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AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ  
RUTLAND EXCHANGE No. 304  
031 225 2595 Extn. 309

NOTE

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ADDITIONAL RESPONSIBILITY FEE, ETC.

in PETITION of

████████████████████ KA  
(Assisted Person)

for

An Order under the Child Abduction and Custody Act  
1985, Interdict and Interdict ad interim

EDINBURGH. 21st March 1994. The Auditor has been asked to fix the amount of the additional responsibility fee allowed to the solicitors for the Petitioner ██████████ by Interlocutor of 3rd June 1993 in terms of (sic) Rule of Court 347(d), paragraphs (2) and (4).

1. On 11th November 1992 ██████████, a resident in Kalmar, Sweden, raised a Petition in the Court of Session against his wife, ██████████ for the return of his son, ██████████ (otherwise known as ██████████) aged two years, in terms of the Child Abduction and Custody Act 1985.
2. As appears from the Petition ██████████ were married at Orkney on 16th February 1990 and that there are two children of the marriage, namely ██████████ and ██████████, born respectively on 19th November 1990 and 22nd July 1992.
3. On or about 26th May 1992 ██████████ returned to Scotland bringing ██████████ with her and shortly thereafter she raised proceedings in the Sheriff Court at Kirkwall for custody of him and interdict to prevent ██████████ removing ██████████ from Orkney and on that date ██████████ was granted interim custody and interim interdict.

4. [REDACTED] in his Petition complained that the removal of [REDACTED] from Sweden to Scotland was wrongful in terms of the Convention on the Civil Aspects of International Child Abduction since Jonathan had been habitually resident in Sweden up to the time he had been brought to Scotland by his mother, and in terms of the laws of Sweden [REDACTED] was at that date in the joint custody of [REDACTED]
5. Shortly after coming to Scotland [REDACTED] gave birth to [REDACTED] who was born on 22nd July 1992.
6. [REDACTED] lodged Answers to the Petition in which she averred that [REDACTED] was highly strung and excitable and that after the birth of [REDACTED] had begun to lose his temper more and more often with [REDACTED] and regularly swore and shouted at her. This behaviour had prejudicially affected [REDACTED] [REDACTED] further alleged that [REDACTED] had torn items of her underwear and scattered them round the house and had broken property belonging to her. She further claimed that as a result of [REDACTED] behaviour she had been forced to leave the matrimonial home. As she had no other accommodation in Sweden, and because she was fearful for her safety, and that of [REDACTED] and her expected child she returned to live with her parents in Orkney.
7. After sundry procedure a Proof commenced on 9th February 1993. After [REDACTED] had given evidence and was in the course of being cross-examined the Proof was adjourned until the following day to allow parties to discuss a possible settlement. Evidence was resumed on the next day when [REDACTED] was further cross-examined and after the luncheon adjournment the Court was informed that parties had reached agreement in principle that [REDACTED] should return to Sweden with [REDACTED] to enable a Court there to resolve the question of his custody. The Court consequently adjourned the Proof until 10th March to enable suitable arrangements to be made for [REDACTED] return to Sweden and for information about those to be given to the Court. On 10th March the case was further continued until 17th March when it was again continued to a continued diet of Proof fixed for 24th March on which date a detailed Note of Heads of Agreement between the parties was lodged and for which work the Court noted its



appreciation in pronouncing its Interlocutor on the merits. On 30th April the Court authorised the release of [REDACTED] passport to enable her to return to Sweden with [REDACTED].

8. [REDACTED] solicitors had to devote considerable time and attention to the gathering of information in support of [REDACTED] Petition. This necessitated their having recourse to a Swedish solicitor to ascertain the relevant law in Sweden relating to [REDACTED] custody, so that this information could be incorporated in the pleadings and in preparation for its presentation at the Proof. While the Swedish solicitor spoke English his comprehension of it was less good and this added to the Scottish solicitor's responsibility in making sure that there were no misunderstandings between them. They had also to make full enquiries into the allegations made against their client and the respective domestic circumstances of the parties. Both parties' solicitors were heavily involved in the negotiations which resulted in the Note of Heads of Agreement.
9. The Auditor has perused the detailed Account of Expenses and the Process and read the Opinion of the Lord Ordinary on the matter of finding [REDACTED] liable in expenses in which he gave his reasons for not so doing in the particular circumstances of the case. In his Opinion the Lord Ordinary expressed his satisfaction that it was appropriate to award an additional fee to cover the responsibility undertaken by [REDACTED] solicitors in the conduct of the case.
10. The Auditor having heard representations by the solicitors and on behalf of the Scottish Legal Aid Board is satisfied that the solicitors over a period of some six months devoted considerable time and attention in a matter of some complexity and considerable urgency and fixes the amount of the additional responsibility fee payable to them at the sum of FOUR THOUSAND POUNDS (£4,000.00)
11. Outlays for "faxes"

In the course of the taxation the Auditor was asked to consider the charges which the solicitors had included in their Account as outlays



in respect of letters which they had sent to their client and his Swedish solicitor by facsimile transmission but for which there were no vouchers. It was submitted by the solicitors that these charges were reasonable having regard to the urgency with which proceedings under the Act have to be conducted. It was submitted on behalf of The Scottish Legal Aid Board that such charges were not payable having regard to the specific provisions of Regulation 6 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, the solicitors having charged detailed fees under Schedule 3 thereof. Regulation 6 states:

"... In Schedule 3, without prejudice to any other claims for outlays, a solicitor shall not be allowed outlays representing posts and incidents."

The Auditor having regard to the terms of that Regulation upheld the Board's objection.

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