

20 October 2023

To the Justice Committee

Manaaki Tāngata Victim Support's submission on Family Violence (Strengthening Legal Protections) Legislation Bill

Introduction

Manaaki Tāngata Victim Support is a non-government organisation that has been offering emotional support, practical assistance, information, and criminal justice system support to victims of crime and traumatic events for more than 30 years. Last year Victim Support helped more than 48,000 people affected by crime, suicide and traumatic events in the immediate aftermath, through the justice process, and beyond.

Victim Support supports the intention of the Family Violence (Strengthening Legal Protections) Legislation Bill, which seeks to strengthen the court's statutory powers to protect victims of litigation abuse in family proceedings.

Litigation abuse must be recognised as a form of emotional, psychological, and economic abuse and an extension of coercive control. It may include threats of harm, humiliation, insults, and financial and legal abuse.¹ Given it falls under the broader legal definition of family violence in the Family Violence Act 2018, litigation abuse is essentially a “manifestation of domestic violence in the courtroom”.² Therefore, courts – the very places victims go to be safe from violence – have a responsibility to ensure they don't perpetuate violence. As one victim states: “No one should have to fear the judicial system that they grew up believing was there to help them. The judicial system has become a playground for many abusers who use it as their weapon of choice.”³

Litigation abuse has psychological, emotional, physical, spiritual and financial impacts for victims, including legal costs, loss of faith in the justice system, and serious psychological stress which may exacerbate mental health issues.⁴ Victim Support has heard numerous accounts of litigation abuse from family violence victims we've supported. One family violence victim racked up a legal aid bill of over \$128,000 after her ex-partner filed multiple

¹ State of Victoria. (2016). Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf

² Beeman, A. (2022). The need for more states to adopt specific legislation addressing abusive use of litigation in intimate partner violence. *Seattle Journal for Social Justice*, 20(3), 825-860, p 839.

³ Ibid. p 449.

⁴ Fitch, E., and Easteal, P. (2017). Vexatious litigation in family law and coercive control: ways to improve legal remedies and better protect the victims. *Family Law Review*, 7(2), 103–115.

petitions in court. She recalled how the court became the “only way to attack” after their separation, resulting in crippling consequences. The victim described her “hair falling out and going completely bald for over a year”, posttraumatic stress disorder, and requiring twice-weekly counselling over three years to cope. This is an example of how “litigation can then provide a new opportunity to continue to perpetrate abuse in a way that is apparently legally justified”.⁵

Litigation abuse may also force victims to be in continual contact with their abuser, make concessions to try to stop the litigation, and result in loss of faith and trust in the legal system.⁶ As the victim we supported states, “victims just stay because they are too scared to go through the court process.”

Research suggests that many judicial officers fail to recognise litigation abuse,⁷ hence the need for legislation that prevents it. Such legislation exists in various jurisdictions, including the states of Washington and Tennessee, which have taken specific steps to ensure no loopholes exist that could be used against victims.⁸ Meanwhile, administrative court staff, registrars and judicial officers in Australia are undertaking professional development programmes that provide education around abuse and coercive control.⁹ It is time for New Zealand legislation to catch up.

Conclusion

Victim Support urges policy-makers to adopt legislation to prevent litigation abuse for the protection of family violence victims. Without the legislation proposed in this bill, courtrooms will continue to be “playgrounds” for abusers to assert coercive control tactics, prolonging harm to victims and contributing to a loss of faith in the justice system.

⁵ Toy-Cronin, B. (2020). Responding to Abusive Litigation: Short v Short. *New Zealand Women's Law Journal*, 7, 64-76.

⁶ Ward, D. (2016). In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors. *Seattle Journal for Social Justice*, 14(2), 429-464.

⁷ Ibid.

⁸ Beeman, A. (2022).

⁹ Faulks, J. (2010). Condemn the Fault and Not the Actor? Family Violence: How the Family Court of Australia Can Deal with the Fault and the Perpetrators, *University of New South Wales Law Journal*, 33, 818.