Pro Bono Ontario
Funding Backgrounder and History

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1. Executive Summary

Pro Bono Ontario (PBO) has been creating and promoting pro bono opportunities for Ontario lawyers since 2001. In 2018, PBO served 28,872 clients out of 11 physical locations. Volunteer lawyers and law students donated 17,193 hours of pro bono time through PBO’s various programs, including its three Law Help Ontario court-based centres (“Law Help Centres”), Free Legal Advice Hotline, medical-legal partnerships, children’s programs, and corporate pro bono offerings.

PBO’s most significant programs by volume are the Law Help Centres and the Hotline. Combined, these programs have helped 169,149\(^1\) clients since 2007 by providing in-person advice and assistance and operating a telephone service for clients who cannot attend a physical location. An independent evaluation of the centres in 2017 found that these programs create more than $5 million annually in economic benefits and yield a $10 to $1 return on investment. The Hotline was launched in 2017 to replace and enhance the remote telephone service then run by the Law Help Centres, thereby increasing PBO’s ability to provide low-barrier services province-wide using productivity-enhancing technology. This also meant that PBO could engage far more volunteer lawyers. These Hotline volunteers offer both summary legal advice and additional brief services such as court form completion and letter drafting by telephone and served 14,380 clients in 2018. Together, the Law Help Centres and the Hotline provide a complimentary suite of services that enable Ontarians to address their legal needs in the manner most suited to them.

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\(^1\) To February 21, 2019.
PBO focusses on problems that are both common and underserved. Legal needs studies show that over 85% of civil legal needs go unmet, and that the vast majority of those problems are in areas served by PBO programs, including employment, housing, consumer protection, consumer debt, wills and powers of attorney, small or personal business issues, discrimination and civil litigation. These programs reach people who do not qualify for legal aid and who would otherwise fall through the cracks.

The efficacy and value of PBO’s programs are demonstrated by formal program evaluations and by numerous firsthand accounts from lawyers and judges who have witnessed the impact of services both on members of the public who had nowhere else to turn and on a chronically overburdened court system.

PBO’s programs have evolved and grown over the years to meet increasing demand for services. The number of people served by PBO more than tripled between 2009 and 2018, with an increase in expenditures of only 34%.

In a decade, the number of clients served increased by 272%, while expenditures rose by 34%

PBO faced a substantial reduction in its core funding, when a sustaining grant provided by Legal Aid Ontario (LAO) was eliminated in 2012. Despite the growing efficiencies and consistent efforts to obtain stable funding from various sources, PBO faced a budgetary shortfall in 2018 that led to the near-closure of its Law Help Centres. While that closure was averted by a surge in support from the private bar and a one-time grant from the federal government, PBO
requires ongoing stable funding to continue to organize lawyers to provide these essential pro bono services. It is beyond dispute that, without PBO, individual *ad hoc* efforts, however well-intentioned, could never produce the level of service and improved access to justice that PBO’s innovation and coordination achieves.

As former Chief Justice of Canada McLachlin has said, access to justice is the most important challenge that our justice system faces today. This challenge requires a coordinated approach from all players in the justice system, including members of the bar. The *Law Society Act* imposes on the Law Society of Ontario (LSO) “a duty to maintain and advance the cause of justice and the rule of law” and “a duty to act so as to facilitate access to justice for the people of Ontario.” The LSO requires lawyers to take an oath to “seek to ensure access to justice and access to legal services”, and has identified access to justice as a priority in its strategic plans.

While the Law Society has provided valuable support to PBO in the form of in-kind donations and one-time grants for specific needs, what PBO needs is sustaining funding. Lawyers have tremendous capacity to improve access to justice by providing pro bono services, but need support to do so effectively. As former Supreme Court of Canada Justice the Honourable Thomas Cromwell put it, “We’ve got lots of lawyers willing to volunteer their time and we’ve got thousands of people who need this help. All we need is some resources to help with the administration necessary to bring the volunteers and the people in need together.”

The LSO is uniquely positioned to provide this support – more so than any other potential funding source. While PBO has and will continue to obtain grants from entities with broader mandates, including the government, there is a natural affinity between the mandates and obligations of PBO, its volunteers and the LSO. The LSO has a special opportunity to support its members and the public by funding infrastructure that increases access to justice. Doing so will serve the public and bring great rewards and satisfaction to the profession. Moreover, the monopoly licensees enjoy over the provision of legal services makes it especially important that the LSO ensure this funding. Failing to do so will represent a serious abdication that will rightly call this monopoly into question.

Law societies in other provinces have recognized this unique relationship and have committed to providing sustaining funding from member fees or levies. The Law Society of British Columbia governs approximately 12,000 lawyers and contributes $340,000 annually ($28 per lawyer) to pro bono legal services in that province. The Law Society of Alberta governs approximately 10,000 lawyers and contributes $420,000 annually ($42 per lawyer). The Law Society of Saskatchewan also provides a contribution of $28,000 towards pro bono legal services ($15 per lawyer) from a membership of only 1,900 lawyers.

### 2. History of Pro Bono Ontario

**a. Mission and mandate**

PBO was founded in 2001 as a joint initiative of the Law Foundation of Ontario and Legal Aid Ontario. From the outset, PBO’s mandate has been to help lawyers fulfill their professional
responsibility to ensure access to justice. This responsibility crystallizes the moment lawyers are called to Bar, when the Law Society of Ontario (LSO) requires them to take an oath “to seek to ensure access to justice and access to legal services”. PBO helps lawyers fulfill this obligation by creating and promoting opportunities to provide pro bono legal services to low-income members of the public with unmet civil legal needs.

It is widely accepted that the legal profession must play a role in promoting access to justice. While pro bono is not a complete solution to the access to justice crisis, it is a key component, and has an immediate, measurable impact on individuals in need. The only people who can provide these services are the members of the Law Society of Ontario. The private bar is ready and willing to provide these services, but they need access to opportunities. PBO is the vehicle to organize and deliver those opportunities.

The private bar is also uniquely suited to address the area most underserved: civil non-family law matters, including consumer, money/debt, and employment problems, which account for 60% of legal needs. As discussed below under “3(c). Limitations on Legal Aid coverage”, LAO has withdrawn almost entirely from this area and is now facing its own heightened pressures due to recent cuts. Moreover, there is no private legal market for many of these services. Neither of these factors is likely to change in the near future, but the profession can help address this crisis by establishing a sustainable means of connecting people with lawyers who are ready, willing and able to provide high quality services, free of charge.

b. How PBO accomplishes its mandate

PBO bridges the gap between lawyers who want to donate their services and low-income Ontarians who need a lawyer, by:

- Developing and directly managing pro bono programs that address unmet legal needs
- Providing strategic consulting services and tailored technical assistance to third parties engaged in the provision of pro bono legal services
- Promoting the private bar’s role in the overall delivery of legal services in Ontario.

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4 For discussion of this concept, see M. Mercer, “Access to Justice and Market Failure” (November 1, 2016), Slaw at http://www.slaw.ca/2016/11/01/access-to-justice-and-market-failure/.
Prior to the establishment of PBO, pro bono services in Ontario were delivered by lawyers on an ad hoc basis, with no formal means of promoting, facilitating, measuring, or recognizing the legal profession’s enormous and vital contribution to access to justice.

PBO programs are designed to complement, but not duplicate, services offered by LAO. PBO works in partnership with the courts, legal aid clinics, hospitals and dozens of social service organizations to identify clients and design programs tailored to their needs. For example, 25% of PBO’s Free Legal Advice Hotline clients are referred by the courts and legal aid, while the overwhelming majority of referrals to the court-based help centres are from the courts.

