

LETTER TO EDITOR

18 King Street East,
Toronto 210, Ontario.

August 19th, 1969.

Dear Sir: Re: *Frivolous and Vexatious Proceedings*, Vol. 3, No. 2, 87.

We have no knowledge or record of any civil action instituted by the Attorney General for Ontario which was struck out as frivolous and vexatious. Furthermore, I found only one reported case where such an issue was raised. In *Attorney General for Ontario v. Attorney General for Canada*, (1929) 37 O.W.N. 30, 149, the Attorney General for Canada unsuccessfully moved to have the statement of claim struck out as not disclosing a reasonable cause of action.

It is interesting to note that the Attorney General must consent to any application for an order under the Vexatious Proceedings Act, R.S.O. 1960, c.417. Nevertheless, it seems to be possible that an individual action by the Crown could be frivolous and vexatious, and that it could be struck out as a result. In *Attorney General for Duchy of Lancaster v. London and Western Railway Company*, [1892] 3 ch. 274, the English Court of Appeal impliedly held that this could be the case.

In the area of the criminal law, I might mention the recent decision of *Regina v. Osborn*, (1969) 1 D.L.R. (3d) 664. The Ontario Court of Appeal held that a court has the inherent discretionary power to stay an indictment on the ground that the proceedings are oppressive and an abuse of the process of the court. In that case, a second and subsequent indictment was laid upon the same facts that gave rise to the first. The court felt that every court, whether of civil or criminal jurisdiction, has the power to prevent an abuse of its own process through oppressive and vexatious proceedings.

I should point out that the *Osborn* case was heard on appeal last spring in the Supreme Court of Canada. I expect the lower court decision to be reversed.

Yours very truly,

BLENUS WRIGHT, Solicitor.

