



MONTSERRAT

## **CHAPTER 4.16**

# **COSTS IN CRIMINAL CASES ACT**

**Revised Edition**  
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **COSTS IN CRIMINAL CASES ACT**

Act 10 of 1983 ... in force 1 November 1983

Page  
3





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Page  
3



**CHAPTER 4.16**

**COSTS IN CRIMINAL CASES ACT**

**ARRANGEMENT OF SECTIONS**

SECTION

1. Short title
2. Interpretation
3. Costs out of public funds awarded by the Magistrate's Court
4. Costs between parties awarded by the Magistrate's Court
5. Costs out of public funds awarded by the High Court
6. Costs between parties awarded by the High Court
7. Costs out of public funds awarded by the Court of Appeal
8. Other costs out of public funds awarded by the Court of Appeal
9. Award of costs where an appeal is abandoned
10. Award of costs out of public funds when prosecution in Magistrate's Court withdrawn
11. Procedure for payment of costs from public funds



**CHAPTER 4.16**

**COSTS IN CRIMINAL CASES ACT**

*(Act 10 of 1983)*

AN ACT TO MAKE PROVISION FOR CERTAIN MATTERS RELATING TO COSTS IN CRIMINAL CASES.

**Commencement**

*[1 November 1983]*

**Short title**

1. This Act may be cited as the Costs in Criminal Cases Act.

**Interpretation**

2. In this Act, unless the context otherwise requires—

“**criminal cause or matter**” means any proceedings to which the provisions of the Criminal Procedure Code apply;

“**public funds**” means any money provided by an Appropriation Act to meet expenses payable under the provisions of this Act or, if no such express provision is made, any money provided under an Appropriation Act to meet expenses payable on account of judicial services.

**Costs out of public funds awarded by the Magistrate’s Court**

3. (1) Subject to the provisions of this section, the Magistrate’s Court, when dealing summarily with any criminal cause or matter under Part IV of the Criminal Procedure Code or when holding a preliminary inquiry under Part V of the Criminal Procedure Code, may order the payment out of public funds—

- (a) of the costs of the prosecution, in the case of a summary trial, upon the conviction of the accused;
- (b) of the costs of the defence—
  - (i) in the case of a summary trial, when dismissing the information; or
  - (ii) in the case of a preliminary inquiry, when determining not to commit the accused for trial.

(2) The costs payable out of public funds under subsection (1) shall be such sums as appear to the court to be reasonably sufficient to compensate the prosecutor or the accused, as the case may be, for the

expenses properly incurred by him in carrying on the prosecution or the defence, and to compensate any witness for the prosecution or the defence, as the case may be, for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Notwithstanding that the Magistrate's Court makes no order under this section for the payment out of public funds of the costs of the defence, it may order the payment out of those funds of such sums as appear to the Magistrate reasonably sufficient to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(4) References in subsections (2) and (3) to a witness include any person who is a witness to character only and in respect of whom the Magistrate certifies that the interests of justice required his attendance, but no sums shall be payable in pursuance of this section to or in respect of a witness who is a witness to character only and in respect of whom no such certificate is given.

(5) In this section, the expression "witness" means a person properly attending to give evidence, whether or not he gives evidence; and a person who, at the instance of the Court, is called or properly attends to give evidence may be made the subject of an order under subsection (3) whether or not he is a witness for the defence.

#### **Costs between parties awarded by the Magistrate's Court**

4. (1) On the summary trial of any criminal cause or matter, the Magistrate's Court, on dismissal of the information, shall have power to make such order as to costs to be paid by the prosecutor to the accused as it thinks just and reasonable.

(2) On the summary trial of a criminal cause or matter, the Magistrate's Court, on conviction, shall have power to make such order as to costs to be paid by the accused to the prosecutor as it thinks just and reasonable, but—

- (a) where under the conviction the Court orders payment of any sum as a fine, penalty, forfeiture or compensation, and the sum so ordered to be paid does not exceed \$2, the Court shall not order the accused to pay any costs under this section unless in any particular case it is satisfied that there are special circumstances which make such an order appropriate;
- (b) where the accused is under the age of sixteen years, the amount of any costs ordered to be paid under this subsection shall not exceed the amount of any fine ordered to be so paid.

(3) The Magistrate's Court, when making an order for the dismissal of an information or for a conviction, as the case may be, shall specify in the order the amount of any costs that it orders to be paid under subsection (1) or (2).



(4) Where, in the case of a preliminary inquiry, the Magistrate's Court determines not to commit the accused person for trial on the grounds that the evidence is not sufficient to put him on trial, and the Court is of the opinion that the charge was not made in good faith, the Court may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence.

(5) If the amount ordered to be paid under subsection (4) exceeds \$100, the prosecutor may appeal to the Court of Appeal within fourteen days of the decision of the Magistrate's Court; and no proceedings shall be taken upon the order until the time allowed for giving notice of appeal has elapsed or, if within that time notice of appeal is given, until the appeal is determined or ceases to be prosecuted.

### **Costs out of public funds awarded by the High Court**

5. (1) Subject to the provisions of this section, where a person is prosecuted or tried on indictment before the High Court, the Court may—

- (a) order the payment out of public funds of the costs of the prosecution;
- (b) if the accused is acquitted, order the payment out of public funds of the costs of the defence.

