



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

Phone/Téléphone:
416-979-1446
Toll-free/Sans frais:
1-800-668-8258
Fax/Télécopieur:

September 10, 2001

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request

Thank you for your request for access to information which our office received on August 17, 2001. Payment of the \$5.00 fee was received in this office on August 22, 2001.

I have concluded that The *Legal Aid Services Act* prohibits any disclosure in the circumstances of this request. Section 89 of the *Legal Aid Services Act* provides as follows:

89.(1) All legal communications between the Corporation, an officer or employee of the Corporation, an area director or member of an area committee and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

(2) All legal communications between a lawyer, student or service-provider at a clinic, student legal aid services society or other entity funded by the Corporation, or any other member, officer or employee of a clinic, student legal aid services society or other entity funded by the Corporation and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

(3) Disclosure of privileged information to the Corporation that is required under this Act does not negate or constitute waiver of privilege.

Section 90 provides as follows:

90.(1) A member of the board of directors, an officer or employee of the Corporation, an area director, a member of an area committee, a lawyer, a service-provider or a member, officer, director or employee of a clinic, student legal aid services society or other entity funded by the Corporation shall not

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disclose or permit to be disclosed any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services.

(2) A person referred to in subsection (1) may disclose information or allow it to be disclosed in the performance of his or her duties or in the provision of legal aid services or with the consent of the applicant or if authorized by the Corporation.

You requested billing and payment records of [REDACTED] that were garnisheed pursuant to a court or other order and then paid to other counsel, including [REDACTED]. You also requested counsel's names billing and payment details for clients on legal aid certificates for whom you provided legal services [REDACTED] request and for which you were not paid. You clarified subsequently that you were requesting information related to a list of clients which you had provided to the Investigations and Complaints Department of LAO. You had already been provided by that department with information which you had requested respecting certificates where [REDACTED] had acknowledged the request. You have also been provided with information where no legal aid certificate has been located. The invoices which you submitted to Legal Aid where [REDACTED] acknowledged the legal aid certificate have been forwarded to the Legal Accounts Officer for review. The remainder of your request relates to information regarding legal aid certificates which have been acknowledged by solicitors other than [REDACTED]

These records are, in my view, subject to the provisions of Sections 89 and 90 of the *Legal Aid Services Act*. The information in the legal aid file, including the accounts of solicitors is subject to solicitor client privilege and, as such, is subject to Section 89 of the Act. I have reached this conclusion based on the general principles relating to solicitor client privilege (see *Slavutych v. Baker*, [1976] 1 S.C.R. 254). The law with respect to solicitor client privilege makes clear that the privilege is that of the client, not the solicitor, and the privilege continues notwithstanding that the solicitor client relationship has come to an end. In view of this conclusion, we would require the waiver of the client to the privilege before we are in a position to release the contents of the legal aid file to you.

In addition, it is my view that the release of these documents is prohibited by the confidentiality provisions of Section 90 of the *Legal Aid Services Act, 1998* as this is information received by Legal Aid employees as part of our duties. Nor does it appear that it would be part of our duties to allow the release of this material, as the purpose of your request is related to litigation in which you intend to engage. Again, the consent of the client to the release of information would be required.

With respect to Section 90, exemptions apply which allow the release of information. These exemptions include the authorization of the Corporation. The Board of Legal Aid Ontario has specifically authorized the release of information to a lawyer agent providing services at the request of a lawyer who acknowledged a legal aid certificate or to a third party to whom a lawyer owes a disbursement. The information that may be released in these circumstances is whether or not the lawyer who acknowledged the certificate has been paid and the amount of the relevant payment. In the present request, we are unable, as a result of the limitations of these provisions, to authorize information to you, as you did not provide service at the request of the lawyer who acknowledged the certificate in the case of certificates acknowledged by a lawyer other

than [REDACTED]. We have reached this conclusion based on the information which you provided to us that you acted as agent at the request of [REDACTED].

Please be aware that it is the position of Legal Aid Ontario that ss.89 and 90 of the *Legal Aid Services Act*, by legislation, prevail over the *Freedom of Information and Protection of Privacy Act*: see s.103 of the *Legal Aid Services Act* and s. 67(2) of the *Freedom of Information and Protection of Privacy Act*.

With respect to the portion of the request related to the garnishment of [REDACTED] accounts, I have also concluded that this information, although not privileged under s. 89 of the *Legal Aid Services Act*, is nevertheless subject to the confidentiality provisions of s. 90 and analysis set out above related to disclosure would apply.

In addition, the provisions of the *Freedom of Information and Protection of Privacy Act* appear to prohibit the disclosure of this information. The definition of personal information includes "information relating to financial transactions in which the individual has been involved". The payment of legal accounts and their garnishment appears to come within the definition of personal information, notwithstanding that information on garnishments is available from the Sheriff's Office. Section 21 of the Act prohibits the release of personal information except with the consent of the person to whom the information relates, except in certain circumstances. Section 21(3)(f) provides that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. The information which you are requesting appears to fall within this category.

I am responsible for the decision to deny you access to the records. You may ask for a review of this decision within 30 days of receiving this letter by writing to: The Information and Privacy Commission/Ontario, 80 Bloor Street West, Suite 1700, Toronto Ontario M5S 2V1, Telephone 1-800-387-0073.

If you decide to request a review of this decision, please provide the Commissioner's office with the following: the file number listed at the beginning of this letter; a copy of this decision letter; and a copy of the original request for information you sent to our institution.

In addition, you must send an appeal fee to the Commissioner's office. That appeal fee for information other than personal information is \$25.00.

I regret that I am unable to provide the requested information.

Yours truly,

Ruth Lawson
Vice President, Appeals