

COSTS IN CRIMINAL CASES BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the law relating to the payment of costs in criminal cases. It implements the report of a committee which reported to the Minister of Justice on this question in September 1966 and which recommended that there should be a more liberal approach to the payment of costs to successful defendants in criminal cases.

Clause 1 relates to the Short Title and commencement of the Bill, which is to come into force on 1 April 1968.

Clause 2 is an interpretation clause.

Clause 3 provides that the Act shall bind the Crown.

Clause 4 re-enacts the provisions of the Crimes Act 1961 and the Summary Proceedings Act 1957 which relate to the payment by a convicted defendant of the costs of the prosecutor.

Clause 5 is largely new. It makes more generous provision for the award of costs to successful defendants by setting out a number of matters which the Court may take into consideration and by providing, in *subclause (5)*, that no defendant shall be refused costs by reason only of the fact that the proceedings were properly brought and continued.

Clause 6 is new. It makes provision for the award of costs to a defendant who is convicted if the Court is of the opinion that the prosecution involved a difficult or important point of law and that in the special circumstances of the case it is proper that the defendant should receive costs in respect of the arguing of that point of law.

Clause 7 is new. It deals with the payment of the defendant's costs when a Court has ordered that they be paid.

Where the prosecution was conducted by the Crown the costs shall be paid by the Secretary for Justice unless the liability to pay them has been specifically imposed on a Government Department or officer of the Crown because of the bad faith or negligent conduct of some person acting on the Crown's behalf in the matter.

Where the prosecution was not conducted by the Crown the costs shall be paid by the informant unless the liability to pay them has been imposed on some other person because of his bad faith or negligent conduct in the matter. Local authorities and public bodies will be responsible for the bad faith and negligent conduct of persons acting on their behalf.

Clause 8 provides that costs may be allowed on appeals made pursuant to any provision of the Crimes Act 1961 or the Summary Proceedings Act 1957. It is new in that—

- (a) There is at present no provision for the award of costs to either side on an appeal under the Crimes Act 1961 to the Court of Appeal:
- (b) It requires the Court to have regard to the considerations set out in *subclauses (2) and (3)* (which should result in a more liberal award of costs to successful defendants).

Subclause (6) allows costs to be awarded to an unsuccessful party to an appeal if the appeal has involved a difficult or important point of law.

Clause 9 re-enacts a provision of the Summary Proceedings Act 1957 dealing with costs when an appeal is abandoned. The provision is extended to cover appeals under the Crimes Act 1961.

Clause 10 deals with the enforcement of an order as to costs made on an appeal. It is largely a re-enactment of section 142 of the Summary Proceedings Act 1957 but it has been amended to cover the award of costs on an appeal under the Crimes Act 1961 and to make better provision in the case where the costs awarded must be paid by the Crown.

Clause 11 enables certain orders for the payment of costs made by the Supreme Court or the Court of Appeal to be filed in the Supreme Court and enforced as judgments.

Clause 12 requires the Court to give a party who wishes to make submissions or to call evidence relevant to the question of costs a reasonable opportunity to do so.

Clause 13 authorises the making of regulations. Regulations may prescribe scales of costs for the purposes of the Act and the heads of costs that may be awarded. Costs in excess of the amounts prescribed may be awarded only in cases of special difficulty, complexity, or importance.

Clause 14 makes consequential amendments and repeals.

Clause 15 provides that nothing in this Act shall limit or affect the powers of any Court under section 42 of the Criminal Justice Act 1954.

Clause 16 is a transitional provision. The Act is to apply to proceedings commenced on or after the date of its commencement and to proceedings commenced but not completed before that date.

Hon. Mr Hanan

COSTS IN CRIMINAL CASES

ANALYSIS

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A BILL INTITULED

An Act to amend the law relating to the payment of costs in criminal cases

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title and commencement—(1) This Act may be cited as the Costs in Criminal Cases Act 1967.

10 (2) This Act shall come into force on the first day of April, nineteen hundred and sixty-eight.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Costs” means any expenses properly incurred by a party in carrying out a prosecution, carrying on a defence, or in making or defending an appeal: 5

“Court” means any Court exercising any jurisdiction in criminal cases:

“Defendant” means any person charged with an offence.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Costs of the prosecutor—(1) Where any defendant is convicted by any Court of any offence, the Court may, subject to any regulations made under this Act, order him to pay such sum as it thinks just and reasonable towards the costs of the prosecution. 10

(2) Where on the arrest of that person any money was taken from him the Court may in its discretion order the whole or any part of the money to be applied to any such payment. 15

(3) Where the Court convicts any person and the informant or prosecutor has not prepaid any fees of Court, the Court may order the person convicted to pay the fees of Court. 20

(4) Any costs allowed under this section shall be specified in the conviction and may be recovered in the same manner as a fine.

