

**SHERIFFDOM OF GRAMPIAN, HIGHLAND & ISLANDS AT PORTREE**

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Note  
by**M. Campbell  
Auditor of Court  
Portree**

In Remit by

**The Scottish Legal Aid Board**

And

**Mr J.A.P. Moir**

Portree 27th January 2003

**Background**

This taxation arose out of a dispute over fees between the Scottish Legal Aid Board and Mr Moir. Mr Moir was instructed by Messrs Anderson MacArthur & Co, Portree in an appeal under Section 51(1) of the Childrens Scotland Act 1995. The appeal was on behalf of a [REDACTED]. There have been a number of similar cases in this court and in Inverness Sheriff Court in respect of [REDACTED] and his son. Anderson MacArthur & Co have represented Mr Miller in all those cases.

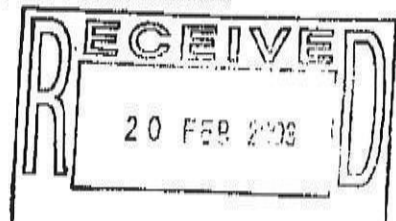
A diet of taxation was in due course assigned. Parties were offered the choice of having the taxation in Inverness Sheriff Court. Given that Mr Moir and the Board are based in the Central Belt this would have offered a substantial saving in time and costs. For some reason which is still unclear the offer was not accepted. [REDACTED] did state that the other side had sought to impose wholly unreasonable conditions to have the taxation in Inverness. Mr Shearer attended the taxation on behalf of the Board. Mr Moir attended with his clerk [REDACTED].

**Submissions**

Various cases were cited in what turned out to be a lengthy taxation. I am grateful to parties for lodging copies of the various cases referred to and also for lodging some written notes on their submissions and copies of reports in other taxations. The majority of cases refer to the following areas :-

- 1) *The importance of the case to the client.*
- 2) *The complexity of the case in question.*
- 3) *Fair and reasonable remuneration.*

Mr Moir and [REDACTED] both referred to each of those areas in their submissions.



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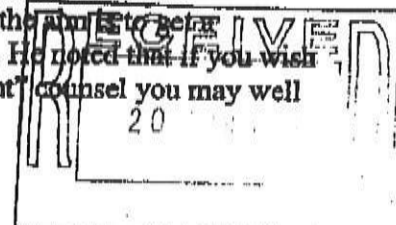
There was also of necessity submissions by both on the expenses associated with conducting cases in geographical areas such as Portree which are remote from the Central Belt and whether or not such expenses should be taken into account when fees are being charged. This is obviously connected to fair and reasonable remuneration. I can state here that I do have sympathy with Mr Moir as far as this is concerned.

Regarding the cases lodged and referred to I have taken particular note of "MacLaren on Expenses", "Cassidy v Celtic Football Club", "MacNaughton v MacNaughton" and the reports by Ian Balfour, F.M. McConnell and M Reid. I have also taken note of the well known "90% regulation" as far as fees are concerned and the standards of taxation as noted in "MacLaren". I do not think it necessary to rehearse either the appropriate regulation or the appropriate standard in this note both of them being very well known to those concerned.

As far as (1) above noted is concerned that is the importance of the case to the client :- every case is important to the respective client although in the eyes of the court some cases are of necessity more important than others. Where cases concerning children are concerned the courts will always attach importance to them. Any individual will feel that his/her child's upbringing is of paramount importance. As far as Glen (the child involved here) is concerned a vast number of outside agencies had already been involved and further agencies/professionals had of necessity to be brought into the process. Indeed vital decisions were taken by the end of the case concerning Glen's future schooling which involved a residential establishment. This was all obviously of vast importance to [REDACTED] and, as noted by Mr Moir, to Glen himself given his very special needs. Having said that there have been many other much more serious and pressing cases involving children which this and other courts have had to deal with over the years.

