

## Governance Fundamentals

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# 1 Introduction to Fundamentals of Governance

## 1.1 Introduction

Family Health Teams (FHTs) and Nurse Practitioner-Led Clinics (NPLCs) are models of primary health care delivery based on the use of inter-professional, collaborative teams of health care professionals. FHTs and NPLCs are relatively new models of care in Ontario, having been established beginning in 2007. They are provincially or federally incorporated bodies, with legal obligations and responsibilities that are largely new to primary health care in Ontario. As corporations, FHTs and NPLCs are required to have Boards of Directors that are accountable for the organization's mandate and performance. AFHTO's *Governance Fundamentals* program is designed to help FHT and NPLC boards understand their role, responsibilities, and the critical importance of governance to the success of the organization.

## 1.2 Board Legal Structures

A FHT/NPLC is required by the Ministry of Health and Long-Term Care to be a registered non-profit corporation with a board of directors. At this time, most FHTs and NPLCs are registered under Ontario's *Corporations Act (1990)* pending new provincial legislation not yet in force called the *Not-For-Profit Corporations Act (2010)*. FHTs and NPLCs will be required to review their bylaws and make an application for continuance when this new legislation becomes applicable. If your organization is incorporated under federal legislation, you will need to pay attention to the Canada Not-for-profit Corporations Act, also recently updated. There are a few instances where a FHT/NPLC is sponsored by another organization that is incorporated (e.g. a hospital or Victorian Order of Nurses). In these cases, the FHT/NPLC is not itself incorporated.

In addition to being registered as a not-for-profit corporation, a FHT/NPLC may also choose to apply for charitable status under the federal *Income Tax Act (1985)*.

There is variability among these primary care organizations in the type of board structure employed, with three distinct configurations:

1. Provider-based board
2. Community-based board
3. Mixed community/provider-based

Your organization's board structure is delineated in your bylaws.

In this section you will find information on:

- Not-for-profit corporations
- Registered charities
- Types of board structures

### 1.2.1 What is a not-for-profit corporation?

A not-for-profit corporation is an organization where the corporation is a legal entity separate from its directors and members. A not-for-profit corporation may earn excess revenue but must use these earnings to further the work of the corporation (rather than distributing the profit among owners or shareholders as in a for-profit corporation). FHTs/NPLCs are required to return surplus Ministry funding to the Ministry of Health and Long-Term Care unless given express permission to retain it.

Not-for-profit corporations are fairly straight-forward to set up. To be able to issue tax-deductible receipts to donors, they must apply for and be granted charitable status by Canada Revenue Agency.

### 1.2.2 What is a registered charity?

Charities are not-for-profit corporations that are registered under the *Income Tax Act (1985)* and regulated by the Canada Revenue Agency (CRA). One of the benefits of becoming registered as a charity is that your organization can issue receipts to donors for income tax purposes. CRA grants charitable status to those organizations that meet requirements under the *Income Tax Act* and whose objects, activities and purposes are accepted as being "charitable". Before applying for charitable status, it is advisable to consult with CRA to confirm your organization's eligibility. Obtaining registered charitable status can be costly in terms of time and additional filing requirements. The process generally takes at least six months and can take longer.

Acquiring charitable status obligates the organization to file additional annual financial reports with CRA and to permit the organization's filings to be public. There are reporting and fund utilization constraints that need to be carefully considered by a board prior to deciding to proceed with an application for charitable status. However, charitable status does allow the organization to raise funds and provide tax receipts to support its activities. For example, a FHT that is planning to fundraise to support a

capital expansion of its premises would benefit from being able to issue donation receipts for donations of money.

### 1.2.3 Types of board structures

As mentioned above, there are three types of board structures: provider-based, community-based and mixed. A FHT may have any one of these types of board structures whereas a NPLC must have a mixed board structure.

#### 1.2.3.1 Provider-based boards

A provider-based organization as defined by the Ministry of Health and Long-Term Care, has a board of directors that is drawn from a profession governed by the *Regulated Health Professions Act*. Physicians are affiliated with the FHT through an association agreement with their Family Health Organization (FHO), Family Health Network (FHN), or Rural and Northern Physician Group (RNPG). The board usually comprises physicians who are members of the affiliated physician group(s), or, if specified in the bylaw, physicians from outside these affiliated physician group(s). The corporate bylaw will provide details around eligibility for both membership and directors. The majority of FHTs are governed by provider-based boards.

