

# **Taxation Report**

**25<sup>th</sup> August 2004**

NM



**2239845902**

**John McRitchie & Co**

**Solemn Time & Line**

**Precognitions**

SCOTTISH COURT SERVICE  
Sheriffdom of Grampian, Highland and Islands  
Sheriff Clerk's Office  
Queen Street  
PETERHEAD  
AB42 1TP



Sheriff Clerk: Mr R.Cantwell

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Your reference LJB.MS.5602

Your reference RC

Date 29 October 2004



Scottish Legal Aid Board  
Legal Services Department  
44 Drumsheugh Gardens  
Edinburgh  
EH3 7SW

Dear Sir

HMA v [REDACTED]

I apologise for the delay in issuing my decision following upon the diet of taxation on 25<sup>th</sup> August 2004 but I now enclose herewith my written decision on the matter as promised.

If you have any questions please do not hesitate to contact me.

Thank you for your patience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Cantwell'.

Richard Cantwell  
Sheriff Clerk & Auditor of Court

[REDACTED]

Here is the decision in the [REDACTED] case. I do not think it creates any unfortunate precedent. The bottom line here seems to be that the view taken by the Auditor was that this was not a transcript as such and that the precognition agent, one way or another, was obtaining the information from the police officers.

It is not authority for defence agents to say that it is in order to copy down the transcript of evidence either from a police notebook or sitting listening to a tape and get paid for it – at least that is how I see it.

Happy to discuss.

[REDACTED]

Peterhead 28<sup>th</sup> October 2004

This account was remitted to me by Messrs John McRitchie & Co, SSC, in terms of Regulation 11 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 on a specific point in relation to the framing of certain precognitions for police officers which include details of the police interview with the accused.

A diet of taxation was subsequently fixed for 25<sup>th</sup> August 2004, at which Messrs John McRitchie & Co were represented by [REDACTED]. The Scottish Legal Aid Board made written submissions and I considered these together with [REDACTED] submissions at the taxation, the copy account and previous correspondence lodged. I also had sight of the solicitors' file both prior to and after the taxation for perusal. I also consulted further with [REDACTED] at the Scottish legal Aid Board following the taxation diet to take his further views on the points raised at the taxation.

The items of the account in dispute were the 2 entries on 14<sup>th</sup> November 2002 and 20<sup>th</sup> November 2002 and in each case they related to the framing of precognitions

The main thrust of the Scottish Legal Aid Board argument as I understand it can be briefly summarised as follows:

- that the 2 entries in question were abated because they substantially consisted of the transcript of taped interviews.
- Who is the fee earner
- The work in obtaining a transcript of the tape was premature and in any event framing of the transcript is not a proper charge to the Board

John McRitchie & Co's argument as I understand it can be briefly summarised as follows:

- The entries in question were not transcripts, they were the result of a question and answer session between the police officer and enquiry agent which were then framed by the said enquiry agent to form the precognition as it appears on the file.
- The fee earner in this case was the precognition officer but as he was acting on the instructing partners' responsibility the fee is a proper charge, as is normal practice for the procurement of precognitions.
- The precognition had to be carried out as part of proper investigation of the case to confirm the accused's version of events and to ascertain how the accused should be properly advised
- It is a matter for the Procurator Fiscal to decide if and when a tape is obtained and / or transcribed and when it is then passed to the defence. The Defence agent is therefore obliged to carry out the work as in this case, which could often lead to a Section 76 letter being submitted to the benefit of the client and the removal of the necessity for a trial
- It is Grampian Police policy to not allow precognition officers access to police notebooks other than by the officer in question sitting in for a question and answer session

I considered all of the above submissions and formed the view that in this case the precognitions **were** required. The Legal Aid Board took no issue with the time spent by the precognition officer at the police office to carry out the interviews and allowed the time charge, only the time element in the framing of the recognition was in dispute. However, this objection was on the basis that the precognition was simply a

transcript of a taped interview. I believe that this was not the case and that the precognition had to be obtained by question and answer interview followed by framing of the lengthy precognition. I had sight of the precognitions in question within the solicitors' file and have therefore ascertained that the pages as charged were appropriately charged for the work done.