At the same time, PBO works closely with law firms, legal departments and law associations to recruit, train and support volunteer lawyers. PBO creates opportunities for both litigators and solicitors, offers accredited CPD programming, precedent court forms and correspondence, knowledge management resources, staff support and tailored insurance for lawyers who participate in its programs. By making it easy for lawyers to contribute their time, PBO programs directly increase access to justice. The benefits to the community are multiple: thousands of lawyers have been sensitized to the access to justice crisis in Ontario, millions of dollars in pro bono services are donated each year, millions more dollars are realized in savings to the justice system and, most importantly, almost 29,000 low-income clients were served by PBO in 2018.

c. Funding overview

The Law Foundation of Ontario (LFO) has been the primary source of PBO’s funding since its inception. It currently provides an operating grant of $880,000 per year, and has regularly provided one-time grants to fund specific projects, including an evaluation of PBO’s Law Help Centres and implementation of its Hotline, both described below.

From 2001 to 2011, LAO also provided an operating grant to PBO. The amount of that grant was $328,000 in 2009, when Legal Aid informed PBO that it would be reducing and ultimately eliminating the grant as part of its broader cuts to its civil non-family supports. The loss of this core funding effective 2012 has had a significant impact on PBO, as discussed further below.

The LSO has also provided support to PBO since it was founded, initially in the form of in-kind support, including rent-free premises, and subsequently by offering a rent subsidy in the amount of $50,000.

These primary funding sources are supplemented by a law firm giving campaign, project funding from PBO’s children’s hospital partners, corporate grants, and fee-for-service activities that include consulting services and service agreements with various provincial government ministries.
d. Governance structure

PBO is governed by a 12-member Board of, all of whom are lawyers. The majority are senior partners at law firms or senior corporate counsel. The Board’s policy is to replace one-third of its members each year, which enables PBO to benefit from both continuity and new ideas. The current board members are as follows:

Chair: Guy Pratte
Borden Ladner Gervais LLP

Vice Chair: Gordon Currie
Executive Vice President & Chief Legal Officer,
George Weston Limited

Treasurer: Gordon Baird
McGarry Tétrault LLP

Secretary: Carol McNamara
Royal Bank of Canada

Directors:
Marion Annau
Founder, Connect Legal and LL.M. Candidate,
University of Toronto

Simon Fish
General Counsel, BMO Financial Group

Daniel Holden
Vice President, General Counsel & Secretary,
Nestlé Canada Inc.

Heather Innes
Heather D. Innes Professional Corporation

Kike (Kikelomo) Lawal
Chief Legal Officer & Corporate Secretary,
Interac Association / Acxsys Corporation

Larry Lowenstein
Osler Hoskin & Harcourt LLP

Linda Plumpton
Torys LLP

Anne C. Sonnen
Senior Vice-President & Chief Compliance Officer
Great-West Lifeco

PBO’s Board has four scheduled meetings each year (including the AGM and annual strategic planning meeting) and meets more often as required. The average number of directors present at Board meetings is nine.

PBO also has four standing committees of the Board, including an Executive Committee, Audit and Finance Committee, Fundraising Committee, and Litigation Committee.
PBO has 11 full-time employees and four part-time employees, seven of whom are lawyers and four of whom are licensed paralegals. 87% of employees are women, and 20% are visible minorities. Lynn Burns, the Executive Director, has more than 25 years’ experience designing and managing legal service delivery programs.

PBO relies on volunteer lawyers to deliver free legal services to the public. In 2018, volunteers donated 17,193 hours of pro bono time through PBO’s various programs. This is in addition to hours donated by lawyers who provided services via third party-managed programs brokered by PBO. All PBO programs follow best practices and include extended malpractice coverage via LawPRO.

e. Summary of programs and services

PBO’s strategic focus is on civil non-family legal needs, the greatest area of unmet legal need in Ontario. PBO provides direct legal services to address everyday legal problems such as civil litigation, consumer debt and protection, corporate law (for non-profits and start-ups), education law, employment law, housing, and powers of attorney for property and personal care.

PBO delivers services primarily through five programs:

   i. Law Help Centres
   ii. Free Legal Advice Hotline (the “Hotline”)
   iii. Medical-legal partnerships
   iv. Children’s programs
   v. Corporate pro bono for start-ups and non-profits

i. Law Help Centres

The access to justice crisis consists of thousands upon thousands of human stories of unmet need. Perhaps the most potent expression of this need is the skyrocketing phenomenon of self-represented litigants. These members of our community are attempting to navigate a complex system that was designed for expert assistance they cannot afford. PBO was an early responder to this need. PBO’s court-based Law Help Centres have provided in-person support to self-represented litigants since 2007, when PBO launched its pilot project in Toronto.

The Law Help Centres flow from PBO’s conviction that access to justice requires that citizens have the information and judgment they need to solve common, justiciable problems. If we fail to meet that requirement, enshrined rights and duties are unable to protect people and are rendered meaningless. For rights to exist in practice and not just in theory, people must be able to access the courts in a meaningful way. The Law Help Centres make that possible. It is no exaggeration to say that a Law Help Centre should be viewed as a fundamental feature of any busy, modern courthouse.
The Law Help Centres are PBO’s most significant program for self-represented litigants. PBO operates three drop-in Law Help Centres: two in Toronto (at the Superior Court at 393 University Avenue and at the Small Claims Court at 47 Sheppard Avenue East) and another in Ottawa that serves both the Small Claims Court and Superior Court of Justice (161 Elgin Street), where people can access procedural information, court form completion assistance and summary legal advice.

These drop-in services also serve as a hub for a range of courtroom advocacy assistance. PBO and the Law Help Centres coordinate same-day representation on some matters as well as scheduled duty counsel offerings at Small Claims Judgment Debtor Examination Court, Small Claims Motions Court, Superior Court Civil Practice Court, Divisional Court, and the Ontario Court of Appeal.

In addition, the Law Help Centres operate litigation assistance matching programs that pair clients with individual lawyers for services that range from merit assessments to full representation. These programs assist people at all levels of the justice system, from Small Claims Court to the Ontario Court of Appeal and the Supreme Court of Canada.

The Law Help Centres blend the best of self-help models with the best of duty counsel services and leverage the skills of the private bar to deliver services on a pro bono basis. The program creates meaningful opportunities for lawyers to enhance access to justice and to gain valuable, hands-on, civil litigation experience. The Law Help Centres have helped 147,770 clients since they launched in 2007.

ii. Free Legal Advice Hotline

Genesis of the Hotline

Given the size of Ontario, PBO has always been aware of the need to and benefit of providing remote services by telephone. In 2009, an independent report on PBO’s Law Help Centre pilot project (discussed below under “3(d). Proven efficacy of PBO programs”), recommended the addition of a telephone service as a way to improving that program by leveraging existing resources.

In 2012, PBO began exploring this option by implementing a Remote Service Line through its Law Help Centres. PBO staff members completed intake and scheduled calls, and lawyers who were already volunteering at the centres would field those calls from the centres while also continuing to assist in-person clients. This was done with no additional infrastructure or budget.

While the Remote Service Line demonstrated that telephone advice was an extremely effective complement to in-person, court-based services, it was also unwieldy, in part due to the lack of technological support and the need to allocate staff resources to perform a separate, manual intake process. PBO was able to serve only one-third of the people who requested services through the Remote Services Line. When those clients were served, help centre volunteers
were often being diverted from providing in-person service. As a result, services needed to be enhanced.

In 2016, PBO began to look at upgrading its technology to create a more streamlined point of entry for clients who needed advice remotely, while reducing pressure on the overburdened Law Help Centres. The objective was to enable both service lines to thrive harmoniously: the help centres would provide essential services to litigants in the courthouses and others who required in-person services, while the Hotline would serve those who needed or wanted help from a distance.

Start-up funding for the Hotline was secured from the Law Foundation specifically for this purpose. The Hotline has since received additional funding through fee-for-service arrangements, corporate donations and project-specific grants, as explained further below under “4. Funding History”. The start-up funding for the Hotline covered, among other things, the cost of upgrading telephone and case management technology to support the volume of calls coming in through the Law Help Centres.

