

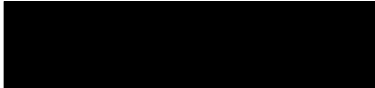
AUDITOR OF COURT  
SHERIFFDOM OF GLASGOW  
AND STRATHKELVIN

RUTLAND EXCHANGE: BOX GW 203

T. McCafferty  
Auditor of Court

1 CARLTON PLACE  
GLASGOW G5 9DA  
Tel: 0141-429 8888

My Ref: TMcC/JM  
Your Ref: JDH/CS



Scottish Legal Aid Board  
DX ED 555 250  
Edinburgh 30

6<sup>th</sup> February 2003

Dear Mr Haggarty,

Diet of Taxation 16<sup>th</sup> October 2002  
Gerald Carroll Esq Advocate  
Ian Sharpe Esq Advocate



With further reference to my letter of 16<sup>th</sup> January and subsequent telephone conversation with you I confirm that I have heard nothing further from [REDACTED] [REDACTED]. Accordingly I have concluded the above taxations on the same basis as Mr Allan and Mr Cheyne. A copy of my note on each together with the Fee Note invoices duly docketed is enclosed. As before I trust you can adjust the balance due to Mr Carroll and Mr Sharpe from the figures shown on their respective invoices. Finally, my own Audit Fee invoices enclosed for settlement with those for Cheyne and Allan in due course.

Yours Sincerely

A handwritten signature in black ink, appearing to read "T. McCafferty". The signature is written in a cursive style with a large, stylized flourish at the end.

**SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW**

Note by the Auditor of Court, Glasgow Sheriff  
Court in the Taxation of Fees to Counsel.  
Desmond P Cheyne Esq; Advocate  
Gary J.G Allan Esq; Advocate  
Ian Sharpe Esq; Advocate  
✓ Gerald Carroll Esq; Advocate.

**in causa**

JK; CE; IK & DGM

[REDACTED]

**APPELLANTS**

**AGAINST**

[REDACTED]

**RESPONDENTS**

**In The case of**

[REDACTED]

This taxation arose out of a dispute between the Scottish Legal Aid Board ("The Board") and Desmond P Cheyne, Advocate representing [REDACTED] Gary J.G Allan Advocate representing [REDACTED] Ian Sharpe, Advocate representing [REDACTED] and Gerald Carroll, Advocate representing [REDACTED] The taxation took place on 16<sup>th</sup> October 2002 and this was followed by written submissions from both parties. The remit to me is in terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S1 1989 No 1490). At the taxation all four Counsel were represented by [REDACTED] Law Accountant and the Board was represented by [REDACTED] I think it is fair to say that whilst the fees involved are substantial, caused mainly by the length of the Hearing, the areas of dispute are few and relate to the daily rate of charge, the relevant preparation and the number of consultations charged by each Counsel which vary from three to sixteen.

Firstly, ██████████ drew my attention to Regulations 9 and 10 of the 1989 Regulations

(1) Regulation 9 – Subject to the Provisions of Regulation 10 regarding calculation of fees, Counsel may be allowed such fees as are reasonable for conducting the proceedings in a proper manner, as between Solicitor and client, Third Party paying, and (2) Regulation 10 (2). Counsel's fees for work in relation to proceedings in the Sheriff Court, House of Lords, Employment Appeal Tribunal, Lands Valuation Appeal Court, Scottish Land Court or Lands Tribunal for Scotland, shall be 90% of the amount of fees which would be allowed for that work on a Taxation of Expenses between Solicitor and client, Third Party Paying, if the work done were not legal aid.

There are differing views of the interpretation of the phrase "Agent and Client Third Paying". ██████████ referred me to the Note by the Auditor of Court at Hamilton in the taxation of Accounts of Expenses for Counsel In Causa Application under Section 68 of the Children (Scotland) Act 1995 by the Authority Reporter for South Lanarkshire Council against the parents of R&J Respondents in particular pages 2-5 inclusive. This is a case of which I am well aware.

██████████ in turn provided me with a copy of the Opinion of Lord Eassie respecting a Note of Objections to a Report by the Auditor in the case of ██████████ and referred me in particular to pages 12 and 24. I have read this with interest and note Lord Eassie's comment page 23 "the amount of fee to counsel recoverable under a party and party award ought not to diverge markedly from that recoverable on an agent and client, third party paying basis". It was accepted by both parties that this basis of taxation must lie somewhere between Party/Party expenses and Solicitor and Client/Client paying. It was further agreed that this was a matter for my determination by deciding what was the reasonable fee for conducting the proceeding in a proper manner having regard to this particular case.

