aware of them (as with the “Top 10 Laws” from Section II). If these laws apply to your FHT/NPLC, they impose risks of liability for Board members either personally or for the acts and/or omissions of the FHT/NPLC.

### IF THE FHT/NPLC IS A CHARITABLE CORPORATION ...

Name of Act: [Charities Accounting Act](#) (Ontario) (CAA).

Background: The CAA applies to registered charities (a subset of not-for-profit corporations) and imposes reporting and other obligations on trustees in regard to property acquired by the trustee. A corporation incorporated for a charitable purpose is deemed by the CAA to be a trustee.

Compliance Requirements: The CAA requires charities to apply trust funds for the purposes for which they were donated. The Public Trustee may require reporting on trust funds.

Liability and Penalties: The FHT/NPLC and its Board members may face penalties including fines and/or imprisonment up to 12 months if they do not abide by specific directions about a donation made by a testator in a will or by a donor in a gift agreement. The Public Guardian and Trustee can bring the matter to court, either on its own initiative or as a result of a complaint received from a donor or beneficiary. The court may order the charity to comply with the terms of the directions given by the donor, or remove the FHT/NPLC as the trustee and appoint a new trustee.

If you believe your FHT or NPLC may be a charitable corporation, you should ensure you and your organization have sufficient legal advice and accounting advice to carry out your duties in accordance with the various laws specific to charities. Charities are highly regulated.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ ADMINISTRATOR

- Has the FHT/NPLC received any charitable donations as contemplated by the CAA?
- If yes, has the gift been disposed of in accordance with the wishes of the donee?
- Have we complied with mandatory requirements for our operations, reporting, disbursement of funds and receipting of donations?
- Are we engaged in fundraising? If so, have we received legal advice or accounting advice?

## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC RECEIVES \$10 MILLION DOLLARS OR MORE OF PUBLIC FUNDING ...

Name of Act:	<a href="#">Broader Public Sector Accountability Act, 2010</a> (Ontario) (BPSAA).
Background:	<p>The BPSAA establishes rules and accountability standards for hospitals, Local Health Integration Networks (LHINs) and broader public sector organizations. Rules related to procurement and expense reporting are among the most important.</p> <p>Most FHTs and NPLCs are not subject to the BPSAA. But, if your FHT/NPLC received more than \$10 million dollars in public funds in the prior fiscal year, it is a “designated broader public sector organization” and the BPSAA will apply.</p>
Compliance Requirements:	Adherence to various directives made under the BPSAA, among the most important of which is the procurement directive.
Liability and Penalties:	A breach of the BPSAA is a breach of the FHT/NPLC’s funding agreement with the Ministry of Health and Long-Term Care. As such, any penalties for breach will be prescribed in that agreement.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Does the FHT/NPLC receive more than \$10 million dollars in public funding in a single fiscal year?
- Has the FHT/NPLC complied with the directives of the BPSAA?
- Has the FHT/NPLC ever been cited from non-compliance with the BPSAA? If so, what were the consequences and what action was subsequently taken?

#### ADDITIONAL RESOURCES

- [The Broader Public Sector Procurement Directive Implementation Guidebook](#)
- Information about [other directives](#) under the BPSAA

## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC IS PROVINCIALLY INCORPORATED ...

Name of Act: [Corporations Act](#) (Ontario) (CA), to be replaced eventually by the [Not-for-Profit Corporations Act](#) (Ontario) (ONCA).

Background: Most FHTs and NPLCs are incorporated under the CA, which is outdated non-profit corporate legislation. The CA is intended to be replaced by ONCA, which became law in October 2010 but is not yet in effect. ONCA has no determined implementation date, but the government has been working on a transition guide, regulations, new forms and default by-laws.

Compliance Requirements: Boards should ensure they are following the CA corporate rules as they currently exist. A compliance review of letters patent and by-laws is recommended. A FHT/NPLC cannot transition to the ONCA rules before ONCA is proclaimed in force.

