

Waiver of collection rights



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Requests for a waiver or reduction of the amount owing to LAO shall be sent in writing to LAO.

Information or documents that may be required for waiver requests

Depending on the nature of the waiver request, the service provider shall include the following information and/or documents that are specified in relation to each type of waiver request discussed below:

1. The basis of the request.
2. The service provider's opinion as to whether they would recommend to a reasonable private paying client of modest means that court costs be waived in the circumstances.
3. Information to support the recommendation, in terms of the probability, amount, and collectability of the court costs award.
4. The amount of the service provider's account or an estimate of the amount of the service provider's total account for fees and disbursements (excluding HST).
5. If a settlement is being negotiated, information as to the proposed terms of the settlement. If the request is urgent, the service provider should contact LAO by telephone.
6. Information as to the client's general financial circumstances and hardship factors such as:
 - a. age
 - b. number of dependants
 - c. disability
 - d. employment possibilities
 - e. extraordinary expenses not covered by insurance or any other government agency,

with details provided

- f. current income
 - g. and a general breakdown of expenses (example, a current family law financial statement).
7. Copy of the minutes of settlement, judgment or orders obtained.
 8. The amount of equity in the subject property or other security.
 9. Copies of supporting documentation.

A. Waiver of court costs

Whether or not the legal aid services have been completed, LAO has the authority to waive court costs. However, court costs awarded to a legally aided client or LAO that have been collected cannot be waived and shall be paid to LAO.

Requests for a waiver of court costs shall include the information and/or documents in items 1, 2, 3, 4 and 5 above.

In cases involving clients who have entered into a contribution agreement, the service provider shall ensure that the client or person responsible agrees with the waiver of court costs and shall obtain their written consent.

If a judgment debtor under an existing court costs order is seeking a waiver of the payment of all or part of the court costs and

- the legal aid services have been completed, and
- LAO's interest in the costs has been secured by the filing of a Writ of Execution and Assignment of Judgment for Costs with the Sheriff

then the request shall be sent in writing to LAO and include the basis of the request, and any information and/or documents relevant to the request.

B. Waiver of LAO's statutory charge against money or other property

In some cases, it may be appropriate to waive LAO's statutory charge under section 13 of LASA 2020 against a legally aided client's entitlement to money or other property because failure to do so would cause the client or person responsible hardship. Amounts that LAO will generally waive are set out in the policy "Recovery of Amounts under s. 13 of the Act."

Whether or not the legal services are completed, requests for a waiver shall be sent in writing to LAO.

Requests shall include the information and/or documents in items 1, 4, 6 and 7 above.

C. Waiver of obligation under contribution agreement

Legal aid liens and other forms of security

If the service provider is requesting a waiver or reduction of obligations under a contribution agreement that is secured by a legal aid lien or other form of security, the service provider shall send the request in writing to LAO and provide the information and/or documents in items 6, 8 and 9 above.

Negotiating a Settlement

If a settlement contemplates or requires a waiver or reduction of LAO's entitlement to court costs, statutory charge against recovery, and/or a contribution agreement, LAO must approve the settlement in advance.

Waiver of court costs to facilitate settlement or because any court costs awarded would be uncollectible

In some cases it may be appropriate to waive or reduce court costs in order to facilitate a timely resolution of the litigation or because court costs, if awarded, would be uncollectible. In such cases, the service provider may request that court costs be waived.

Requests shall be sent in writing to LAO and shall include the information and/or documents in items 1, 2 and 5 above. If the request is urgent, call LAO.

Waiver of corporation's statutory charge on recovery to facilitate settlement

In some cases, it may be appropriate to waive LAO's statutory charge under section 13 of LASA 2020 against a legally aided client's entitlement to money or other property in order to promote the timely settlement of the proceeding. A waiver may also be advisable in order to reduce the overall statutory charge that LAO has against any interest in money or other property a legally aided client recovers or becomes entitled to recover.

Requests to waive LAO's statutory charge shall be sent in writing to LAO and shall include

the information and/or documents in items 1, 4, 5, and 6 above.

Settlements involving the transfer or sale of property with a lien

The amount owing by a legally aided client pursuant to a legal aid lien is not due until the sale, transfer or refinancing of the property. A service provider should know the terms of the client's contribution agreement, and shall contact LAO where, in the course of the litigation and/or settlement negotiations, there is a transfer, sale or refinancing involving a property against which there is a legal aid lien.

Settlements involving the discharge or postponement of a lien

In some cases the transfer, sale or refinancing of real property is necessary to reach a settlement on behalf of a legally aided client, and a discharge or postponement of the legal aid lien is necessary to facilitate such a settlement. In these cases, the service provider shall seek prior approval of the settlement from LAO.

A request for approval shall be made in writing to LAO through and shall include the information and/or documents in items 4, 5, 6, 8 and 9 above.

LAO must act as a reasonable creditor. Other reasonable creditors do not usually reduce or waive their secured debt so that the debtor can pay other creditors. Therefore, there must be compelling reasons supporting a request to LAO to waive or postpone a lien.