The resulting launch of PBO’s Free Legal Advice Hotline in September 2017 was a success. Law Help centre lawyers are able to focus on drop-in clients while the Hotline phones are staffed by volunteer lawyers at PBO headquarters. For the first time in its history, PBO is able to serve the entire province efficiently, addressing the myriad barriers to justice faced by its citizens.

The Hotline Today

The Hotline provides summary advice and legal drafting to Ontarians with civil non-family matters. It is the first telephone hotline in Canada to provide both summary legal advice and brief services such as court form completion and letter drafting.

The goal of the Hotline is to provide just-in-time legal assistance to help Ontarians address everyday legal problems before they escalate and intensify. By making legal advice and services available over the telephone, the Hotline addresses barriers to justice including age, disability, illiteracy, childcare obligations and inflexible work schedules. Callers are connected directly with a lawyer in the relevant area of law and receive advice that enables them to understand their rights, know their options, and take concrete steps to resolve their issues.
Because of its province-wide reach and minimal barrier to entry (a free telephone call), the Hotline has become a main point of entry for most PBO clients. Operating along with the Law Help Centres at the base of PBO’s service pyramid, the Hotline resolves many issues in one call. Callers can return to the Hotline if they need further advice or services, and callers whose cases are deemed too complex to be addressed by telephone can be referred to other PBO programs. These include self-represented litigants who need enhanced litigation services at the Law Help Centres.

The public’s appetite for the service speaks for itself: despite conducting no outreach beyond PBO’s court-based programs, the Hotline served 1,934 clients in its first 9 weeks of operation. Moreover, it resolved 81% of callers’ inquiries with one telephone call. In 2018, Hotline volunteers responded to 14,380 telephone calls from clients.

The Hotline is supported by PBO staff and volunteer lawyers. Callers receive legal advice and help preparing documents such as demand letters and basic court forms. Each day, up to six volunteer lawyers staff the Hotline to provide advice and services.

After a call, clients may receive follow-up resources, completed documents and instructions for sending and/or filing those documents, as required. Clients with civil litigation matters are often referred to the litigation assistance offerings provided by the Law Help Centres for further services when their needs cannot be addressed in a telephone call.

The Hotline uses state-of-the-art technology – Salesforce for case and knowledge management, TalkDesk to manage call centre functions, and Nintex DocGen for template document assembly – to support the provision of consistent, high quality legal assistance to the public. Volunteers have access to a growing custom knowledge base within Salesforce that includes over 400 lawyer-drafted FAQs providing practical answers to common Hotline questions, with direct hyperlinks to primary source law and relevant forms.

### iii. Medical-Legal Partnerships

PBO currently provides hospital-based programs in seven hospitals in Ontario. Funding for any additional costs associated with these hospital-based programs comes from partnerships with various hospital foundations. The funding earmarked for these programs cannot be used to fund other PBO programs such as the Hotline or the Law Help Centres. The funding from the medical-legal partnerships also helps defray the salary costs of five of PBO’s staff lawyers.
PBO operates medical-legal partnerships (MLPs) that embed triage lawyers in all five children’s hospitals in Ontario to help patients and their families address legal needs that impact the patient’s health. These problems can include job loss due to prolonged absences to attend to sick children, or substandard housing that affects chronic conditions like asthma. Triage lawyers provide legal issue-spotting training to clinicians (e.g. social workers and nurses), meet with families onsite to provide summary advice and brief services (e.g. drafting demand letters, notarizing documents), and refer families to pro bono lawyers for additional services as required. In 2013, PBO’s MLP model was recognized as a Leading Practice by Accreditation Canada, an organization which promotes best practices in healthcare. These programs serve over 1,200 families each year.

Starting in 2016, PBO extended its MLP model to include general hospitals. PBO now organizes semi-annual Power of Attorney clinics (as well as emergency visits) at Princess Margaret Cancer Centre and offers monthly Power of Attorney clinics at both Sinai Health System locations (Mount Sinai and Bridgepoint Active Healthcare).

iv. Children's Programs

PBO’s children’s programs are designed to protect the rights of vulnerable children in various administrative law contexts. PBO’s oldest children's program, the Education Law Program, helps children who have been unlawfully denied education accommodations or unfairly disciplined, bullied or denied enrollment. This program launched in 2002 and now helps approximately 150 children each year.

PBO created the Unaccompanied Minors project in 2008 to provide Designated Representatives (DRs) to children arriving alone at Ontario’s ports of entry and seeking refugee protection. DRs help facilitate the refugee claims process by helping children access legal aid certificates, instruct counsel, support research and generally act in the best interests of the child before Immigration and Refugee Board hearings.

PBO also helps families (often grandparents) caring for minor children obtain government benefits, specifically the Temporary Care Allowance. PBO maintains a small roster of lawyers who represent kinship care providers that are appealing decisions denying them the benefit.

v. Corporate Pro Bono for Start-ups and Non-profits

PBO supplements corporate and non-profit services provided through the Hotline by offering public legal education sessions and maintaining a roster of volunteer lawyers who provide unbundled services and full representation to eligible organizations.

In 2016, PBO initiated a process to restructure and reorganize its business law services. It launched a Corporate Pro Bono Clinic and merged it with its existing Charitable Law Program. PBO also developed new partnerships between Weston and the Toronto District School Board to provide free Public Legal Education to students enrolled in entrepreneurship programs and
launched a partnership with Bennett Jones and the Prince’s Charities to provide business law services to veterans of Canada’s Armed Services who are transitioning into civilian life.

3. Importance of Providing Civil Legal Assistance

a. Legal needs studies

PBO focuses on legal problems that are both widespread and underserved. A study published by the federal Department of Justice based on a nation-wide survey conducted in 2006 found that only 11.7% of survey respondents with justiciable legal problems sought assistance.5 As Malcolm Mercer noted in a 2014 article, this means that over 85% of justiciable problems do not attract legal attention.6

The vast majority of the issues identified by the DOJ survey respondents were civil non-family matters, with over 80% of problems falling into the categories of consumer, money and debt, employment, housing, wills and powers of attorney, discrimination, and litigation,7 which are all areas of focus for PBO’s programs. Similarly, in the Report of the Ontario Civil Legal Needs Project, a joint research initiative of the Law Society of Ontario, Legal Aid Ontario, and PBO, over 70% of the issues identified by participants as problems that would have benefited from legal advice fell into the civil non-family areas addressed by PBO programs, including employment, housing, consumer protection, consumer debt, wills and powers of attorney, small or personal business issues, discrimination and litigation.8

b. Focus on accessible, complementary services

PBO also prioritizes programs that emphasize accessibility. For services to be accessible, they must reduce and even eliminate barriers. When considering a province as large and diverse as Ontario, it’s important to realize that the multitude of existing barriers requires a variety of service models.

The Law Help Centres are an emblem of accessibility because of their indispensable location. By locating them in courthouses and giving outreach material to court staff, PBO proactively reveals the help centres to the public. This is critical. When a person is overwhelmed and seeking help, they should not be asked to figure out who can help them and where they need to go. This information should be obvious. This is precisely what happens when self-represented litigants attend courthouses where PBO operates a help centre. In addition to promoting accessibility through ideal location, the Law Help Centres reduce barriers to justice

5 DOJ Justiciable Problems Report, supra, p. 56. Note that another 5.7% identified the legal problem experienced as “not important enough” to do anything about.
6 M. Mercer, “Being in Favour of Reform, Just Not Change”, supra.
for people who require in-person assistance due to language barriers, illiteracy, inability to use technology, or complexity of legal issues.

Another good example of this is PBO’s award-winning medical-legal partnerships, which embed legal services in healthcare settings, bringing services directly to patients and families who are too overwhelmed by debilitating personal circumstances or who lack the wherewithal to address legal problems that impact their health needs.