Boards should also keep abreast of ONCA developments. Once ONCA is implemented (“proclaimed in force”), FHTs/NPLCs will have 3 years to transition under the ONCA rules. Transition requires applying for Articles of Amendment that set out the classes of corporate members and other required information and updating the by-laws to conform to new ONCA rules. Failure to take proactive steps to transition under ONCA during the 3-year transition period will result in ONCA “deeming” the FHT’s/NPLC’s incorporating documents and by-laws to have been amended to comply with the new requirements. FHTs/NPLCs will want to avoid this, as the governance rules for the FHT/NPLC will effectively be unwritten, and there will be confusion about what rules govern the Board and members. If the FHT/NPLC has no by-laws, ONCA will impose default by-laws on the corporation.

Liabilities and Penalties: Fines under the current CA for non-compliance are quite small: up to \$200 for corporations, directors and officers.

Penalties for non-compliance will increase under ONCA – \$5000 and potential imprisonment of 6 months. Improper use of member information can lead to a fine of \$25,000.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Has our letters patent and by-laws undergone legal review in the last 3-5 years?

- Has ONCA been proclaimed into force? If yes, what is our transition plan?

#### ADDITIONAL RESOURCES

- ONCA status [update](#) website

## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC IS FEDERALLY INCORPORATED...

Name of Act: [Canada Not-for-profit Corporations Act](#) (Canada) (CNPCA).

Background: On October 17, 2011, this new, federal, not-for-profit law came into force. The CNPCA (and its regulations) introduced a new framework for the federal incorporation of not-for-profit corporations. The goal of the CNPCA is to promote accountability, transparency and good corporate governance for the not-for-profit sector.

Compliance Requirements: Very few FHTs and NPLCs are federally incorporated – but some are. If your FHT or NPLC was federally incorporated under the old *Canada Corporations Act*, the CNPCA requires that it apply for a Certificate of Continuance to transition to the CNPCA. Once that transition has been made, the FHT/NPLC must continue to fulfill its ongoing reporting obligations, in addition to any new duties imposed under the CNPCA.

Liabilities and Penalties: The FHT/NPLC may be dissolved if it has not applied for its Certificate of Continuance before October 17, 2014. If the FHT/NPLC is a registered charity, dissolution could result in a revocation of its registered charity status, possibly requiring it to pay revocation tax equal to 100% of its remaining assets. A contravention of the CNPCA can generally result in fines up to \$5,000 and imprisonment up to 6 months, although for certain offences the maximum fine is up to \$25,000. Upon application by a complainant, the court may, among other things, order compensation to a person or dissolution of the FHT/NPLC.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Has the FHT/NPLC applied for its Certificate of Continuance?
- Where in the transition process is the FHT/NPLC?
- If the transition process has been completed, has the FHT/NPLC met its annual reporting obligations?

#### ADDITIONAL RESOURCES

- [Corporations Canada Transition Guide for Federal Not-For-Profit Corporations](#)
- [Reporting obligations under the CNPCA](#)

## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC IS INVOLVED IN REVENUE-GENERATING ACTIVITIES ...

For example, if your FHT or NPLC is engaged in selling products or commercial activities. “Commercial activity” is broadly defined to include almost any activity of a commercial character, whether or not there is any expectation of profit.

Name of Act: [Canada’s Anti-Spam Legislation](#) (Canada) (CASL).

Background: Most parts of CASL will take effect on July 1, 2014. CASL regulates communications using commercial electronic messages. A “commercial electronic message” is any electronic message (such an e-mail or a text) that encourages participation in a “commercial activity”. “Commercial activity” is broadly defined to include almost any activity of a commercial character, whether or not there is any expectation of profit. CASL also regulates malware and spyware.

Unless subject to an exclusion or exemption under CASL, it will apply to a FHT/NPLC that is involved in revenue-generating activities and that markets, promotes and/or sells its products and ancillary services using commercial electronic messages. “Electronic message” is broadly defined to include any message sent by any means of telecommunication, including a text, sound, voice or image message. Even an electronic message that contains a request for consent to send a commercial electronic message is itself a commercial electronic message.

Compliance Requirements: Ensuring that the FHT/NPLC has consent to send commercial electronic messages to recipients and that it adheres to the CASL form and content requirements for commercial electronic messages. If the FHT/NPLC is a charity, there is a broad exemption for fundraising. If not, it must be very careful to comply with CASL requirements.

