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# Meeting The Legal Needs of Ontario Nonprofits Through Changing Times

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### Contents

Acknowledgments.....	1
Introduction .....	1
Methodology.....	2
Part 1: What are the Unmet Legal Needs of Nonprofits in Ontario?.....	6
The highest priority areas of legal need .....	7
Our study confirms high priority areas of law but finds a high degree of need in all areas.....	8
The extent of unmet legal needs and who has them .....	11
Part 2: How Do We Meet the Legal Needs of Nonprofits in Ontario?.....	16
How legal needs currently get met in other jurisdictions.....	16
Nonprofits need more than traditional legal services .....	17
How to meet the legal needs of Ontario more effectively .....	19
Part 3: Recommendations .....	22
The key actors .....	22
Recommendations for key actors .....	22

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### Introduction

Nonprofits, like everyone else, are going through times of profound change. An HR crisis compounded by an ongoing decline in volunteerism has decimated the workforce of a labour-intensive sector.

Digitization and hybridization of workplaces and operations driven by technological developments and accelerated by the COVID-19 pandemic are putting ever increasing pressure on under-resourced organizations and opening up an ever-greater digital divide. Social justice movements are forcing profound reflection on how collective decisions are made and who makes them. Without intending it, we believe this report in part tracks the legal impact that these and other societal transformations are having on individual nonprofits and the supports these nonprofits need to adapt and deliver on their missions more effectively both individually and collectively.

Between March 2021 and April 2023, Community Legal Education Ontario (CLEO) carried out a study of the legal needs of nonprofits in Ontario and how best to meet them. The study focused on small to medium-size public benefit nonprofits and legal needs related to the organization (for example, corporate and employment law) as opposed to legal issues of clients (for example, family law in gender-based violence shelters). The study used a mix of qualitative and quantitative methods including:

- A review of scholarly and grey literature on the legal needs of nonprofits.
- A series of action-research workshops on a range of legal topics. Topics were selected based on surveys distributed to networks of nonprofits.
- A province-wide legal needs survey focused on areas identified as top priorities through the action-research workshops.

We have also included data from the database of enquiries CLEO has received from the public through its website and events since 2017.

Based on the above data, this report sets out to document the highest priority legal needs of nonprofits in Ontario, the extent to which they are being met, and how to meet them most effectively going forward. It concludes with recommendations for key actors across the sector on how we could work together to meet the legal needs of nonprofits better. We expect this report to be particularly relevant to volunteer centres, funders (particularly place-based funders such as municipalities, United Ways, and community foundations), and subsector associations.

## Methodology

Large scale legal needs studies have been done across common law jurisdictions since at least the 70s.<sup>1</sup> As a legal needs study of nonprofits in Ontario has never been done, we began this study with an exploration of the limited number of studies focusing on the legal needs of nonprofits to set our expectations. To get the most fulsome picture, we then combined three legal needs study methodologies, action-research workshops, a large scale survey, and the questions on the survey were meant to lay the groundwork for the development of proxy models of legal need.<sup>2</sup> Below we describe in

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<sup>1</sup> Lyons, G. (1983). Defining Unmet Legal Need. *Legal Service Bulletin*, 8, 165-167 at 165.

<sup>2</sup> Johnsen, J. (1999). Studies of Legal Needs and Legal Aid in a Market Context in *The Transformation of Legal Aid: Comparative and Historical Studies* (eds. F. Regan, A. Paterson, T. Goriely, & D. Fleming). Oxford: Oxford University Press, 205-232.; Woodward, S. Marshall, S. (2004) *A Framework: Reforming Not-for-Profit Regulation*. University of Melbourne. Available at: [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0004/2065756/A-better-framework-reforming-not-for-profit-regulation-2004.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0004/2065756/A-better-framework-reforming-not-for-profit-regulation-2004.pdf) (“Woodward”); Baker, D., & Barrow, S. (2006). Proxy models of legal need: Can they contribute to equity of access to justice? *Journal of Social Policy*, 35(2), 267-282.

brief our methodology with a focus on distinguishing features, both to account for the distinct nature of organizations and to overcome limitations that have been identified in the literature.<sup>3</sup>

## 1. Literature Review

Our literature review was more exploratory than systematic. We searched “legal needs” and “nonprofit” as well as related terms such as “transactional law” and “community economic development” in databases including: JSTOR, Sage Journals, Academia.edu, ResearchGate, and Google Scholar. We also reviewed texts recommended by experts in the field with whom we discussed our study’s proposed methodology. In total, 26 sources were identified including a book, 11 peer-reviewed journals, 8 reports, and 6 magazine articles.

## 2. Action-Research Workshops

Between March 2 and July 27, 2022, CLEO delivered 14 legal information action-research workshops to nine networks of nonprofits. These sessions were attended primarily by staff varying in seniority and role within their organization. These networks included provincial sectoral associations, nonprofits convened by regional funders, and a local identity-based network.

In the case of six of the nine networks, workshop topics were selected based on a survey that was circulated through the networks in advance. In three cases, due to poor or no survey response, session topics were selected based on pre-existing data shared by the networks from other needs assessments and evaluation exercises. Indeed, this served as a reminder that networks already hold rich data and insight into the legal needs of their members and using a legal needs framework to recode existing data can be an efficient way to gain insight into the needs of a group.

In total there were 217 respondents from 8 networks (some networks ultimately decided not to participate in the study). Examining 12 different areas of a nonprofit’s structure and operations, the survey asked respondents to rate their level of agreement with the following statement (on a scale of 1 to 5) “I need to know more about the law in this area to do my work more effectively.” In each section, respondents were also invited to specify questions or topics they were interested in.

During the workshops 50-75% of the was allocated to providing legal information to participants. This was done both to deliver value to them and to equip them with information they would need to be able to recognize and articulate their needs in legal terms. This was meant to overcome a traditional criticism of legal needs study that respondents are typically unable to identify their own needs. 25-50% of the time was allotted to a discussion period. In this discussion period, participants were asked to share their questions and experiences. Participants were then asked to respond to each other if they had any solutions before the facilitator answered questions. This was intended to overcome the criticism that

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<sup>3</sup> While we do not have space in this report to explain all of our methodological choices, the choices were based on responses from experts in this field to a discussion paper we circulated early on. The paper is available upon request.

legal needs studies are paternalistic and that the concept of legal need individualizes problems that may be collective or political in nature.<sup>4</sup>

### 3. Province-Wide Survey

From February to May 2023, CLEO circulated a legal needs survey to nonprofits across Ontario. CLEO used the following dissemination strategies:

- We sent the survey to members of the public who had submitted requests for legal information in the past.
- We asked networks with whom we have partnered on workshops to disseminate it to their members through newsletters and social media.
- We posted directly on CLEO and personal LinkedIn and Twitter accounts.
- We posted an invitation to the survey on the Nonprofit Law Ontario website home page.
- We reached out personally to nonprofits within our networks.

Our survey asked about a series of legal instruments, including: written agreements for paid workers, written volunteer agreements, harassment policies, privacy policies on websites, complete corporate minutes, articles, bylaws and constitution, and corporate status. For each, it asked:

- if the organization had the legal instrument, did not have the legal instrument, or N/A did not need the legal instrument (for example no employment contracts because no employees);
- if the legal instrument was followed in practice, was not followed in practice, or N/A;
- if the organization had experienced an issue in the last 12 months that they gave them cause to believe it would be good to implement or improve the legal instrument.

