

B3: Better Billing Bulletin

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Legal Aid Ontario may now obtain informations directly from courthouses

Following an Auditor General of Ontario recommendation that Legal Aid Ontario have direct access to court documents for auditing purposes—and to ease the burden on lawyers—LAO’s Audit and Compliance Unit (ACU) may now obtain informations directly from courthouses.

Previously, LAO asked lawyers to provide such documentation.

The new process was designed in collaboration with the Ministry of the Attorney General, and in response to feedback from lawyers who work with LAO.

In certain circumstances, with hourly tariff certificates or if LAO is unable to obtain court informations, for example, lawyers may still be required to provide copies of these, and if requested, dockets and supporting documentation if informations do not support billings.

See *Legal Aid Online* for further details on this and other audit and compliance processes.

To receive emails or texts advising you of LAO communications, select the “Address change” link under the Personal Info tab, then select “Edit”. A new window will open, then select “yes” under “Receive email notification” and/or “Receive SMS notification”.

Reminder: fee waiver regulation

In the May 2017 B3 newsletter, LAO provided notice it would no longer be covering court fees as of September 1, 2017. This was in response to the Ministry of the Attorney General’s Fee Waiver Regulation. Since September 1, 2017, LAO has ceased payment of court fees disbursements and disbursement requests.

LAO wishes to remind counsel for family, civil and small claims matters, an application for a

fee waiver can be made, and should be made, when commencing a matter. Clients should be asked by counsel to complete a fee waiver early on in the matter. Fee waivers cannot be applied retroactively. Any expenditures prior to the fee waiver cannot be recouped.

The application of the waiver in these matters is advantageous for counsel, in that once the fee waiver is granted, clients and witnesses will be eligible for court interpreters free of charge.

Please be advised failure to apply for the waiver does not provide for an exception or a discretionary request for payment. If a court filing fee has been claimed as a disbursement on an account, and paid via the portal system, LAO upon review may seek and/or process a recovery of the paid court fee disbursement from counsel.

For additional information, please visit the website for the Ministry of the Attorney General for information on having your court fees waived.

Court and net costs (settlements): the difference and obligations

A B3 on Cost was released in the fall of 2018. The following summary on costs and net costs is being provided as a reminder.

Chapter 6 of the Tariff and Billing Handbook provides oversight on both costs and net costs; steps to be taken by counsel; and obligations of counsel. The Tariff and Billing Handbook can be found on the LAO Website, under the Information for Lawyers tab, or by clicking on the following link:

https://www.legalaid.on.ca/wp-content/uploads/Tariff_Manual.pdf

Generally

- Counsel are obligated to advise LAO of cost awards and/or settlements immediately, even if payment of costs and/or the settlement remain outstanding. This can be completed on the communication tab for Lawyer Services and Payments.
- When submitting accounts, counsel are obligated to declare both settlement and cost awards, even when the awards are not realized and/or received. Costs awards and settlements, paid or not, should be declared when submitting an account.
- Any and all funds in trust, cost awards, settlement funds, and funds held in dispute (ie family law matters) should be declared in your account submission.

- Issues with costs awards and net costs are the authority of Lawyer Services and Payments.

Costs awards (court costs)

- Costs awarded **are the property of LAO** (LASA, s. 46(4), now s.12(3)). When costs are awarded and not recovered, it is the responsibility of counsel to protect LAO's interests
- Even if the costs are greater than the amount paid by LAO in respect of the legal aid services, the costs remain the property of LAO. Costs can only be apportioned where the costs order covers proceedings paid for privately by the client
- Counsel is expected to seek costs in accordance with the *Family Law Rules*. Bill of Costs submitted to the Court should refer to counsel's usual private retainer billing rate and not to the solicitor's rate under the legal aid tariff.
- Costs cannot be paid directly to the client based on financial needs and hardship
- In family law matters, please ensure the costs are apportioned between the issues of support and the remainder of the issues. Doing so will protect the costs portion under support from bankruptcy. This does not infer that costs should be collected by FRO. 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.
- Steps counsel are to take to make certain LAO's interest is protected:
 - Ensuring cost orders specify costs awarded are the property of LAO. LAO is the creditor and not the client. Immediately provide the issued and entered order, coupled with a writ if the costs are over \$1000.00 and information such as the last known address, employer, etc of the opposing party;
 - If the costs order does not list LAO as the payee, the following must be completed:
 - Counsel will have the client complete an Assignment for Judgement of Costs;
 - The Assignment for Judgement of Costs will be served via correspondence to the opposing party (if in the event the order lists FRO then the opposing party and FRO. A counter motion is to be filed to amend the order to reflect costs payable to LAO and not FRO);
 - The issued and entered order, Assignment and correspondence to the opposing party serving the Assignment will be forwarded to Lawyer Services and Payments via the communications tab on the portal
- When seeking a waiver of costs, please do so prior to the completion of the matter and prior to your final account. Be advised costs awarded to a legally aided client that have been collected cannot be waived and must be paid to LAO
- Costs awarded against a legally aided client are not covered by LAO. It is the responsibility of the client for payment of costs ordered against the client.

- **Lawyer Services and Payments can consider a discretionary increase where costs actually recovered exceed the fees and disbursements as actually billed.**

Net costs (settlements) and section 47 (now section 13) of the *Legal Aid Services Act (LASA)*

- LAO has a first charge against any interest in money, inclusive of support or other property a legally aided client recovers or becomes entitled to as a result of legal aid services
- The amount of LAO's statutory charge is the total of all fees and disbursements paid (not including HST) for all legal aid services, plus an administrative fee of 10% of the total net fees and disbursements paid is added
- The recovery not only includes monetary recoveries, but recoveries in real or personal property, including but not limited real estate and RRSP's. The exception would be personal household items, such as furniture, clothing, or jewellery.
- The charge/secured interest of LAO pursuant to section 47 (now section 13) of LASA is not limited to a signed direction. The charge/secured interest exists even without the signed section 47 (now section 13) direction
- No money or property may be delivered to the client, nor can LAO's charge be waived or compromised, without approval of Lawyer Services and Payments
- DO NOT release any money or property without instruction/authorization from LAO. For property, no title should be delivered to the client until LAO's charge is secured by a mortgage/chattel mortgage/lien
- Waivers of net costs are to be sought with Lawyer Services and Payments, and no any other division in LAO. Requests are to be in writing and include: the client's general financial circumstances and hardship factors such as age, number of dependants, disability and employment possibilities. Minutes of settlement/orders/judgements and financial documentation to support the waiver request of the client. Finally an estimate of counsel's final account must be provided.

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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