
Meeting The Legal Needs of Ontario Nonprofits Through Changing Times Executive Summary

October 2023

Benjamin Miller

COMMUNITY LEGAL EDUCATION ONTARIO (CLEO)

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 (e.g., corporate and employment law) as opposed to legal issues of clients (e.g., 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 identified key actors, including volunteer centres, funders (particularly place-based funders such as municipalities, United Ways, and community foundations), and subsector associations.

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

A nonprofit has a legal need when the law is more or less necessary to acquire benefit that is itself needed to advance the mission of the nonprofit. For example, charitable status may be needed in order to be eligible for the kind of funding needed to operate at the required scale.

Consistent with past studies, our study identifies the highest areas of need as:

- **Privacy law and record keeping:** 66% of respondents had unmet needs in this area. 40% of respondents did not even have a privacy policy.
- **Employment and volunteer law:** 65% of respondents had unmet needs in this area. 54% of respondents did not have agreements in place with all volunteers. 25% of respondents did not have any harassment policies in place.
- **Governance** 54% of respondents had unmet needs in this areas. Though almost all respondents had governing documents in place, 75% of respondents experienced an incident in the last 12 months to give them cause to believe their governing documents ought to be improved.

There is also reason to believe there is a high level of need across all areas studied, with no less than one-third of respondents reporting a need in any given area.

Our provincial survey supports the claim in the literature that certain key organizational factors can help predict the extent of unmet legal needs in nonprofits, such as:

- **Budget:** Having a budget under \$100,000 or over \$1,000,000 are clearly significant factors in predicting whether an organization has certain legal instruments (e.g. employment agreements, privacy policies, harassment policies) and their likelihood to report having experienced issues in the areas of employment, privacy, and governance. 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 an organization has a paid worker or not is significant for predicting 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 a significant predictor of whether an organization has harassment policies and, to a lesser extent, volunteer agreements in place.
- **Location:** An organization is increasingly unlikely to have legal instruments in place based in a city, small non-rural community, rural community, or Northern community.

Contrary to the literature, and much to our surprise, we did not find governance structure to be predictive of unmet legal need.

While these factors are interesting in isolation, they also tend to cluster into three profiles of legal need, in organizations:

- **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. one in five are very dependent on donations. A significant proportion have no relationship with funders. A majority are based outside of cities.
- **Medium organizations:** These organizations have annual budgets of \$100,000-1,000,000. 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. A majority 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. A majority are based in cities.

Part 2: How do we Meet the Legal Needs of Nonprofits in Ontario?

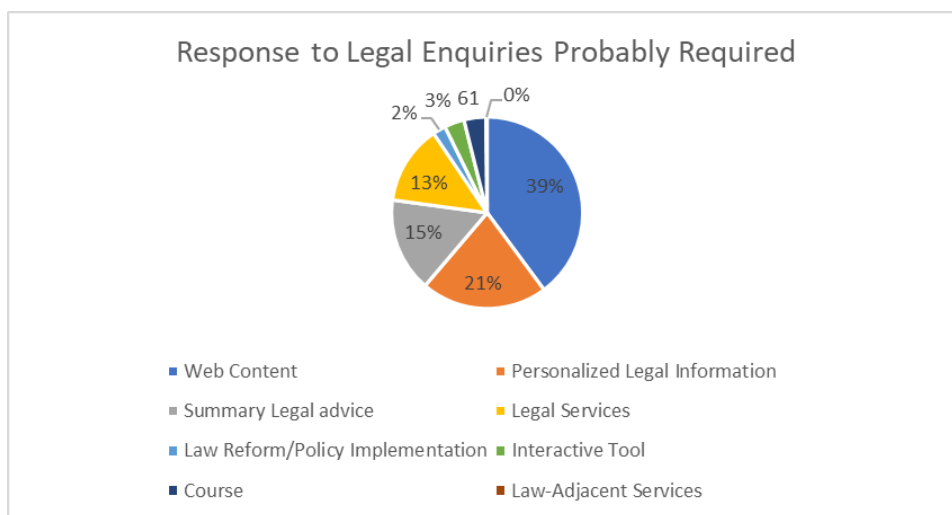
In other jurisdictions, nonprofits' legal needs are met through a mix of board members, volunteer attorneys, nonprofits that provide legal services to nonprofits, and paid counsel. Models for nonprofits that provide legal services to other nonprofits include: transactional services, a clinic model, or general counsel. In the US and UK, it is also common for law schools to offer transactional or community economic development legal clinics.

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. There are two transactional clinics in Ontario (Queens University and Toronto Metropolitan University), however, the extent of service to nonprofits is not known. There is

one charity and nonprofit law course at the University of Ottawa that contains a practical component. 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.

However, our literature review, action-research workshops, and experience answering public enquiries have found that 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 power imbalances, nonprofits may not be willing to enforce their rights, so collective action is needed.

We estimate based on the primarily corporate law enquiries receive, the supports required.



Part 3: Recommendations

Based on all of the above, we can conclude that what is needed is a layered and multi-pronged education-first approach to legal supports by subsector and geography. Towards, this end, we believe the following actors are key to responding to the legal needs of small to medium-size nonprofits:

- **Volunteer centres:** The nonprofits with the least legal infrastructure are volunteer-run. Furthermore, volunteer law is clearly an area of significant need across the sector. Finally, the legal needs of nonprofits are systematically different in part because of volunteer involvement.
- **Place-Based Funders:** Relationship with a funder and place are both predictors of legal infrastructure. The literature posits that place-based networks are also important for culturally sensitive training.
- **Subsector Associations:** Action-research workshops reveal certain legal issues only emerge at the subsector level. Furthermore, in matters where collective action is needed to overcome power dynamics or a legal issue is otherwise shared, subsector associations are well positioned to coordinate solutions.

Ultimately, we recommend coordinating provincially to meet the legal needs of public benefit nonprofits more broadly by:

- Financially supporting 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.
- Participating 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.
- Partnering 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.