In a province as large as Ontario, it is impossible to serve everyone at a physical location. Moreover, remote services can promote accessibility for those who have difficulty attending an office. In this respect, the Free Legal Advice Hotline reduces barriers to justice that include geography, disability, age, poor transit options, childcare obligations and precarious work arrangements. The Hotline enables PBO to overcome geographic constraints and deliver direct legal services to Ontarians regardless of where they reside. As this map of caller postal codes indicates, the Hotline is serving callers throughout southern and central Ontario, Thunder Bay and a growing number of remote communities such as Kenora, Red Lake, and Sioux Lookout.

In responding to diverse needs, PBO also ensures that its programs are complementary. For example, while the Hotline can address some civil litigation needs, the Law Help Centres are fundamental to the needs of many self-represented litigants. They are essential for a variety of clients, including:

- Clients who are already in the courthouse, need help court staff cannot provide, and benefit from the courtesy and convenience and being offered face-to-face advice in the same building.
- Clients who need help with complicated form completion. For example, help centre clients frequently spend several hours completing court forms by using form completion software and obtaining assistance from staff and volunteers who review the work and ensure accuracy. This is not possible with the pace and volume of the Hotline.
• Clients who need same-day representation at motions, settlement conferences and trials. The help centres are needed to facilitate those appearances, as well as to operate a variety of scheduled duty counsel programs in the courthouses in which they operate as well as nearby courthouses.

• Clients needing advice on issues in which in-person interaction with a lawyer would improve the quality of advice given, such as:
  o clients who are preparing to examine a party;
  o clients who are preparing to give evidence;
  o clients who are preparing to be cross-examined;
  o clients who need to discuss the quality of evidence that cannot readily or optimally viewed on a screen, such as objects or the details of handwriting or objects.

• Clients who do not or prefer not to use email, such that they need a hard copy of next steps suggested by the pro bono lawyer.

• Clients who do not function well over the telephone or derive more value from in person communication.

As such, the Hotline routinely refers callers to the Law Help Centres when an in-person consultation will be more effective, and/or the client needs more help than can be provided by telephone.

In other cases, the Law Help Centres – or even the courts themselves – refer clients to the Hotline. Over 40% of the Hotline’s volume relates to civil litigation matters. 13% of Hotline referrals originated with the courts. This includes judges who call the Hotline seeking counsel for unrepresented litigants. Another 13% are referred from Legal Aid Ontario.

Ultimately, the two service streams work very well together and mutually reinforce the principle that Ontarians deserve help in whatever forum is most suited to their unique situation. Both services are needed to meet rising demand. These different channels of service enable PBO to provide people with the right level of service while more efficiently allocating pro bono resources based on the specificity of individual needs.

PBO also focuses on developing and enhancing services to address the needs of specific populations that may have limited access to legal services. For example, since 30% of callers to the Hotline are senior citizens, PBO is currently developing knowledge management resources and recruiting volunteers to help seniors prepare Powers of Attorney by telephone and in hospital settings. It also intends to develop screening tools to better flag additional services for seniors who are victims of consumer fraud and predatory lending schemes.

**c. Limitations on Legal Aid coverage**

While Legal Aid is a valuable and essential component of access to justice, it is not enough. It has been observed that Legal Aid coverage has been diminishing since the 1990s and government funding for Legal Aid has remained stagnant while spending in areas like health
care and education has increased. The most recent cuts to Legal Aid confirm that it cannot be asked to meet all legal needs of low-income Ontarians. Moreover, Legal Aid Ontario is statutorily required to provide services in criminal, family, mental health and clinic law, and must necessarily focus on fulfilling those obligations. The Legal Aid Services Act also specifically prohibits Legal Aid from serving certain areas of civil law and includes a very strong, catch-all provision that Legal Aid shall not provide services in “prescribed areas of civil law, for prescribed types of civil cases or for prescribed types of civil proceedings”. Legal Aid’s decision to eliminate most services in the area of civil law is not surprising in this context, and even before the recent cuts Legal Aid showed no indication that it would reverse this decision. This leaves huge swaths of unaddressed need in areas of fundamental importance to peoples’ lives, including work, debt, consumer protection, business activities and substitute decision-making.

Even within areas Legal Aid covers, many people have income or assets above its financial eligibility limits. While the financial eligibility limits for Legal Aid have increased in recent years, there remains a sizable gap between families who are eligible for Legal Aid and those who can afford to hire a lawyer. Legal Aid’s income limit for certificate work is currently $14,453 for a single person or $32,207 for a family or four. PBO helps to address this gap by providing civil legal services to single persons with incomes up to $54,000 and families of four with incomes up to $86,000. While these families may not be living in poverty, few are in a position to retain a private lawyer when urgent situations arise or when they are unsure of their rights.

Legal Aid also disqualifies applicants based on an asset test that includes real property and most savings. An individual with assets of over $1,118 and families of three or more with over $2,676 are ineligible for legal aid certificates. This means that low-income homeowners do

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10 Legal Aid Services Act, SO 1998, c 26, s. 13(1).

11 Ibid., s. 13(3).


13 General, O Reg 107/99, ss. 1(2)-(4); Legal Aid Ontario, “Financial Eligibility Test for Legal Aid Certificates, v. 1.2”, online at https://www.legalaid.on.ca/en/publications/downloads/Certificate-Financial-Eligibility-Criteria.pdf. See also “Financial Eligibility Test for Duty Counsel Services”, online at https://www.legalaid.on.ca/en/publications/downloads/Financial-Eligibility-Test-for-Duty-Counsel-Services.pdf, which sets out higher thresholds for duty counsel services ($22,720 for a single person, or $45,440 for a family of four). The automatic eligibility thresholds for clinics are similar to those for certificates, but clinics also have the discretion to provide services for individuals with incomes as high as $22,720, or families of four with incomes as high as $45,440 (“Financial Eligibility for Clinic Law Services, v. 1.2”, online at https://www.legalaid.on.ca/en/publications/downloads/Financial-Eligibility-for-Clinic-Law-Services.pdf).

14 Household goods and vehicles are excluded, as are RDSPs, RESP, locked-in pensions, and certain settlement funds. See Legal Aid Ontario, Financial Eligibility Test for Legal Aid Certificates, v. 1.2, ibid.
not qualify, even if they live off of CPP or OAS. Business assets are also counted, so small business owners with assets over these thresholds are also ineligible for legal aid.\textsuperscript{15} Without access to pro bono services, these individuals could be forced to sell their homes or liquidate their business assets to obtain assistance with their legal needs.

PBO does not have an asset test. This has proven vital to many Ontarians served by PBO programs such as low-income homeowners, often seniors, who have fallen victim to crippling unfair business practices by door-to-door sales companies, or who have rented out space in their homes to make ends meet and are in disputes with tenants or boarders.

PBO understands that limits on Legal Aid are unavoidable. The crucial point is that pro bono legal services must be seen as an essential component of a legal system that strives to provide meaningful access to justice for all.

d. Proven efficacy of PBO programs

PBO develops long-term strategic priorities, drafts annual business plans to guide the implementation of goals, and reviews progress quarterly and annually. To ensure that it provides high-quality legal services that are responsive to client needs, PBO maintains detailed program statistics that include demographic information about clients, types of legal problems, services rendered and immediate outcomes. The latter is gauged by surveys automatically sent to clients after services are provided. For example, PBO sends SMS or email user surveys to Hotline callers after each call, or, in the case of matching programs like the Education Law Program, email surveys after volunteers provide case disposition reports.

PBO routinely reviews this data to ensure that internal processes are effective and to identify systemic issues or emerging unmet legal needs. The data gathered by the Hotline provides a real-time assessment of unmet legal needs in Ontario. This informs program design, volunteer recruitment, and training activities. For example, PBO has recognized that door-to-door sales account for nearly half of the consumer law calls to the Hotline. To address this, PBO is gathering information about repeat offenders with the goal of identifying a potential class action or other form of impact litigation.