Cf. 1957, No. 87, s. 72 (1), (4), (6); 1961, No. 43, s. 402 (1), (4) 25

5. Costs of successful defendant—(1) Where any defendant is acquitted of an offence or where the information charging him with an offence is dismissed or withdrawn, whether upon the merits or otherwise, or where he is discharged under section 179 of the Summary Proceedings Act 1957 the Court may, subject to any regulations made under this Act, order that he be paid such sum as it thinks just and reasonable towards the costs of his defence. 30

(2) Without limiting or affecting the Court’s discretion under subsection (1) of this section, it is hereby declared that the Court, in deciding whether to grant costs and the amount of any costs granted, may have regard to— 35

(a) Whether the prosecution acted in good faith in bringing and continuing the proceedings: 40

- (b) Whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant in the absence of contrary evidence:
 - 5 (c) Whether the prosecution took proper steps to investigate any matter coming into its hands which suggested that the defendant might not be guilty:
 - (d) Whether generally the investigation into the offence was conducted in a reasonable and proper manner:
 - 10 (e) Whether the evidence as a whole would support a finding of guilt but the information was dismissed on a technical point:
 - (f) Whether the information was dismissed because the defendant established (either by the evidence of witnesses called by him or by the cross-examination of witnesses for the prosecution or otherwise) that he was not guilty:
 - 15 (g) Whether the behaviour of the defendant in relation to the acts or omissions on which the charge was based and to the investigation and proceedings was such that a sum should be paid towards the costs of his defence.
- (3) In deciding whether to grant costs under this section the Court shall consider the facts of each case, and there shall
25 be no presumption for or against the granting of costs.
- (4) No defendant shall be granted costs under this section by reason only of the fact that he has been acquitted or discharged or that any information charging him with an offence has been dismissed or withdrawn.
- 30 (5) No defendant shall be refused costs under this section by reason only of the fact that the proceedings were properly brought and continued.

Cf. 1957, No. 87, s. 72 (2); 1961, No. 43, s. 402 (3)

6. Costs of convicted defendant—Where any defendant is
35 convicted but the Court is of the opinion that the prosecution involved a difficult or important point of law and that in the special circumstances of the case it is proper that he should receive costs in respect of the arguing of that point of law, the Court may, subject to any regulations made under this
40 Act, order that he be paid such sum as it considers just and reasonable towards those costs.

7. Payment of defendant's costs—(1) Subject to subsection (2) of this section, where any order is made under section 5 or section 6 of this Act the amount ordered to be paid to the defendant shall—

(a) If the prosecution was conducted by or on behalf of the Crown, be paid by the Secretary for Justice out of money appropriated by Parliament for the purpose and may be recovered as a debt due by the Crown: 5

(b) If the prosecution was not conducted by or on behalf of the Crown be paid by the informant and may be recovered from him as a debt, and any such order made by a Magistrate's Court shall be enforceable as if it were an order made under Part II of the Summary Proceedings Act 1957. 10 15

(2) Notwithstanding the provisions of subsection (1) of this section where a Court is of the opinion that any person has acted negligently or in bad faith in bringing, continuing, or conducting a prosecution it may, in any order made under section 5 of this Act, direct that the defendant's costs shall be paid by— 20

(a) The Government Department, officer of the Crown, local authority, or public body on whose behalf that person was acting; or 25

(b) If he was not so acting, by that person personally,— and in any such case costs shall not be paid under subsection (1) of this section but shall be paid by, and may be recovered as a debt from, the Government Department, officer of the Crown, local authority, public body, or person specified in the order. 30

8. Costs on appeals—(1) Where any appeal is made pursuant to any provision of the Summary Proceedings Act 1957 or the Crimes Act 1961 the Court which determines the appeal may, subject to any regulations made under this Act, make such order as to costs as it thinks fit. 35

(2) No defendant or convicted defendant shall be granted costs under this section by reason only of the fact that his appeal has been successful.

