

Recovering court costs



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When court costs are awarded in favour of a legal aid client, the service provider shall protect LAO's interest in the costs by taking the following steps, unless LAO instructs otherwise.

1. Immediately notify LAO, through the Solicitor Portal, of the terms of the order or settlement and provide LAO with a copy of the order or settlement and any other information or document that LAO specifies.
2. Court costs in favour of a legal aid client shall also be reported when submitting an account. They are entered under "Amount Awarded" and "Amount in Trust" in the costs fields in the "Funds Received" section of the account.
3. Ensure that the order awarding court costs is issued and entered by the court in accordance with section 118(2)(a)(i) of the Legal Aid Services Rules.
4. Provide LAO with a copy of the issued and entered order in accordance with section 118(2)(a)(iv) of the Legal Aid Services Rules.
5. If the court costs are not payable to LAO, but are payable to the legally aided client, have the client sign an Assignment of Judgment for Court Costs to LAO in a form approved by LAO in accordance with section 118(2)(a)(ii) of the Legal Aid Services Rules.
6. Send to the judgment debtor at their last known address, and to their lawyer, if any, a notice advising that the court costs are the property of Legal Aid Ontario pursuant to subsection 12(3) of the *Legal Aid Services Act, 2020* in accordance with section 118(2)(a)(v) of the Legal Aid Services Rules. If applicable, enclose a copy of the Assignment of Judgment for Court Costs.

Court costs recovered

7. If the order is an interim order for court costs, the service provider shall request that the court costs be paid to the service provider in trust.
8. If court costs are received, the service provider shall hold the court costs in trust pending

their next account for fees and disbursements.

9. The service provider shall indicate in their next account that they are holding court costs in trust. LAO will provide further instructions. LAO may instruct the service provider to transfer the funds from their trust account to their general account for payment of fees and disbursements.

Writs of execution or notices of garnishment

10. When court costs are awarded and immediate payment is not expected, then the service provider shall consider obtaining a Writ of Seizure and Sale, in accordance with section 118(2)(a)(iii) of the Legal Aid Services Rules, or a Notice of Garnishment.

Writs of seizure and sale

11. If the judgment debtor owns real property in Ontario, or there is a likelihood that the judgment debtor will inherit real property in Ontario, then it is usually cost effective to obtain a Writ of Seizure and Sale.
 - a. if the judgment debtor does not own real property in Ontario and there is no real likelihood that the judgment debtor will inherit real property in Ontario, then it is a matter of discretion as to whether or not it is cost effective to obtain a Writ of Seizure and Sale
 - b. if the costs award is under \$1,000 and the judgment debtor does not own real property, then it usually is not cost effective to obtain a Writ of Seizure and Sale
 - c. if the service provider would recommend to a reasonable private paying client of modest means that they obtain a Writ of Seizure and Sale, then the service provider shall proceed to obtain the Writ. However, if the service provider would not recommend to a reasonable private paying client of modest means that they obtain a writ, they shall contact LAO for instructions
 - d. if the judgment debtor is known to own property in Canada, but outside Ontario, then the service provider shall advise LAO. LAO has reciprocity agreements with other Canadian legal aid societies
12. A Writ of Seizure and Sale is issued by the court. To obtain the writ, the service provider files a *Family Law Rules* Form 28 Writ, a Form 28A Request for a Writ, and a statement of monies owed.
13. The service provider shall provide LAO with a copy of the issued and entered court costs order (if they have not already done so), the Assignment of Judgment for Court Costs, and the Writ of Seizure and Sale in accordance with section 118(2)(a)(iv) of the Legal Aid Services Rules.

14. If directed by LAO, the service provider shall file the Writ of Seizure and Sale and the Assignment of Judgment for Costs with the Sheriff in the jurisdiction where the property is located and take steps to collect the costs, in accordance with sections 118(2)(b) (i) and (ii) of the Legal Aid Services Rules. There is a tariff authorization and additional hours paid for taking these steps.

Notices of Garnishment

15. If the judgment debtor does not own real property in Ontario, but is gainfully employed, then the court costs award may be collectible by garnishment. The service provider must contact Lawyer Services and Payments for instructions about whether and how to prepare and issue a Notice of Garnishment.

Costs before tribunal

16. If a roster member seeks a costs order in a proceeding before an administrative board or tribunal, and has obtained a written Assignment of Costs to LAO, the roster member must file a notice, and the Assignment of Costs, with the administrative board or tribunal before the conclusion of the proceeding, unless directed otherwise by LAO, in accordance with section 118(3) of the Legal Aid Services Rules.

The notice must state that:

- the client is the recipient of legal aid services
- Legal Aid Ontario has a statutory claim for the costs awarded to the client under subsection 12 (3) of the *Legal Aid Services Act, 2020*, and
- costs awarded to the client are the property of Legal Aid Ontario.