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Court File No: 23298

IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)

IN THE MATTER OF the custody and apprehension of Sheena B., an infant

BETWEEN:

**RICHARD B. AND BEENA B.**

Appellants (Respondents)

- and -

**CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO**

Respondent (Applicant)

- and -

**THE OFFICIAL GUARDIAN for SHEENA B., an infant**

Respondent (Intervener)

- and -

**THE ATTORNEY GENERAL OF ONTARIO**

Respondent/Cross-Appellant (Intervener)

**THE ATTORNEYS GENERAL OF CANADA, NEWFOUNDLAND and QUEBEC**

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**PART I- STATEMENT OF FACTS**

1. The Attorney General of Canada intervened in this Court with respect to the constitutional questions and then sought and received leave to intervene on the issue of costs in the cross-appeal. Having reviewed the facta filed by the Appellant, Respondents and other Interveners in this matter, the Attorney General of Canada cannot assist the Court further with respect to the constitutional questions, but agrees with the position stated by the Attorney General of Ontario. The following submissions are, therefore, limited to the issue on the cross-appeal.

2. The Attorney General of Canada relies on the facts stated in the factum on the cross-appeal of the Attorney General of Ontario.

**PART II- ISSUES**

3. Attorneys General, as interveners, ought to be considered by the courts in the same manner as other interveners, with respect to the awarding of costs.

4. The Court should not award costs *against* an Attorney General as intervener supporting the validity of legislation in a constitutional challenge, where the legislation is determined to be valid.

### **PART III - ARGUMENT**

5. It is submitted, that the Courts below erred in failing to consider the capacity in which the Attorney General came before the District Court and in failing to apply the same considerations to the Attorney General, as are applied in law to any other intervener acting in the public interest.

6. Most substantive and procedural bars and privileges enuring to the benefit of the Crown in litigation have been removed, so as to place the Crown and the ordinary litigant on the same footing before the courts. The Attorneys General, as representatives of the Crown should sustain both the benefit and burden of these developments.

Re Imperial Canadian Trust Co.; Attorney General for Manitoba v. Attorney General for Canada [1942] 2 D.L.R. 96 (Man. C.A.)

The King v. Thibodeau Express [1948] O.W.N. 207 (C.A.)

Ferguson v. Attorney General of Canada [1971] 2 W.W.R. 637 (B.C.S.C.)

Crown Liability and Proceedings Act, R.S.C. 1990, c.C-50, s.28, as amended.

Proceedings Against the Crown Act, R.S.O. 1990, c.P.27, s.13.

7. It is submitted that a party which is granted intervener status in the public interest in ordinary matters is, generally, neither entitled to nor liable for the costs in the matter. The basis for this general rule is that an intervenor who has assisted the Court, as intended, should not have to bear the cost of providing such assistance.

Metropolitan Stores (MTS) Ltd. v. Manitoba Food and Commercial Workers, Local 832 (1990), 70 Man. R. (2d) 59 (Q.B.); aff'd on other grounds [1990] 1 W.W.R. 373 (Man.C.A.), leave to appeal to S.C.C. refused.

Clelland v. Godon and Conway (1962), 38 W.W.R. 372 (Man. Q.B.) at 376.

Hines v. Nova Scotia (1990), 78 D.L.R. (4th) 162 (N.S.S.C.) at 169.

8. Although statute and common law have blurred the historically distinct roles of an added party intervener and an intervener as a friend of the Court, the *primary* purpose of the latter remains to assist the Court. As a result, the intervener as friend of the Court may have curtailed rights, but will benefit from its non-party status in such ways as resistance to cost awards.

Muldoon P.R. The Law of Intervention, (Canada Law Book, 1989), pp. 5 and 153.

9. The right of the federal and Ontario Attorneys General to intervene in constitutional issues in Ontario courts includes the right to adduce evidence and make

submissions to the court in respect of the constitutional question. However, these constitutional interveners are not parties to the litigation, but are deemed to be parties solely for the purpose of any appeal in respect of the constitutional question.

