

Recovering amounts under Section 13 of the *Legal Aid Services Act*



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1. Section 13 of LASA 2020 grants LAO a charge against any money or any interest in property a legally aided client recovers, or becomes entitled to, as a result of receiving legal aid services. This charge exists even in a case where the legal aid certificate was issued without the requirement of a contribution agreement.
2. The amount of LAO's statutory charge is equal to the total of all fees and disbursements paid (without HST) for all legal aid services relating to the proceeding out of which the recovery or entitlement arose, and may relate to more than one certificate, and an administrative fee calculated at 10 per cent of the total fees and disbursements paid (without HST).
3. If there is any likelihood that a legally aided client may become entitled to money or other property (e.g., award of damages or compensation from a court or tribunal, sale of matrimonial home, equalization payment, lump sum support, support arrears) against which LAO has a statutory charge, the service provider shall advise the client and LAO at the outset of the case, or as soon thereafter as they become aware of it.
4. To avoid any allegation that the service provider did not advise the client of LAO's statutory charge, the service provider shall have the client sign a written direction to LAO and to the service provider in respect of money to which the client may become entitled. The direction shall state that all money to which the client is entitled shall be delivered to the service provider to be held in trust pending authorization from LAO to release the funds.
5. For property other than money, the service provider shall have the client sign, in a form approved by LAO, a written acknowledgment of LAO's interest in the other property.
6. Where LAO has prepared a written direction for a client to sign and has included an estimate of the cost of the legal aid services in the direction, the service provider shall notify LAO promptly if it appears that their total account for net fees and disbursements will exceed the estimated amount in the direction, including when making a request to amend a certificate.

Amounts recovered

7. If a legally aided client has become entitled to money or other property as a result of legal aid services, the service provider shall immediately advise LAO and take steps to secure LAO's interest in the client's entitlement.
8. No money or property may be delivered to the client, nor can LAO's charge be waived or reduced, without approval of LAO.
9. The service provider shall forward to the person from whom the money or other property is recoverable and to that person's lawyer, if any, the written direction and a notice. The notice shall state that Legal Aid Ontario has a charge against the money or other property pursuant to section 13 of LASA 2020 and that no money or other property is to be delivered directly to the client until the charge has been released.
10. Monies received by the service provider further to the direction and notice shall be held in trust until submission and settlement of the service provider's final account, at which time LAO will provide instructions. These funds shall be reported in the "Settlements in trust" field in the service provider's online account.
11. The service provider may request authorization from LAO to release funds to the client prior to submission of a final account. When making that request, the service provider shall also advise LAO of their best estimate of their final account for fees and disbursements to conclude the legally aided matter. It is important that the service provider take care to be as accurate as possible, because if their estimate is less than their actual account, LAO may not pay fees and disbursements in excess of the service provider's estimate where the remaining funds held in trust are less than the actual final account.
12. In the case of property, no title is to be delivered to the client until LAO's charge is secured by a mortgage, chattel mortgage or lien agreement.
13. If a service provider fails to protect LAO's charge against a legally aided client's settlement, the service provider's account may be reduced or disallowed.

Waiver of Section 13 collection rights

14. In accordance with section 119 of the Rules, LAO will generally waive its charge under section 13 of LASA 2020 in respect of the following amounts:
 - a. periodic payments of child support, spousal support or combined support
 - b. the first \$5,000 of lump sum payments of child support or spousal support (lump sums paid in instalments are not exempt)
 - c. lump sum retroactive social assistance benefits.

LAO may exercise its discretion not to waive the collection of these amounts depending on all the circumstances of the case, including:

- the amount of the award
- the cost of providing the legal aid services
- the stage of the litigation
- if the award is part of a negotiated settlement, any relevant circumstances relating to the award that facilitated the settlement
- the client's circumstances, including their financial and personal circumstances such as:
 - i. age,
 - ii. number of dependants,
 - iii. disability,
 - iv. employment possibilities,
 - v. extraordinary expenses not covered by insurance or any other government agency, with details provided
 - vi. current income,
 - vii. and a general breakdown of expenses (example, a current family law financial statement).

Requests for LAO to exercise its discretion to recover the above amounts shall be sent in writing to LAO.

Requests shall include:

- the amount of the award
- the stage of the litigation
- an estimate of the service provider's total account
- information as to the client's financial circumstances and personal circumstances, and
- a copy of the minutes of settlement, judgment or orders obtained.

Amounts uncollected

15. If the money or property has not been recovered, the service provider shall, unless otherwise directed by LAO, obtain from the court a Writ of Seizure and Sale. For cases governed by the *Family Law Rules*, the service provider needs to file a Form 28 Writ, a Form 28A Request for a Writ, and a statement of monies owed. The issued writ shall then be filed with the appropriate Sheriff.
16. The service provider shall include the written direction and a notice stating that Legal Aid Ontario has a charge against the money or other property pursuant to section 13 of the *Legal Aid Services Act, 2020* and that no money or other property is to be delivered directly to the client until the charge has been released.
17. The service provider shall take no further steps with respect to enforcing a judgment without authorization from LAO.
18. If the service provider would recommend to a reasonable private paying client that a Writ of Seizure and Sale not be filed, the service provider shall ask LAO for a waiver or reduction of LAO's charge.

Settlement/judgment before administrative tribunals

19. Where money or property is awarded to a client in a claim before an administrative board or tribunal, the governing legislation may prohibit the charging of money and property awarded by the tribunal and provide that the settlement, award or judgment must be paid to the applicant directly. The following boards or tribunals cannot direct payment to anyone other than the applicant and, therefore, are unable to accept a direction from LAO:
 - Criminal Injuries Compensation Board
 - Social Benefits Tribunal
 - Workplace Safety Insurance Appeals Tribunal.
20. If the governing legislation does not prohibit the charging of money and property awarded by the tribunal, then prior to the settlement, award, or judgment, the roster member shall obtain a signed Direction and Acknowledgment from the client that Legal Aid Ontario has a charge against any sum or other property recovered by the client.
21. The roster member shall deliver to the board or tribunal, before the money or property awarded is paid to the client, a notice which states that:
 - a. the client is the recipient of legal aid services in relation to the proceeding
 - b. Legal Aid Ontario has a statutory charge against any award or payment to the client under section 13 of LASA 2020, and

c. any costs awarded to the client are the property of Legal Aid Ontario.