

B3: Better Billing Bulletin

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Costs, Settlements and Contribution Agreements

Legal Aid is often asked questions about a lawyer's obligation to address costs and settlements as well as the impact of a client contribution agreement on costs and settlement. It is important that lawyers protect LAO's interests and the following is a reminder of the actions you should take.

Costs

You are expected to seek costs in accordance with the Family Law Rules. Your bill of costs should refer to your usual private retainer billing rate and not to the solicitor's rate under the legal aid tariff.

Costs awarded to a legally-aided client are the property of Legal Aid Ontario: LASA, s. 46(4).

- Costs orders should specify that the costs are the property of Legal Aid Ontario, thereby clearly indicating that LAO is the creditor and not the client.
- In family law matters where support is at issue and costs are awarded, the costs should be apportioned between the issue of support and all other issues. That portion of a costs order that is attributed to support will survive the bankruptcy of the judgment debtor.
- Costs awarded to legally aided clients in family law matters should NOT contain a clause that the costs shall be enforced by or collected by FRO.
- The Family Responsibility Office (FRO) does NOT collect cost awards on behalf of Legal Aid. The FRO does not recognize any assignment by the client to LAO.

Counsel is required to take all reasonable steps to protect the interests of LAO in any award of costs or recovery by the client in accordance with the Legal Aid Services Act.

Assignment of judgment for costs

Send a copy of any costs endorsement or order obtained to Lawyer Services & Payments, with the signed assignment of judgment for costs.

Counsel for a legally-aided client should obtain an executed assignment of judgment for costs from the client for any costs orders made. Have your client sign the assignment at the time the order is made.

- LSP may request that counsel file the applicable documents to file a writ of seizure and sale or notice of garnishment.
- An additional authorization for three (3) hours of tariff is available for all preparation for and attendance on assessment of bill of costs/ obtaining assignment of costs and filing execution.

Contribution agreements

Some clients are required to enter into contribution agreements with LAO in order to receive certificate coverage. The client is responsible for the full and actual cost of legal aid services, unless the contribution agreement is capped at a fixed amount. The contribution agreement may require the client to make monthly payments, and/or it may be secured by a lien against the client's interest in real property.

- Counsel must advise if the cost of legal services will exceed the amount stipulated in the contribution agreement to permit LAO to determine whether an increase in the CA is required.
- A request for discretionary payment of an account in excess of the Tariff is required notwithstanding that a Contribution Agreement is in place.
- Property authorizations may not be granted in the absence of a properly executed Contribution agreement and/or registration of a lien, except in accordance with LAO domestic violence protocol which permits for delayed registration in appropriate cases

Section 47 directions

Pursuant to section 47 of the *Legal Aid Services Act*, LAO has a first charge against any interest in money or other property a legally aided client recovers or becomes entitled to as a result of legal aid services. This charge exists even in a case where the legal aid certificate was issued without the requirement of a contribution agreement.

At the outset of a family law proceeding, where equalization of property is at issue or where payment of lump sum support or arrears of support may be payable, your client should

sign a section 47 direction which authorizes you to hold in trust money received by way of settlement or judgment. The direction should be served on the opposing party at the appropriate time to ensure that settlement funds are not paid directly to your client. No funds should be released to your client without written authorization from a legal accounts officer. Please submit your request to release funds through *Legal Aid Online* to Lawyer Services & Payments for instructions.

Liens

Legal Aid Ontario can register a lien against title to a property where the applicant has signed a contribution agreement. The authority to do so is found in section 48 of the *Legal Aid Services Act*:

48. (1) Where a person who owns or has any interest in any land in Ontario has agreed to contribute towards the costs of legal aid services given to him or her or to a person for whom he or she is the person responsible, the Corporation may register a notice of lien for an amount equal to the amount that he or she agreed to contribute against the person's land in the proper land registry office.