We asked about legal instruments as well as legal issues to reflect the fact that the law may be needed proactively and not only reactively in response to some incident.

The survey asked about what supports the respondent had used or would like to use in obtaining these instruments, including an open-ended text box to provide more context. Due to poor wording and a technical error, the open-ended text box responses are excluded from this report. Consequently, we have supplemented this study with data from our database of enquiries we receive from the public.

Finally, the survey asked about a number of organizational features the literature review suggested might be important predictors or determinants of legal needs, including:

- **Annual budget:** <\$10,000; 10,000-100,000; 100,000-500,000; 500,000-1,000,000; 1-5,000,000; 5,000,000+
- **Workforce:** Including number of employees, volunteers, and contractors, 0, 1-10, 11-20, 21-30, 31-100, 100+
- **Governance structure:** Including the number of directors, voting members, and non-voting members 0, 1-10, 11-20, 21-30, 31-100, 100+

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<sup>4</sup> Curran, L. & Noone, M. (2007). The Challenge of Defining Unmet Legal Need. *Journal of Law and Social Policy* 21, 63-89 at 68. Available at: <http://digitalcommons.osgoode.yorku.ca/jlsp/vol21/iss1/4>; Lewis, P. (1973). Unmet Legal Needs in Social Needs and Legal Action (eds. Morris, P., White, R., Lewis, P.). London: Martin Robertson, 73-97.

- **Location of operations:** City, small non-rural community, rural community, northern community

By capturing data on these points, it may allow future researchers to construct profiles models of legal need, what has been referred to in the literature as “proxy models”.

We had 282 respondents of which 267 were from incorporated organizations (we filtered out the responses from individuals representing unincorporated associations to have a more uniform data set). There are approximately 58,000 nonprofit corporations in Ontario.<sup>5</sup> Furthermore, our sample contained a good distribution of subsectors, with the exception of international development organizations and hospitals. The most represented subsector was social services (23%). Organizations with budgets over \$1 million are, however, significantly overrepresented with 30% of respondents reporting \$1 million+ budget compared to 5-7% of the sector.<sup>6</sup>

#### 4. Database of Enquiries

Since 2017, CLEO has fielded enquiries from the public on nonprofit law related issues. These enquiries come primarily through our website and workshops, but also come through referrals and responses to our newsletter. In total, 1677 of these enquiries have been recorded in a database (including 275 follow up questions). Although it's outside the scope of this study to do an exhaustive analysis of these enquiries, we note that they primarily focus on governance and corporate law related issues (unsurprising given the nature of our website and workshops). We classify these enquiries according to what type of response might be sufficient to meet the underlying need: web content, interactive tool, course, personalized legal information, summary legal advice, law reform, policy implementation reform, law-adjacent help. While there is obviously some degree of subjective judgment involved in making these determinations, we used the following criteria in classifying enquiries.

- **Web content:** requiring relatively short answer of general application are suitable to be answered through web pages.
- **Template/Interactive tool:** answer has multiple variables, that are nonetheless finite and well defined may be suitable for a tool, particularly if there is some work product involved such as a legal document.
- **Course:** question is general in nature and/or if the request is to understand a skill or a process, or the user's judgment is involved (i.e., not the legal judgment of a lawyer, but judgment is required for the one who must apply the rules on a regular basis).
- **Personalized legal information:** situation is specific enough that it would not be worthwhile to produce a web page, but answer is possible without giving advice. Also, when the information is already available online and user still doesn't understand it, some personal help might be needed to relay information otherwise appropriate for the website.
- **Summary legal advice:** unique situation and legal information likely to be more confusing than a short straight prescriptive answer.

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<sup>5</sup> ONN (N/A). About ONN. Available at: <https://theonnc.ca/about/>

<sup>6</sup> Estimated based on the following study Scott, K. et al. (2006). The Nonprofit and Voluntary Sector in Ontario: Regional Highlights of the National Survey of Nonprofit and Voluntary Organizations. Imagine Canada, Canadian Council on Social Development, Toronto: Canada, at 15. Available at: <https://www.imaginecanada.ca/sites/default/files/2019-11/Regional%20Report%20-%20Ontario.pdf>

- **Legal services:** Complex legal scenario requiring review of documents or extended engagement/representation.
- **Law reform:** The law is the problem. No answer to the issue under current laws.
- **Policy Implementation reform:** The public service is causing the problem by spreading false or inconsistent information or insisting on more than is in their jurisdiction. Alternatively, where a right exists but the way it is implemented (for example costs to access courts) makes it inaccessible.
- **Law-adjacent help:** Legal solution possible but secondary to some alternative more practical solution (for example mediation).

We have written more extensively about the criteria for triaging in a paper that is available upon request.

Even with all the above sources of data, it is important to highlight that we are only scratching the surface of need. Every survey response or enquiry is a small window into situation that may arise and disappear in a week, a month, a year, or never quite go away. As with other areas of legal need, individuals who work one-on-one with nonprofits over a long period of time can attest to the multifaceted and long-term nature of many legal issues as well as the legal questions that positive long-term projects (for example developing new nonprofit housing) gives rise to. This study, therefore, is only the tip of the iceberg.

## Part 1: What are the Unmet Legal Needs of Nonprofits in Ontario?

The law provides diverse benefits to nonprofits that range from cost savings,<sup>7</sup> mitigating disruption to operations (for example that result from a board dispute or losing charitable status),<sup>8</sup> inspiring trust in the public (for example through a non-distribution constraint or regulation),<sup>9</sup> granting access to resources (for example tax credits), and more. A legal need therefore is not simply ensuring legal compliance for compliance's sake. Rather, legal need provides a framework to focus our attention on those gaps that undermine a nonprofit's ability to accomplish its public benefit mission. Each of these needs will be legal to the extent that these benefits cannot reasonably be obtained by means other than the law.<sup>10</sup>

In Part 1, we will see that the areas of law of highest priority or greatest need identified by the literature (employment, privacy, and governance) are confirmed by our study, but there is reason to believe there

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<sup>7</sup> Wright, L., *Managing Your Campus Legal Needs: An Essential Guide to Selecting Counsel*. National Association of College and University Attorneys/American Council on Education at 21. Available at: [https://learn.uvm.edu/wordpress\\_3\\_4b/wp-content/uploads/Managing-Your-Campus-Legal-Needs.pdf](https://learn.uvm.edu/wordpress_3_4b/wp-content/uploads/Managing-Your-Campus-Legal-Needs.pdf). ("Wright")

<sup>8</sup> Martha Rans, (2013). *The Legal Landscape: A Scan of Public Legal Education and Information Materials for Non Profits*. Pacific Legal Education and Outreach. ("Rans"); Brescia, Raymond H., et al. (2020). "The Legal Needs of Nonprofits: An Empirical Study of Tax-Exempt Organizations and Their Access to Legal Services." *Hastings Race and Poverty Law Journal*, 17(2), p. 451-490 at 457-458, 460, 462, HeinOnline. ("Brescia et al."); A Business Commitment. (2002). *The ABC Manual: Starting and Operating a Pro Bono Business Law Project*. American Bar Association. ("American Bar Association")

<sup>9</sup> Stefan Toepler, Lester Salomon (2000). *The Influence of the Legal Environment on the Development of the Nonprofit Sector*. Center for Civil Society Studies, George Mason University. Working Paper Series No. 17.

