## DITOR OF THE COURT OF SESSION

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PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ RUTLAND EXCHANGE No. 304 031 225 2595 Extr. 309

NOTE

re

## ADDITIONAL RESPONSIBILITY FEE, ETC.

in PETITION of

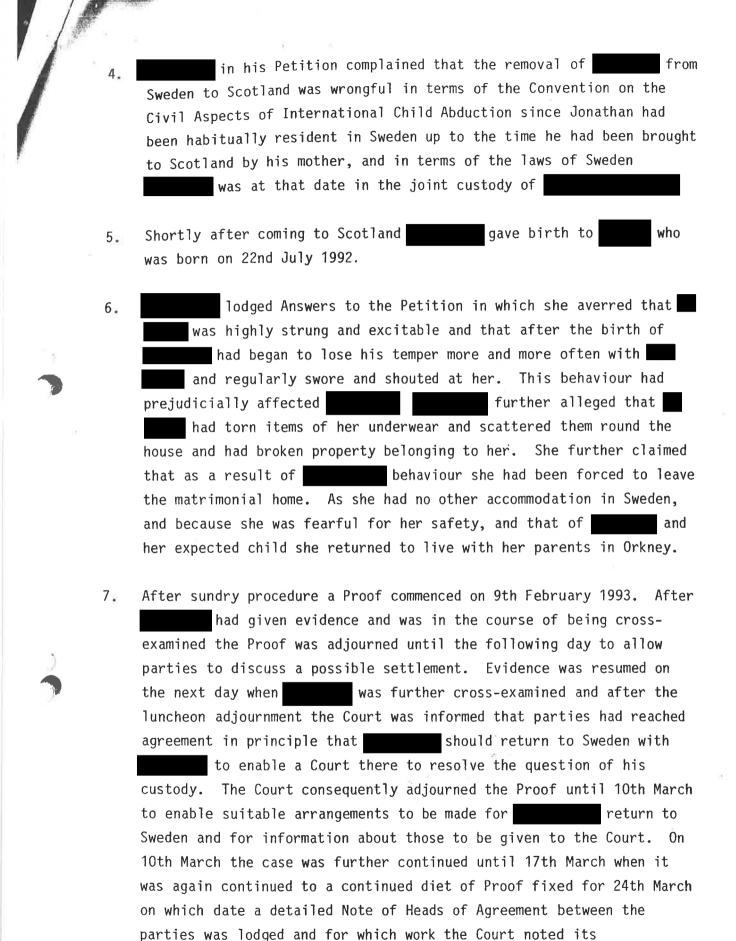
ΚA

(Assisted Person)

for

An Order under the Child Abduction and Custody Act 1985, Interdict and Interdict  $\underline{ad}$   $\underline{interim}$ 

EDIN	BURGH. 21st March 1994. The Auditor has been asked to fix the
amou	nt of the additional responsibility fee allowed to the solicitors for
the	Petitioner by Interlocutor of 3rd June 1993 in terms of
(sic	) Rule of Court 347(d), paragraphs (2) and (4).
1.	On 11th November 1992 , a resident in Kalmar, Sweden, raised
	a Petition in the Court of Session against his wife,
	for the return of his son, (otherwise known as
	two years, in terms of the Child Abduction and Custody Act 1985.
2.	As appears from the Petition were married at Orkney on
	16th February 1990 and that there are two children of the marriage,
	namely and born respectively on 19th November 1990
	and 22nd July 1992.
	<u></u>
3	On or about 26th May 1992 returned to Scotland bringing
	with her and shortly thereafter she raised proceedings in
	the Sheriff Court at Kirkwall for custody of him and interdict to
	prevent removing from Orkney and on that date
	was granted interim custody and interim interdict.





appreciation in pronouncing its Interlocutor on the merits. On 30th April the Court authorised the release of passport to enable her to return to Sweden with

- solicitors had to devote considerable time and attention to the gathering of information in support of Petition. This necessitated their having recourse to a Swedish solicitor to ascertain the relevant law in Sweden relating to custody, so that this information could be incorporated in the pleadings and in preparation for its presentation at the Proof. While the Swedish solicitor spoke English his comprehension of it was less good and this added to the Scottish solicitor's responsibility in making sure that there were no misunderstandings between them. They had also to make full enquiries into the allegations made against their client and the respective domestic circumstances of the parties. Both parties' solicitors were heavily involved in the negotiations which resulted in the Note of Heads of Agreement.
- 9. The Auditor has perused the detailed Account of Expenses and the Process and read the Opinion of the Lord Ordinary on the matter of finding liable in expenses in which he gave his reasons for not so doing in the particular circumstances of the case. In his Opinion the Lord Ordinary expressed his satisfaction that it was appropriate to award an additional fee to cover the responsibility undertaken by
- 10. The Auditor having heard representations by the solicitors and on behalf of the Scottish Legal Aid Board is satisfied that the solicitors over a period of some six months devoted considerable time and attention in a matter of some complexity and considerable urgency and fixes the amount of the additional responsibility fee payable to them at the sum of FOUR THOUSAND POUNDS (£4,000.00)

## 11. Outlays for "faxes"

In the course of the taxation the Auditor was asked to consider the charges which the solicitors had included in their Account as outlays



in respect of letters which they had sent to their client and his Swedish solicitor by facsimile transmission but for which there were no vouchers. It was submitted by the solicitors that these charges were reasonable having regard to the urgency with which proceedings under the Act have to be conducted. It was submitted on behalf of The Scottish Legal Aid Board that such charges were not payable having regard to the specific provisions of Regulation 6 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, the solicitors having charged detailed fees under Schedule 3 thereof. Regulation 6 states:

"... In Schedule 3, without prejudice to any other claims for outlays, a solicitor shall not be allowed outlays representing posts and incidents."

The Auditor having regard to the terms of that Regulation upheld the Board's objection.

AUDITOR OF THE COURT OF SESSION