Third-party disbursement invoices

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Please itemize all disbursements in your detailed account. Lawyers can only bill a third-party disbursement if they have an invoice for the disbursement. When billing for a disbursement online, please attach all third-party invoices (a receipt or cancelled cheque is not an invoice) and ensure that they include:

- date of invoice
- the third party service provider's name, title (credentials), address, telephone number
- the name of the LAO client for whom service was provided,
- a description of the services provided to the LAO client, including dates of service provided and a breakdown of the expense (i.e. hourly rate, per page rate, number of words etc.).
- the HST, clearly separated
- (if available) the business registration number and/or GST/HST number

Aboriginal self-identification question (ASIQ)

Beginning June 1st, 2016 it will now be mandatory for all legal aid service providers to ask clients if they identify as an Aboriginal person and record this information within the duty counsel accounts and services page.

The Aboriginal self-identification question is a standardized question to be utilized at point of contact for legal aid services that allows all clients the opportunity to identify as Aboriginal, including First Nation, Métis or Inuit, regardless of legal status or where they live. This information will need to be recorded for each client on the duty counsel accounts and services page.

Starting May 16, 2016 all counsel will be able to access a short eLearning course on Aboriginal identity and LAO's Aboriginal self-identification question. For more information on the Aboriginal self-identification question, LAO's Aboriginal identity policy, training and other resources, please visit www.legalaid.on.ca/ASIQ.

Billing update: Submitting accounts when two block fee matters for a client are resolved together

LAO is updating its billing processes to stop incorrect billing of double-billed block fees.

LAO has determined, through its own audit processes and data collection, that it has been recovering approximately \$250,000 annually from lawyers who have double-billed resolution block fees for charges resolved together.

LAO identifies a double billed block fee account as one where:

- a lawyer has two or more authorized certificates for criminal charges faced by a client and
- the court disposes of these charges together, as part of a global resolution for that same client, on the same day, in the same courtroom, or in front of the same judge, at approximately the same time.

To prevent this billing error, effective May 8, 2016:

- if you submit two double-billed block fees for payment through Legal Aid Online at the same time, LAO will pay the higher-resolution block only, plus separate block enhancers, such as a bail hearing and disbursements on both accounts

- if you bill the same block fee resolution on a new account as you already billed on a previously paid account, LAO will pay for the enhancers and disbursements of the new account only; you will not receive additional payment for the new account.

In the above circumstances, your deposit notices will clearly indicate the reasons for the settlement as a double-billed block fee account and will provide you with the certificate identified as the “duplicate.”

In the rare situation where your block fee resolution has been incorrectly identified as double billed, please provide Lawyer Services and Payments with a written explanation to support separate payment of the second block resolution

Additional Information

For additional information on costs, settlements and contribution agreements, please review:

- Billing Handbook, Chapter 6: Costs and contributions
- General terms and conditions for panel lawyers

Assignments of confiscated money

Reminder: If your client is on a contribution agreement that includes an assignment against confiscated money, an application for an order for restoration of the money seized should be made where there is a reasonable expectation funds will be returned to the client. The certificate will include a direction: Solicitor to file notice of application for an order of restoration re: monies seized by police, if appropriate.

Specialist medical reports for IRB matters

LAO appreciates that there are circumstances when the cost of a specialist medical report (eg. psychiatrist, psychologist) may exceed the \$300 allowable tariff. In such circumstances, counsel must provide an explanation in support of the request for coverage above the \$300 allowable tariff through the solicitor portal.

LAO will consider factors such as the limited availability of specialists, the necessity for an expedited report, the need for the specialist to attend at the detention centre, and the complexity of the client’s trauma, as well as other reasonable explanations. A note from the specialist is not required.

LAO will endeavour to respond to all requests for coverage of specialist medical reports that exceed \$300 within 2 business days.

Questions?

Please let us know if you have questions or if there are topics you'd like to see us cover by contacting the Lawyer Service Centre at pl-lsc@lao.on.ca



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