



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

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

March 2, 2005

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request – [REDACTED]

Thank you for your access to information request, requesting information regarding the acknowledgment of legal aid certificates by former employees of yours. Your request was received in this office on March 2, 2005.

You asked whether the following person signed any legal aid certificates between [REDACTED] and [REDACTED]

The answer is no.

You also asked whether any legal aid certificates were issued to [REDACTED] during that time period. The answer is no.

You asked whether the following person signed any legal aid certificates between [REDACTED] and [REDACTED]

The answer is yes, two certificates were acknowledged during that period.

You also asked whether any legal aid certificates were issued to [REDACTED] during that period. The only record of certificates issued relates to the two certificates referred to above, which were acknowledged. No additional certificates were issued.

You have asked for the names of the applicants to whom the records apply. I am unable to provide that information, for the following reasons. 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

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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 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 that the named person was legally aided. This would disclose the nature of the retainer of that person as being a legal aid retainer. 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 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. In view of this conclusion, we would require the consent of the named person in order to confirm or deny whether that person is in receipt of legal aid assistance. This is supported by the decision of the Information and Privacy Commissioner in Order PO-2083.

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*.

I am responsible for the decision to grant you access to part of the records and deny access to the other information. 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