(2) The costs payable out of public funds under subsection (1) shall be such sums as appear to the High Court to be reasonably sufficient—

- (a) to compensate the prosecutor or the accused, as the case may be, for the expenses properly incurred by him in carrying on the proceedings; and
- (b) to compensate any witness for the prosecution or the defence, as the case may be, for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Notwithstanding that the Court makes no order under this section as respects the costs of the defence, it may order the payment out of public funds of such sums as appear to the Court to be reasonably sufficient to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(4) References in subsections (2) and (3) to a witness include any person who is a witness to character only and in respect of whom the interests of justice required his attendance, but no sums shall be payable in pursuance of an order made under this section to or in respect of any witness who is a witness to character only and in respect of whom no such certificate is given.

(5) In this section, the expression "**witness**" means a person properly attending to give evidence, whether or not he gives evidence; and a person who, at the instance of the Court, is called or properly attends to give evidence may be made the subject of an order under subsection (3), whether or not he is a witness for the defence.

(6) The costs of carrying on the defence that may be awarded to any person under this section may include the costs of carrying on the defence at the preliminary inquiry before the Magistrate's Court.

### **Costs between parties awarded by the High Court**

6. Where a person is prosecuted or tried on indictment before the High Court, the Court may—

- (a) if the accused is convicted, order him to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the Magistrate's Court;
- (b) if the accused is acquitted, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the Magistrate's Court.

### **Costs out of public funds awarded by the Court of Appeal**

7. (1) Without prejudice to the provisions of sections 180 and 181 of the Criminal Procedure Code (relating to costs payable by either party to an appeal from the Magistrate's Court), where the Court of Appeal allows an appeal from a decision of the High Court or the Magistrate's Court (as the case may be) against—

- (a) conviction or sentence; or
- (b) a verdict of insanity under subsection (2) of section 122 of the Criminal Procedure Code; or
- (c) a special verdict under section 156 of the Criminal Procedure Code,

the Court may order the payment out of public funds of the costs of the appellant.

(2) On determining an appeal or application in any criminal cause or matter the Court of Appeal may order the payment out of public funds of the costs of the prosecutor.

(3) The costs payable out of public funds under subsection (1) or (2) shall be such sums as appear to the Court of Appeal reasonably sufficient to compensate the party concerned for any expenses properly incurred by him in the appeal or application (including any proceedings preliminary or incidental thereto) or in any court below.

### **Other costs out of public funds awarded by the Court of Appeal**

8. (1) The Court of Appeal may order the payment out of public funds of such sums as appear to the Court to be reasonably sufficient to compensate a person properly attending to give evidence on an appeal in any criminal cause or matter, or in any proceedings preliminary or

incidental thereto, whether or not he gives evidence, for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(2) Where an appellant in a criminal cause or matter, who is not in custody, appears before the Court of Appeal either on the hearing of his appeal or in any proceeding preliminary or incidental thereto, the Court may direct that there be paid to him out of public funds the expenses of his appearance.

#### **Award of costs where an appeal is abandoned**

9. In any criminal cause or matter in which notice of appeal to the Court of Appeal from a decision of the Magistrate's Court or of the High Court is given, and the appellant fails to appear and prosecute the appeal or gives notice that he has abandoned his appeal, the Court of Appeal may award the respondent in the appeal such costs as appear to the Court to be reasonably sufficient to compensate the respondent, and any witness properly required to attend at the hearing of the appeal, for the expense, trouble or loss of time properly incurred in or incidental to the appeal up to the date of hearing of the appeal or the serving of notice of abandonment of the appeal.

#### **Award of costs when prosecution not proceeded with**

10. (1) Where proceedings are instituted under section 13 of the Criminal Procedure Code in respect of any offence, but the case is not proceeded with, either by summary trial or by a preliminary inquiry, the Magistrate's Court may order the payment out of public funds of—

- (a) the costs properly incurred in preparing a defence to the offence charged; and
- (b) such sums as appear reasonably sufficient to compensate any person attending to give evidence for the defence for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(2) Where proceedings have been instituted in circumstances such as are mentioned in subsection (1), if no order is made under that subsection for the payment of costs out of public funds, the Magistrate's Court may make an order for the payment by the prosecutor to the accused of such costs as appear to the Court to be reasonable, and shall specify in the order the amount of costs to be paid.

#### **Procedure for payment of costs from public funds**

11. (1) When an order is made under this Act for the payment of costs out of public funds the amount due to be paid to any person (except where a specific amount is ordered to be paid) shall be ascertained as soon as practicable by the proper officer of the Court, who shall make and sign a certificate of the amount so payable which certificate shall be the authority for the payment to be made by the Accountant General.

(2) Any person who is dissatisfied with the amount of any costs authorised for payment to him out of public funds may require the proper officer of the court concerned to give his reasons in writing for his decision as to the amount payable, and, within fourteen days of the receipt of such reasons, the person aggrieved may appeal to the Court of Appeal against the decision of the proper officer.

(3) For the purposes of this section **“the proper officer of the court”** means—

- (a) in the case of the Magistrate’s Court, the Clerk of the Court;
  - (b) in the case of the High Court or the Court of Appeal, the Registrar or any other officer appointed for the purpose by the Chief Justice.
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Printed by the Law Revision Unit of the Government of Montserrat  
Authorised Printers for this revised edition