Regarding the complexity of the case Mr Moir commented that the Board did grant sanction for counsel presumably on the basis that it was suitable for counsel. I accept that there is a history of litigation involving the [REDACTED] (although as Mr Shearer noted the Board cannot be expected to be aware of this fact). This does not mean that the case is necessarily complex in comparison with all other cases. It was certainly by no means the most straightforward of cases. There were a number of lengthy reports and correspondence from the various agencies involved which had to be studied in depth. The report from Mr Jamieson especially was of great importance to the case and that report succeeded in the case being settled. Despite this I cannot say that the case was of unusual complexity.

We then come to fair and reasonable remuneration. I noted "MacLaren on Expenses" page 451 here and "Cassidy v Celtic Football Club". In such a case as this I think it was important that counsel specialising in Family Law was obtained. I also noted Regulations (9) and (10) of the Civil Legal Aid (Scotland) (Fees) Regulations. Mr Moir noted that Mr Miller was a "difficult" client which I can sympathise with knowing some of the background to the various cases. Mr Moir obviously had to spend time going through a number of reports. He would have had to consider the whole history of the case and, as Mr Moir noted, there were considerable developments throughout the case. Mr Shearer noted that the subject to be argued was "competent" counsel as opposed to a "particular" counsel. He noted that if you wish to obtain a "particular" counsel as opposed to a "competent" counsel you may well



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have to pay "over the odds" but that this cannot be right for the Board. He put the question "are those reasonable fees for the public purse". I suggest each fee should be looked at individually.

As far as the cost of attending the court in Portree is concerned given its geographic remoteness from the Central Belt I have, as already noted, sympathy with Mr Moir. The cost to counsel of travelling, accommodation and subsistence cannot be ignored. [REDACTED] submitted that there had to be some consistency as regards payment to counsel across Scotland. That is a fair point. He further submitted that the fact that the case was remote from Edinburgh was irrelevant and that that was one of the risks of conducting litigation a long distance from Edinburgh. I do not accept that. You cannot have what would amount to a two tier system of representation by council in courts across Scotland with certain council refusing to travel to the more remote courts in view of the costs involved and knowing that they would have no way of being reimbursed for those costs. There must be some recompense to counsel for travelling long distances to the more remote courts in Scotland.

#### Decision on Fee Notes

Date	Fee Claimed		Fee Allowed
1) 05-01-01	£150.00	Accepted by parties	£150.00

2) 08-01-01	£1000.00		£800.00
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I accept this proof was discharged fairly late in the day. Records do seem to show Mr Moir was notified of the postponement on 5<sup>th</sup> January at the latest. Some opinion/chamber work could have been done but Mr Moir would have spent time on preparation etc.

3) 22-03-01	£1000.00		£800.00
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I accept that this is for a consultation but I do feel Mr Moir must be allowed credit for the time and expense of travelling to Portree. The consultation was important to the case.

4) 02-04-01	£500.00		£400.00
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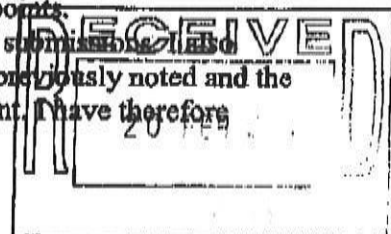
Again counsel would have been unavailable for other work while doing the consultation and it was just prior to the hearing. But as Mr Shearer noted Mr Moir was in Portree anyway for the hearing and there should be no enhancement for the travel time. Mr Moir noted that he had to be apprised of various matters e.g. reports and other considerable developments. The consultation is noted as being 15 minutes.

5) 03-04-01	£1500.00		£1300.00
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I accept that the proof was set down for 2 days. Mr Moir noted that he had to make detailed submissions in respect of three matters namely: -

- 1) the motion to adjourn
- 2) if the appeal were to proceed he had to make preparation for that eventuality
- 3) to prepare for detailed submissions in respect of ECHR points.