<sup>10</sup> Miller, B. (2016). *Theorizing Legal Needs: Towards a Caring Legal System*. [Thesis] University of Ottawa, at p.53. Available at: <https://ruor.uottawa.ca/handle/10393/35204>. ("Miller 2016")

is a high level of need across all areas studied. Furthermore, we will see that the predictions of the literature of what organizational factors are most likely to drive legal need (for example budget, composition of workforce, source of funding), with some exceptions (governance structure), and whether or not those needs are met, are confirmed by our study.

### The highest priority areas of legal need

The literature found consistently that legal needs must be organized holistically or functionally rather than by area of law in order to both effectively communicate with nonprofits and to get a bigger picture of the interrelated nature of legal needs. Below is a table that synthesizes the holistic approaches different studies took and informed the scope and structure of our surveys and workshops.<sup>11</sup>

**Table 1: Operational breakdown of legal needs**

<b>Aspect of the organization</b>	<b>Areas of law typically implicated</b>
Records and data (institutional memory)	Privacy law, corporate law, sector-specific regulation, funding agreements
Relationship with workers (employees, contractors, volunteers)	Employment law, contract law, volunteer law
Relationship with clients	Torts, contract law, sector-specific regulation
Governance	Corporate law, contract law, trust law
Revenue generation (fundraising and social enterprise)	Tax law, charity law, trust law, contract law
Charity status	Tax law, charity law
Relationship with funders	Contract law, administrative law
Advocacy	Election law, lobbyist law, charity law
Organizational identity (brand, logo, name)	Copyright law, trademark law,
Relationship with municipality	Municipal law, contract law
Finances	Corporate law, trust law
Workspace	Real estate law

Local, regional, and national studies in the United States and British Columbia have come to wide ranging conclusions about the extent of unmet legal need from a reported 25% of organizations claiming unmet need to 92%. However, these studies have consistently found similar areas of highest concern for the organizations, including employment law, governance disputes, and privacy law.<sup>12</sup> Studies also report a wide range of explanations for why nonprofits with unmet legal needs do not access legal supports, including: lack of awareness of the need, lack of awareness of where to get help, and the

<sup>11</sup> Wright *supra* note 6 at 3. Rosenthal, L. (2012) *Good Counsel: Meeting the Legal Needs of Nonprofits*. Hoboken: Wiley Nonprofit Authority. Available at: [https://books.google.ca/books?hl=en&lr=&id=39lcbv3g6MwC&oi=fnd&pg=PR11&dq=Legal+Needs+Nonprofits&ots=q83kEUPVA&sig=7dMq\\_KLGKloNMJvf3iHszfRPk8&redir\\_esc=y#v=onepage&q=Legal%20Needs%20Nonprofits&f=false](https://books.google.ca/books?hl=en&lr=&id=39lcbv3g6MwC&oi=fnd&pg=PR11&dq=Legal+Needs+Nonprofits&ots=q83kEUPVA&sig=7dMq_KLGKloNMJvf3iHszfRPk8&redir_esc=y#v=onepage&q=Legal%20Needs%20Nonprofits&f=false); (“Rosenthal”) Wash. Att’y Assisting Community Org., (Jan 2012). *The Legal Needs of Nonprofits Serving Low Income Communities*, WAYFIND LEGAL, at 4. available at: <https://wayfindlegal.org/wp-content/uploads/2014/03/The-Legal-Needs-of-Nonprofits-Serving-Low-Income-Communities-FINAL.pdf>. (“WAACO”).

<sup>12</sup> Rosenthal *supra* note 10.; Brescia et al. *supra* note 7 at 478.; WAACO *supra* note 10 at 4.; Rans *supra* note 7 at 19.



perception and reality that help is unaffordable.<sup>13</sup> A survey of existing legal information offerings in Canada for nonprofits found that there was a glut of information on certain topics, such as fiduciary responsibilities, and a complete absence of nonprofit specific information in other areas such as real estate or privacy law.<sup>14</sup>

**Our study confirms high priority areas of law but finds a high degree of need in all areas**

In the action-research workshop selection surveys we asked participants whether or not they agreed with the statement “I need to learn more about the law in the following area to do my work more effectively.” We found that across all areas, self-reported need for further knowledge ranges from about one-third to two-thirds (30%-66%) of respondents.<sup>15</sup> This shows that in all topic areas, at least a significant minority of participants felt that legal information is needed.<sup>16</sup> However, these surveys do confirm that three of the highest priority areas are privacy, employment/volunteer law, and governance. Our results differ somewhat from the literature in that relationship with clients was found to be a higher priority than governance.

**Table 2: Action-research workshop topics survey results**

Topic	Strongly disagree 1	Disagree 2	Neither agree nor disagree 3	Agree 4	Strongly agree 5
Records and data (privacy)	19 (9%)	13 (6%)	42 (19%)	69 (32%)	74 (34%)
Relationship with employees and volunteers	15 (7%)	23 (11%)	39 (18%)	71 (33%)	69 (32%)
Relationship with clients	16 (7%)	20 (9%)	53 (24%)	79(36%)	49 (22%)
Governance	27 (12%)	26 (12%)	52 (24%)	60 (28%)	52 (24%)
Revenue	23 (11%)	33 (15%)	50 (23%)	64 (29%)	47 (22%)
Charitable status	35 (16%)	36 (16%)	51 (24%)	51 (24%)	44 (20%)
Relationship with funders	33 (15%)	32 (15%)	62 (29%)	56 (26%)	34 (16%)
Advocacy	41 (19%)	39 (18%)	48 (22%)	49 (23%)	40 (18%)

<sup>13</sup> WAACO supra note 10 at 5 and 22.

<sup>14</sup> Rans supra note 7 at 10.

<sup>15</sup> The fact that nowhere does it drop below 30% may reflect a self-selecting sample effect (i.e. respondents chose to fill out a survey and they were promised a workshop, so they were clearly motivated by some need). However, on average respondents answered 4 or 5 to 46% of the areas which is not significantly more than an even distribution across all answers. While it may be reasonable to assume that a respondent is more likely than a non-respondent to have answered 4 or 5 to at least one area, it does not explain the extent and range of need reported on average by respondents.

<sup>16</sup> On average, of the 12 areas, respondents answered 4 or 5 in 5.6 areas in which they had needs. There is a bell curve distribution of organizations with needs in some, few, and many areas of law.

Name, logo, brand	31 (14%)	46 (21%)	52 (24%)	49 (23%)	39 (18%)
Relationship with municipality	29 (13%)	43 (20%)	64 (29%)	49 (23%)	32 (15%)
Financial review and accounting	53 (24%)	42 (19%)	45 (21%)	49 (23%)	27 (12%)
Workspace	46 (21%)	49 (23%)	56 (26%)	35 (16%)	31 (14%)

The topics we did workshops on reflected the priorities within each network rather than the aggregated priorities across network. For example, while we did 5 workshops on employment law, we only did one workshop on privacy law, and we never did a session on relationships with clients. This suggests that while privacy is a pressing issue, it is very few subsectors' first priority. This may suggest that the issue needs to be tackled at a sector level rather than a subsector level.