Courts of Justice Act, R.S.O. 1990 c. C.43, s. 109(5)

10. It is submitted that where a party intervenes in the public interest but is seriously affected by the action, costs may be awarded to that party, if successful. However, only where a party intervenes for the protection of its own interest, or purports to act in the public interest but does not act entirely in the public interest, may costs be awarded against that party.

Lavigne v. OPSEU [1991] 2 S.C.R. 211

John Doe v. Ontario (Information Commissioner) (1992), 7 C.P.C. (3d) 33 (Ont. Div. Ct.) at 36-38

Canada (Minister of Finance) v. Finlay [1993] 1 S.C.R. 1080.

11. The role given to the Attorneys General as interveners in constitutional challenges to legislation is to act in the public interest and not for the direct benefit of the offices of the Attorneys General. In some cases, without the intervention of the Attorneys General the courts would have no assistance on one side of a constitutional issue.

Re Lavigne and OPSEU *supra*, at (1987), 60 O.R.(2d) 486 (C.A.) at 528-29.

Ontario Hydro v. O.L.R.B. (1991), 1 O.R. 737 (C.A.) at 779, per Galligan, J.; *aff'd* on other grounds [1993] 3 S.C.R. 327

12. It is submitted that as other provinces have statutory provisions which are similar to s.109 of the Ontario Courts of Justice Act, the result in this case will likely have an effect on the way the federal and provincial Attorneys General will conduct their business.

13. This Court has indicated that it is desirable for the Attorneys General to participate actively in litigation to adduce evidence regarding the legislation which is the subject of a Charter challenge. This role is viewed as important enough to warrant the appointment of an amicus curiae, where an Attorney General declines to participate in this manner.

Miron v. Trudel, (appeal adjourned October 14, 1993; S.C.C. file no. 22744)

14. It is submitted that this Court has consistently applied the general rule regarding costs in cases where the Attorneys General have participated as interveners in constitutional litigation.

Société des Acadiens du Nouveau - Brunswick Inc. v. Association of Parents for Fairness in Education [1986] 1 S.C.R. 549.

MacDonald v. City of Montreal [1986] 1 S.C.R. 460.

Bell Canada v. Québec (C.S.S.T.) [1988] 1 S.C.R. 749.

15. In the case of Schachter v. The Queen, cited by the Appellants as an exception to the general rule, the Attorney General was a full party to the action and was not an intervener. Further, it should be noted that this Court granted leave to appeal in that case on the condition that the Appellant would pay the costs in any event, since the validity of the statute was no longer an issue in the appeal.

16. It is submitted, moreover, that the Courts below erred by taking into account inappropriate factors in awarding trial costs *against* an Attorney General intervening in a constitutional matter where the impugned legislation is determined to be valid.

17. It is submitted that the Courts below erred in considering the province-wide or national importance of this case as a factor in awarding costs against an intervening Attorney General in Charter litigation. Where the Attorneys General decide that to intervene at the lower court levels on a constitutional issue, it is ordinarily in relation to an issue of province-wide or national importance. If this factor is relevant in similar

litigation, the Attorneys General will routinely be expected to pay the entire costs of litigation when they intervene.

Case on Appeal, Vol. VIII, p. 1289 (Reasons for Judgment, Ontario Court of Appeal)

18. It is submitted that the Courts below erred in considering the fact that an "act of the state" triggered the constitutional challenge. Where, as here, the triggering act is carried out pursuant to and entirely in accordance with the impugned statute, this factor ought to have little or no weight in the award of costs, as the essence of the constitutional issue in such a case remains the validity of the challenged legislation, irrespective of the triggering act.