I accept he had to make substantial preparations and lengthy submissions. I also accept [REDACTED] submissions on the rates for counsel as previously noted and the previous arguments re complexity and importance to the client. I have therefore



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abated the fee charged as shown but only by that amount given that the case was set down for 2 days.

6) 20-06-01 £150.00 Accepted by parties £150.00

7) 25-06-01 £500.00 £500.00

Mr Moir submitted that the draft report by Mr Jamieson had to be considered along with further procedural matters re the appeal. He noted that this included travel, which may obviously have to be deducted from the next day's fees. Mr Moir would have a good "working knowledge" of the case by this stage but I accept that the report by Mr Jamieson was to be of the utmost importance.

8) 26-06-01 £1500.00 £1300.00  
(27-06-01)

Mr Moir submitted that he had to attend court on both dates and this is accepted. I am also aware that most of the day was spent in negotiations and discussions with Mr [REDACTED] and the other agencies involved. At the taxation Mr Moir stated that the negotiated settlement had a knock on effect for other children's hearings in respect of the child thus saving court time and cost to the Board. He again made submissions in respect of time spent travelling and subsistence and not being available for other work (he also made a submission re travelling in respect of the claim for 25<sup>th</sup> June). I accept those submissions to a large extent. Despite that heed must also be paid to Mr Shearer's submission of what is fair and reasonable and the complexity or otherwise of the case. Mr Shearer submitted that the hearing on both days had been very short. That is true but I am aware that most of the 26<sup>th</sup> of June was spent in negotiations outside of court and credit must be given for that. I accept that 27<sup>th</sup> June was not taken up in the same way but Mr Moir would have had to travel back to Edinburgh. I have taken all this into account and allowed the fees shown.

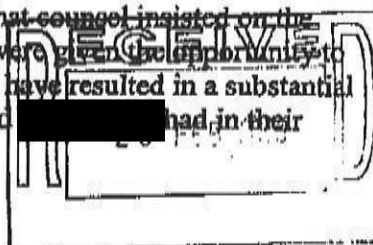
9) 27-06-01 £1500.00 £900.00

The time spent in court was extremely short as settlement had been effected. I also accept Mr Moir's work was not completely over once the court had adjourned. Given the fee allowed for the previous day I do not think a fee of £1500.00 is appropriate here. £900.00 was offered by the Board and I think that is acceptable.

#### Expenses of the taxation

Mr Moir moved for the Board to be found liable for the expenses of the taxation. He referred to the amount of preparation that was made for the taxation with submissions, copies of authorities etc. He also stated that there should be a further finding in respect of the costs of accommodation, subsistence and mileage by his and [REDACTED] attendance at the taxation. [REDACTED] opposed this. He again stated that counsel had sought to impose wholly unreasonable conditions in respect of the taxation and in particular in respect of the taxation being held elsewhere. He then stated he was content to leave the matter in the hands of the Auditor.

Having considered the matter I find it most surprising that counsel insisted on the taxation being held in Portree. As noted earlier parties were given the opportunity to have the hearing at Inverness Sheriff Court. This would have resulted in a substantial saving in time and costs to both sides. Both Mr Moir and [REDACTED] had in their