The action-research workshop surveys also included an open text box could list any specific issues or questions they had about the law. It was clear from several comments across subsectors that the factors driving interest in employment and privacy law include increasing digitization, hybrid work environments, and increased absenteeism all trends pre-dating but accelerated by the COVID-19 pandemic. Furthermore, respondents consistently expressed a special interest in how the law affects volunteers.

Our province-wide study focused on these areas of high priority. We asked whether respondents had each of the following legal instruments in place: written agreement with every employee, written agreement with every volunteer, harassment policies, privacy policies, articles, and bylaws, complete minutes and financial records. We see from the results that even with a 10% confidence interval it's clear that a significant minority and maybe even a majority of nonprofits in Ontario lack volunteer agreements, privacy policies, and harassment policies.

**Table 3: Provincial legal needs survey results-unmet legal needs**

Legal instrument	Yes	No	Don't Know	N/A (Don't need it)
Written agreement with every employee or contractor	171 (64.29%)	30 (11.28%)	2 (0.75%)	63 (23.68%)
Written agreement with every volunteer	87 (32.71%)	145 (54.51%)	10 (3.56%)	24 (9.02%)
Harassment policy	179 (67.04%)	67 (25.09%)	6 (2.13%)	15 (5.62%)
Privacy policy on your website	116 (43.45%)	108 (40.45%)	22 (8.24%)	21 (7.87%)
Complete minutes and financial records	237 (88.76%) <sup>17</sup>	23 (8.61%)	6 (2.25%)	1 (0.37%)

<sup>17</sup> This number is difficult for the author to believe as corporate law requires all minutes to be kept and in the author's experience most organizations that have been around for any length of time do not have all their minutes.

Articles of incorporation	247 (92.51%)	4 (1.5%)	13 (4.87%)	3 (1.12%)
Bylaws/constitution	256 (96.24%)	7 (2.63%)	2 (0.75%)	1 (0.38%)
Corporate status	260 (97.38%)	-	6 (2.25%)	1 (0.38%)

We asked respondents whether in the last 12 months they were given cause to believe that it would have been good to have the legal instruments in place or to improve their existing instruments. Although this is a compound question, we can parse out the answer by filtering according to whether the respondent reported having the instrument in place to begin with.

The responses reveal that in all of the areas studied, a majority of respondents see room for improvement based on recent experiences. This likely means that to reach the greatest number of nonprofits, supports need to be provided to both introduce new legal instruments and to improve existing legal instruments. While we did not provide a textbox allowing respondents to provide example of issues they may have encountered, speaking from personal experience, examples may include:

- A volunteer contributes to a nonprofit's newsletter for an extended period of time. The nonprofit is pleased with their work and would like to reuse the content on their blog. The volunteer claims the copyright belongs to them, and owing to a personal dispute, refuses to ever let the nonprofit use the materials. There is no agreement in place to ensure the nonprofit has the copyright.
- An executive director of a small organization feels they cannot get any work done because board members are constantly infringing on their work. Board members believe it is within their purview to do the complained of tasks. There is no employment agreement with a job description to settle the scope of the executive director's work.
- A staff member complains of harassment to her supervisor. The supervisor, not knowing what to do because there is no harassment policy, uses her best judgment in a difficult situation and tries to make peace between the parties. The organization is later heavily criticized on social media for not having provided an objective and confidential investigation as the law requires.
- A dispute breaks out a members' meeting over proposed sale of the nonprofit's real estate. The bylaws are consulted to determine how to settle the dispute only to find there is no clear definition of membership to determine who has a say in the matter.
- A nonprofit is pursuing an exciting partnership with another organization to integrate their services to better serve their community. However, when it comes time to discuss data sharing it is unclear what information can be shared because there is no privacy policy.

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Additionally, many nonprofits are not aware that they are required to keep board committee minutes as well. Consequently, this high number may indicate that nonprofits will not seek out assistance in these areas unless the requirements are brought to their attention.

**Table 4: Provincial legal needs survey results-incidence of having cause for desire to implement new versus improve existing legal instruments**

Legal instrument	Yes, we have it	In the last 12 months we were given cause to believe they should be improved (% of yes, we have it)	No, we don't have it	In the last 12 months we were given cause to believe we should have it (% of no, we don't have it)
written agreement with every employee or contractor	171	121 (70.76%)	30	19 (63.33%)
Written agreement with every volunteer	87	55 (63.21%)	145	71 (48.96%)
Harassment Policy	179	103 (57.54%)	67	28 (41.79%)
Privacy policy on your website	116	52 (44.82%)	108	58 (53.7%)
Complete minutes and financial records	237 <sup>18</sup>	120 (50.63%)	23	21 (91.3%)
Articles of incorporation	247	166 (67.2%)	4	2 (50%)
Bylaws/Constitution	256	195 (76.17%)	7	4 (57.14%)

### The extent of unmet legal needs and who has them

Some sources examined in the literature review argued that certain organizational factors drive legal need, such as size and age of the organization.<sup>19</sup> These sources posited four factors in particular as predictive of a wide range of legal needs:

- **Types of funding sources:** organizations that depend on government funding or sales of goods and service are exposed to whole areas of law (such as administrative law and consumer protection) that other nonprofits are not. Furthermore, nonprofits who depend on donations or grants from private funders will have a much stronger rationale to seek registered charity status.<sup>20</sup>

<sup>18</sup> This number is difficult for the author to believe as corporate law requires all minutes to be kept and in the author's experience most organizations that have been around for any length of time do not have all their minutes. Additionally, many nonprofits are not aware that they are required to keep board committee minutes as well. Consequently, this high number may indicate that nonprofits will not seek out assistance in these areas unless the requirements are brought to their attention.

<sup>19</sup> Andersson, F. O., Faulk, L., & Stewart, A. J. (2016). Toward More Targeted Capacity Building: Diagnosing Capacity Needs Across Organizational Life Stages. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 27(6), 2860–2888. ("Andersson et al.")

<sup>20</sup> Woodward, supra note 2 at 31, 45, and 48.; Organizations that receive government funding are also more likely to have higher assets, and to have chosen their particular corporate structure because the funder required it. On the other hand, organizations that receive public funds are less likely to report having more than 100 members.

- **Governance structure:** The size of boards and of membership will have significant practical impact on how governance is operationalized and risk of exposure to various kinds of disputes.<sup>21</sup>
- **Size and structure of workforce:** Who the workers are and what the organization’s legal relationship to them is will impact the nonprofit’s level of exposure to distinct employment, contract, and volunteer law concerns.<sup>22</sup>
- **Budget:** Unsurprisingly, budget is consistently found to be a predictor of whether any legal services are accessed and in what form.<sup>23</sup>

Based on this literature, we asked specifically about these factors in our province-wide survey. We did find several relationships between budget size, workforce, funding mix, as well as location and legal needs related to employment, volunteer, and privacy law. Almost all organizations had the corporate documents asked about on the survey and claimed to follow them in practice. Surprisingly, governance structure did not seem to be a significant determinant of other variables, although it did seem to impact the number of volunteers a nonprofit was likely to have.

