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November 1, 2010



Dear [REDACTED]

Re: Access to Information Request – [REDACTED]

Thank you for your access to information request, which was received in our office on October 4, 2010, having been forwarded from the Ministry of the Attorney General where it was originally directed. You requested "all invoices, expense receipts and information related to contracts and/or payments to [REDACTED] through Legal Aid Ontario."

I am enclosing at this time a copy of the panel enrolment form for [REDACTED], as this is a contract with LAO which forms the basis for the lawyer to act for legal aid clients and submit accounts.

I am unable to release further records responsive to your request, as lawyers who act for legal aid clients submit accounts to Legal Aid Ontario in the form of copies of legal accounts to the clients or lists of duty counsel clients who were served by the lawyer acting as duty counsel. 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 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, if released, might identify persons who were legally aided. 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 Ontario 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 legally aided client, in order to release the legal account. This is supported by the decision of the Information and Privacy Commissioner in Order PO-2083.

I have also considered severance, namely, removing the name of the legally aided client and releasing the legal account exempt from the name.

However, it appears to me that it would remain possible to infer the name of the legally aided person from the remainder of the details of the fees and disbursements, which refer to dates of service and contain details of the legal service provided. This information, together with publicly available court records would enable an assiduous researcher to infer the identity of the legally aided client. For that reason, I am unable to release details of the legal accounts, even in the absence of the name of the legal aid client.

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 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, 2 Bloor Street West, Suite 1400, Toronto Ontario M4W 1A8, 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,

Robert W. Ward
President/CEO