Case on Appeal, Vol.VII, p.1288 (Reasons for Judgment, Ontario Court of Appeal)

19. The Court of Appeal highlighted the errors in the approach to costs taken by the learned District Court judge, by making no award of costs of the appeal. It is submitted that the Court of Appeal was correct in its approach to its order of costs of the appeal, which followed the general rule, notwithstanding that the matter was still of national importance and the issues remained the same at both levels.

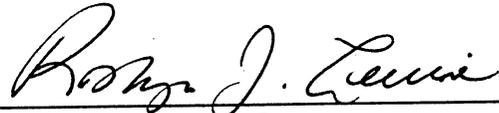
Case on Appeal, Vol.VII, p.1290 (Reasons for Judgment, Ontario Court of Appeal)

Ontario Hydro v. O.L.R.B., supra.

**PART IV - ORDER SOUGHT**

20. The Attorney General of Canada submits that the appeal should be dismissed and the cross appeal should be allowed.

All of which is respectfully submitted.

A handwritten signature in cursive script, reading "Roslyn J. Levine". The signature is written in black ink and is positioned above a horizontal line.

Roslyn J. Levine, Q.C.  
Of Counsel for the Intervener  
the Attorney General of Canada.

**PART V**  
**TABLE OF AUTHORITIES**

**TEXT**

1. Muldoon P.R. The Law of Intervention, (Canada Law Book, 1989)

**CASES**

2. Bell Canada v. Québec (C.S.S.T.) [1988] 1 S.C.R. 749.
3. Clelland v. Godon and Conway (1962), 38 W.W.R. (Man. Q.B.) 372.
4. John Doe v. Ontario (Information Commissioner) (1992), 7 C.P.C. (3d) (Ont. Div.Ct.) 33.
5. Ferguson v. Attorney General of Canada [1971] 2 W.W.R. 637 (B.C.S.C.)
6. Hines v. Nova Scotia (1990), 78 D.L.R. (4th) 162 (N.S.S.C.)
7. MacDonald v. City of Montreal [1986] 1 S.C.R. 460.
8. Metropolitan Stores (MTS) Ltd. v. Manitoba Food and Commercial Workers, Local 832 (1990), 70 Man. R. (2d) 59 (Q.B.); [1990] 1 W.W.R. 373 (Man.C.A.)
9. Miron v. Trudel, (S.C.C. file no.22744)
10. Ontario Hydro v. O.L.R.B. (1991), 1 O.R. 737 at 779, per Galligan, J.; aff'd on other grounds [1993] 3 S.C.R. 327.
11. Re Imperial Canadian Trust Co.; Attorney General for Manitoba v. Attorney General for Canada [1942] 2 D.L.R. 96 (Man. C.A.)
12. Re Lavigne and OPSEU (1987), 60 O.R. (2d) 486; aff'd 67 O.R. (2d) 536; aff'd [1991] 2 S.C.R. 211.
13. Société des Acadiens du Nouveau - Brunswick Inc. v. Association of Parents for Fairness in Education [1986] 1 S.C.R. 549.
14. The King v. Thibodeau Express [1948] O.W.N. 207 (C.A.)

**APPENDIX "A" STATUTES**

- (i) Crown Liability and Proceedings Act, R.S.C. 1990, c.C-50, s.28, as amended.
- (ii) Ontario Courts of Justice Act, R.S.O. 1990 c. C-43, s. 109(5)
- (iii) Proceedings Against the Crown Act, R.S.O. 1990, c.P.27, s.13.

1990

No judgment by default without leave

25. In any proceedings against the Crown, judgment shall not be entered against the Crown in default of appearance or pleading without leave of the court obtained on an application at least fourteen clear days notice of which has been given to the Deputy Attorney General of Canada.

25. Dans les poursuites exercées contre lui, l'État ne peut faire l'objet d'un jugement par défaut de comparaître ou de plaider qu'avec l'autorisation du tribunal obtenue sur demande, un préavis d'au moins quatorze jours francs devant être donné de celle-ci au sous-procureur général du Canada.

