

AUDITOR OF THE COURT OF SESSION
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Your Ref: 7163005007

SCOTTISH LEGAL AID BOARD
LP 2 EDINBURGH 7



27 July 2012

Date and Tax Point

VAT Reg. No.: 938 9082 77

VAT Invoice No. 56779

HMA V [REDACTED]
TAXATION OF LEGAL AID ACCOUNT

The Auditor's Fee herein is	£64.00
VAT thereon @ 20%	£12.80
Posts & Incidents (incl VAT)	£0.00
	<hr/>
	£76.80
	<hr/>

The papers submitted await collection
Please make payment by :
BACS Sort Code 80 12 80 Account No.
06008856 or cheque payable to The
Auditor Of The Court Of Session

herewith
by Document Exchange
by post

The Auditor Kenneth M Cumming W.S
Principal Clerk Mrs Sheila Muir

The Auditor
Kenneth M. Cumming, W.S.

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Auditor of the Court of Session

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HMA V [REDACTED]
REF: 7163005007

EDINBURGH. 27 July 2012. At a diet of taxation on 2 February 2012 the Auditor heard representations by [REDACTED] on behalf of the Scottish Legal Aid Board and Mr David Fiskien of Messrs Hamilton Burns & Company, Solicitors, Glasgow. Having considered the business papers submitted to him, the Auditor now taxes at TWO HUNDRED AND THIRTY SIX POUNDS AND FORTY PENCE (£236.40) the disputed fees due to Messrs Hamilton Burns & Company. To the said sum there falls to be added the Auditor's fee, inclusive of VAT, £76.80



AUDITOR OF THE COURT OF SESSSION

The Auditor
Kenneth M. Cumming, W.S.

Principal Clerk
Mrs Sheila Muir

AUDITOR, COURT OF SESSION

POINTS OF OBJECTION

for

THE SCOTTISH LEGAL AID BOARD

in the case of

HMA -v- [REDACTED]
(L.A. Ref 7163005007)

regarding the fees of

HAMILTON BURNS & COMPANY

Case Background

The account lodged for taxation relates to confiscation proceedings in the High Court of Justiciary by the Crown Prosecutor as a result of [REDACTED] being convicted in the High Court of offences under the Forgery and Counterfeiting Act 1981 and being sentenced to six years imprisonment.

The solicitor, Hamilton Burns & Company was at all times providing criminal legal aid and the reasonable fees and outlays incurred are payable from the Fund in terms of the Legal Aid (Scotland) Act 1986 and the relevant regulations.

Richard L Lobjoie & Company represented [REDACTED] during his High Court trial and after [REDACTED] conviction the legal aid certificate was transferred to Hamilton Burns & Company in respect of the confiscation proceedings which were then raised by the Crown.

In terms of section 101 of the Proceeds of Crime Act 2002, a Statement of Information was served by the Prosecutor seeking to recover the sum of £297,537.39 from [REDACTED] and it is understood from Hamilton Burns & Company that the confiscation proceedings settled at £96,000.

Nature of Dispute

It is understood that there are ten account entries in dispute which fall into two categories.

- (1) Perusal of all disclosed statements provided by [REDACTED] previous solicitor.

<u>Date</u>	<u>Time</u>	<u>No. of sheets</u>	<u>£</u>
20.04.10	75 mins	60	59.10
21.04.10	60 mins	40	47.28
22.04.10	80 mins	60	70.92
23.04.10	115 mins	90	94.56
24.04.10	150 mins	100	118.20
24.04.10	100 mins	80	82.74
	<u>9 hrs 40 mins</u>	<u>430</u>	<u>472.80</u>

(2) Outlays paid to Hannah's Sheriff Officers

<u>Date</u>	<u>£</u>
05.10.10	258.27
15.02.11	282.60
17.03.11	303.24
15.04.11	283.75
	<hr/>
	1127.86

The relevant regulations

This being a criminal legal aid account, the appropriate feeing regulations to apply when assessing the account are the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 [S.I. 1989 No. 1491 (S.120)]¹ as amended. A copy of these regulations are attached for ease of reference.

The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2010, introducing block fees for certain parts of procedure, do not apply to this case as these proceedings were not commenced on or after 1 April 2008 and before 5 July 2010.