██████████ had earlier provided me with a copy of the Sheriff's Stated Case for the Opinion of the Court of Session at Edinburgh which runs to almost 400 pages. There were some 200 findings in fact and the hearing extended to some 48 days of evidence with the interests of seven different parties being represented. In addition, there were a series of Procedural/Preliminary Hearings determining various issues. Evidence was taken from the various children, Clinical Psychologists (2), Police and Social Workers, oral and written medical evidence from five Doctors, evidence of ██████████ the sisters of the two female relevant persons, evidence of the five relevant persons and the evidence of the ██████████ the parents of ██████████ and further evidence from Social Workers and Police, Educational experts and the area of evidence surrounding the use and sale of a computer.

At the close of evidence the sheriff invited parties to prepare written submissions and allowed a substantial period for preparation of these. The submissions began on 9<sup>th</sup> August 2001 and continued until 14<sup>th</sup> August 2001, when adjourned to 28<sup>th</sup> September 2001 for consideration and preparation of written judgement.

The final paragraph of page 9 of the stated case reads as follows: "The referral proceedings were regrettably conducted in a somewhat hostile and contentious atmosphere which I felt resembled a keenly contested Criminal trial \_\_\_\_\_ .

I found the whole proceedings extremely difficult to handle". Whilst the second paragraph page 10 reads "There was a clear lack of co-operation amongst the parties, little or no advance notice was being given of witnesses or witness running order and on occasions it was clear that there was a total absence of information passing about the nature of the evidence which may be led or the line of cross-examination".

Given that the probable result of such a case, if proved, would be the loss of a parent's child or children into local authority care I am not surprised at these comments and I think they illustrate the additional responsibility which counsel and solicitors carry in such cases.

██████████ referred to the Sheriff's comments on the conduct of the case and seemed to suggest that I may have power to restrict the number of court days Counsel can charge by applying the basic standard of taxation "Counsel only be paid for work actually and reasonably done due regard being had to economy". This suggestion I have never encountered before in my experience as an Auditor of Court and I cannot see how I can disallow Counsel's Fees for attendance at Court where that Counsel was actually in attendance. My function is I believe to fix the appropriate daily rate. Where Counsel has attended Court on a particular day then the work has actually been done. If the attendance is at a Proof or Hearing fixed by the Court then it is surely reasonable for Counsel to have attended. I have therefore allowed all days charged where Counsel attended court.

#### **Daily Rate and Preparation**

██████████ referred me again to the Note by the Auditor at Hamilton where the daily rate had been fixed at £1,350 (90% of £1,500). He also provided me with a copy of a Note by the Auditor of Court, Arbroath in the taxation of the Account of Expenses of Andrew Smith Advocate in causa ██████████ where the daily rate had been fixed at £1,395 (90% of £1,550).

██████████ referred me again to the Opinion of Lord Eassie in the case of ██████████ and my own note on the taxation of the Account of Expenses of Mrs Maria Clarke, Advocate in the case of ██████████ a Social Work Referral June 2001 wherein I allowed a daily rate of £1,080 (90% of £1,200).

#### **Consultations**

As I have said earlier the number of consultations held varied from three to sixteen.

██████████ firstly questioned whether all of these meetings were indeed consultations. In addition he doubted whether an agent experienced in instructing counsel in litigation, and answerable to his client, would either seek or agree sixteen consultations during the course of litigation.

He also referred me to the general regulation 12(b) preceding the Table of Fees in the Sheriff Court in party and party taxations “except on cause shown fees to counsel and solicitor for only two consultations in the course of the cause are to be allowed”. Although conceding that the standard of taxation in this case is agent and client, third party paying he questioned whether the Board as third party paying should be liable for such expenses, again referring to the Opinion of Lord Eassie pages 23 and 24.

In reply [REDACTED] made no admission as to whether or not an experienced agent and instructing counsel in litigation would seek or agree to sixteen consultations during the course of litigation; each case requiring to be looked at in its own merits.

Having given consideration to all submissions, the Opinion of Lord Eassie and the Notes by my fellow Auditors provided by both [REDACTED]

considering this case on its merits but not in isolation and exercising my own discretion and knowledge as an auditor I am of the opinion that a sum of £1,400 per day is a fair and reasonable fee for all preparation and conduct of this case by Junior Counsel on the basis of Solicitor and Client, third party paying. Under deduction of 10% this gives the daily rate of £1,260. My view is that the preparation in such a lengthy case must be regarded as ongoing and therefore to accurately reflect proper preparation this requires to be subsumed within the daily rate. The foregoing rate therefore includes all preparation. There is no further allowance for preparation of final written and oral submissions as this is included within the allowed daily rate.