Nécessité d'une autorisation pour les jugements par défaut

No jury trials

26. In any proceedings against the Crown, trial shall be without a jury.

26. Les procès instruits contre l'État ont lieu sans jury.

Procès sans jury

Rules of court

27. Except as otherwise provided by this Act or the regulations, the rules of practice and procedure of the court in which proceedings are taken apply in those proceedings.

27. Sauf disposition contraire de la présente loi ou de ses règlements, les instances suivent les règles de pratique et de procédure du tribunal saisi.

Règles de pratique

Costs

Costs

28. (1) In any proceedings to which the Crown is a party, costs may be awarded to or against the Crown.

28. (1) Dans toute poursuite à laquelle l'État est partie, les dépens peuvent aussi bien lui être adjugés que mis à sa charge.

Adjudication

Costs awarded to Crown

(2) Costs awarded to the Crown shall not be disallowed or reduced on taxation by reason only that the solicitor or counsel who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing those services in the discharge of the officer's duty and was remunerated therefor by a salary, or for that or any other reason was not entitled to recover any costs from the Crown in respect of the services so rendered.

(2) Les dépens adjugés à l'État ne peuvent être refusés ni réduits lors de la taxation au seul motif que l'avocat pour les services duquel ils sont justifiés ou réclamés était un fonctionnaire salarié de l'État, et à ce titre rémunéré pour les services qu'il fournissait dans le cadre de ses fonctions, ou bien n'était pas, de par son statut ou pour toute autre raison, admis à prélever les dépens sur l'État pour les services ainsi rendus.

Dépens adjugés à l'État

Execution of Judgment

No execution against Crown

29. No execution shall issue on a judgment against the Crown.

29. Les jugements rendus contre l'État ne sont pas susceptibles d'exécution par voie de contrainte.

Non-exécution contre l'État

Payment of judgment

30. (1) On receipt of a certificate of judgment against the Crown issued pursuant to the regulations, the Minister of Finance shall authorize the payment out of the Consolidated Revenue Fund of any money awarded by the judgment to any person against the Crown.

30. (1) Sur réception d'un certificat réglementaire, le ministre des Finances autorise le paiement, sur le Trésor, de toute somme d'argent accordée à un particulier, par jugement contre l'État.

Paiement en exécution d'un jugement

Crown costs to be paid to Receiver General

(2) Any money or costs awarded to the Crown in any proceedings shall be paid to the Receiver General.

(2) Les sommes d'argent ou les dépens adjugés à l'État dans toutes procédures sont versés au receveur général.

Versement au receveur général des dépens dus à l'État

978 Chap. C.43

COURTS OF JUSTICE

Composition of jury

(4) Where a proceeding is tried with a jury, the jury shall be composed of six persons selected in accordance with the *Juries Act*.

(4) Si une instance a lieu devant jury, ce dernier se compose de six personnes choisies conformément à la *Loi sur les jurys*.

Composition du jury

Verdicts or questions

(5) Where a proceeding is tried with a jury,

(5) Dans une instance devant jury :

Verdicts ou questions

(a) the judge may require the jury to give a general verdict or to answer specific questions, subject to section 15 of the *Libel and Slander Act*; and

a) le juge peut exiger que le jury rende un verdict général ou réponde à des questions particulières, sous réserve de l'article 15 de la *Loi sur la diffamation*;

(b) judgment may be entered in accordance with the verdict or the answers to the questions.

b) un jugement peut être rendu conformément au verdict ou aux réponses aux questions.

Idem

(6) It is sufficient if five of the jurors agree on the verdict or the answer to a question, and where more than one question is submitted, it is not necessary that the same five jurors agree to every answer.

(6) Il suffit que cinq des jurés s'entendent sur le verdict ou sur la réponse à une question. S'il y a plusieurs questions, il n'est pas nécessaire que les cinq mêmes jurés s'entendent sur chaque réponse.