Liability and Penalties: The FHT/NPLC can face a maximum fine of \$10 million for violation of CASL. As well, Board members could be found liable if they acquiesced or participated in the commission of the offence. Individual fines can be up to a maximum of \$1 million. In addition, the offender could be required to pay damages and penalties to an applicant under CASL. Fines for certain offences are calculated on a “per day” basis.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Does the FHT/NPLC engage in revenue generating activities?
- Does the FHT/NPLC have a plan in place for ensuring CASL compliance?

#### ADDITIONAL RESOURCES

- The CASL [website](#)
- [The Industry Canada Digital Policy Branch Q&A on CASL](#)

## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC IS CONSTRUCTING OR RENOVATING A BUILDING ...

Name of Act:	<ul style="list-style-type: none"><li>• <a href="#">Building Code Act, 1992</a> (Ontario) (BCA) and the <a href="#">2012 Building Code</a>.</li></ul>
Background:	The <i>Building Code Act, 1992</i> and its regulation, the <i>2012 Building Code</i> , establish rules for property owners to enhance building standards and processes to protect public health and safety. The <i>2012 Building Code</i> is new. Most of its provisions came into force on January 1, 2014 – others will come into effect over the course of the next few years.
Compliance Requirements:	If a FHT/NPLC engages in construction or renovations, it must obtain the appropriate building permits before beginning construction. It must also ensure that contractors adhere to the standards established by the law.
Liability and Penalties:	Board members can be fined up to a maximum of \$50,000 for a first offence and the FHT/NPLC can be fined up to \$100,000 for a first offence. Failure to comply with an order on time can result in a fine of up to \$10,000 per day.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Has the FHT/NPLC ensured that all required building permits have been obtained?
- Has a construction or renovation project been stopped or halted because of an offense under the BCA? If so, what action was taken?
- How does the FHT/NPLC ensure that contractors comply with the Code?

#### ADDITIONAL RESOURCES

- [Overview of the 2012 Building Code](#)
- The Ontario Building Code [website](#)
- The Ontario Ministry of Municipal Affairs and Housing [website](#)



## SECTION V: LAWS THAT APPLY TO PARTICULAR KINDS OF CLINICS

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### IF THE FHT/NPLC IS THE “OWNER” OF A BUILDING ...

Name of Act:	<a href="#">Fire Protection and Prevention Act, 1997</a> (Ontario) (FPPA) and its regulation, the <a href="#">Fire Code</a>
Background:	The Fire Code is a set of minimum requirements respecting fire safety within and around existing buildings and facilities. The “owner” is responsible for complying with the Fire Code, except where otherwise specified. The term “owner” is so broadly defined in the Fire Code that it includes any person, firm or corporation having control over any portion of the building and includes the persons in the building. The FHT/NPLC and likely the Board members could be found liable for a breach. The municipal fire department enforces the Fire Code.
Compliance Requirements:	Adherence to the standards and procedures established by the FPPA and the Fire Code.
Liability and Penalties:	Board members can face fines up to a maximum of \$50,000, imprisonment for up to one year, or both if convicted of knowing that the FHT/NPLC violated a provision of the Fire Code. Additionally, a Board member who hinders the Fire Marshall or inspector in his or her duties can also be subject to the penalties described above. The FHT/NPLC can be subject to a fine up to \$100,000 for contravening the FPPA.

#### THE KEY QUESTIONS BOARD MEMBERS SHOULD ASK THE EXECUTIVE DIRECTOR/ADMINISTRATOR

- Has the FHT/NPLC established an approved fire safety plan?
- When was the last time the building was inspected/audited for *Fire Code* compliance?
- Does the FHT/NPLC conduct fire drills?
- Has the FHT/NPLC ever been cited for a violation under the FPPA? If so, what has action was taken?

#### ADDITIONAL RESOURCES

- The Ministry of Community Safety and Correctional Services [website](#)
- [Office of the Fire Marshall](#)

## SECTION VI: TIPS FOR EXECUTIVE DIRECTORS/ADMINISTRATORS AND BOARD MEMBERS

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### Tips for Executive Directors/Administrators

The Executive Director/Administrator of a FHT or NPLC should be prepared to assure his or her Board that the organization has the necessary processes, policies and practices in place to meet its legal obligations.

