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Scottish Legal Aid Board  
LP - 2  
EDINBURGH 7

Your Ref: JDH/CS

Our Ref: RDS

Date: 20 March 2006



**TAXATION UNDER REGULATION 12 - E G M TARGOWSKI QC**

**P v M**



I refer to the above and enclose herewith my certificate and note. As discussed the modified audit fee of £1000 should please be paid direct to me by the Board, with the agreed proportion thereof (£300) being deducted from the fees payable to Mr. Targowski.

Yours sincerely

R.D. SINCLAIR  
Sheriff Clerk/Auditor of Court



INVESTOR IN PEOPLE

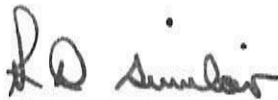
**Account of Expenses incurred to the Scottish Legal Aid Board by  
E.G.M. Targowski QC**

*In causa*

A117/98 [REDACTED]

Stirling 16 March 2006

Having examined the foregoing account of expenses, and having heard [REDACTED]  
[REDACTED] for the Scottish Legal Aid Board and Mr Targowski thereon, I hereby  
tax the said account in terms of Regulation 12(1) of the Civil Legal Aid  
(Scotland) (Fees) Regulations 1989 at the sum of THIRTY SEVEN  
THOUSAND, ONE HUNDRED AND TWENTY FIVE POUNDS (£37,125),  
net of VAT.



Auditor of Court  
STIRLING

STIRLING SHERIFF COURT  
NOTE BY THE AUDITOR OF COURT  
TAXATION OF FEES TO COUNSEL, E.G.M. TARGOWSKI, QC

*In causa*

A117/98 [REDACTED]

(Mr E.G.M. Targowski acting on behalf of [REDACTED] Curatrix ad litem)

**1. Introduction**

The taxation, held in terms of Regulation 12 of the Civil Legal Aid (Scotland)(Fees) Regulations 1989, was held before me on 16 March 2006. [REDACTED] represented the Scottish Legal Aid Board whilst Mr Targowski appeared on his own behalf. Mr Targowski had appeared as Senior Counsel for the Curatrix appointed in the case, [REDACTED] a local Stirling Solicitor. His involvement in the case was from, approximately, October 2003 until June 2004.

**2. Background**

The case of [REDACTED] had initially been raised in 1978 at Stirling, relative to the future of two young children and had a particularly difficult and anxious background. At the time in question there was pending a Minute to Vary and Answer procedure, in respect of which four days of Proof had been assigned for 24 October 2003 and 3 ensuing days.

On 8 October 2003 the Pursuer/Respondent lodged a Motion which sought *inter alia* to re-call the appointment of [REDACTED] as Curatrix; and calling, under specification, for recovery of all her documentation in relation to her actings as Curatrix. At that stage there was also lodged a Minute of

Amendment on behalf of the Pursuer/Respondent containing averments as to why the Curatrix should be removed. These amendments, and Answers thereto were allowed onto Record and a "Specific Issue" Proof under Rule of Court 29.6 was assigned for 3 November 2006 restricted to that part of the Motion seeking the removal of the Curatrix.

On 3 November that Proof was unable to proceed, due to the illness of Counsel, then instructed for the Pursuer/Respondent and the matter was adjourned until 6 November 2003. On that date (with no notice having been given to other parties) the Pursuer/Respondent withdrew her Motion seeking removal of the Curatrix; the "allegations" against the Curatrix were deleted from the Record, expenses awarded against the Pursuer/Respondent and the matter continued for diets to be identified for a Proof on the merits of the Minute to Vary and Answers.

### **3. Previous Taxation**

Subsequent to the award against the Pursuer/Respondent in favour of the Curatrix made on 6 November 2003 a Judicial Account was lodged on behalf of the Curatrix and a taxation, before me, took place on 26 March 2004. By this time the Pursuer/Respondent was no longer represented and appeared at that diet on her own. Having determined a figure I advised the Pursuer/Respondent of her right to take a Note of Objections to my decision(s) which she duly exercised.

As a result the matter called before Sheriff Pritchard on 22 June 2004, when after hearing parties, he repelled the objections and Approved my Report. In respect of the present matter before me I felt it appropriate, some weeks before the diet, to advise both Mr Targowski and [REDACTED] of my previous involvement at a Judicial Taxation in the same cause with the offer

that I “decline jurisdiction”. Both parties were satisfied that the matter proceed before me.

#### 4. Preliminary Submissions

██████████ had helpfully provided me with cases/opinions to which he intended to refer prior to the diet. These were: –

Opinion of Lord Eassie in Dingley v Chief Constable of Strathclyde -

9/10/02

Note of the Auditor at Glasgow in ██████████

- 6/2/03

Note of the Auditor at Linlithgow in ██████████ - 26/1/05

Note of the Auditor at Glasgow in ██████████ - 9/6/05

Initial submissions related to

#### 5. **The approach to be taken in cases such as this which fell to be taxed “in a proper manner, as between solicitor and client, third party paying” – as laid down in Regulation 4 of the 1989 Regulations.**

Mr Haggarty submitted the Dingley Opinion had helped to clarify that standard and its relationship to a party and party taxation and that in this matter there could be applied two differing standards of taxation – under reference to the Observations of Lord Eassie at Page 24 of Dingley in relation to local and Edinburgh agents - what I would have to decide is the way in which “3<sup>rd</sup> party paying” is determined. It was, he submitted, different from taxations on a “Judicial” basis. I enquired of ██████████ what cases he had encountered (other than SLAB cases) where this “3<sup>rd</sup> party paying” approach was applicable. Other than suggesting perhaps an action of Multiplepointing, he was unable to refer me to any. He did concede however that notwithstanding his reading of Dingley, rates applicable to for instance Senior Counsel in a Sheriff Court action could be broadly the same.

