

## Private Practice: Legislative and Regulatory Considerations

August 2020

### *Background*

All occupational therapists (OTs) registered to practice in Alberta are accountable for adhering to the Alberta College of Occupational Therapists (ACOT) Standards of Practice (SoP) and Code of Ethics (CoE), regardless of practice setting.

It is important that registrants wishing to set up a private practice undertake due diligence to ensure their practice adheres to ACOT's SoP and CoE. Most notably, Standard 1.2 and 9.1 require that registrants:

*"be knowledgeable of and adhere to all relevant public protection legislation, regulatory and professional legislation, bylaws, standards of practice and code of ethics applicable to his/her/their occupational therapy practice." And*

*"maintain appropriate management structures and organizational structures and processes for his/her/their practice"*

Occupational therapists working in private practice are accountable for delivering competent and ethical services and utilizing ethical business practices. The responsibility is on the OT to develop policies and procedures for the various aspects of practice operations described in this document including, but not limited to: consent and documentation, records management, fees and billing, occupational health & safety, infection prevention & control, human resource management (if you will be hiring employees).

As part of a regulatory body's public protection mandate, ACOT has a role in assisting OTs in interpreting applicable public protection legislation, public health orders, regulatory and professional legislation, standards of practice and code of ethics. This guideline highlights some of the main **public protection legislation** relevant to a private practice setting in order to adhere to the relevant **professional legislation** (i.e. [Health Professions Act -HPA](#), the [Occupational Therapists Profession Regulation - OTPR](#), ACOT [Standards of Practice - SoP](#) and [Code of Ethics - CoE](#)). More information on ensuring your private practice aligns with professional legislation can be found in ACOT's [Answers to Frequently Asked Questions About: Private Practice](#) document.

### *Applicability of this Practice Guideline*

This practice guideline is intended for occupational therapists who are or are wanting to: become self-employed, own and operate their own occupational therapy business/clinic, and/or act as independent contractors/sub-contractors.

For the purpose of this practice guideline, a client is defined as: *the individual, group, organization, system (or combination of these) to whom the occupational therapy services, recommendations or professional opinions apply.*

**NOTE:** It is not in ACOT's mandate to formally advise about all of the legislation that might apply as it can vary depending on how a private practice is set up. In addition to the general guidance provided below, it is recommended that you seek more specific advice from a legal advisor, an accountant, and your liability insurance provider.

## Setting up Your Practice

The opportunities for private practice OTs are diverse, not just in terms of practice area or client population, but also in whether the practice is solo or group-based, gets referrals through word-of-mouth/advertising, a funding source (e.g. Family Supports for Children with Disabilities - FSCD) or an established relationship with a referral source (e.g. law firm). Many OTs in private practice are also engaged on contract with an agency or organization (e.g. Worker's Compensation Board - WCB, early childhood services providers, school boards, etc.).

The [Government of Alberta](#) and [Government of Canada](#) have prepared resources for people interested in becoming self-employed or setting up a small business.

Accessed from the Alberta Learning Information Services (ALIS) site, OTs can also find resources on [self-employment](#), [contracting](#) and other related topics to aid in determining how and what is required to set up a practice.

### More On This Topic



Look for Work

#### Self-Employment: Finding Your Way

Do you want to work for yourself? Find out more about some of the ways to be self-employed.



Look for Work

#### Self-Employment: Top Tips for Success

Stay ahead of competitors with these tips for business owners.



Look for Work

#### Self-Employment: Traits and Attitudes

People who are successfully self-employed share certain traits and attitudes. Find out what they are and whether you share them, too.



Look for Work

#### Self-Employment: Avoid Common Pitfalls

Here are some ways to avoid the most common things that can go wrong when you run your own business.

## Legislative Requirements

Client/worker safety and information privacy are two aspects of public protection that have legislative requirements all employers (including people who are self-employed) need to consider and implement in any workplace. Typically, an employer is responsible for having policies and procedures in place to ensure adherence to these requirements. In private practice, you are responsible for developing the policies and procedures for your practice (regardless of how you decide to set it up).

The legislative requirements for workplace safety and information privacy are described in the following sections.

## A. Client and Workplace Safety

As per Standard of Practice 9.2, OTs are expected to *“Demonstrate safe work practices by identifying potential risks and minimizing those risks in the practice setting.”*

The Government of Alberta has prepared [occupational health and safety resources for small business](#) owners to learn about their occupational health and safety (OH&S) responsibilities. This link also connects to OH&S policy templates and hazard assessment checklists.