#### 1.2.3.2 Community-based boards

A community-based FHT as defined by the Ministry of Health and Long-Term Care includes local community representation. FHT physicians in a community-based FHT may be salaried employees or they may be in an affiliated physician group, and may not be members of the board.

#### 1.2.3.3 Mixed community/provider-based boards

A mix of community and provider-based representatives may govern a FHT/NPLC. In the case of NPLCs, the Nurse Practitioners Association of Ontario recommends that more than half of the board members be nurse practitioners.

**Case Study**  
**Essex County NPLC – A Unique Mixed Governance Model**  
**Background**  
The Essex County Nurse Practitioner-Led Clinic became operational in 2011, serving a wide range of patients in the southwest of the province. A year later an outreach office opened in

Windsor. The clinic has 4 Nurse Practitioners, as well as nurses, social worker, dietitian, health promoter, executive director and administrative staff.

Catherine Schooley is a nurse practitioner and Chair of the Board. Pauline Gemmell is the Clinic's Executive Director.

### **A unique mixed-governance model**

The NPLC has a board of seven (7) members:

- Board Chair
- 3 nurse practitioners
- 3 community members (a lawyer, an accountant, a member of the general public)

At the time of incorporation, the founding directors (who are nurse practitioners) decided that the potential for conflict of interest, should they sit on the board, was high, and they elected to step back. They became staff of the Clinic, and the NPLC looked to other nurse practitioners in the area to serve as board directors.

The advantage? A board that has top-notch clinical knowledge provided by nurse practitioner colleagues, without the conflict of interest issues that arise from having board members who also provide service to the FHT. The community members bring skills and expertise in areas such as finance and law. Overall, the NPLC has achieved a balanced board that includes clinical knowledge and operations/management expertise.

### **Reaching out to the community**

The Essex County NPLC has also reached out to its stakeholders and the community. It is a member of the local Business Improvement Association, which has helped the community to understand what the NPLC offers, and has helped the NPLC to become better known. As it begins a board recruitment exercise in the near future, these connections in the community may assist in identifying potential new board members.

### **Learnings from the Essex County NPLC Governance Journey**

- Hire your executive director very carefully; this is the most important position you have.
- The executive director/board chair relationship is very important. It's not just personality, it's having a good and productive working relationship.
- There needs to be trust between the executive director and the board
- Good legal support is necessary to help deal with all of the legislative requirements related to managing a Nurse Practitioner-Led Clinic. Our lawyer, for example, helped us to carefully consider the potential conflict of interest issues in our governance model, and ultimately, we selected a model that is proving to be very successful.

#### 1.2.3.4 *Is one of these models better?*

The principles of good governance apply to all three of the above models. The information and tips in this toolkit will help you to ensure that regardless of the model you are working in, your board can be productive and effective. However, there are some unique characteristics and challenges related to each of the models that you will need to address if you are to become a high performing board.

#### 1.2.3.5 *Common characteristics of all models*

In all 3 of the models, board members have an obligation to act in the best interest of the corporation.

In all 3 models, the board may choose to assemble a Community Advisory Committee to provide information and advice.

It is important to understand the relationship between the physician group (FHO/FHN/RNPG) and the Family Health Team. It is a complex, mutually beneficial relationship that to be effective, requires collaboration, cooperation and sometimes negotiation. The relationship may put physicians in a conflict of interest position from time to time, which by law must be acknowledged and managed (see [Conflict of Interest](#), Section on *Board Structures and Processes*). Some of the key elements of this relationship include the following:

- The FHT's members and directors are the individual physicians, acting as individuals. While they may come from the FHO/FHN/RNPG, they do not represent those bodies for the purposes of governing the FHT and in board decisions must act in the best interests of the FHT or recuse themselves.
- The physician association agrees to provide medical services to the FHT, usually by an agreement between the association and the FHT.
- All members of a physician association that has a Family Health Team funding agreement with the Ministry are subject to the terms and conditions of the FHT agreement.
- The physician association does not “own” the FHT. Certainly it is essential to have a physician group associated with the FHT; however, the FHT exists as a separate legal entity.

