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Law
Institute
Victoria

Telephone (03) 9607 9311
Facsimile (03) 9602 5270
E-mail lawinst@liv.asn.au

ENQUIRIES

EC: TS
Elissa Campbell
Direct Line: (03) 9607 9386
Email: ecampbell@liv.asn.au

Ms Kerry Risely
Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
MELBOURNE VIC 3002
Email: vpirc@parliament.vic.gov.au

Dear Ms Risely,

Inquiry into Vexatious litigants

The Law Institute of Victoria (LIV) wishes to make a submission to the Victorian Parliament Law Reform Committee's (Committee) *Inquiry into Vexatious Litigants* for the Committee's consideration.

The Committee is to:

- (a) inquire into the effectiveness of current legislative provisions in dealing with vexatious litigants; and
- (b) make recommendations, which better enable the courts to more efficiently and effectively perform their role while preserving the community's general right of access to the Victorian courts.

Effectiveness of current legislative provisions in dealing with vexatious litigants

Currently, section 21 of the *Supreme Court Act 1986* (the Act) enables the Supreme Court to declare a person to be a vexatious litigant for both civil and criminal proceedings. Such a vexatious litigant order applies to any court or tribunal in Victoria. However, only the Victorian Attorney-General can make an application under section 21(1) of the Act.

By contrast, Order 21(2) of the *Federal Court Rules* allows a person to be declared vexatious:

- (a) on the court's own motion; or
- (b) on the application of the Attorney-General or Solicitor-General of the Commonwealth or of a State or Territory; or
- (c) on the application of the Registrar.

The LIV supports expanding section 21 of the Act to reflect Order 21(2) of the *Federal Court Rules*. Feedback from LIV members suggests that some litigants "forum shop" by moving their particular proceedings around between the different courts and tribunals. By expanding the class of person who may seek to have a person declared vexatious, the LIV considers that this problem will be reduced.

Enabling the court to more efficiently and effectively to perform their role

Vexatious litigants or persons who regularly institute potentially frivolous or vexatious proceedings can consume a great deal of court time and resources. Often, such persons may be initiating multiple proceedings in different jurisdictions at the same time. They may also have outstanding cost orders against them for previous matters, which have been struck out or dismissed.

To reduce the burden on courts, the LIV recommends that the registrar for each Victorian court and tribunal develop, and maintain, a list of applicants with outstanding costs orders for struck out or dismissed proceedings. This would mean there would be less opportunity for a litigant to bring frivolous or vexatious matters in front of different members of the judiciary.

The LIV also proposes that a person who has initiated multiple actions in relation to the same matter can have all related matters heard before the same judge each time. This would save court time and resources as the judge hearing the case will already be familiar with its history and the same facts would not need to be repeatedly explained to different people.

Costs

The LIV is also concerned about the issue of litigants who have a trail of unpaid costs across the different Victorian jurisdictions. One way this situation may be addressed is through the list of litigants with outstanding costs orders as proposed above. The LIV recommends that litigants who are on this list be required to deposit a costs bond, or some other kind of security for costs, with the court to prevent further potential abuse of the system. This bond could be reviewed and potentially reversed if, at the directions hearing stage, a judge or tribunal member agreed that the relevant litigant's claim had merit.

Merit of claims

Anecdotal evidence suggests that the number of self-represented litigants in the Victorian court system is increasing, particularly in the Victorian Civil and Administrative Tribunal and Magistrates' Court. However, these litigants may not possess the legal knowledge to determine if their case has merit or not. The LIV considers that educating such parties on the issue of costs, if their proceeding is unsuccessful, is vital.

The Victorian Law Reform Commission (VLRC) is also looking at this issue as part of its ongoing *Civil Justice Review*. It is considering various means by which:

- additional assistance may be provided to self represented litigants who have claims or defences which appear to have merit; and
- unmeritorious claims and defences (whether by represented or self represented litigants) may be screened out without proceeding to trial.

However, the VLRC has not released any further details on these proposals at this stage.

If you have any questions regarding this submission, please contact Elissa Campbell, Litigation Lawyers Section solicitor on (03) 9607 9386.

Yours sincerely



Geoffrey Provis
President
Law Institute of Victoria