On detailed analysis of the various invoices it is clear that a great number of charges for Consultations are made on days when Counsel was also in Court and accordingly has been allowed a full fee for preparation and attending court on that day. As I consider the daily rate I have allowed to be sufficient for all work carried out on that particular day I have disallowed all consultations where these have taken place on a day when Counsel attended court and has been allowed a full fee for that day. Furthermore where allowed the fee has been restricted by 10% as with the daily rate to reflect Regulation 10 (2) of the Civil Legal Aid (Scotland) (Fees) Regulation 1989.

Finally [REDACTED] raised the question of the expense of his attendance at the taxation. Chapter 2 paragraph 21 (b) of the current Sheriff Court Table of Fees allows a fee of £118.40 for the preparation of an Account of Expenses and attending taxation thereof. I consider £120 plus v.a.t to be adequate allowance for all preparation and attendance at a taxation. As four separate accounts of fees are being taxed I have allowed this charge on each occasion.

In conclusion I have shown on the various invoices issued on behalf of Counsel the abatements referred to. I have also incorporated my own fee thereon, allowing recovery of my fee on the total fees allowed as opposed to the fees charged by Counsel. Accordingly the invoices pertaining to Gerald Carroll Esq Advocate are finalised as follows:- Consultations 19<sup>th</sup> March, 25<sup>th</sup> April, 2<sup>nd</sup> May, 18<sup>th</sup> May, 15<sup>th</sup> May and two on 8<sup>th</sup> June, all 2001, (2<sup>nd</sup> May, 15<sup>th</sup> May and one of the two on 8<sup>th</sup> June charged at £450 all others charged at £350.) All Court days therefore disallowed. 9 consultations allowed at £315 total £2,835. 60 Court days allowed at £1,260 total £75,600. I have therefore concluded the taxation of the disputed fees due to Gerald Carroll Esq Advocate at a total sum of £96,640.22 (Ninety Six Thousand Six Hundred and Forty Pounds and Twenty Two pence) all as detailed on Faculty Services Invoices which are docquetted and attached hereto.



**Auditor of Court**  
**Sheriffdom of Glasgow and Strathkelvin**  
**6<sup>th</sup> February 2003**

CRIMINAL L/AID (AUTO.SANCTION)  
HAYS BOX No. 512222  
[REDACTED]  
PER NAFTALIN DUNCAN & CO  
534 SAUCHIEHALL STREET  
(CHARING CROSS)  
GLASGOW  
G2 3LX

06-09-2002  
N020/KE010200/2  
Unallocated Solicitor Name  
MS BAXTER

1 of 4

CHILDREN'S REPORTER -V- [REDACTED]

CRIMINAL L/AID (AUTO.SANCTION)

0079535400

C41

GERALD CARROLL

290 3130 87

		<u>TAXED off</u>	
11-09-2000	CONSULTATION, GLASGOW	- 35.00	350.00
14-09-2000	CONSULTATION, GLASGOW	- 35.00	350.00
01-03-2001	CONSULTATION, GLASGOW	- 35.00	350.00
19-03-2001	CONSULTATION, GLASGOW	350.00	350.00
22-03-2001	CONSULTATION, GLASGOW	- 35.00	350.00
25-04-2001	TELEPHONE CONSULTATION WITH [REDACTED] (GLASGOW)	- 350.00	350.00
02-05-2001	TELEPHONE CONSULTATION WITH EXPERT [REDACTED] [REDACTED] AT HIGH COURT, GLASGOW, FOLLOWED BY CONSULTATION WITH CLIENT	- 450.00	450.00
	Continued...	<u>- 1290.00</u>	<u>2550.00</u>

\*\*\* LEGAL AID \*\*\*



CRIMINAL L/AID (AUTO.SANCTION)

06-09-2002

HAYS BOX No. 512222

N020/KE010200/2

PER NAFTALIN DUNCAN & CO

Unallocated Solicitor Name

534 SAUCHIEHALL STREET

(CHARING CROSS)

GLASGOW

MS BAXTER

G2 3LX

2 of 4

CHILDREN'S REPORTER -V- [REDACTED]

CRIMINAL L/AID (AUTO.SANCTION)

0079535400

C41

GERALD CARROLL

290 3130 87

18-05-2001 MORNING CONSULTATION WITH [REDACTED]  
 [REDACTED] AT 8.30AM AT HIGH COURT,  
 GLASGOW

22-05-2001 CONSULTATION, [REDACTED] (TELEPHONE -  
 GLASGOW)

28-05-2001 CONSULTATION WITH CLIENT

15-05-2001 TELEPHONE CONSULTATION WITH [REDACTED]  
 FOLLOWED BY CONSULTATION WITH CLIENT

11-06-2001 CONSULTATION WITH CLIENT

08-06-2001 CONSULTATION WITH CLIENT

TAXED off

- 1290.00      £ 2550.00

- 350.00      350.00

- 35.00      350.00

- 35.00      350.00

- 450.00      450.00

- 35.00      350.00

- 350.00      350.00

---

- 2545.00      £ 4750.00

Continued...

