

Submission No. VL/28
Received 30/06/2008
Law Reform Committee

Mr. Johan Scheffer MLC
Chairman
Victorian Parliament Law Reform Committee
Inquiry in Vexatious Litigants
Parliament House
Spring Street
East Melbourne Vic. 3002

30 June 2008

Dear Mr. Scheffer,

My name is Maartje Van-der-Vlies and I am a Criminologist specialising in Victimology. I have kept my response brief and to point as I suspect the Committee will receive volumes from some parties.

However, I would appreciate an appearance before the Committee to discuss any questions they may have and to clarify why I have taken the conciliation and mediation view.

I wish the Committee every success in this complex and worthy endeavour.

Yours faithfully,

Maartje Van-der-Vlies
B.A., Dip Crim., M.B.A.

Response to the Inquiry into Vexatious Litigants

Vexatious litigants in Victoria

The truly confusing thing about vexatious litigants is that no one in the general public can give a definition of what that means. In many cases, just because an individual has an unpopular issue, they are labeled a vexatious litigant, which is frequently not the case. Before any investigation can be fairly undertaken, there needs to be a standard descriptor or descriptors of exactly what constitutes a vexatious litigant that can be clearly understood by the community at large.

In general, once that is understood, many people in the situation can be offered advice and/or counselling, rather than going forward with cases, which for legal reasons cannot succeed. Ordinary people can and do confuse justice with the law. An emotional person is not necessarily mentally ill, as is often suggested, just angry or distressed, frequently with justification. Too many decisions are based on personal opinion with all the influences of bias rather than fact.

The effect of vexatious litigants on the justice system

The principal effect of vexatious litigants is to clog up the courts with cases, which often cannot succeed. This can cause considerable expenditure to the litigants, and general distress to many individuals who are involved. These cases take up a great deal of time with no satisfaction or closure at the end of each case. In other words, no closure of the issue and the pain continues. It seems like an opportune moment to cite the case of the lady who was raped repeatedly as a youngster and her ten-year battle to have the culprit found guilty and fined. She was frequently cited as a vexatious litigant by defense counsel. The final decision proved otherwise.

The effect on individuals and agencies who are victims of vexatious litigants

The costs include money, time, earnings lost, ill health, distress, lost opportunities, relationship breakdowns, mental, emotional and physical stress and in many cases the beginning and continuation of hate. This can destroy careers, marriages, family relationships and lives, as attack and counter attacks continue over years. Some people have been driven to suicide or murder in extreme cases.

Applying for a declaration under Victoria's vexatious litigant laws

Once a legal definition of a vexatious litigant is made, the Office of the Attorney General should be the sole place where individuals can apply to have some one declared a vexatious litigant. That will standardise the procedure rather than have it going through various courts at unnecessary cost in time and money. Or failing the Office of the Attorney General a Special Division of the Supreme Court with the Masters ruling on the cases. What right of appeal should a vexatious litigant have, is the next question.

Who is a vexatious litigant under Victoria's laws?

Ask the ordinary person in the street to define a vexatious litigant and the variation of answers will show that ordinary people do not know exactly what constitutes a vexatious litigant. At present it is open to too much interpretation. Personal spite or bias or attacks based on qui bono are commonplace. Reputations, careers, marriages, and lives can be forfeited based on the effects of these irrational and often counterfactual comments.

Definitions have to be decided upon and published. This is probably best conducted by a panel of Supreme Court Judges who are sufficiently experienced and know the law with all of its failings. This could save a great deal of time and angst.

I am recommending the unusual step of having a blanket definition with a sub set series to suit or match individual cases and would really like to discuss this issue with the Committee.

What rights should a vexatious litigant have?

A vexatious litigant should have the same standard right of appeal under law, as anyone else in the court system. This begins with a presumption of innocence and a fair and impartial hearing.

The power of the court to control vexatious litigation

The Supreme Court and other Courts should have the right to enforce order and a vexatious declaration should be a standard court order.

The effect of a vexatious litigant declaration

Vexatious litigants should be able to apply for leave to appeal, but the other parties should be notified including the Attorney General. Standard court procedures should apply. It would be far more effective if they were offered an independent hearing by a panel who would read the case or cases and hear what they had to say and suggest a path which could resolve the matter rather than more litigation. This is the case in Some European countries where Mediators and Victimologists are hired to sit on the panels. What a vexatious litigant wants is justice, but all they can get is the law, so a hearing in which they are permitted to air all of their grievances may just put the matter or at least some of the issues to rest. That makes this avenue of alternate dispute resolution, time well spent.

Balancing rights and interests

If an individual is deemed a vexatious litigant and appeals the right to a fair and impartial hearing becomes critical. If that right is not corrupted in any way the rights and interests of all parties are balanced in terms of human rights.

Other ways to respond to vexatious litigants

Rather than another court hearing to deal with the case, have an ex parte independent panel, to hear the real problems of the vexatious litigant and act as an advisory panel. The law cannot deal with human emotion, this panel could.

The panel could comprise of a Judge, (retired judges would be excellent if available) community person, mediator, victimologist, counselor, Ethnic representative, Aboriginal representative or other suitable person depending on the particular issues of the individual case. Also the individual should be asked whom they want on the panel, apart from the judge and this request considered.

The impact of vexatious litigation in other federal, state and territory courts.

If the other methods of dealing with a vexatious litigant solve most of the ongoing cases the impact on other courts should diminish over time.