



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

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

September 17, 2004

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request No. [REDACTED]

I am responding to your request for access to information which was received in this office on September 16, 2004. You requested information regarding the legal aid costs relating to the defence of [REDACTED]

I am unable to confirm or deny whether records exist which are responsive to your request. That is so because disclosure of that information, should it exist, would disclose the nature of the clients' retainer as being a legal aid retainer. 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

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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 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 information which would require us to confirm whether the person named was legally aided. You requested billing information from legal accounts regarding the legal aid expenditures relating to this individual.

These records are, in my view, subject to the provisions of ss. 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).

Further, the Supreme Court of Canada has held, in *Descoteaux v. Mierzwinski* (1982), 70 C.C.C. (2d) 385, 28 C.R. (3d) 289 (S.C.C.), that all information, administrative or legal, contained in the form that an applicant for legal aid must fill out is provided for the purpose of obtaining legal advice and is given in confidence for that purpose and, consequently, is subject to the applicant's fundamental right to have such communications kept confidential pursuant to solicitor-client privilege. The fact that the information is provided to legal aid in confidence brings the information within Section 90 of the Legal Aid Services Act, 1998. The fact that the information is subject to solicitor-client privilege brings the information within Section 89. 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 clients to the privilege before we are in a position to confirm the existence of files or release the contents of the legal aid files to you.

The refusal to confirm or deny the existence of records in this situation is confirmed by the order of the Information and Privacy Commissioner in Order PO-2083.

Nor does it appear that it would be part of our duties to allow the release of this material (see s. 90 (2)). Again, the consent of the client to the release of information would be required.

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*.

In addition, the provisions of the *Freedom of Information and Protection of Privacy Act* appear to prohibit the disclosure of this information, should it exist. The definition of personal information includes "information relating to financial transactions in which the individual has been involved". The payment of legal accounts appears to come

within the definition of personal information. 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, as it would disclose income of the solicitor paid on a legal aid certificate.

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.

Yours truly,

Ruth Lawson
General Counsel