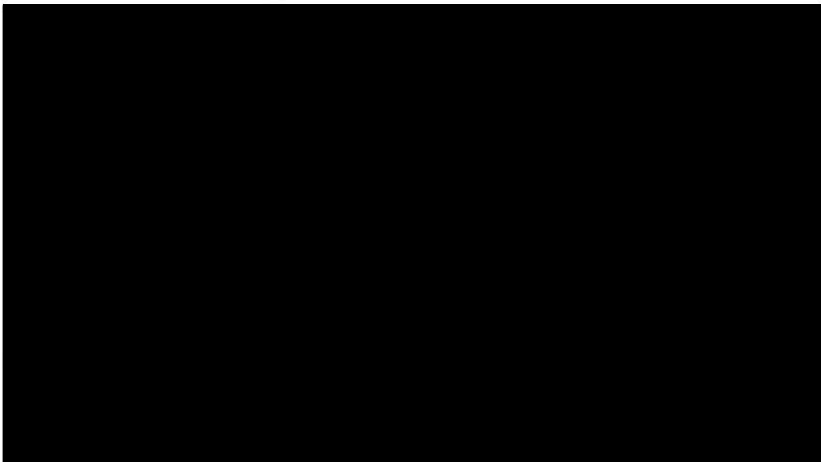
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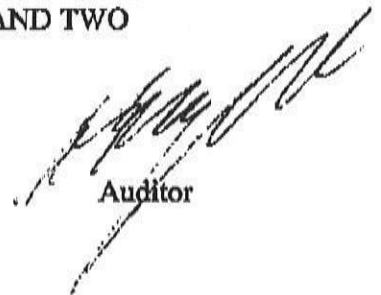
earlier submissions addressed the question of the costs involved in travelling to Portree. Mr Moir had submitted that coming to Portree effectively took at least one day out of his diary in which he was not available for other work. Also if the taxation was to be held in Portree I am somewhat surprised that Mr Moir and [REDACTED] both felt it necessary to attend. I am of the opinion that the matter could quite easily have been argued by a local solicitor. Indeed Mr Burd who instructed Mr Moir has a full knowledge of the case and of the expenses involved and he would have been well able to present Mr Moir's case. Therefore for the reasons stated and despite Mr Moir having been at least partially successful in the taxation I find no expenses due to or by either side for the taxation and the associated expenses.

I find parties jointly liable in the Audit Fee which is ONE HUNDRED AND EIGHTY NINE POUNDS (£189.00).

#### Summary

I therefore tax Counsel's fees in total at SIX THOUSAND THREE HUNDRED POUNDS (£6300.00) to which sum fails to be added VAT at 17.5% = ONE THOUSAND ONE HUNDRED AND TWO POUNDS AND FIFTY PENCE (£1102.50) a total of SEVEN THOUSAND FOUR HUNDRED AND TWO POUNDS AND FIFTY PENCE (£7402.50).



  
Auditor

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SCOTTISH LEGAL AID BOARD

09-07-2001

[Redacted]

A301/MI010004/1

PER ANDERSON, MACARTHUR & CO.  
MACDONALD HOUSE,  
SOMERLED SQUARE  
PORTREE  
ISLE OF SKYE

DUNCAN M. BURD

DUNCAN M BURD

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CRIMINAL LEGAL AID CERTIFICATE

CH/ /0248387600

23-10-2000

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J.A.P. MOIR

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- 05-01-2001 NOTE RE APPEAL SET DOWN FOR 8TH & 9TH JANUARY
- 08-01-2001 APPEAL PORTREE SHERIFF COURT SET DOWN FOR 2 DAYS. AGREEMENT TO POSTPONE AT INSTANCE OF CURATRISC FRIDAY 3.00PM PREPARATION / DISAPPOINTMENT FEE
- 22-03-2001 CONSULTATION MESSRS ANDERSON, MACARTHUR & CO - PORTREE - ENGAGED INCLUDING TRAVEL 12 HOURS
- 02-04-2001 CONSULTATION MESSRS ANDERSON, MACARTHUR

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SCOTTISH LEGAL AID BOARD

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	AND CO, PORTREE (INCLUDING TRAVELLING 5 HOURS)
01-04-2001	PORTREE SHERIFF COURT - SET DOWN FOR 2 DAYS
20-06-2001	NOTE RE APPEAL
25-06-2001	CONSULTATION MESSRS ANDERSON, MACARTHUR AND CO, PORTREE RE DRAFT REPORT (INCLUDING TRAVELLING 5 HOURS)
26-06-2001	PORTREE SHERIFF COURT
27-06-2001	PORTREE SHERIFF COURT

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