Although not all of the content is applicable to OTs in solo practice, there are some important recommendations (e.g. having procedures in place for working alone, required personal protective equipment – PPE, etc.) as well as information on what a contracting agency can and should do and/or request of you when they are engaging you as a contractor.

Ensuring adherence to [Infection Prevention and Control \(IPC\) standards](#) is another way OTs in private practice demonstrate safe work practices. IPC Resource Manuals can be accessed [here](#) (click on the “Community Based Services” tab). Although these resources have been prepared for Alberta Health Services (AHS) staff and their contracted partners, you will find numerous useful resources relating to hand hygiene and PPE and the cleaning and disinfection of workspaces/equipment you use for yourself or your clients. These resources can be used as a reference for the IPC policies and procedures you develop for your own private practice.

## B. Information Privacy

As part of demonstrating respect for clients, OTs are required to *“safeguard client information from unwarranted disclosure”*(CoE 1.6).

### Retention, Storage and Disposal of Client/Employee/Business Records

Agencies, organizations or private practice providers, who are not listed as custodians or affiliates in the [Health Information Act](#) (HIA), or named in the [Student Record Regulation](#)<sup>1</sup>, are bound by the requirements in the [Personal Information and Protection Act](#) (PIPA), specifically:

*“An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.”*

The PIPA also speaks to retention and destruction of information/records in Section 35:

- (1) An organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes.*
- (2) Within a reasonable period of time after an organization no longer reasonably requires personal information for legal or business purposes, the organization must*
  - (a) destroy the records containing the personal information, or*
  - (b) render the personal information non-identifying so that it can no longer be used to identify an individual*

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<sup>1</sup> The *Student Record Regulation* sets out the requirements and obligations regarding the management of student records maintained by a board, an operator of a charter school, a Francophone Regional authority, a person responsible for the operation of a private school, or an early childhood services program.

Examples of a “legal purpose” to retain records would be if a client/guardian disagrees with the results or recommendations of an assessment and decides to file a lawsuit or if a former client submits a claim of sexual assault or battery.

- According to Alberta’s [Limitations Act](#), there is a 10-year limitation period in which a civil action can be filed. There is no limitation period for claims of sexual assault or battery or sexual misconduct (other than sexual assault) if the claimant was a minor or under guardianship at the time of the alleged misconduct.
  - As well, beyond the limitation period for filing a claim in Court, the Alberta Rules of Court provide that a claimant must serve the claim within one year of being filed in Court, with the possibility of extending time for service by up to three months.
- Although there is always a risk that client records may be required for litigation purposes, the indefinite retention of records is not always possible. ACOT’s guidance is to retain records for ***at least 11 years and three months after the last date of service delivery***. If the last date of service was provided when the client was a minor, records should be retained for ***11 years and three (3) months after the date on which a client turns 18***.

An example of a “business purpose” would be requirements specified by the Canada Revenue Agency (CRA).

- CRA requires that all income tax records and supporting documents be kept for six (6) years in case an audit is requested. More information on business record keeping can be accessed [here](#).

The PIPA does not specify that client records have to be paper copies; electronic versions are acceptable as long as they are [retained according to the PIPA](#). For example:

- If mobile devices such as laptops are used to store electronic client/employee records, they should be encrypted and password protected.
- Caution should be taken to ensure the security of records held in [cloud-based storage](#) solutions.
  - The Office of the Information and Privacy Commissioner reports that the most common reasons for information breaches relate to compromises in electronic storage and electronic communications. ([Cause of Breaches and Breach Prevention Recommendations](#))
- For the integrity of records stored electronically, documentation in a client record should be stored in a way that incorporates an audit trail which tracks and captures any edits or alterations made to those records including who made the change/addition and the date that the change/addition was made

The [Freedom of Information and Protection of Privacy Act](#) (FOIP), applies to public bodies such as a school boards/districts, government ministries or municipalities. If you are contracted by a school board or receive funding from a government ministry (e.g. Education, Children’s Services), requirements for storage, retention and release of client records may be different and should be clearly stated in your contract.

See ACOT’s practice guideline on [Information Privacy and Disclosure Legislation](#) for more information about your duties in the collection, use and disclosure of a client’s personal and/or health information as well as the [Standards for Documentation](#) guideline on the type of information your client records must include.

## **Communicating with Clients Electronically**

Emails and text messages are considered records according to Alberta’s various privacy legislation (see the Office of the Information and Privacy Commissioner’s guidelines on [Managing Emails](#) from March 2019). As such, you are to take the same care and caution with their collection, use and disclosure, and retention, storage and disposal, as you would with any other client record.