PBO also conducts formal program evaluations as resources allow. For example, PBO commissioned an independent evaluation of its Law Help Centre at 393 University Avenue after its first year of operation. This report, which came out in 2009, was based on stakeholder interviews that included judges, front-line court staff, volunteer lawyers and clients.\textsuperscript{16} Similarly,

\textsuperscript{15} Ib\textit{id}.

in 2012, PBO commissioned a study evaluating its MLP program at SickKids,\textsuperscript{17} in 2016, it conducted an internal review of the Education Law Program, and in 2017 it commissioned an independent evaluation of its court-based pro bono programs, discussed under the next heading.\textsuperscript{18}

Most recently, PBO launched a pilot project to evaluate mid- and long-term outcomes of Hotline services to measure their impact on client self-efficacy and the resolution of everyday legal problems.

e. Value-for-money offered by PBO programs

PBO’s programs generate significant value for money. Independent evaluations have demonstrated that PBO programs improve clients’ self-efficacy\textsuperscript{19} as well as their mental health and financial positions\textsuperscript{20}. Moreover, they generate economic value that improves the administration of justice. The 2017 evaluation of Law Help Ontario referred to above found that the centres create $5.76 million in benefits each year.\textsuperscript{21} This includes $2.29 million in cost avoidance by taking claims of doubtful merit out of the system; $2.11 million in legal services leveraged, pro bono, for the benefit of the courts and the public; $0.76 million by increasing court efficiency (for example, by making hearings more efficient); and $0.6 million in savings for clients.

These outcomes are only achieved because PBO provides the infrastructure and coordination required to leverage the private bar. Essential infrastructure includes:

- When necessary, e.g. the Law Help Centres, providing the space for lawyers and clients to meet
- Organizing and supervising brief service opportunities that facilitate participation for sole practitioners and Bay Street firms alike
- Providing risk-management tools (such as intake forms that manage client expectations and a case management system)
- Providing knowledge management tools
- Providing document generation tools and associated precedents
- Maintaining dedicated program staff to recruit, train, schedule and supervise volunteers
- Liaising with the courts and other sectors, and
- Identifying opportunities for regulatory reform. For example, the Law Society’s recent efforts to amend conflict of interest rules for short-term legal services was in direct response to barriers to pro bono participation at the Law Help Centres.

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\textsuperscript{17} Focus Consultants, “PBLO at SickKids: A Phase II Evaluation of the Medical-Legal Partnership between Pro Bono Law Ontario and SickKids Hospital, Toronto, Final Report” (February 17, 2012), online at https://www.probono.net/download.cfm?id=225017 [“2012 PBO at SickKids Evaluation”].


\textsuperscript{19} 2009 Law Help Evaluation, \textit{supra}.

\textsuperscript{20} 2012 PBO at SickKids Evaluation, \textit{supra}.

\textsuperscript{21} 2017 ROI Report, \textit{supra}.
Not surprisingly, the 2017 evaluation found that PBO achieves a $10 to $1 return on investment. Without PBO at the hub of this wheel it is inconceivable that the private bar would erect this infrastructure and participate at current rates. As a result, far fewer clients would receive the high quality pro bono legal services the profession is keen to provide. The entire justice system – including courts and litigants on the other side of a dispute – would have to bear millions of dollars in downstream costs.

f. Consensus from the bar and the bench that PBO provides valuable services

There is ample evidence that PBO’s services are both effective and cost-effective. Beyond the plain facts, it is striking that numerous leaders of the profession have spoken out about their value. The near closure of the Law Help Centres late last year is a poignant example. These leaders did not have to speak out. It may well have been easier for them to quietly agree that the Law Help Centres are valuable and decline to speak publicly. Instead they concluded that the issue was too important to ignore. PBO is hopeful that the Law Society will listen to these leaders and embrace the opportunity to solve an important problem and take a leadership role into the future.

Many of these leading voices are judges who have first-hand experience with these programs. They have presided over matters in which volunteers have given necessary assistance to self-represented litigants and thereby enhanced both access to justice and the administration of justice. Former Associate Chief Justice Dennis O’Connor summarized this well: “These programs have been enormously helpful to judges and to the courts over the years. They enable the courts to work more efficiently, to use their resources more effectively, and to provide greater fairness, really, to unrepresented litigants.”22

Judges also know the human face of justice. They understand that high quality pro bono legal assistance is the difference between disaster and fairness. Former Court of Appeal judge Karen Weiler is vivid in her memory of these situations:

I think of the young mother about to lose her home due to a judgment of foreclosure against her but who, with the help of a volunteer lawyer, was able to work out a payment plan that allowed her to remain in her home. I think of the elderly woman who went to a payday loan service to borrow against her Old Age Security cheque and who spiralled into debt despite the payments she made. A volunteer lawyer determined the lender made an error in calculating her debt by charging her interest it should not have done. And I think of the man suffering from mental health issues who had a potentially good defence to the claim against

him but not the ability to organize his paperwork in a manner that made it comprehensible.\textsuperscript{23}

These stories are emblems of daily occurrences. The vast majority of referrals to the Law Help Centres come from judges and court staff who see struggling litigants on the frontline and reflexively refer them to help centres for meaningful legal assistance.

Support from the judiciary includes explicit statements about funding. Former Supreme Court of Canada judge Thomas Cromwell elegantly articulates the issue: “We’ve got lots of lawyers willing to volunteer their time and we’ve got thousands of people who need this help. All we need is some resources to help with the administration necessary to bring the volunteers and the people in need together.”\textsuperscript{24}

Would this be money well spent? Fittingly, the most powerful answer comes from Ontario’s Chief Justice, George R. Strathy. The Chief Justice has said that, “The money spent on pro bono work in this province through Pro Bono Ontario is delivering more to provide access to justice – pound for pound, dollar for dollar – than any other kind of funding that can be found.”\textsuperscript{25}

Far from alone at the top, the Chief is joined by many other leaders who share his conviction. These include former Chief Justice of Canada Beverley McLachlin, who described the help centres as a “required” service that “helps relieve the burden on court staff and on judges, helps to shorten trials, and in the end will save the province money.” Accordingly, she has delivered a simple call to action: “I call upon the Government of Ontario, the Law Society of Ontario, and the Ontario bar to work together to save these centres in the short term, and to provided sustainable funding in the long-term.”\textsuperscript{26}

Her Honour’s former colleague Ian Binnie has echoed this conclusion with even greater specificity, stating that, “I am in favour of a levy on individual lawyers. It needn’t be a high amount, could be $25, $30 dollars, something like that, just to show that the profession as a whole is behind these clinics ... It’s an important access to justice issue and the Law Society should be taking the lead.”\textsuperscript{27} Former Court of Appeal judge Stephen Goudge is similarly concerned, stating that, “[t]he notion that we can’t come up as a profession or as a government with enough money to make that work is appalling to me. I really think it’s a professional

\textsuperscript{23} The Honorable Karen Weiler, former Justice of the Court of Appeal for Ontario, YouTube video posted November 19, 2018, \url{https://www.youtube.com/watch?v=EP6Srpp7b-0&feature=youtu.be}.
\textsuperscript{24} The Honourable Thomas Cromwell, former Justice of the Supreme Court of Canada, Twitter video posted November 9, 2018, \url{https://twitter.com/twitter/statuses/1061031929569513472}.
\textsuperscript{25} The Honourable George R. Strathy, address given at Pro Bono Ontario 15\textsuperscript{th} Anniversary Event (Toronto, May 16, 2016).
\textsuperscript{26} The Honourable Beverley McLachlin, former Chief Justice of the Supreme Court of Canada, Twitter video posted November 12, 2018, \url{https://twitter.com/ErinDurant42/status/1062074710756859911}.
\textsuperscript{27} The Honourable Ian Binnie, former Justice of the Supreme Court of Canada, YouTube video posted November 26, 2018, \url{https://www.youtube.com/watch?v=bjUJ3rDAMZs&feature=youtu.be}. 
obligation to do everything we can to ensure the survival of these centres because of what they do for ordinary people facing a system they don’t understand...”

