



# Black Legal Action Centre

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October 15, 2021

Mr. David Field  
President and CEO  
Legal Aid Ontario  
40 Dundas St. West, Suite 200  
Toronto, Ontario M5G 2H1

## **Re: Solicitor-Client Privilege and Confidentiality**

BLAC continues to have serious concerns about LAO's access to privileged and confidential client information. The Service Agreement would have our clinic agree that LAO can demand this information, without limitations, from our clinic at any time. Our clinic's clients have the same rights as other Ontarians who have the resources to hire a lawyer. The lawyers and licensed paralegals working in our office are bound by the Law Society of Ontario's Rules of Professional Conduct and have the same obligations as every other lawyer and licensed paralegal in this province to protect our clients' rights.

As noted in our submissions to LAO dated May 25, 2021 and September 16, 2021, BLAC is concerned that this requirement will have a disproportionate impact on Black people who make up a large number of the low-income population in Ontario, and who are also more likely to rely on legal aid services. BLAC notes that, through LAO's rules, Black and other low-income clients will have to choose between not accessing legal aid services, or accepting lesser protections arising from the lawyer-client relationship than clients who have the means to pay for private representation. This could amount to unequal treatment under the law.

Not unrelated, BLAC seeks to foster legal talent within our community, not expose Black lawyers and paralegals to potential non-compliance with the Law Society of Ontario. BLAC is troubled by the notion that we should resolve this issue by inserting language in our retainer that could facilitate the erosion of our clients' constitutional rights.

Our clinic recognizes the authority and responsibility of LAO to administer Ontario's legal aid program and to oversee that the legal aid services provided are of the highest quality. However, our clinic does not believe that it is necessary for our clients to relinquish their rights for LAO to meet its obligations. We urge you to work with the ACLCO to develop ways in which this role can be fulfilled in a manner that is more respectful of the dignity of legal aid clients.

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LAO's letter of October 12th does not provide BLAC with the assurances we need. In that letter LAO commits to refraining from demanding privileged and confidential information from clinics pending a consultation only in the limited circumstance of "quality assurance reviews".

Instead, BLAC is requesting that LAO agree that it will not demand privileged and confidential client information from clinics for any purpose except determining that client's eligibility for legal aid services, until LAO has engaged in a comprehensive consultation with the clinics and with the Law Society of Ontario, on the issue of when privileged and confidential information will be requested and how it will be used, leading to the development of a set of policies or protocols that are in compliance with the Law Society's rules, the importance of solicitor-client privilege and confidentiality within our legal system and the right of legal aid clients to equal protection under law.

Yours truly,

A handwritten signature in cursive script that reads "Aba Stevens".

Aba Stevens, Board Chair

Cc.: BLAC Executive Director; BLAC Board of Directors; Association of Community Legal Clinics of Ontario, Lenny Abramowicz; Attorney General of Ontario, Doug Downey; Board Chair of Legal Aid Ontario, Charles Harnick; Vice President Clinic Law Services of Legal Aid Ontario, Rod Strain.

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