We recommend at a minimum that Executive Directors/Administrators:

- Immediately or at least regularly report to the Board any compliance breaches or complaints
- Submit an annual Statutory Remittance Certificate (see Appendix 1) to their Board

We also recommend that you keep track of:

- The laws that apply to your organization
- Your compliance status with those laws (in general terms such as “Compliant” or “In progress”)
- Your compliance activities related to those laws including keeping track of any related organizational committees, policies, reports made to authorities, internal or external audits, training, or legal/professional advice
- Any legal breaches or complaints
- Who in the FHT/NPLC is responsible for compliance

See Appendix 2 for a sample statutory compliance audit checklist.

You should also be able to answer questions about your organizational insurance coverage, and in particular whether Board members are offered directors’ and officers’ liability insurance.

### Tips for Board Members

Some of most important ways in which you can protect yourself and assure yourself that the FHT or NPLC is meeting all of its legal obligations are to:

- Ask questions of your Executive Director/Administrator (this Toolkit has provided recommendations for the types of questions you should ask)
- Attend Board meetings
- Review management and Board committee reports and other materials provided to you
- Ask for annual business plans and updates from your Executive Director/Administrator
- Ask for a Statutory Remittance Certificate on an annual basis (see Appendix 1)
- Ask the Executive Director/Administrator to report compliance breaches or complaints to the Board on at least a quarterly basis (or more frequently if appropriate)
- Ask whether the FHT or NPLC has directors’ and officers’ liability insurance, whether that insurance covers statutory fines/penalties, and whether the organization indemnifies its Board members for costs incurred in carrying out their duties

Please refer to [AFHTO Fundamentals of Governance guidebook](#) for additional information on your duties as a Board member of a FHT or NPLC and how to fulfil your governance obligations.

## APPENDIX 1: STATUTORY REMITTANCE CERTIFICATE

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### SAMPLE

#### STATUTORY REMITTANCE CERTIFICATE

FOR PERIOD JANUARY 1, [Year] – DECEMBER 31, [Year]

**TO:** Chair, [insert name of organization] Board of Directors  
[insert name of organization]

**FROM:** \*, Executive Director/Administrator  
[insert name of organization]

**DATE:**

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I certify that:

1. I have made appropriate inquiries and investigations with respect to the matters referenced in this Certificate.
2. I confirm that, for the financial quarter ending (date) \_\_\_\_\_, the [insert name of organization] has:
  - a) deducted and remitted all amounts required under law relating to its employees, including under the *Income Tax Act*, the *Canada Pension Plan*, the *Employment Insurance Act*, and the *Employer Health Tax Act*; and
  - b) collected and remitted to the proper federal and provincial authorities, respectively, all taxes required to be collected and remitted during such period pursuant to the *Excise Tax Act* and the *Retail Sales Tax Act*.

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Executive Director  
[insert name of organization]

**APPENDIX 2: STATUTORY COMPLIANCE AUDIT CHECKLIST**

**SAMPLE**

**STATUTORY COMPLIANCE AUDIT CHECKLIST**

**FOR PERIOD JANUARY 1, [Year] – DECEMBER 31, [Year]**

NAME OF LAW	GENERAL DESCRIPTION	COMPLIANCE STATUS AND ACTIVITIES	BREACH/COMPLAINT HISTORY	AREA OF RESPONSIBILITY
<b>INSTRUCTIONS</b>				
<p><i>Name the laws on which you are going to report</i></p> <p><i>Indicate if the law is new from when the last report was made to the Board</i></p> <p><i>Indicate if the law includes potential Board member liability</i></p>	<p><i>Describe each law in general terms for the Board</i></p>	<p><i>Identify whether the organization is compliant or in progress of becoming compliant</i></p> <p><i>List all applicable FHT/NPLC activities of compliance including any related organizational:</i></p> <ul style="list-style-type: none"> <li>• <i>Committees</i></li> <li>• <i>Policies</i></li> <li>• <i>Reports made to authorities</i></li> <li>• <i>Internal or external audits</i></li> <li>• <i>Training</i></li> <li>• <i>Legal or professional advice received</i></li> </ul>	<p><i>List any problems, breaches or complaints related to the law and as necessary append additional materials to explain organizational responses</i></p>	<p><i>List the FHT/NPLC staff member who is responsible for reporting on compliance and any problems</i></p>