4. Funding History

a. Loss of core funding and near closure of Law Help Centres

As noted above, the Law Foundation of Ontario is currently PBO’s only core funder. PBO has experienced increasing financial pressure since 2010, when it lost its operational grant from Legal Aid Ontario, just as the need for pro bono services was increasing due to cuts to legal aid services and the rise in self-represented litigants. The Legal Aid grant was $338,000 in 2009, when the intention to eliminate it was announced. PBO has engaged in a combination of cost-cutting and fundraising activities to address this structural deficit but has been able to maintain its programs only by running deficit budgets and through last-minute injections of emergency funding.

PBO has been working with the Ministry of the Attorney General since December 2015 to attempt to secure sustaining funding. In 2017, the Ministry provided a $300,000 core grant that was administered by Legal Aid Ontario. In 2018, however, the Ministry declined to provide any funding for PBO programs and suggested that PBO seek funding from Legal Aid Ontario, the Law Foundation of Ontario, and the Law Society of Ontario.

In November 2018, PBO announced that it would be closing its court-based Law Help Centres effective December 14, 2018, due to a lack of stable funding. This decision was based on financial necessity. The profession’s outcry in response to this decision demonstrated the importance of PBO’s activities to Ontario lawyers. Private donors, including law firms and individual lawyers, gifted amounts totalling over $275,000, and the federal Department of Justice made a one-time contribution of $250,000 through its Justice Innovation and Partnership Program to meet the immediate need of $500,000.

While these resources will enable PBO to keep the Law Help Centres open through to the end of 2019, they do not provide a long-term solution. PBO needs stable funding to continue its work of connecting volunteer lawyers with low-income Ontarians who need legal assistance. As of the date of this paper, the Attorney General continues to maintain that no funding will be forthcoming. The LFO has also indicated that it will not be increasing PBO’s core grant.

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b. Increasing demand for services and introduction of the Hotline

As noted above, the genesis of PBO’s financial hardship and operational challenges was the rise in demand for its services and simultaneous reduction in core funding. On the demand side, the phenomenon of self-represented litigants has grown dramatically in the past decade. The shortage of help for these Ontarians was exacerbated when Legal Aid ended its civil certificate program in 2010. Over the same period, legal services for everyday problems became increasingly unaffordable to people of low to moderate income, leading to increased attendance at the Law Help Centres. This meant that in civil matters, PBO’s three Law Help Centres in Toronto and Ottawa became the only organized service for self-represented litigants at the very time that their numbers were rapidly growing.

The centres have provided in-person and telephone consultations to a growing number of people referred by Legal Aid offices and court houses throughout the province. With the addition of the Hotline in September 2017, PBO as a whole served 28,872 clients in 2018, almost double the number it served in 2013. As shown in the graph on page 4, PBO’s expenditures have increased only 34% in the past decade, while the number of people served has more than tripled.

PBO managed this by diversifying its revenue streams (from three funders to 20+), while also cutting expenses by eliminating various staff positions, co-locating with another charity, and implementing technological solutions that increased efficiency.

As described above, the Hotline reduced pressure on the Law Help Centres by assuming responsibility for the Remote Services Line that was operated by the Law Help Centres before the implementation of the Hotline.

Because the Hotline was intended to complement rather than replace the Law Help Centres, it was funded through separate grants. PBO funded the Hotline’s $130,000 implementation by obtaining a project grant from the Law Foundation of Ontario, entering into fee-for-service contracts and pursuing other development activities. It has continued to fund the Hotline by entering into fee-for-service arrangements, securing corporate donations (e.g. to cover the expenses associated with the corporate line for low-income entrepreneurs) and obtaining project grants. In 2018 alone, PBO secured $135,000 from various sources to cover Hotline
expenses. Notably, funds to operate the Hotline are restricted and cannot be used to underwrite the help centres’ operations.

5. Why the Law Society Should Support PBO

The near closure of the Law Help Centres revealed overwhelming support for their continued operation and indeed for PBO’s services in general. Indeed, it should be a starting point for all concerned that nobody is questioning the value of these services. We appear to have achieved a valuable consensus that they increase access to justice and enhance the administration of justice. They help people in need and, in so doing, save the justice system a significant amount of money. In short, they tell a story of serving and saving. This is a unique win-win that must be preserved.

PBO welcomes a robust debate about how its services should be supported. With the greatest of respect to all justice system players, what PBO laments is the possibility that excessive finger pointing will result in a missed opportunity for the people of Ontario. In other words, if everyone values the services but nobody is willing to own the problem, our justice system will be impoverished, and vulnerable people will suffer. This is the calamity PBO is striving to avoid.

It is not controversial that the Ontario government, through the Ministry of the Attorney General, shares responsibility for ensuring access to justice in the province. However, the severity of the situation compels all institutions in the justice system to act. As former Chief Justice of Canada McLachlin said in her statement in support of PBO referred to above, access to justice is the most important challenge that our justice system faces today.

As the sole provider of legal services, the legal profession clearly has an important role to play in ensuring access to justice. As its regulator, the Law Society also has a role that merits careful consideration. When analyzing this role, it is useful to focus on the three key actors: a) the Law Society itself; b) the professionals it regulates; and c) the members of the public who need services. When the perspectives of these three actors are seen together, it is clear that the Law Society can and should ensure sustainable funding for PBO programs. Indeed, it is among the noblest things it could do to facilitate access to justice in the province of Ontario.

a. The Law Society has a duty to act so as to facilitate access to justice for the people of Ontario

The legal profession benefits significantly from an enshrined monopoly over the provision of legal services to the public. As a result, the legal profession as a whole has an obligation to ensure that there are services available to assist self-represented litigants who cannot afford to pay for legal services.29

This obligation is reflected in the Law Society’s enabling statute. The most relevant sections of the *Law Society Act* are sections 4.1 and 4.2:

**Function of the Society**

**4.1** It is a function of the Society to ensure that,

(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

**Principles to be applied by the Society**

**4.2** In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.

2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.

3. The Society has a duty to protect the public interest.

4. The Society has a duty to act in a timely, open and efficient manner.

5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.  

In a recent blog post on the mandate of the Law Society, Malcolm Mercer draws an interesting distinction between statutory mandate and statutory purposes that must be considered when pursuing a mandate. In respect of the Law Society’s duty to facilitate access to justice for the people of Ontario, the distinction boils down to this question: is this duty part of the Law Society’s statutory mandate, or is it a principle to be applied as the Law Society fulfills its

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mandate? Mercer seems to favour the view that facilitating access to justice is not part of the statutory mandate but acknowledges that “[i]t makes good sense that the Law Society should exercise [its] mandate ‘so as to facilitate access to justice for the people of Ontario’”. Regardless of how the above question is answered – if indeed it can be – the Law Society can and should fund PBO programs.

As Mercer acknowledges, the Law Society’s mandate is not entirely clear from the statute. Ensuring standards of learning, professional competence and professional conduct is identified in section 4.1 as “a function” of the Law Society, not the function. Whether function equates to mandate is also not obvious, particularly given the wording of section 4.2, which refers to the principles to be applied by the society in carrying out its “functions, duties and powers” under the Act. That wording appears to give functions and duties equal rank, and, as we’ve seen, facilitating access to justice is clearly identified as a duty under the Act. The Law Society Act does not simply say that the Law Society should “consider” or “promote” access to justice. Rather, it stipulates that there is a duty to facilitate it. This is clear, powerful language in support of the view that this forms part of its statutory mandate.

It is also clear is that setting standards of professional conduct is within the Law Society’s core mandate, and that the Law Society has chosen to require its members to promote access to justice as part of this mandate. When legal professionals are called to the Bar, they must take an oath that says, “I shall seek to ensure access to justice and access to legal services”. Pursuant to the Rules of Professional Conduct on Integrity, “[a] lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.” The Commentary says that profession is enhanced through activities such as “participating in legal aid and community legal services programs or providing legal services on a pro bono basis.”

