

APPENDIX

NOTE OF LEGAL COSTS ARISING OUT OF EXTRADITION AND FUGITIVE OFFENDERS PROCEEDINGS

Particulars of legislation, case-law or State-practice regarding the legal costs of extradition and fugitive offenders proceedings in certain Commonwealth countries.

AUSTRALIA

The Australian practice is to offer the services of the Director of Public Prosecutions to represent requesting countries in extradition proceedings, including any proceedings by way of appeal or review. In consequence, costs and disbursements incurred are borne by the Australian Government. Normally an officer of the Office of the Director of Public Prosecutions in the State or Territory in which the application is made appears for the requesting country. Alternatively, the Director of Public Prosecutions may brief counsel if that course appears desirable. This practice is largely based on reciprocity of treatment and is liable to be varied in the event of a particular country being unwilling to make similar arrangements for, or to meet the costs of, legal representations when Australia makes a request.

BARBADOS

Although legislative provisions regarding extradition make no mention of legal costs, State-practice in extradition proceedings is described as follows:

"The fugitive offender is brought to trial on a magistrate's warrant for which no fee is required. But expenses are required for briefing and obtaining the services of an Attorney-at-law in connection with the trial. Current practice requires the requesting State to meet these expenses. In an effort to ensure payment, the requesting State is required to give an undertaking at the time of requisition.

"In the event there are habeas corpus proceedings the requesting State may also be required to pay the necessary court fees in accordance with Order 54 Rule 2 of the Supreme Court Rules. But if there is any existing treaty arrangement providing for exemption of fees in these matters, this will be facilitated by Order 54, Rule 3.

There are no concrete cases arising out of the definition."

LESOTHO

Since the Act of 1967, Lesotho entertained one extradition request made by Swaziland in 1972. A problem arose after surrender and trial – the fugitive was found guilty in Swaziland but was given a suspended sentence and permitted to return to Lesotho – as to who should bear the costs of repatriation. The problem was solved through the good offices of the British High Commission and the Bail money standing in the name of the fugitive in Lesotho.

Another question posed is whether any procedure exists to enforce the suspended sentence if the condition of release should be breached?

NEW ZEALAND

According to New Zealand the Extradition Act makes no mention of legal costs, therefore the question of costs would be disposed of in accordance with the terms of the relevant treaty. The only treaty concluded by New Zealand in this respect is with the U.S.A. Concluded in 1970 the Treaty provides that expenses relating to transportation of the person sought shall be paid by the requesting Party and that appropriate legal officers of the country in which extradition proceedings take place shall, by all legal means within their power assist the officers of the requesting Party before the respective judges and magistrates.

NIGERIA

Under section 1(1) of the Extradition Act, 1966, as amended, Nigeria has entered into agreements on Extradition with the Republic of Liberia and the U.S.A.

Article 16 of the Extradition Treaty with Liberia provides that:

"All expenses connected with Extradition shall be borne by the demanding State."

Article 13 of the Treaty with U.S.A. also provides that:

"All expenses connected with the Extradition shall be borne by the High Contracting Party making the application."

TONGA

As regards legal costs, Tonga expressed its inability to comment until bilateral treaties were concluded between Tonga and other countries. However, attention has been drawn to the procedure for arrest and committal in the Extradition Act being similar to criminal prosecutions in which the costs involved are borne by the Government of Tonga with exception of costs for the repatriation of the offender which is expected to be borne by the requesting State.

UNITED KINGDOM

Provision has been made in extradition treaties or separate administrative arrangements, concluded by the United Kingdom with other Western European countries and the United States, for the requested Party to make all necessary arrangements for, and meet the cost of, the legal representation of the requesting Party in any proceedings arising out of a request for extradition.

Arrangements have been made between England and Wales and a number of Commonwealth countries (Australia, Barbados, Canada, Cyprus, Ghana, Gibraltar, Hong Kong, Kenya, Malta, Nauru, New Zealand and Swaziland) for the requested

State to arrange and meet the costs of legal representation on behalf of the requesting State. Similar arrangements have not been necessary for Scotland where the requesting State is represented without charge by the Lord Advocate (the Chief Public Prosecutor) or on his behalf by his local prosecutors, the Procurators Fiscal.

Since 1969 non-statutory arrangements have existed with the Republic of Ireland whereby the Attorney-General of the Republic of Ireland represents United Kingdom interests in any extradition proceedings in the Republic and the Director of Public Prosecutions undertakes a reciprocal service in any habeas corpus proceedings in England and Wales under the Backing of Warrants (Republic of Ireland) Act, 1965. Similar reciprocal services in Scotland are offered and undertaken by the Lord Advocate.