For all of the above reasons I will allow the two entries in dispute i.e. 14 November 2002 relating to "*framing precognition – 58 sheets £343.00*" and 20 November 2002 "*framing precognition – 21 sheets £126.00*"



Richard Cantwell  
Auditor of Court, Peterhead

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JDH/AH

24 August 2004

Dear Mr Cantwell

**HMA AGAINST [REDACTED] - SL/2239845902**  
**TAXATION 25 AUGUST 2004**

I refer to previous correspondence. As indicated at an earlier stage, I would propose with your permission, to deal with this matter by way of written submissions given the level of the amount in dispute between the solicitor and the Board and the fact that there is not a significant issue of principle at state in this taxation.

The two entries in dispute in the account are those of 14 November 2002 relating to "*framing precognition - 58 sheets £348*" and the entry on 20 November 2002 "*framing precognition - 21 sheets £126*". With regard to both precognitions the Board has allowed six sheets which have been reinstated. This leaves the sums of £312 and £90 respectively in dispute.

As can be seen the time charge for attendance at Fraserburgh Police Office is not in dispute, only the element relating to the framing of the precognition.

The position from the file is that these entries were abated because they substantially consisted of the transcript of taped interviews. I enclose a copy of pages two and three of the account on file in case the written reason for abatement does not appear on the copy of the account which has been lodged by the solicitor. I have had some difficulty in identifying the exact nature of the precognition. The bookkeeper who dealt with this account left the Board's employ some weeks ago. As you are aware my secretary asked for a copy of the first 10 or 12 sheets of the precognition as I wished to avoid a situation where I was asking you to fax almost 80 sheets to this office. The sheets which I have in my possession are not terribly helpful but I understand from Mr MacRitchie's office that you have the file and you will no doubt have before you the two precognitions and will be able to identify the sections of these precognitions which essentially contain the transcripts of the taped interviews.

I have also had considerable difficulty in identifying exactly what happened in the police station and how the content of the taped interview ended up in the form of written notes or a tape dictated by the solicitor's enquiry agent – and thereafter in the form of a precognition. The information I have from former police officers in the employ of the audit section of the Board is that they cannot imagine writing out the content of the taped interview either at the interview itself or subsequently, but practices may differ throughout the length of Scotland.

Two points arise: one relating to whether it was reasonable to undertake the work at this stage and the second relating to who is a "fee earner" within an office entitled to charge the Board.

With regard to the first point, regulations 7(1) of the Criminal Legal Aid (Scotland) Fees Regulations 1989 provides that a solicitor "*shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and reasonably done, and travel and waiting time actually and reasonably undertaken or incurred, with due regard being had to economy. The fees allowed shall be at the rates provided in paragraphs one to five of Schedule 1*". This is the basis of the Board's letter of 1 March 2004 a copy of which is attached and which I do not intend to further rehearse. It is clear from the account that the precognition process took several months and the tape became available following the serving of the indictment. There is no indication from the solicitor's account that any attempt was made to obtain the tape and the transcript at an earlier stage in the proceedings.

The second point relates to the framing of the transcript and in this regard I attach a copy of the Board's guidance as contained in the Criminal Accounts Assessment Manual issued to the profession in August 2000 and also a copy of a taxation decision in the case of *HMA -v- [REDACTED]* where the Auditor of the Court of Session agreed with the Board that a secretary typing out a transcript is not a fee earner but is, rather, part of the overheads for which fee earners charge fees. A secretary in these circumstances simply typing out the transcript and cannot be said to be "framing" the transcript. There is, accordingly, no basis for a framing charge. From Mr MacRitchie's letter of 3 August 2004 (second page) it seems likely that the precognition was indeed typed by his secretary. Even if it had been typed by the enquiry agent, it would make no difference as it is the solicitor who is charging at unqualified rates for all work carried out by the precognition agent even though the agent is being paid as an outlay, as is the practice.

Accordingly, the position of the Board is that the work in obtaining a transcript of the tape was premature and in any event the framing of the transcript is not a proper charge to the Board.

Yours sincerely

[REDACTED]

Enc. Copy of pages one and two of account  
 Copy of Board's letter dated 1 March 2004  
 Copy of letter dated 3 August 2004 from solicitor  
 Copy of Board's guidance  
 Copy of taxation decision in the case of *HMA -v- [REDACTED]*