Although any one of these other organizational features may be more or less influential than budget size when we look at specific associations, to look at organizations holistically, we need to look at legal needs as they relate to clusters of organizational characteristics. What emerges is a picture of three somewhat overlapping but distinct profiles of small, medium, and large organizations. While not perfect, budget size was found to be the clearest way to divide these groups. We hope that by setting out the profiles below, those looking to meet the legal needs of nonprofits will be better able to tailor the multi-pronged approach apparently needed.

**Table 5: Different organizational profiles emerging from legal needs survey**

	Small organizations (<\$100,000)	Mid-sized organization (\$100,000-1,000,000)*	Large organizations (\$1,000,000+)
<b>Workforce</b>			
Employees	72.2% had no employees (23% had 1-10)	91.6% had employees (78.57% had 1-10 employees)	100% had employees (65.7% had 10+ employees)
Volunteers	No significant differences		
Contractors	53.43% had contractors	79.8% had contractors (67.08% had 1-10 contractors)	92.8% had contractors (66.67% had 1-10 contractors)
<b>Funding Mix</b>			
Donations from individuals	20.77% were very dependent	17.2% were very dependent*	8.6% were very dependent
Grants from foundations	60% were not at all dependent	67.5% had some degree of dependence (32.5% very little)	76.5% had some degree of dependence

<sup>21</sup> Rosenthal *supra* note 10 at 138.

<sup>22</sup> Woodward *supra* note 2 at 36.; Andersson et al. *supra* note 19 at 2882, 2884.; Backer, T., et al. (2005). Strengthening Health and Human Service Nonprofits in the San Fernando Valley: A Feasibility and Needs Assessment Study. Human Interaction Research Institute at 21. Available at: <https://scholarworks.csun.edu/bitstream/handle/10211.3/121149/doc77.pdf?sequence=1>. (“Backer et al.”)

<sup>23</sup> Brescia et al. *supra* note 7 at 471.

			(57.35% were a little dependent)
Grants From Government	56.17% had at least somewhat dependence	81.5% had some degree of dependence (45.67% were very dependent)	92.8% had some degree of dependence (57.97%) were very dependent
Sales of Goods and Services (including membership)	83.1% had some degree of dependence (45.78% were very dependent)	37.5% were not at all dependent (32.5% very little)	38.2% were not at all dependent (29.4% very little)
<b>Location</b>			
Urban/Non-urban	37.36% responded other than city	60.06% responded city	66.66% responded city

\*Indicates that under \$500,000 resembles below \$100,000 and above \$500,000 resembles above \$1 million.

What emerges from the above comparison is the following picture:

- **Small organizations:** These organizations have annual budgets under \$100,000. About three-quarters of them are exclusively volunteer-run. four out of five depend on the sale of goods and services to some degree, which is twice as likely as medium or large organizations. one in five are very dependent on donations which is similar to mid-sized organizations but twice as many as large organizations. A significant proportion have no relationship with either private or public funders. Three out of five of these organizations are based outside of cities.
- **Medium organizations:** These organizations have annual budgets of \$100,000-1,000,000 and share some things in common with both small and large organizations. In contrast to small organizations, the vast majority of these mid-sized organizations have a workforce of 2-20 paid employees and contractors. Medium organizations are similar to small organizations in their dependence on donations up to annual budgets of \$500,000 but begin to look like large organizations after that. What distinguishes medium organizations from small organizations is that a large majority have some degree of dependence on private (two out of three) or public (four out of five) funders. Three out of five of these organizations are based in cities.
- **Large organizations:** These organizations have budgets above \$1 million. All have staff and two-thirds had more than ten of both employees and contractors. The vast majority of these organizations are dependent on government (nine out of ten) and private (three out four) funders, while having a similar relationship to the sale of goods to medium organizations and being half as likely to significantly depend on donations. Three out of five of these organizations are based in cities.

Based on the survey data, we can summarize the salient organizational features correlating with legal instruments and the experience of issues as follows:

- **Budget:** Having a budget under \$100,000 and over \$1,000,000 are clearly significant factors in the existence of legal instruments and issues in most cases, whereas budgets of \$100,000-500,000 and \$500,000-1,000,000 are similar for volunteer agreements and privacy policies but somewhat different for employment contracts and harassment policies.

- **Workforce:** Whether there is a paid worker or not is significant for the presence of legal instruments. There isn't a clear and consistent relationship with the number of workers and either the presence of legal instruments or the reporting of experiences giving cause for a desire for instruments or their improvements.
- **Funding mix:** Whether there is any dependence on a private or public funder appears to be significant.
- **Location:** There is a linear relationship between location and presence of legal instruments.

Below are tables to illustrate each of these relationships.

**Table 6: Provincial legal needs survey results- budget and unmet legal needs<sup>24</sup>**

	\$0- \$100,000	100,000- 500,000	500,000- 1,000,000	1,000,000+
<b>Written agreement with every paid worker</b>				
Respondent has it	75%	81.63%	90.63%	88.1%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	25.97%	70.21%	74.19%	79.41%
<b>Written agreement with every volunteer</b>				
Respondent has it	10.76%	47.9%	50%	55.73%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	50%	70.45%	69.23%	74.14%
<b>Harassment policy</b>				
Respondent has it	36.61%	75%	90.63%	97.14%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	52.38%	62.5%	51.72%	61.19%
<b>Privacy policy</b>				
Respondent has it	30.15%	53.33%	56.67%	66.15%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	51.78%	53.19%	61.53%	58.06%

**Table 7: Provincial legal needs survey results-number of paid workers and unmet legal needs**

	0	1-10	10+
<b>Written agreement with every paid worker</b>			
Respondent has it	68.75% <sup>25</sup>	82.79%	92.64%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	40.9%	73.33%	78.26%

<sup>24</sup> Percentages are calculated out of the total "yes" and "no" answers, excluding N/A out of deference to the respondents own assessment of their needs.

<sup>25</sup> They may still have contractors.

<b>Written agreement with every volunteer</b>			
Respondent has it	14%	41.57%	58.06%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	53.84%	70%	71.92%
<b>Harassment policy</b>			
Respondent has it	25.53%	83.69%	95.83%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	46.51%	65.11%	55.07%
<b>Privacy policy</b>			
Respondent has it	30.43%	45%	32.85%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	44.73%	57.5%	60%

**Table 8: Provincial legal needs survey results-dependency on private or public funders and unmet legal need**

	<b>Not at all dependent</b>	<b>At least somewhat dependent</b>
<b>Written agreement with every employee</b>		
Respondent has it	81.35%	86.33%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	65%	74.21%
<b>Written agreement with every volunteer</b>		
Respondent has it	26.58%	43.45%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	52.94%	70.94%
<b>Harassment policy</b>		
Respondent has it	59.77%	84.26%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	57.14%	61.07%
<b>Privacy policy</b>		
Respondent has it	41.46%	54.37%
In the last 12 months, respondent has experienced something to give cause to believe it would be good to implement or improve it	50.7%	60%



**Table 9: Provincial legal needs survey results-location of organization unmet legal needs**

Has the following legal instrument	City	Small non-rural community	Rural community	Northern community
<b>Written agreement with every employee or contractor</b>	74.48%	66.67%	53.7%	40%
<b>Written agreement with every volunteer</b>	39.04%	33.33%	28.3%	25%
<b>Harassment policy</b>	78.08%	64.58%	59.26%	40%
<b>Privacy policy on your website</b>	52.74%	31.25%	29.63%	10%

## Part 2: How Do We Meet the Legal Needs of Nonprofits in Ontario?

In Part 2, we will explore what the literature tells us about how legal needs currently get met in other jurisdiction, why greater access to traditional legal services would be welcome but insufficient to meet the legal needs of the sector, what our database of legal enquiries tell us about the extent of need for different types of response, and finally what our study tells us about how each type of support could be provided in a way that more effectively and systematically meets the legal needs of nonprofits.