Idem

Discharge of juror at trial

(7) The judge presiding at a trial may discharge a juror on the ground of illness, hardship, partiality or other sufficient cause.

(7) Le juge qui préside un procès peut libérer un juré en raison de maladie, de préjudice grave, de partialité ou pour toute autre raison suffisante.

Libération d'un juré

Continuation with five jurors

(8) Where a juror dies or is discharged, the judge may direct that the trial proceed with five jurors, in which case the verdict or answers to questions must be unanimous.

(8) Si un juré décède ou est libéré, le juge peut ordonner que le procès continue en présence de cinq jurés, auquel cas le verdict ou les réponses doivent être unanimes.

Procès continué avec cinq jurés

Specifying negligent acts

(9) Where a proceeding to which subsection 193 (1) of the *Highway Traffic Act* applies is tried with a jury, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the proceeding is brought.

(9) Si une instance à laquelle s'applique le paragraphe 193 (1) du *Code de la route* est instruite devant jury, le juge peut ordonner au jury de préciser les omissions ou les actes de négligence qui ont entraîné les dommages ou les lésions faisant l'objet de l'instance.

Précision des actes de négligence

Malicious prosecution

(10) In an action for malicious prosecution, the trier of fact shall determine whether or not there was reasonable and probable cause for instituting the prosecution. 1984, c. 11, s. 121 (3-10).

(10) Dans une action pour poursuite abusive, il appartient au juge des faits de décider s'il existait ou non des motifs raisonnables et probables justifiant l'introduction de l'action. 1984, chap. 11, par. 121 (3) à (10).

Poursuite abusive

Constitutional questions

**109.**—(1) Where the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature or of a regulation or by-law made thereunder is in question, the Act, regulation or by-law shall not be adjudged to be invalid or inapplicable unless notice has been served on the Attorney General of Canada and the Attorney General of Ontario in accordance with subsection (2). 1984, c. 11, s. 122 (1).

**109** (1) Une loi du Parlement du Canada ou de la Législature, ou un règlement ou règlement municipal pris sous leur régime, dont la constitutionnalité ou l'applicabilité constitutionnelle est en cause, ne peuvent être déclarés invalides ou inapplicables, à moins qu'un avis n'ait été signifié au procureur général du Canada et au procureur général de l'Ontario conformément au paragraphe (2). 1984, chap. 11, par. 122 (1).

Questions constitutionnelles

Form and time of notice

(2) The notice shall be in the form provided for by the rules of court and, unless the court orders otherwise, shall be served at least ten days before the day on which the question is to be argued. 1984, c. 11, s. 122 (2); 1989, c. 55, s. 21.

(2) L'avis est rédigé selon la formule prévue aux règles de pratique et, à moins que le tribunal n'en ordonne autrement, est signifié au moins dix jours avant la date à laquelle la question doit être débattue. 1984, chap. 11, par. 122 (2); 1989, chap. 55, art. 21.

Formule et délai de l'avis

Notice of appeal

(3) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1),

(3) Si le procureur général du Canada et le procureur général de l'Ontario ont droit à l'avis prévu au paragraphe (1), ils ont droit à