Supporting programs to help lawyers meet the requirement to promote access to justice is no different from running educational programs to promote professional competence and supporting a Member Assistance Program to support professional conduct. These are core activities that ensure the regulator’s mandate is not hollow. In our current reality, which includes historic levels of unmet civil legal need and the skyrocketing phenomenon of self-represented litigants, there is no better way for the Law Society to carry out its duty to facilitate access to justice than by funding programs that are specifically designed to help lawyers discharge this responsibility. In so doing, it would clearly be advancing its statutory mandate. To suggest that it’s not part of mandate would be, respectfully, a largely semantic point that would fail to grasp the importance of the Law Society’s role on the pressing issue of access to justice.

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b. The Law Society’s members are entitled to support from their regulator as they carry out their professional obligations

As shown above, the Law Society’s foundational documents – the Law Society Act, the By-Laws and the Rules of Professional Conduct – support the view that the Law Society requires lawyers to promote access to justice. The Law Society can and must support lawyers as they do this. The Law Society Act provides that a function of the Law Society is to “ensure” standards of conduct, not simply to set them. In the arena of professional competence, the Law Society does this by accompanying the CPD requirement with an array of educational opportunities and other resources.

Through existing initiatives, the Law Society appears to acknowledge it must do something to support the obligation to promote access to justice. We agree. It follows that the Law Society’s focus, and that of the profession, should be to ask whether the Law Society is in fact doing enough. We suggest that the answer is no, and that supporting PBO programs is a desirable and indeed optimal way to remedy that deficiency.

On this point, PBO is buoyed by the reality that the profession has already spoken loudly in support of its services. For example, late last year many lawyers rallied on a very tight timeline to keep the Law Help Centres alive and implore the Law Society to contribute to a sustainable solution. In general, every single day lawyers vote with their feet by enthusiastically volunteering for PBO’s programs. This reflects a fundamental dynamic between the Law Society and its members: the Law Society requires its members to increase access to justice, the members are ready, willing and able to do so, and they have asked that the Law Society use its institutional strength and resources to support opportunities that enable them to carry out their duties.

This dynamic is highly instructive to the question of “mandate”. PBO fears that discussions on the scope of mandate will tempt people to try to define the Law Society’s role as something fixed or static. This would be a mistake. Taking a step back, let’s remember that Benchers and the Treasurer are elected. They run spirited campaigns with competing platforms and priorities. After the election, Benchers identify priorities. Indeed, access to justice was identified in 2012 as a priority for the 2011-15 bencher term and should remain a priority for newly elected Benchers. However, this is not a foregone conclusion or statutory requirement. What this means is that the Law Society’s mandate is inevitably fluid and always earned from its membership. At any given time, what we view as a critical part of the mandate is the product of present-day imperatives and human choices. Surely, we can agree that in this moment in time – when access to civil justice remains unacceptably low and mere months after the profession rallied to save the Law Help Centres – it is proper to view the funding of PBO services as part of the mandate the membership has given to the Law Society.

In this regard, it is essential to remember that if pro bono programs are not supported, pro bono work itself will undoubtedly wither. Lawyers want to do pro bono work, but nobody reasonably expects them to do all of the research, program creation, project management,
monitoring and evaluation required to ensure pro bono has optimal impact for the public. This highlights the importance of the Law Society’s support; without it, it will be sending a clear message to its members that their oath and ongoing obligation to ensure access to justice will be much harder to fulfill. Instead, the Law Society could harness the ethics, energy and expertise of its members and turn pro bono work into a highly effective and integral feature of legal services delivery in Ontario.

c. Supporting PBO programs facilitates access to justice in the interests of the public

One cannot discuss the efficacy and funding of organized pro bono programs without a focus on the people they serve. Every time PBO builds a pro bono program, it does so in response to a specifically identified legal need that is capable of being met by a volunteer response. This groundwork is ensures that the public gets the help it needs, volunteers get opportunities they embrace, and funders know they are making wise investments.

The Law Help Centres provide an illuminating example. PBO created the centres coincident with the rise of self-represented litigants in civil courts. The importance of this shift in our legal culture cannot be overstated. In a very short period of time, one of our core assumptions about the justice system — that we correctly understood the role of legal professionals and the role of laypersons — was shattered. The new reality is a justice system facing scores of people who are navigating the courts without professional guidance. This includes litigants in the Superior Court — which was never designed for self-representation — as well as the Small Claims Court — which is increasingly complex and is not meaningfully accessible to many without significant support from the profession.

This challenge touches every player in the justice system: the litigants themselves, opposing parties, their counsel, the rest of the profession, other service providers, court staff, the judiciary, the government, and indeed the entire population, which suffers when a major public institution struggles with a new and expensive set of pressures. Without a doubt, it behooved the legal profession to come up with an organized response. And without ever pretending it could do so alone, PBO filled the breach by creating a suite of programming to help these Ontarians. The help centres are the hub of those programs.

Fortunately, we have come a long way in recognizing the importance of supporting self-represented litigants. The bar has stepped up by volunteering in droves at the help centres; opposing counsel better understand their obligations to self-represented litigants; court staff enthusiastically refer them for assistance; and the judiciary is gaining more and more experience with the unique challenges of hearing argument from laypersons. This is an accomplishment the legal system can be proud of. To roll it back by removing a core source of support would be a corresponding tragedy.

A recent milestone is the 2017 case of Pintea v. Johns,34 a civil matter in which the Supreme Court of Canada considered the issue of assistance to self-represented litigants. In a short but

significant part of its decision, the Court endorsed the Canadian Judicial Council’s Statement of Principles on Self-represented Litigants and Accused Persons, which included the statement that

Members of the Bar are expected to participate in designing and delivering legal aid and pro bono representation to persons who would otherwise be self-represented, as well as other programs for short-term, partial and unbundled legal advice and assistance as may be deemed useful for the self-represented persons in the courts of which they are officers.

This is a clear statement from Canada’s highest court that the public can expect members of the bar to participate in the design and delivery of pro bono programs.

Indeed, Chief Justice of Canada Richard Wagner recently went further, suggesting that law societies should make pro bono activities mandatory. In a recent interview in the Lawyer’s Daily, the Chief Justice recognized that law societies have a significant role to play in addressing court backlog, “because lawyers realize that they have to do something also, pro bono work, for instance.” He went on to note that “Now you will see more and more law societies who will require that part of being a lawyer is also giving some pro bono work, and that’s very good.”

Whether or not law societies explicitly require pro bono work or simply encourage it, they are in the best position to facilitate it by supporting pro bono programs that provide opportunities for lawyers to donate their services. Returning to the foundational language in the Law Society Act, the duty is to facilitate access to justice for the people of Ontario. Is there a better way to fulfill this duty than by supporting programs that respond to their unmet needs?

6. Precedents for Funding in Other Jurisdictions

Law societies in British Columbia, Alberta, and Saskatchewan are already providing stable funding for pro bono organizations through member fees or levies. These three law societies felt that if lawyers have a professional obligation to provide pro bono services, it follows that their governing bodies should provide support to enable them to meet this obligation.

The following sections outline how funding has been implemented and maintained by each law society.

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i. British Columbia

The Law Society of British Columbia (LSBC) funds pro bono activities, including Access Pro Bono (APB), BC’s equivalent to PBO, through funding derived from member fees. Through a pro bono review process, described below, the LSBC recognized that funding not-for-profit pro bono organizations was consistent with the society’s public interest mandate and ultimately concluded that, “We as a law society must use that voice loudly and effectively to increase public understanding of access issues and ultimately government funding. This, whether it arises from the narrow words of the Legal Profession Act, or from the simple rights and privileges we have as lawyers, is our duty.”