### How legal needs currently get met in other jurisdictions

Research has shown that nonprofits meet their legal needs through a mix of sources, including:<sup>26</sup>

- Board members
- Volunteer attorneys
- Nonprofits that provide legal services to nonprofits
- Paid counsel

Surveys in New York and Washington found that around 40% of nonprofits pay for some or all of the legal advice and services they receive, with about as many meeting their legal needs through board members.<sup>27</sup>

We were not able to identify studies of lawyers on boards. This is an area for further study. Besides *ad hoc* relationships, there are two main ways nonprofits receive help from volunteer attorneys. One is through nonprofits who focus on meeting the legal needs of other nonprofits, often by connecting clients to lawyers through a “clearinghouse model” (for example Nonprofit Justice Connect in Australia,

<sup>26</sup> Carpenter, H., Gregg, R., Clarke, A. (2013). 2013 Nonprofit Needs Assessment, A Profile of Michigan's Most Urgent Professional Development Needs. Dorothy A. Johnson Center for Philanthropy at 13. Available at: <https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1003&context=icppubs>. (“Carpenter et al.”)

<sup>27</sup> Brescia et al. *supra* note 7 at 473.

Sustainable Economies Law Center).<sup>28</sup> These are sometimes in specialized subsectors like housing or arts organizations.<sup>29</sup> The other is through student legal clinics.

The American Bar Association breaks down to three main types of services that lawyers render to nonprofits through the clearinghouse model:

- Transactional services (i.e., meeting a discrete legal issue such as zoning, or review of contract)
- Clinic model (i.e., pop up events in a community to provide summary advice)
- General counsel (i.e., where a firm and organization enter into an agreement for the firm to represent all the needs of the nonprofit over the long-term).

In some parts of the US and UK, nonprofits are served by transactional or community economic development student legal clinics (17% in the US require clients to be nonprofits).<sup>30</sup> In Ontario, there appears to be two transactional student legal clinics (at Queens University and Toronto Metropolitan University) whose clients include nonprofits, though the extent to which they focus on nonprofits is not known; and one course on nonprofit and charity law at the University of Ottawa that includes a practical component. One case study in Florida observes that these clinics are most effective when students proactively identify legal needs through being involved in the community rather than waiting to be asked.<sup>31</sup>

While Pro Bono Ontario did at one time offer a summary advice hotline, it has been reported to us by nonprofits that there is currently no active source to provide free or low bono legal advice or document review beyond ad hoc volunteers. It is clear therefore that there is a gap in province-wide structures to provide free or affordable traditional legal education, information, and summary advice.

### Nonprofits need more than traditional legal services

Meeting the legal needs of nonprofits is about more than making traditional legal services more widely available (although that would likely be welcome) for a number of reasons. Firstly, the legal needs of nonprofits, while similar in some ways, differ fundamentally from those of businesses. Secondly, law reform and policy implementation is in many cases necessary. Thirdly, education is a necessary complement to legal advice to make that advice effective over time. Finally, in situations of major power imbalances, nonprofits may not be willing to enforce their rights, so collective action is needed.

Firstly, nonprofits are like other types of organizations in many respects and so the services and resources that exist for business should to a certain extent be relevant to nonprofits. It is therefore

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<sup>28</sup> See for example WAACO supra note 10 at 6.; Johnson, D. (September/October 2002). Building neighborhoods: Pro bono works in Texas. *Business Law Today*, 12(1), pp. 16-19. American Bar Association. Available at: <https://www.jstor.org/stable/23292860> . ("Johnson")

<sup>29</sup> Johnson supra note 21 at 117.

<sup>30</sup> Benham, R., Farrell-Clifford, E., Black, S., Gordon, J. (2014), Entrepreneurial Law Programs and Legal Needs. 15 *Transactions: Tenn. J. Bus. L.* 727-754 at 727 These date back to 1970s. In 1973, the Antioch School of Law had a community economics development clinic and a housing development clinic was started at Georgetown University Law School in 1974.; Campbell, E. (2016). Recognizing the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom. *Journal of Legal Education*, 65(3), 580-596. Available at: <http://www.jstor.org.ezproxy.torontopubliclibrary.ca/stable/26177045> .; Thompson Jackson, J. & Jones, S. (2018). Law & Entrepreneurship in Global Clinical Education, *INT'L J. CLINICAL LEGAL EDUC.*, 25(3), at 85.

<sup>31</sup> Alfieri, A. (2007). Faith in Community: Representing "Colored Town": "'What about This Isn't a Community?'" *California Law Review*, 95(5), 1829-1878 at 1837.

important to recognize that while there are commonalities, the legal needs of nonprofits are not the same as those of for-profit businesses even in areas where the law does not make an explicit distinction between nonprofits and businesses. While there are many particular differences, the underlying causes of these differing legal needs have been summarized as: a reliance on volunteers, tax-exempt status, and a plurality of stakeholders.<sup>32</sup>

These differences have far-reaching implications. For example, the special dynamics between a volunteer board and the staff means that corporate law and employment law issues can often become entangled. The plurality of stakeholders of a nonprofit, many of whom are not in a position to pursue enforcement of their legal rights, means that the ethical duty of a lawyer to advise in the best interests of the corporation makes it especially important to resist the temptation of simply advising based on what is in the interests of the immediate client (i.e., the board).

Secondly, some studies argued that certain kinds of legal needs of nonprofits could not be met unless there was a change in law or the implementation of policy by Government. For law reform, for example, legal needs relating to charities advocating may be secondary to a simple change in the rules governing charitable advocacy. For policy implementation reform, a study in Australia recommended the creation of a nonprofit specialist group within the corporate registrar.<sup>33</sup> Similarly, a study of Florida-based local social justice movements noted that law has limited effect without street-level enforcement.<sup>34</sup> These studies clearly point to not only the need for legislative reform but policy implementation reform. In our experience, these concerns are echoed in the struggles that many nonprofits face when trying to use the Ontario Business Registry or access support from Service Ontario's help line.

Thirdly, while legal information and education are sometimes regarded as a stopgap measure for those who cannot access legal advice. It can certainly play that role. It is also a necessary complement to legal advice to ensure there is long-term compliance and follow through.<sup>35</sup> Beyond legal advice and services, subsector associations were found in BC and Michigan to be an important source of legal information as well as crucial convenors for professional development with legal content, particularly where they are locally-based and/or culturally specific.<sup>36</sup> As books and articles written by in-house counsel point out, in medium to large organizations legal advice is usually given directly to individuals who are unlikely to be the ones to carry it out. Therefore, legal information and education becomes a necessary component of meeting most if not all organizational legal needs.<sup>37</sup>

Consistent with the above research, subsector associations and funders regularly carry out some degree of legal information and professional development, though the lack of special mandate means that the extent of services and capacity to sustain these supports ranges widely between sectors. To our knowledge legal information and education aimed at the nonprofit sector as a whole is limited to: government websites, our project, and law firms in this area. As funding for our project ends at the end

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<sup>32</sup> Woodward *supra* note 2 at 2.; Rosenthal *supra* note 10 at 127-128.