(3) No defendant or convicted defendant shall be refused costs under this section by reason only of the fact that the appeal was reasonably brought and continued by another party to the proceedings. 40

(4) No Magistrate or Justice who states a case in accordance with Part IV of the Summary Proceedings Act 1957 and no Judge who states a case shall be liable to costs by reason of the appeal against the determination.

5 (5) If the Court which determines an appeal is of opinion that the appeal includes any frivolous or vexatious matter, it may, if it thinks fit, irrespective of the result of the appeal, order that the whole or any part of the costs of any party to the proceedings in disputing the frivolous or vexatious
10 matter shall be paid by the party who raised the frivolous or vexatious matter.

(6) If the Court which determines an appeal is of opinion that the appeal involves a difficult or important point of law it may order that the costs of any party to the proceedings
15 shall be paid by any other party to the proceedings irrespective of the result of the appeal.

Cf. 1957, No. 87, s. 140; 1961, No. 43, s. 391

9. Party giving notice of appeal and not prosecuting may be ordered to pay costs—(1) In any case where notice of
20 appeal is given under any provision of the Summary Proceedings Act 1957 or the Crimes Act 1961 but the appeal is dismissed for non-prosecution or a certificate is given under section 107 of the Summary Proceedings Act 1957 that the appeal has not been prosecuted, the Court to which the appeal
25 is made may, subject to any regulations made under this Act, allow the respondent such costs as it thinks fit.

(2) No costs incurred after notice has been given by the appellants abandoning the appeal shall be allowed.

Cf. 1957, No. 87, s. 141

30 **10. Enforcement of order as to costs made on an appeal—**Where on the determination of any appeal either party is ordered to pay costs,—

(a) The order as to costs shall, in the case of an appeal
35 under Part IV of the Summary Proceedings Act 1957, be included in the certificate of the decision transmitted in accordance with section 134 of that Act, and, except where the party ordered to pay costs is the Crown, or a person acting for or on behalf of the Crown, be enforceable as if it were
40 a fine imposed by the Magistrate's Court:

- (b) The amount of the costs shall be recoverable from the Crown where the party ordered to pay costs is the Crown or a person acting for or on behalf of the Crown.

Cf. 1957, No. 87, s. 142

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11. Order for costs made by the Supreme Court or Court of Appeal—Any order made by the Supreme Court or the Court of Appeal, other than on an appeal under Part IV of the Summary Proceedings Act 1957, for the payment of costs by any person, other than the Crown, shall upon being filed in the Supreme Court have the effect of a judgment.

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12. Submissions and evidence—Before deciding whether to award costs under this Act the Court shall allow any party who wishes to make submissions or call evidence on the question of costs a reasonable opportunity to do so.

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13. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the heads of costs that may be ordered to be paid under this Act: 20
 - (b) Prescribing maximum scales of costs that may be ordered to be paid under this Act:
 - (c) Prescribing the manner in which costs for which the Crown is liable shall be claimed from or paid by the Crown: 25
 - (d) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Any regulations made under this Act may—
- (a) Apply scales of costs, fees, or expenses prescribed from time to time under other enactments: 30
 - (b) Delegate, or empower a Court to delegate, to any person or officer the power to determine the costs to be allowed under any particular head.
- (3) Where any maximum scale of costs is prescribed by regulation, the Court may nevertheless make an order for the payment of costs in excess of that scale if it is satisfied that, having regard to the special difficulty, complexity, or importance of the case, the payment of greater costs is desirable. 35

14. Consequential amendments and repeals—(1) Section 379A of the Crimes Act 1961 (as inserted by section 8 (1) of the Crimes Amendment Act 1966) is hereby amended by omitting from subsection (3) the words “and that Court
5 may also make such order as to the costs of the appeal as to that Court seems just”.

(2) The enactments specified in the Schedule to this Act are hereby repealed.

15. Saving—Nothing in this Act shall limit or affect the
10 powers of any Court under section 42 of the Criminal Justice Act 1954.

16. Transitional provision—This Act shall apply to proceedings commenced on or after the date of the commencement of this Act and to proceedings commenced but not
15 completed before that date.

SCHEDULE

Section 14 (2)

ENACTMENTS REPEALED

1957, No. 87—The Summary Proceedings Act 1957: Subsection (2) of section 36, sections 72, 140–143, and 179. (Reprinted 1966 Statutes, Vol. 4.)

1961, No. 43—The Crimes Act 1961: Sections 391 and 402.