PAISLEY, ~~14 January~~ 7 February 1994.

Having resumed consideration of the account No. 14 of Process, I tax the same at the sum of £611.50.

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NOTE: This taxation bore upon a matter of considerable importance to both the Scottish Legal Aid Board and to the solicitor and reporter, and I was pleased to have been so greatly assisted by the cogency of the arguments I heard.

The account before me related to the charges for preparation of a report requested by the Court from Mr Howat, a solicitor in Paisley, in a defended action for access to a child. It was agreed that there was no scale of charges laid down for these reports, and the Legal Aid Board's view is that Mr Howat was correct in choosing Chapter III of the Act of Sederunt (Fees of Solicitors in the Sheriff Courts) (Amendment & Further Provisions) 1993. That said, however, they disputed Mr Howat's application of a time charge to the preparation of the report, and wished me to substitute a drawing fee for it. That would reduce the fee for preparation of the report from £236.00 to £5.90 per sheet. Although contained on 10 pages the report runs to at least 15 and possibly more sheets of 250 words and the reduced charge would be around £90. [redacted] compared the drawing of this report to the drawing of a Writ or other paper in an ordinary action. He also drew my attention to a somewhat similar case in Cupar in which the Auditor there, having to choose between the Affidavit fee rate charges and the drawing fee proposed by the board, had chosen

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the latter. He also asked me to note that an Auditor of Court at Hamilton had informally expressed the view that the drawing fee would in such a case be appropriate.

Mr Howat argued that a Writ would often be prepared on the basis of precognitions for which a separate fee would be paid. He had only notes taken during his various interviews in the homes of the parties involved on which to base his report. The preparation of the report involved a great deal of thought and care and was to an extent judicial in nature, as the court would expect it to present a balanced view incorporating not only the interviewees' opinions but the reporter's own thoughts and observations on what he saw and heard, and the Court would normally place considerable confidence in the reporter's recommendations. In the event the litigation was settled on the basis of the report, at considerable saving to the public purse. Mr Howat further argued that, accepting as he did that Chapter III should form the basis for charging, Chapter III was not designed with these reports in mind. The Auditor therefore should apply Chapter III in a reasonable way, and should not apply the Chapter rigidly without regard to circumstances.

In reply [redacted] asked me to take a general view of this matter and not to give weight to any saving there might have been in this case by its settlement. On being asked by me whether he thought that the time taken to complete the report was in any event reasonable he very properly said that he could not comment, he never having had to prepare such a report. He stood by his view that a drawing fee was appropriate.

Although it was not at issue before me, therefore not fully argued, I am inclined to the view that Chapter III is an appropriate basis for charging these reports. I am firmly persuaded however that the preparation of a report of this nature can not be equated with drawing a Writ. Over the course of a litigation, a solicitor may draw many papers for which he gets a drawing fee. No distinction is drawn between a difficult 250 word sheet and a motion to recall a sist. There is therefore an element of gain and loss, with some chance at least of a measure of equalisation. The more difficult papers are often drawn on the basis of precognitions for which separate fees are exigible. I found Mr Howat's argument about the nature of the task particularly persuasive. The preparation of a report of this nature is not an incidental, however necessary, to a long court process; it is the very essence of the task requiring to be done. The solicitor must look to both sides of a dispute, consider the merits of each, and present his judgment of the inverviewees and the whole circumstances relating to the welfare of the child on whom the dispute centres. I do not think that the importance of that task is properly reflected in the Chapter III drawing fee and I have allowed for the time charged, the length or propriety of was not in dispute.

Had I been proceeding on the basis of the table of fees for general business, I may well have taken the view the drawing and engrossing fee was appropriate.

Kinnaird.