In 2006, the LSBC struck a Pro Bono Funding Task Force to look into the existing practice of funding pro bono initiatives on an ad hoc basis. The task force concluded that it was appropriate for the Law Society to fund pro bono programs based on its statutory mandate to serve the public interest, and proposed that they contribute 1% of the general fund of members’ annual fees to pro bono initiatives. To address concerns that the Law Society lacked the resources to administer pro bono funding requests, the Benchers approved a plan to distribute the funds through the Law Foundation of British Columbia (LFBC). These funds were to be in addition to funds already provided to pro bono organizations by the LFBC.

In 2012, LSBC assigned a committee to review the question of whether the 1% allocation of general fees was still appropriate. The amount generated by the 1% had increased from $97,344 in 2007 to $269,840 in 2013, and the LSBC was also providing in-kind rental space for APB valued at $47,200, for a total contribution to pro bono and access to justice initiatives of $217,040. However, demand was increasing for APB services at a greater rate due to the rise in self-represented litigants, with APB reporting annual increases of 33% in numbers served. At the same time, prolonged low interest rates were impacting the LFBC’s funding model, putting other funding sources at risk. The committee concluded that the 1% number was divorced from the issue of need and should be increased to a specific amount.

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37 The information in this section is drawn from a personal interview with Michael Lucas, Director of Policy and Planning, and Doug Munro, Policy and Legal Services, Law Society of British Columbia (January 11, 2019), and from the documents cited.
41 Letter dated February 7, 2007, from Wayne Robertson, Executive Director of the Law Foundation of British Columbia, to Ian Donaldson Q.C., Chair of the Pro Bono Funding Task Force, Law Society of British Columbia ["February 7, 2007 Robertson Letter"].
42 2013 LSBC Report, supra, p. 5.
43 Ibid., p. 6.
44 Ibid., pp. 6 & 12.
As part of its review, the committee developed a set of funding principles that acknowledged that the Law Society was not a funding organization, and that the primary funders should be the government and the LFBC. In response to concerns that the Law Society could never meet all demands due to the vast scope of access to justice needs, they articulated a clear goal of providing a meaningful amount of funding to encourage and support pro bono. They recognized that that amount may increase over time with or exceeding inflation, but – to alleviate concerns about constant repeat requests – stipulated that the amount of funding was to be subject to review or inflation only at the direction of the Benchers.

As a result of those principles, the committee settled on an appropriate lump sum amount of up to $340,000, which also includes a rent subsidy for APB. The LFBC splits the $340,000 between pro bono programs – primarily APB – and a separate discretionary access to justice fund that it distributes based on consultations with the Law Society. The funding is set to increase to $346,800 in 2019 in accordance with the Consumer Price Index. Following this adjustment, the contribution will be $28 per lawyer from a membership of approximately 12,000 lawyers.

ii. Alberta

The Law Society of Alberta (LSAB) has provided stable funding to Pro Bono Law Alberta (PBLA) derived from member fees since 2007, when it decided to take a leadership role by promoting a culture of pro bono services among Alberta lawyers.

PBLA was created and funded as an initiative of the LSAB. In 2003, the Law Society’s Pro Bono Committee produced a report concluding that funding pro bono services was consistent with the society’s mission of serving the public interest by promoting a high standard of legal services in governing the profession, as well as with its Code of Professional Conduct. The Committee acknowledged that not all solutions were within the power of the Law Society as a regulatory body, but found that this spoke only to the methods of promotion and did not impact the law society’s ultimate mandate to promote the provision of pro bono services. They concluded that the LSAB should take a leadership role and provide structure and encouragement to promote a culture of pro bono services in Alberta.

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46 “Principles for the Law Society’s Contributions to Pro Bono”, Appendix to 2013 LSBC Report.
47 Ibid.
48 2012 LSBC Report, supra, p. 15.
49 February 7, 2007 Robertson Letter, supra.
51 Ibid.
52 The information in this section is drawn from personal interviews with James Peacock, QC, Bencher of the Law Society of Alberta from 2001-08 (January 14, 2019), correspondence with Nonye Opara, Executive Director of Pro Bono Law Alberta, and from the documents cited.
54 Ibid, pp. 2 & 9.
Accordingly, in September 2006, as a legacy project for its upcoming 100th anniversary, the LSAB committed funding of $200,000 to establish a new pro bono network in the province. The Alberta Law Foundation (ALF) provided an additional $200,000 for start-up costs and first year administration. In October 2006, the Law Society co-hosted a roundtable to bring key stakeholders from around the province together, resulting in the development of a model for the proposed network that would be known as Pro Bono Law Alberta. PBLA was launched in May 2007.

To address ongoing funding, the Benchers initially approved a “tick box” method that was intended to encourage lawyers to contribute directly to funding pro bono by allowing them to tick a box on their annual fee forms to add a contribution to pro bono initiatives. This system proved impractical, however, since many lawyers had their fees paid by their firms and were not in a position to tick the box. In December 2007, the Benchers passed a motion to participate in and provide ongoing sustainable core funding and resource support for PBLA.

Since 2007, PBLA funding requests have been considered annually as part of the Law Society’s budget process. The amount received varies based on projected operating expenses. PBLA presents a budget to the Law Society, and that request goes to the Finance Committee and ultimately to Convocation, where the Benchers can amend or veto specific budget items. Funding is based on three-year cycles, but must be approved annually. PBLA is currently receiving annual funding of $420,000 from the LSAB. The LSAB has approximately 10,000 members, so this amounts to a contribution of approximately $42 per lawyer.

iii. Saskatchewan

Pro Bono Law Saskatchewan (PBLS) was established in 2008 with the support of the Law Society of Saskatchewan (LSS). The LSS has had a pro bono levy in place to fund PBLS for over a decade. Soon after PBLS was established, it wrote to the LSS requesting that a membership levy of 1% ($15 per member) be added to each member’s annual fees for 2009 to help support PBLS. The British Columbia funding was cited as a precedent and it was noted that this was a further tangible way of supporting PBLS for the benefit of both PBLS and Law Society members. The

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55 Minutes of the Law Society of Alberta Bencher’s Meeting, September 28, 2006. Note that the LSAB had received half of this $200,000 from Alberta Justice as a contribution to the 100th anniversary celebrations.
56 Laying the Foundation: Second Annual Stakeholders’ Round Table on Pro Bono Legal Services in Alberta – Proceedings (November 1-2, 2007, Calgary) [“LSAB 2007 Report”], pp. 7 & 11. These contributions were in the form of cash and/or funds and in-kind services, space, technology, accounting, human resources, and advertising and promotions.
59 Ibid., pp. 7 & 14.
62 The information in this section is drawn from correspondence with Kara-Dawn Jordan, Policy Counsel at the Law Society of Saskatchewan, and from the documents cited.
request was put before the Benchers at October Convocation that year (the focus of which was approval of the budget, including the annual fee).

The levy was incorporated into the proposed budget, and PBLS received a transfer of $15 per member. The levy has been incorporated into the proposed budget at the rate of $15 since that time. From the current membership of approximately 1,900, this comes to approximately $28,000 per year. Following 2009, there were informal discussions from time to time regarding an increase to the levy at the management levels between the LSS and PBLS but no formal consideration at the Bencher table.

Increased support for PBLS was considered at the Bencher level in 2017 and in 2018, which has led to some increased support in both those years. Minutes are not available as those requests were dealt with in camera, but PBLS was given one-time financial contributions to supplement their operations of $45,000 for 2018 and $30,000 for 2019. The Law Society also provided some additional support in 2019 by way of a waiver of annual fees for staff lawyers at PBLS practicing exclusively for and through that organization, and a reduction in what the Law Society charges PBLS for office services such as accounting.

7. Conclusion

We have the potential in Ontario to have a full access system in which Legal Aid Ontario continues to provide services in its core areas while the private bar responds to unmet needs in the civil non-family arena. The profession has demonstrated a willingness to provide these desperately needed services and PBO has demonstrated its ability to facilitate their delivery. The Law Society has the opportunity to play an essential role by providing PBO with a modest amount of stable funding to enable it to continue leveraging the power of the private bar to make a meaningful impact on access to justice in Ontario.

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