<sup>33</sup> Woodward *supra* note 2 at 1.

<sup>34</sup> Alfieri *supra* note 30 at 1847.

<sup>35</sup> Rosenthal *supra* note 10 at 205.

<sup>36</sup> Rans *supra* note 7 at 6. Here "culturally-specific" may refer to a linguistic or ethnic distinction, or may simply refer to the habits and customs of a particular locale or subsector.

<sup>37</sup> Rosenthal *supra* note 10. ; Wright *supra* note 6.

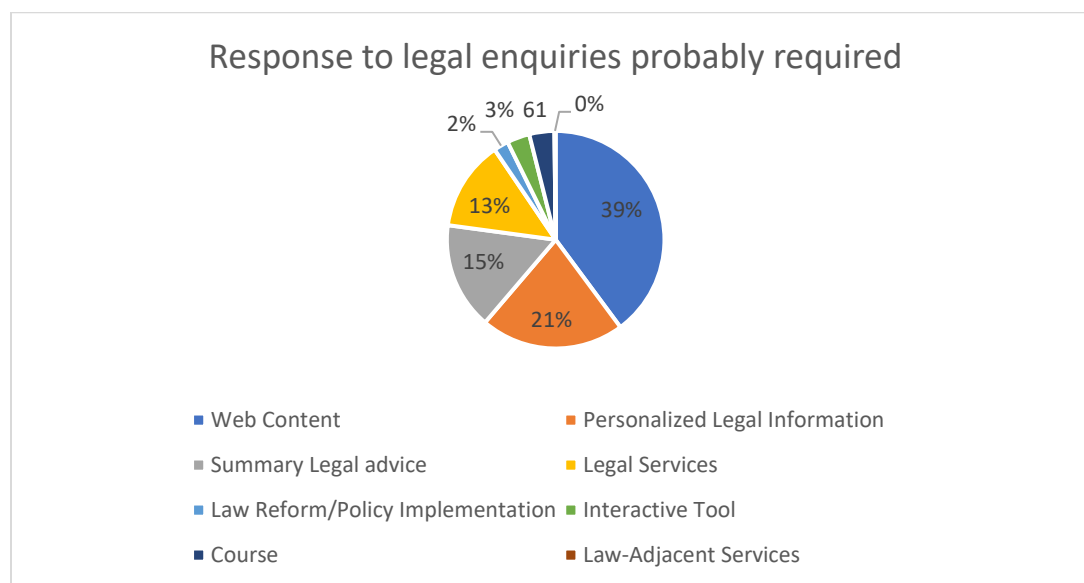
of October, it is expected that there will be a gap in dedicated educational services for the sector as a whole.

Finally, one overarching theme that cut across several sessions (employment, real estate, funding agreements) was the issue of power dynamics. That is, nonprofits acknowledged how power dynamics with other actors such as landlords, employers, and funders could make the law unrealistic in practice because individuals or organizations are unable or unwilling to exercise their rights. For example, in the session about funder agreements, some participants noted never having read their agreements because they didn't feel they could negotiate them anyway and didn't understand them.<sup>38</sup> Similarly, in a discussion of employee's rights in unsafe work environments or harassment complaints, participants noted how unrealistic it was to expect no reprisal: what were individuals supposed to do while these investigations and procedures were being carried out?

On the other hand, in two cases, participants suggested collective negotiations as a potential solution to power dynamic issues with landlords and others with an interest in nonprofit-held land. This highlights the potential of peer-to-peer learning sessions to become peer-to-peer organizing sessions.

### How to meet the legal needs of Ontario more effectively

Our database of enquiries provides us a starting point, at least in the area of governance, to estimate the relative proportion of legal enquiries that different types of support could effectively address.



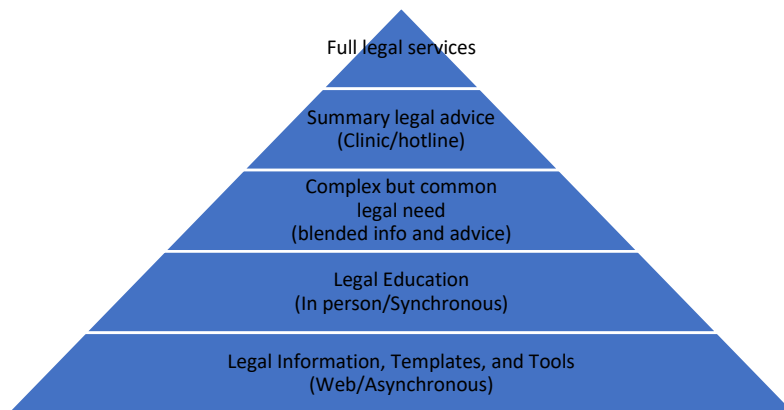
As we see from the above, a significant proportion of enquiries can likely be met either through web content or through personalized forms of legal information. Personalized forms of legal information can come in many forms, including, responding to someone during a workshop, answering an individual enquiry by phone, email, or in an online forum. Similarly, we see that a large proportion of those

<sup>38</sup> This absence of feeling able to speak runs contrary to one of the hallmarks of effective funder-fundee relationships. "When nonprofit leaders are asked what, in their experience, distinguishes the best donor-grantee relationships, they invariably cite the same three characteristics: clear communications, consistent expectations, and a sense of mutuality and respect." Patrick Johnston. (2015). Good Grantmaking: A Guide for Canadian Foundations. Philanthropic Foundations of Canada. Available at: [pfc-good-grantmaking-guide-2015-full-en.pdf](https://www.pfc.ca/wp-content/uploads/2015/04/pfc-good-grantmaking-guide-2015-full-en.pdf)

enquiries that seem to genuinely call for or would at least specifically benefit from legal advice, could be addressed by summary legal advice, making a hotline model particularly attractive. It's for the remaining 13%, which though a minority, include some of the most complicated, damaging and resource intensive problems to address, that the models canvassed above appear genuinely needed.

In the figure below, we have set out a pyramid of supports to better visualize the potential reach of each kind of support. We also believe this pyramid captures how it is most cost effective to meet a legal need on the lowest rung of the pyramid at which the need can be effectively addressed. Below we will discuss what our legal needs study and activity more broadly teaches about how each type of support can be most effectively delivered.

Figure 2: Methods of meeting legal needs in terms of scale of impact



### 1. Legal information, templates, and tools

Martha Rans observes that there is a lack of visual and accessible legal resources.<sup>39</sup> Respondents to surveys, participants in workshops, and enquirers regularly thank CLEO for its plain language and practical approach.

### 2. Legal education

Our study indicates that we can most effectively meet needs for personalized legal information when we pay close attention to the “when” and “where”. It is clear that different actors at the sectoral and subsectoral levels and provincial, regional, and local levels should be hosting different types of legal education sessions, and that all actors should aim to take full advantage of moments of peak collective interest when they happen.

When acute environmental factors, such as a change in legislation or government funding patterns, give rise to a common legal need across otherwise diverse nonprofits, then it is far easier to attract larger audiences to learning opportunities. This creates what we have called elsewhere a “moment of peak collective interest” in which a critical mass of organizations share a common legal need. This makes it far more cost effective to meet those shared needs through group models such as public legal education.<sup>40</sup>

<sup>39</sup> Rans supra note 7.

