

**SHERIFF CLERK'S OFFICE**

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**F.A.O.** [REDACTED]  
**S.L.A.B.**  
**DX ED250**  
**EDINBURGH**

Please reply to The Sheriff Clerk  
Your reference

Our reference **BS/AJC**

Date **14 July 1993**

Dear Sirs

SB

JB

**TAXATION:** [REDACTED] v [REDACTED]

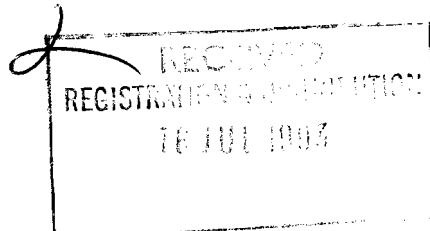
I have to inform you that the Sheriff yesterday Approved of my decision at this Taxation to hold that Mr Logan was not entitled to charge the Affidavit Rate for preparing his Matrimonial Report in the above case, instead of the Drawing Rate.

Mr Logan's Account has been taxed at £590.47.

Yours faithfully

B Sullivan  
Sheriff Clerk

*P.S. I enclose a copy of my Report for your interest perfo.*



COPY

Report in Taxation:- [REDACTED] v [REDACTED] (A568/92)

In this case, the Court had appointed Mr David Logan, Solicitor, Cupar, to prepare a Report in terms of the Matrimonial Proceedings (Children) Act, 1958, Section 11(1). 1 JUL 1993

The Defender was in receipt of Legal Aid, and when Mr Logan's Account was submitted to the Scottish Legal Aid Board for payment of the Defender's share thereof, the Board queried why Mr Logan charged the Affidavit Rate for preparing his Report, as opposed to the Drawing Rate, both Rates being in Chapter III of the Table of Fees of Solicitors in the Sheriff Court, 1989 (as amended.)

After correspondence between the Board, the Defender's solicitors, Mr Logan and myself, which failed to resolve matters, I suggested to Mrs Brown's solicitors that they lodge a Motion requesting the Court to Remit the Account of Expenses to me for Taxation.

This subsequently happened, and the Taxation took place on 23 June 1993. The Legal Aid Board was represented at the Taxation by [REDACTED] and [REDACTED] solicitors by [REDACTED]. Regrettably Mr Logan was not present and no one appeared on his behalf.

Despite this, I took into my deliberations the arguments advanced by Mr Logan in a letter he had written on 8 April 1993 to [REDACTED] solicitors.

[REDACTED] and [REDACTED] both addressed me in support of the argument that Mr Logan's charging at the Affidavit Rate was incorrect. [REDACTED] particularly pointed out that he had been unable to find, among the many other Solicitors' Accounts for preparing such Reports which had been lodged with the Board in recent years, any one in which the Affidavit Rate had been charged.

Having considered the whole matter, I am of the view that the Affidavit Rate is not the correct charging Rate for preparing such Reports.

In support of this view, I would advance the following arguments, viz:-

1. I have never seen the Affidavit Rate charged by any other Solicitor in Accounts for preparing such Reports, and I can hardly imagine that, were this the appropriate Rate, other Solicitors would not have charged same, the difference in the two Rates being approximately 50%.
2. While Mr Logan argues in his letter of 8 April 1993 that such a Report is "formalised evidence", I do not agree with that. An Affidavit is a sworn document, and a "Custody" Report most certainly is not. Such a Report only becomes evidence, in my view, if the Court decides to require the Reporter to appear and be examined on oath, in terms of Section II(4) of the Act of 1958.

For these reasons, I am reducing Mr Logan's Affidavit Fees to Drawing Fees, and accordingly tax his Account at the sum of £590.47.



Auditor of Court, Cupar

Cupar, 13 July 1993.

## CIVIL ACCOUNTS ASSESSMENT AREA

### REPORT ON ACCOUNT TAXED BY AUDITOR

Assisted Person: [REDACTED]  
Reference Number: CI/2022217/92  
Solicitor: Messrs Smith & Grant, Leven.  
Reporter: David Logan, Solicitor, Cupar.  
Auditor: B. Sullivan, Sheriff Clerk, Cupar.  
Taxation date: 23 June 1993

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The assisted person is the pursuer in an action for custody in which the sheriff appointed David Logan, Solicitor, Cupar to prepare a welfare report in terms of the Matrimonial Proceedings (Children) Act 1958, Section 11(1).

The reporters' fee note was presented to the Board for payment under the reimbursement of outlays scheme. The fee note contained a claim for preparing the report at the affidavit drawing rate as opposed to the lower drawing rate appropriate for framing other papers. The Board disputed the charge in question and the reporters' fee note was subsequently referred to the auditor at Cupar Sheriff Court for taxation.

The reporter did not appear at the taxation, however, the auditor heard submissions from the Board and a representative for the nominated solicitor. A photocopy of the auditor's decision is attached and it will be noted that he reduced the reporters' affidavit fees to the drawing fees. The sum taxed off only amounted £27.78, however, it was felt that the point at issue should be properly tested before the local auditor to clarify the position for future cases.

11 August 1993

DA/AR

Enc.: Photocopy of auditor's decision.