Regulation 4 of the 1989 regulations state that the fees allowable to solicitors shall be those specified in Schedule 1.

Regulation 7 of the 1989 regulations states that a solicitor shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and **reasonably done**.... due regard being had to economy and that the fees allowed shall be calculated in accordance with Schedule 1.

It can be seen from Schedule 1 that the fee that can be charged for perusing statements in solemn proceedings is £11.82 for each quarter hour (or part thereof).

Regulation 8(c) of the 1989 regulations states that a solicitor shall be allowed out of pocket expenses actually and **reasonably incurred, due regard to economy**.

Fees claimed

As indicated, two issues arise in this taxation and will be dealt with separately.

Perusal charges associated with all disclosed statements provided by [REDACTED] previous solicitor

It is accepted by the Board that Hamilton Burns & Company did not represent [REDACTED] in respect of his criminal trial and that it would therefore be reasonable for Hamilton Burns & Company to acquaint themselves with the trial file once it was transferred to them from the previous agents.

Accordingly, the Board believes that a maximum of two hours perusal time in this respect could be considered to be a reasonable charge for this work.

¹ Criminal Legal Aid (Scotland) (Fees) Regulations 1989 [S.I. 1989 No. 1491 (S.120)]

The Board does not however accept that it is necessary, and therefore reasonable, to spend a total of nine hours and 40 minutes perusing the entire content of the written statements relating to the trial which was clearly, at that point, completed and the client convicted.

Confiscation proceedings concern whether or not the convicted criminal has acquired assets by criminal activities. The Statement of Information is served by the Crown the purpose being to support averments that a certain amount of money is recoverable. In such proceedings a forensic accountant tends to be employed, as indeed occurred here. Such an expert witness, in effect, carries out a paper-trail to ascertain if the Crown's assertions within the Statement of Information and associated financial schedule are correct or not.

Perusing, in any great detail, for example, the statements of police officers who charged [REDACTED] in respect of the offence of which he is now convicted is not, in the Board's submission, necessary or reasonable in the proper conduct and representation of [REDACTED] in these confiscation proceedings. In the Board's submission, due regard has not been given to economy.

It is noted that Richard L Lobjoie & Company, who actually represented [REDACTED] during his trial, only charged 6½ hours perusal time for perusing 490 sheets of these same statements.

Outlays paid to Hannah's Sheriff Officers

We have been advised by Hamilton Burns & Company in correspondence relating to this account that they use sheriff officers to cite all witnesses in High Court proceedings as a matter of course.

As previously outlined, the standard of taxation, as previously outlined, in relation to payment of these officers is whether the expenses were actually and reasonably incurred, due regard being had to economy.

It is legally competent to cite witnesses via postal citation (see S66(3) Criminal Procedure (Scotland) Act 1995² and Rule 2.4 Act of Adjournal (Criminal Procedure Rules) 1996³ - copies attached for ease of reference.

Postal citation is clearly more economic than citing witnesses via sheriff officers.

No reasonable justification has been provided to the Board to date from Hamilton Burns & Company as to why they did not effect postal citation of these particular witnesses and accordingly the Board submits that all these four entries should be abated in full.


It is accepted that these proceedings had been continued but this was not due to the non-attendance of a witness after postal citation.

The Board assesses over 1,000 accounts a year from criminal practitioners carrying out solemn work in the High Court and can advise that citation of witnesses in solemn proceedings via sheriff officers is not automatically carried out by other criminal law firms for all witnesses who appear in all High Court proceedings. Service via sheriff officers is only carried out, and paid for, where it can be shown to be required, due regard to economy being had.

² S66(3) Criminal Procedure (Scotland) Act 1995

³ Rule 2.4 Act of Adjournal (Criminal Procedure Rules) 1996

IN RESPECT WHEREOF


Solicitor
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
Solicitor for the Scottish Legal Aid Board

26 January 2012

Appendix 1 - Criminal Legal Aid (Scotland) (Fees) Regulations 1989
Appendix 2 - Section 66(3) Criminal Procedure (Scotland) Act 1995
Appendix 3 - Rule 2.4 Act of Adjournal (Criminal Procedure Rules 1996)