\*\*\* LEGAL AID \*\*\*

CRIMINAL L/AID (AUTO.SANCTION)

06-09-2002

HAYS BOX No. 512222

N020/KE010200/2

PER NAFTALIN DUNCAN & CO

Unallocated Solicitor Name

534 SAUCHIEHALL STREET

(CHARING CROSS)

GLASGOW

MS BAXTER

G2 3LX

3 of 4

CHILDREN'S REPORTER -V- [REDACTED]

CRIMINAL L/AID (AUTO.SANCTION)

0079535400

C41

GERALD CARROLL

290 3130 87

TAXED off  
-2545.00 £4750.00

08-06-2001	CONSULTATION WITH EXPERT COMPUTER ANALYST - [REDACTED]
28-05-2001	CONSULTATION WITH EXPERT [REDACTED] AT MARRIOT HOTEL, GLASGOW (EVENING)
17-06-2001	CONSULTATION WITH EXPERT [REDACTED] AT MARRIOT HOTEL, GLASGOW (EVENING)
01-08-2001	PREPARATION OF FINAL SUBMISSIONS
03-08-2001	PREPARATION OF FINAL SUBMISSIONS
04-08-2001	PREPARATION OF FINAL SUBMISSIONS
05-08-2001	PREPARATION OF FINAL SUBMISSIONS

- 450.00	450.00
- 35.00	350.00
- 35.00	350.00
- 750.00	750.00
- 750.00	750.00
- 750.00	750.00
- 750.00	750.00

Continued...

-6065.00 £8900.00

\*\*\* LEGAL AID \*\*\*

CRIMINAL L/AID (AUTO.SANCTION)

06-09-2002

HAYS BOX No. 512222

N020/KE010200/2

PER NAFTALIN DUNCAN & CO

Unallocated Solicitor Name

534 SAUCHIEHALL STREET

(CHARING CROSS)

GLASGOW

MS BAXTER

G2 3LX

4 of 4

CHILDREN'S REPORTER -V-

CRIMINAL L/AID (AUTO.SANCTION)

0079535400

C41

GERALD CARROLL

290 3130 87

- 6065.00

£ 8,900.00

06-08-2001

PREPARATION OF FINAL SUBMISSIONS

- 750.00

750.00

\*\*\* LEGAL AID \*\*\*

- 6,815.00

9650.00

- 1,192.63

17.50

1688.75

CARRA TO W/VICE 318.01

- 8,007.63

£ 11,338.75

CHILDREN'S REPORTER -V-

CRIMINAL L/AID (AUTO.SANCTION)

0079535400

C41

GERALD CARROLL

290 3130 87

12-09-2000 MARCH 2001 // 5, 16, 19, 23, 26 - 30  
 04-10-2000 APRIL 2001 // 2, 6, 23 - 27, 30  
 10-10-2000 MAY 2001 // 1 - 4, 8 - 11, 14 - 18, 23 -  
 25, 29 - 31  
 11-12-2000 JUNE 2001 // 1, 4 - 8, 12, 14, 15, 18 -  
 20, 26, 27  
 22-01-2001 AUGUST 2001 // 10, 13 - 15  
 14-02-2001 GLASGOW SHERIFF COURT 60 DAYS AT £1,500  
 PER DAY

TAXED off

- 14,400

90000.00

\*\*\* LEGAL AID \*\*\*

90000.00

- 2,520 17.50

15750.00

105750.00

- 16920

From INVOICE 6902 - 8,007.63

11338.75

- 24,927.63

ATTENDING TAXATION

£ 117,088.75

141.00

TAXED off

£ 117,229.75

24,927.63

AUDITORS FEE £ 5,503.70

WHARF.

£ 92,302.12

4,338.10

£ 96,640.22

GLASGOW - 6 FEB 2003

I HAVE EXAMINED THE DETAILED ITEMS  
 OF CHARGE RELATING TO THE FOREGOING  
 ACCOUNT AND AM OF THE OPINION THAT  
 IT IS FAIRLY AND REASONABLY CHARGED  
 AT THE SUM OF Ninety Six Thousand  
Six hundred and forty Pounds  
and Twenty Two pence.  
(£ 96,640.22)

T.M. Callerty

ALEXANDER GIBB  
SHERIFF OF GLASGOW  
AND STRATHKELVIN