<sup>40</sup> Miller, B. (October 24, 2022). Meeting collective legal needs and the role of PLEI: a case study At PLEAC and Preventing Sexual Harassment in the Workplace Conference 2022 [conference]. Public Legal Education Association of Canada, Toronto: Ontario. (“Miller 2022”)

All participants benefit from the participation of others as they hear questions they wouldn't otherwise hear. Furthermore, presenters benefit from being rapidly exposed to a large number of questions to improve their materials and create content that can be repurposed as asynchronous legal information for larger audiences.

The action-research workshops and survey taught us that where learning happens also matters a great deal. When aggregating the action-research workshop surveys from all the networks, data and records was the number #1 priority, whereas for individual networks it was only once the #1 priority. This suggests that audience segmentation matters a great deal for whether certain issues get addressed. Furthermore, as discussed above, action-research workshops in which participants were encouraged to respond to each other revealed shared problems and catalyzed proposals for collective action. Furthermore, as discussed above, the survey found location to significantly correlate with the extent of legal structure.

### 3. Complex but common legal needs

The action-research workshops found that in some cases nonprofits face legal issues that are complex for an individual nonprofit to address, however, the elements of complexity are shared with other nonprofits in the subsector. Two examples of this include the interaction between a special Act and Ontario's Not-for-Profit Corporations Act and the classification of particular type of position as an employee or a contractor (where many organizations hire the same type of position under similar circumstances). Complex but common issues offer the possibility of shared solutions such as the developments of guides or tools to assist organizations themselves or generalist practitioners reduce the complexity. This in turn saves time and money and achieves economies of scale.

### 4. Summary legal advice and full legal services

As discussed above, in order to be effective summary legal advice and services but take account of the organizational features that make nonprofits distinctive (i.e., volunteers, multiple stakeholders, tax-exempt status).

For example, there is a significant positive relationship between the number of voting members and the number of volunteers but not the number of non-voting members. Only 28% of respondents answered a higher range for the number of volunteers than voting members. Organizations with 1-10 voting members were 3.5x more likely to answer they had 1-10 volunteers as well and 3.5x less likely to answer they had over 100 volunteers. This makes sense as approximately 95 are estimated to have a self-perpetuating board structure (i.e., a structure in which the directors and voting members are the same people, estimated based on respondent answering the same range for directors and members). Only 35% of self-perpetuating boards had greater than 20 volunteers, compared with 52.54% of organizations with greater than 20 voting members.

This seems to suggest that a closed board model is less likely than other membership models to accompany a large volunteer base. Particularly as the sector faces a volunteer crisis,<sup>41</sup> this may give lawyers pause as they consider the unintended ripple effects of corporate law choices. This data is only

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<sup>41</sup> Phillips, S. (January 30, 2023). Five Trends in 2023 on PANL Perspectives. [Blog] Carleton University: Ottawa. Available at: <https://carleton.ca/panl/2023/five-trends-in-2023/>

suggestive, but the possible knock-on effect that a lawyer's advice may have should give us pause to at least consider the bigger picture.

#### 5. Law and policy implementation reform

Law and policy reform is seldom the response to an individual enquiry (although not never). It requires noticing patterns across needs that are both expressed and unexpressed. This is another reason why audience segmentation is particularly important why those who provide legal supports ought to invest in systematically recording the enquiries and needs expressed in order to analyze commonalities.

### Part 3: Recommendations

Based on all of the above, we can conclude two things: who is best positioned to meet the legal needs of nonprofits, and how they might be able to do that. Ultimately, what emerges is a layered and multi-pronged education-first approach to legal supports by subsector and geography.

#### The key actors

While many different types of stakeholders have a role to play in meeting the legal needs of nonprofits, it appears that those actors best positioned to do so are volunteer centres, (place-based) funders, and subsector associations for the following reasons.

Volunteer centres are key actors in meeting the legal needs of nonprofits for three reasons:

1. There is clearly a significant unmet need in the area of volunteer agreements.
2. The legal needs of nonprofits across other areas of law are coloured by the role of volunteers.
3. The organizations with the greatest extent of unmet need are those that are volunteer-run.

(Place-based) funders such as municipalities, United Ways, and Community Foundations are key actors in meeting the legal needs of nonprofits for three reasons:

1. Place is a key determinant for the extent of legal infrastructure of nonprofits. Consequently, place-based funders are, particularly outside of urban centres have a key role to play.
2. Place is a key determinant in the accessibility and quality of learning opportunities. Ongoing relationships are important to culturally sensitive education that lasts over time.
3. Having a relationship with a funder is an important indicator of a nonprofit's legal infrastructure. This is not surprising given that it takes a financial investment to build and maintain these resources.

Subsector associations have a key role to play for two reasons:

1. Some legal needs only emerge when audiences are segmented by subsectors and are most effectively met in subsector specific ways.
2. Some legal needs are collective in nature and require ongoing coordinated action or advocacy. Subsector associations are well placed to take responsibility for these collective actions.

#### Recommendations for key actors

It is important to recognize that volunteer centres, subsector associations, and (place-based) funders already provide legal information and education opportunities as well as templates and resources to a greater or lesser extent in the areas explored. What is lacking is as follows:

- A provincial entity to provide (and support the provision of) legal information, apps/templates, education, advice, and advocacy in those areas that are not highest priority at the subsector or local level.
- A systematic approach to convert content generated as part of ad hoc educational experiences into plain language, clear design, and accessible information and apps/tools that are more widely available (a “circular economy of legal information”), as well as identify issues requiring collective advocacy or solutions.
- A systemic use of the “complex but common legal issues” framework to address shared legal needs in a cost-effective way through the blending of legal information and advice.
- Free or low bono legal advice and services, particularly summary legal advice.

Volunteer centres, subsector associations, and place-based funders could fill these gaps in the areas identified as highest priority (governance, employment, and privacy law) on their own by taking one or both of the following approaches.

**Option 1:** Meet the needs of own stakeholders without coordinating more broadly

- Create more legal information, education, apps, or templates in the high priority areas. For example, volunteer centres could create a volunteer agreement app.
- More systematically record questions answers at current ad hoc legal education sessions and reuse the content in the continuous generation of more publicly available legal information, education, apps, and templates.
- Hire a lawyer and seek qualification as a civil society organization under the Law Society of Ontario regulations to be able to provide free legal services to their stakeholders.
- Identify complex but common legal needs and coordinate the collective development of resources or purchases of legal services to address those needs for stakeholders.

**Option 2:** Coordinate provincially to meet the legal needs of public benefit nonprofits more broadly

- Financially support the creation and maintenance of a provincial entity to provide (and support the provision of) legal information, apps/templates, education, advice, and advocacy in those areas that are not highest priority at the subsector or local level.
- Participate in a data sharing agreement and system to supply the provincial entity on an ongoing basis with anonymized questions and answers from members and education participants to be converted to legal information, apps/templates, and education.
- Partner with the provincial entity on delivering more consistently and systematically delivering high priority legal education through, for example, communities of practice, and other educational formats.

Ultimately, we recommend the second approach as only it will deliver the fully multi-pronged and layered response that the needs of the sector call for.