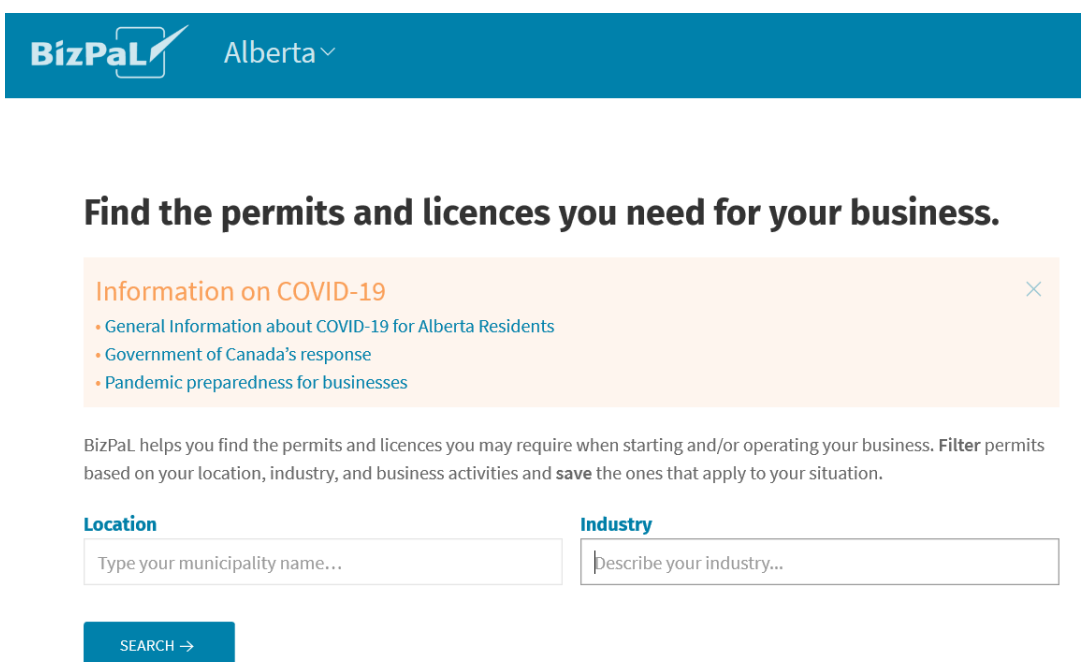
See ACOT's practice guidelines on [Electronic Communications with Clients](#) and [OT Service Delivery through Virtual Means](#) for more information.

## Additional Requirements

There could be other municipal/provincial/federal requirements depending on how you want to set up your practice.

Through the Alberta [BizPal website](#), you can search whether there are any other permits or licenses required depending on where you are operating.

Entering the term "health" generates a picklist where you can find the best match for your practice. The search will generate a list of additional municipal, provincial, and federal permits or licenses you might require along with information pertaining to each one so you can determine whether it applies to you.



The screenshot shows the BizPal Alberta website interface. At the top, there is a blue header with the BizPal logo and the word "Alberta" with a dropdown arrow. Below the header, the main heading reads "Find the permits and licences you need for your business." There is a light orange notification box titled "Information on COVID-19" with a close button (X) in the top right corner. The notification box contains three bullet points: "General Information about COVID-19 for Alberta Residents", "Government of Canada's response", and "Pandemic preparedness for businesses". Below the notification box, there is a paragraph of text: "BizPal helps you find the permits and licences you may require when starting and/or operating your business. Filter permits based on your location, industry, and business activities and save the ones that apply to your situation." Underneath this text are two input fields: "Location" with the placeholder text "Type your municipality name..." and "Industry" with the placeholder text "Describe your industry...". Below these fields is a blue button with the text "SEARCH →".

## Conclusion

This is not an exhaustive list of relevant public protection legislative requirements as they will vary depending on how you set up your practice. It is strongly encouraged that you engage legal counsel, an accountant and/or a small business consultant for advice on operational requirements and best practices. You can also reach out to colleagues in established private practices for advice and mentorship. The Society of Alberta Occupational Therapists ([SAOT](#)) and the Canadian Association of Occupational Therapists ([CAOT](#)) have listings of OTs in private practice.

Please also refer to ACOT's [Answers to Frequently Asked Questions About: Private Practice](#) document where questions about private practice have been compiled and answered.