Avis d'appel

Right of Attorneys General to be heard	they are entitled to notice of any appeal in respect of the constitutional question.	un avis d'appel touchant la question constitutionnelle.	Droit des procureurs généraux d'être entendus
Right of Attorneys General to appeal	(4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.	(4) Si le procureur général du Canada ou le procureur général de l'Ontario ont droit à un avis en vertu du présent article, ils ont le droit de présenter une preuve et des observations au tribunal à l'égard de la question constitutionnelle.	Droit d'appel
Proceeding in wrong forum	(5) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceedings for the purpose of any appeal in respect of the constitutional question. 1984, c. 11, s. 122 (3-5).	(5) Si le procureur général du Canada ou le procureur général de l'Ontario présentent des observations aux termes du paragraphe (4), ils sont réputés partie à l'instance aux fins d'un appel portant sur la question constitutionnelle. 1984, chap. 11, par. 122 (3) à (5).	Droit d'appel
Continuation of proceeding	<b>110.</b> —(1) Where a proceeding or a step in a proceeding is brought or taken before the wrong court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.	<b>110</b> (1) L'instance qui est introduite, ou la mesure qui est prise dans une instance, devant un tribunal, un juge ou un officier de justice qui n'a pas compétence, peut être renvoyée ou déferée au tribunal, au juge ou à l'officier qui a compétence.	Incompétence du tribunal
Set off	(2) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court. 1984, c. 11, s. 123.	(2) L'instance renvoyée à un autre tribunal aux termes du paragraphe (1) est intitulée au greffe du tribunal auquel elle est renvoyée et continuée comme si elle avait été introduite devant ce tribunal. 1984, chap. 11, art. 123.	Continuation de l'instance
Idem	<b>111.</b> —(1) In an action for payment of a debt, the defendant may, by way of defence, claim the right to set off against the plaintiff's claim a debt owed by the plaintiff to the defendant. 1984, c. 11, s. 124 (1).	<b>111</b> (1) Le défendeur dans une action en paiement d'une créance peut opposer au demandeur le droit de compensation d'une créance qu'il a sur le demandeur. 1984, chap. 11, par. 124 (1).	Compensation
Judgment for defendant	(2) Mutual debts may be set off against each other even if they are of a different nature. 1989, c. 55, s. 22.	(2) La compensation peut s'opérer entre deux dettes réciproques, même si elles ne sont pas de même nature. 1989, chap. 55, art. 22.	Idem
Investigation and report of Official Guardian	(3) Where, on a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance. 1984, c. 11, s. 124 (3).	(3) Le défendeur qui oppose le droit de compensation, si le montant que lui doit le demandeur est supérieur au montant qu'il doit à celui-ci, peut obtenir jugement pour la différence. 1984, chap. 11, par. 124 (3).	Jugement en faveur du défendeur
Idem	<b>112.</b> —(1) In a proceeding under the <i>Divorce Act</i> (Canada) or the <i>Children's Law Reform Act</i> in which a question concerning custody of or access to a child is before the court, the Official Guardian may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.	<b>112</b> (1) Lorsqu'au cours d'une instance intentée aux termes de la <i>Loi sur le divorce</i> (Canada) ou de la <i>Loi portant réforme du droit de l'enfance</i> , le tribunal est saisi d'une question qui concerne la garde d'un enfant ou le droit de visite, le tuteur public peut faire procéder à une enquête, faire rapport et faire des recommandations au tribunal sur tout ce qui concerne la garde, les aliments ou l'éducation de l'enfant ou le droit de visite.	Enquête et rapport du tuteur public
Report as evidence	(2) The Official Guardian may act under subsection (1) on his or her own initiative, at the request of a court or at the request of any person. 1987, c. 1, s. 7 (1).	(2) Le tuteur public peut agir en vertu du paragraphe (1) de sa propre initiative ou à la demande d'un tribunal ou d'une personne. 1987, chap. 1, par. 7 (1).	Idem
	(3) An affidavit of the person making the investigation, verifying the report as to facts that are within the person's knowledge and setting out the source of the person's infor-	(3) L'affidavit de l'enquêteur attestant la véracité des faits du rapport dont il a une connaissance directe et donnant la source de ses renseignements et les motifs de sa convic-	Rapport en preuve

same manner as a person may obtain relief by way of such a proceeding, or be made a party thereto, even though the application for relief is made by a sheriff or bailiff or other like officer, and the provisions relating to interpleader proceedings in the rules of court, subject to this Act, shall have effect accordingly. R.S.O. 1980, c. 393, s. 16.

Rights of parties and authority of court

**13.** Except as otherwise provided in this Act, in a proceeding against the Crown, the rights of the parties are as nearly as possible the same as in a suit between persons, and the court may make any order that it may make in a proceeding between persons, and may otherwise give such appropriate relief as the case may require. R.S.O. 1980, c. 393, s. 17.

