

Ross (tax) v. [unclear]

NOTE By AUDITOR OF THE COURT OF SESSION

MA v TA

[REDACTED]

v.

[REDACTED]

Attached to
B, 1000 case -
Separate entry
included

37-01 -

This is a taxation arising out of an account of expenses by the Solicitor for the Pursuer in a divorce action where there is a Legal Aid Certificate.

In terms of the Act of Sederunt No. 497 (S. 47 Rules of Court Amendment (No. 2) Solicitors' Fees) para. 4 Solicitors are no longer entitled to charge detailed charges and block fees in the same account.

The Law Society maintained that because of this Act of Sederunt it would no longer be possible for Solicitors to include in an account detailed charges for the obtaining of Legal Aid and that accordingly any such entries should be deleted.

The Auditor is of the opinion that the Law Society are wrong in their approach to the matter.

The block fees for divorce e.g. the fee of £230 are fees which can be recovered in full from the Defender. The Defender does not have to pay for the work done by the Pursuer's Solicitor in obtaining Legal Aid so that the fee of £230 does not include such work. As therefore the fees for such work are not part of the block fee they form a charge against the Legal Aid Fund; so would be properly payable to the Solicitor. This suggests to the Auditor that such Legal Aid fees are not truly part of the expenses of the litigation. The Rules apply to Judicial proceedings which in the view of the Auditor begin on the taking of instructions for the action. The Legal Aid work does not form part of the taking of instructions for a litigation.

IN RESPECT WHEREOF

H. James Smith

Auditor's Chambers,
11 Parliament Square,
EDINBURGH, 18th February 1982