Mr Targowski submitted this case differed from the others referred to in respect that it contained a previous judicial Determination of an award against the Pursuer/Respondent. However he was not here today simply looking for 90% of the fees awarded in his favour by that Determination. It could however provide a guide to the approach to be taken under "3<sup>rd</sup> party paying" and an indication of what should be paid to him by the Board. In support he referred me to Page 23 of *Dingley*, where Lord Eassie states "For that reason it appears to me that, for similar work performed pursuant to the same instruction, the amount of the 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".

**6. Rate Applicable for Senior Counsel in Sheriff Court**

In the Judicial taxation referred to at Para 2 above, Senior Counsel had been allowed *Two Thousand Five Hundred Pounds (£2,500)* per day. In my report to the Sheriff I outlined my reasons - basically the guidance from various previous cases and the importance of the matter to the Curatrix. My decision in that matter had been upheld by the Sheriff in his Interlocutor relative to the Note of Objections. In his note appended to that Interlocutor the Sheriff indicated that he had sought the advice of the Auditor of the Court of Session and the Clerk to the Faculty of Advocates, having outlined the circumstances of the case to each. The Auditor had advised the Sheriff "an experienced Senior Counsel dealing with a matter of considerable importance could legitimately expect to charge and be paid such a fee", whilst the Clerk "also confirmed such a fee was well within the parameters of what an experienced Counsel might charge". Mr Targowski referred me to these respective observations and further outlined the possible consequences, to the Curatrix, of the averments placed on Record, in support of the Motion for re-call of her appointment.

In summary, these accused her of bias against the Pursuer/Respondent; collusion with the Defender/Minuter and alleged she had "consistently failed to exhibit the necessary degree of fairness and balance essential to a Curator's role in the action as an independent Officer of Court". The Curatrix was an experienced local Solicitor who had acted as Curatrix/Safeguarder in many other cases and the effect on her career and reputation would be catastrophic.

██████████ did not seek to minimise the importance of the matter to the Curatrix. He did however refer me to the case of ██████████ decided by the Auditor at Glasgow and in which Mr Targowski also appeared. The Auditor had allowed a rate of *Two Thousand Four Hundred Pounds (£2,400)* per day for a case, albeit different in circumstance to this, nevertheless equally as anxious and important. He also made the point that the "specific issue" matter relating to the Curatrix did not extend throughout the whole period of Mr Targowski's representation of her.

Having considered Submissions, the cases determined previously by other Auditors and the "3<sup>rd</sup> party paying" Observations of Lord Eassie in *Dingley I* reached the conclusion that a daily rate of *Two Thousand Four Hundred Pounds (£2,400)* would be applicable for appearances relating to the Specific issue matter and *Two Thousand Two Hundred and Fifty Pounds (£2,250)* for other days, relative to the general merits of the cause.

#### **7. Individual Entries/Preparation Time**

The fees claimed in this matter were submitted to me on 5 separate Faculty Services Invoices containing a total of 24 entries. On these were marked the initial "offer" made by the Board. In summary the total amount claimed (net of VAT) was *Forty Six Thousand Seven Hundred and Fifty Pounds (£46,750)* against which the Board had made an offer totalling *Twenty Two Thousand*



*Nine Hundred Pounds (£22,900).* I took parties through each entry, heard Submissions and made my decision accordingly. I was greatly assisted in this by the spirit of compromise exercised by both parties. Two entries are however worthy of mention –

11 October 2003 – “consideration of all papers in preparation for hearing the following day” – *Two Thousand Pounds (£2,000).*

This was the day before the Motion for “removal” of the Curatrix first called in Court and the Curatrix had obtained Sanction for Senior Counsel. [REDACTED]

[REDACTED] submitted that this charge should be disallowed in full. Mr Targowski was being allowed *Two Thousand Four Hundred Pounds (£2,400)* for the hearing the following day, that fee should include preparation, under reference to the cases of [REDACTED]

Mr Targowski argued again the possible consequences to the Curatrix; the fact that the Motion had “come out of the blue” and, given the cause as a whole had been running for several years, it was essential that he appraised himself of the considerable background, in order to properly represent his client. I was persuaded there was some merit in this and allowed this “preparation” fee, albeit I abated same to *One Thousand Five Hundred Pounds (£1,500).*

2 November 2003 – “reading 700 pages of documentation lodged in Inventory” – *Nine Hundred Pounds (£900).*

The Pursuer/Respondent sought recovery of all documentation from the office of the Curatrix, relative to her actings as same. A local solicitor was appointed Commissioner and the documentation received by the Court and parties on 2



November 2003 – the day prior to the scheduled start of the Specific Issue Proof. Mr Targowski had read the documentation, at home, on the evening of 2 November and into the morning of 3 November. [REDACTED] again submitted that this preparation was covered by the daily fee payable for the Court hearing on 3 November. I decided a fee was allowable given the extremely tight deadline involved and allowed *Seven Hundred and Fifty Pounds (£750)*.

**8. Decision**

After determining all matters, my decision was that the total fees due should be *Forty One Thousand Two Hundred and Fifty Pounds (£41,250 (net of VAT))*. That figure is subject to a reduction of 10%, in terms of Regulation 10(2) of the 1989 Regulations and I accordingly taxed the sum due at *Thirty Seven Thousand One Hundred and Twenty Five Pounds (£37,125)*.



R.D. Sinclair  
Auditor of Court  
STIRLING  
16 March 2006