No injunction or specific performance against Crown

**14.**—(1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1980, c. 393, s. 18.

Order for recovery of property not to be made against Crown

**15.** In a proceeding against the Crown in which the recovery of real or personal property is claimed, the court shall not make an order for its recovery or delivery but in lieu thereof may make an order declaring that the claimant is entitled, as against the Crown, to the property claimed or to the possession thereof. R.S.O. 1980, c. 393, s. 19.

Restriction on set-off and counterclaim

**16.**—(1) A person is not entitled to claim a set-off or to make a counterclaim in a proceeding by the Crown for the recovery of taxes, duties or penalties and is not entitled, in a proceeding of any other nature by the Crown, to claim a set-off or make a counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

Idem

(2) Subject to subsection (1), a person may claim a set-off or make a counterclaim in a proceeding by the Crown if the subject-matter of the set-off or the counterclaim relates to a matter under the administration

tance de la même manière qu'une personne peut obtenir un redressement par cette instance ou y être mise en cause même si la requête en redressement est présentée par un shérif, un huissier ou un autre officier de justice. Les règles de pratique qui se rapportent à l'instance d'*interpleader* s'appliquent sous réserve des dispositions de la présente loi. L.R.O. 1980, chap. 393, art. 16.

Droit des parties et autorité du tribunal

**13** Sauf disposition contraire de la présente loi, les droits des parties, dans une instance, contre la Couronne sont, dans la mesure du possible, les mêmes que dans une action entre personnes. Le tribunal peut rendre les mêmes ordonnances qu'il peut rendre dans une instance entre personnes et il peut accorder tout redressement qui convient en l'espèce. L.R.O. 1980, chap. 393, art. 17.

Aucune injonction ni exécution en nature contre la Couronne

**14** (1) Lorsqu'il est demandé, dans une instance contre la Couronne, un redressement qui, dans une instance entre personnes, pourrait être obtenu au moyen d'une injonction ou par voie d'exécution intégrale, le tribunal ne doit pas accorder une injonction ni rendre une ordonnance d'exécution intégrale contre la Couronne, mais il peut, à la place, rendre une ordonnance déclaratoire des droits des parties.

Injonctions ou ordonnances contre les préposés de la Couronne

(2) Le tribunal ne doit pas accorder une injonction ni rendre contre un préposé de la Couronne une ordonnance qui aurait pour effet d'accorder à l'encontre de la Couronne un redressement qui n'aurait pu être accordé dans une instance contre cette dernière; le tribunal peut toutefois, à la place, rendre une ordonnance déclaratoire des droits des parties. L.R.O. 1980, chap. 393, art. 18.

Aucune ordonnance de recouvrement d'un bien contre la Couronne

**15** Dans une instance contre la Couronne ayant pour objet le recouvrement de biens meubles ou immeubles, le tribunal ne doit pas rendre une ordonnance de recouvrement ou de remise du bien, mais il peut, à la place, rendre une ordonnance déclarant que le demandeur a droit au bien ou à la possession du bien à l'encontre de la Couronne. L.R.O. 1980, chap. 393, art. 19.

Demandes en compensation et demandes reconventionnelles

**16** (1) Nul n'a le droit de présenter une demande en compensation ou une demande reconventionnelle dans une instance introduite par la Couronne pour recouvrer des impôts, des droits ou des amendes, ni, dans une instance de toute autre nature introduite par la Couronne, de présenter une demande en compensation ou une demande reconventionnelle fondée sur un droit ou une demande de remboursement d'impôts, de droits ou d'amendes.

Idem

(2) Sous réserve du paragraphe (1), une personne peut présenter une demande en compensation ou une demande reconventionnelle dans une instance introduite par la Couronne, si l'objet de ces demandes se rap-