#### ***1.2.3.6 Common characteristics of provider-led boards:***

- Physicians retain decision-making power
- Are most familiar with the nature of the organization as a provider of primary health care
- Do not have “outsiders” to deal with on issues related to primary care
- Have an inherent conflict of interest as members of a FHN, FHO or RNPG who provide services to the FHT
- May lack diversity of opinion and knowledge of FHT operations (human resources, finance, risk, etc.) and the richness of board discussion that diversity can bring
- May lack connections with community agencies and providers

#### ***1.2.3.7 Common characteristics of community boards:***

- Often have a community advisory committee to enhance the knowledge and understanding of community need
- May lack broad understanding of primary care and sector trends
- May lack robust connections with acute care and tertiary care providers
- Typically have members with a wide range of skills and experience

#### ***1.2.3.8 Common characteristics of mixed boards:***

- Have a combination of community members and physicians or nurse practitioners
- Have both clinical knowledge as well as expertise in areas related to board function (e.g., finance, IT)
- Physicians (in FHTs) and nurse practitioners (in NPLCs) usually hold the majority of board positions
- To reduce the potential for conflict of interest, all or most of the nurse practitioners on NPLC boards may be from outside of the organization

As you learn more about becoming a high performing board, you will be able to assess your board structure and processes, and make the changes necessary to improve effectiveness. If a change in FHT board structure is deemed advantageous, this can be accomplished by amending the Bylaw. Prior to doing so, it is advisable to notify the Ministry. Changes to the Bylaw must also be filed with the Ministry of Consumer Affairs.



## Resources and references

[Making Provider Boards Work- video interview with Dr. Joseph Lee](#)

Family Health Teams, Guide to Governance and Accountability, Ministry of Health and Long-Term Care, 2010



## Questions to consider

Has your board ever discussed changing its governance structure? What were the pros and cons and what decision did you make?

### 1.3 What is governance and why is it important?

This section will address

- What is governance?
- Why is governance important?
- What is “good governance”?

#### 1.3.1 What is governance?

There are many formal definitions of governance. In broad terms, governance refers to the structures, responsibilities and processes that guide an organization’s decision-making and performance. It refers to who is in charge of what; how decisions are made; how authority is exercised; and how decision-makers are held accountable.

For the *Fundamentals of Governance* program, we are using the following definition of governance:

**Governance deals with the leadership, stewardship and oversight of an organization. It concerns itself with the direction of an organization’s activities and includes policy making, structure, decision-making processes and accountability mechanisms as well as operating values, behaviours, traditions and other elements of organization culture. (Nininger, 2010)**

This definition is important as it makes the distinction between What Gets Done (direction, decision making, etc.) and How It Gets Done (behaviours, values etc.). Most books on governance only discuss the first aspect. Experienced directors know the critical importance of a board that is a robust social system consisting of trust, challenge, transparency and candour.

There are many books, associations, courses, resources and training dedicated to the study and execution of governance. There are models and frameworks of governance. What is clear from the literature and experience is that governing an organization well takes skill, knowledge, and practice. It does not happen by chance, or without a lot of attention and work. It is important for boards and their directors to understand the fundamental tenets of governance, and to build the knowledge and capacity to govern effectively.

### **1.3.2 Modes of governance**

To fulfill the obligations for leadership, stewardship and oversight, boards may want to consider the following three modes of governance – fiduciary, strategic and generative. Each of these modes serves a distinct purpose and when taken together, coalesce in a high performing board.

#### **1.3.2.1 Fiduciary mode**

- The principal purpose of this mode is stewardship; the principal role is oversight
- The board executes its fiduciary duties of ensuring that the organization meets its financial and legal obligations; monitors organizational performance; provides stewardship of the organization's assets
- This is a critical role in which the board monitors performance on key indicators such as finance, service volume and quality and clinical targets and works with management to achieve excellent performance

#### **1.3.2.2 Strategic mode**

- The principal purpose of this mode is to ensure the organization develops an effective strategy that will ensure the organization thrives
- Board looks beyond the immediate and assumes a more forward-looking focus
- The board's focus is on creating the strategic plan, ensuring that there are sufficient resources and leadership to execute the plan, monitoring of performance against the strategic plan, and making changes if and as required
- Board consistently considers the strategies needed to achieve the organization's vision, mission and goals

### 1.3.2.3 *Generative mode*

- The principal purpose of this mode is to enable the board to understand why the organization is performing at current levels and the options and new thinking that might enhance performance
- In generative governance the board “thinks outside the box”, and becomes a catalyst for innovation, change and improvement
- The board needs to create the space to do this (e.g. board retreats, agenda design)
- This mode permits boards to consider higher-order issues, to be innovative and creative (see [Adding Value: Introduction to Generative Governance](#))
- The board engages with management in this mode; there is a fusion of thinking and working together to create new and different possibilities.

Some boards fulfill their basic obligations by functioning only in the fiduciary mode. High performing boards strive to achieve the skills and knowledge to function in all three modes and to choose the appropriate mode for different decisions. It is important to note that a board never gives up its fiduciary role; it will always be responsible for basic oversight, leadership and stewardship functions. It must always be confident that the organization is meeting its legal obligations and its commitments to funders and partners.

Governance typically evolves over time with the maturation and level of development of an organization and of its board. The governance needs of a new entity, for example, may not be the same as the governance needs of a mature organization, or an organization facing significant change. A new organization may require its board to focus on developing policy, creating a culture, and attending to basic fiduciary functions. A more mature organization, having made it through the start-up phase, may require its board to focus more on making strategic decisions for the future. As a board becomes more comfortable operating in a strategic mode, it will often work on increasing its capacity to function in the generative mode, being more innovative, and/or on building social and reputational capital that will contribute to success.

### 1.3.3 **Why is governance important?**

Governance plays a key role in organizational success. Good governance, combined with strong management and a committed staff team can:

- Be a positive force for change and innovation
- Provide leadership (within the organization and outside)

- Build social capital
- Ensure the organization achieves its goals and purpose and uses its resources wisely and effectively.

A poorly governed organization will rarely achieve success in meeting its performance goals. A high performing board will provide the leadership, stewardship and oversight that will guide and enable organizational success.

Lack of attention to governance can have serious consequences. Both the private sector and the not-for-profit sector provide numerous examples of this - witness Enron, WorldCom, orange, eHealth Ontario, Niagara Health System. In all of these examples, investigative reports and criminal investigations following an organizational crisis found the boards to be performing poorly, failing to exercise some of the most fundamental of their roles.

So what are some of the ways in which boards fall short?

- Failure to effectively monitor the performance of the Executive Director
- Failure to ask the right questions (e.g. about organizational performance, about quality and safety, about staff satisfaction, about patient complaints)
- Failure to provide adequate oversight
- Failure to maintain and strengthen community and stakeholder relations
- Not understanding the roles and responsibilities of the board and of management
- Failure to provide the leadership that a board must provide for the organization (i.e. depending on the executive director to provide the necessary leadership)
- Failure of the board to hold itself accountable for the performance of the organization.

Failure of the board to monitor compliance with legal and legislative obligations can have serious consequences for both the organization and its directors.

- Violation of Occupational Health and Safety legislation can result in a maximum penalty of \$500,000
- First offence under the Employment Standards Act can result in a \$100,000 fine; repeat convictions up to \$500,000
- Accessibility for Ontarians with Disabilities legislation (AODA) provides for fines of up to \$50,000/day until the contravention is fixed

Your board should always carry adequate insurance, including Directors and Officers' Liability insurance to protect its directors. However, it is important to understand that **directors' liability insurance may not cover directors in cases where due diligence cannot be demonstrated**. The role of a board member and a board is a serious commitment requiring time, knowledge, and vigilance.

#### 1.3.4 What is "good governance"?

Good governance provides an organization with direction and leadership (often through example), develops policy, monitors organizational performance and ensures overall accountability. The board should not be involved in day-to-day- operations. The board's role is to oversee and monitor the work of the executive director in operating the organization.

It is important to master the basics first – the governance fundamentals – which will provide a board with a solid base on which to further build its skills and knowledge. Good governance can be the difference between a solid organization that meets basic standards of performance and a highly effective, highly successful organization that is a leader in its sector.

There are a host of factors that make the difference between an adequate board that meets its fiduciary duties, and a board that provides exciting and dynamic leadership. Many of these factors are related to the ability of the board to work with senior management to build an exceptional organizational culture that values such traits as transparency, trust and partnership. Organizational culture is established at the top; the board has an integral role in establishing and nurturing the kind of culture that produces high quality performance in an environment of partnership and collaboration.



#### Questions to consider

1. Where along the governance continuum do you think your board falls? What has to happen to move your board to the next level of performance?

## 2 Governance Framework and Toolkit



The board is responsible for providing leadership, oversight and stewardship of the FHT/NPLC in a number of key areas. The following Governance Toolkit sections outline the board’s duties and responsibilities in 6 dimensions of a governance framework that also includes board and organizational culture (addressed in Board Culture), a critical element that wraps around every aspect of governance.

The six dimensions of the governance framework include:

- Setting Direction
- Board Structure and Processes
- Executive Leadership
- Resources
- Quality and Safety
- Stakeholder Relations