

(譯文)

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尤建中先生

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尤先生：

**《2007年民事司法制度(雜項修訂)條例草案》
—— 無理纏擾的訴訟人(第5部)**

關於政府當局在立法會CB(2)27/07-08(04)號文件中就無理纏擾的訴訟人(條例草案第5部)所作的回應，希望閣下考慮以下事宜 ——

A. "無理纏擾的訴訟人"的定義及法律代表

1. 美國加利福尼亞州、佛羅里達州、得克薩斯州、俄亥俄州及夏威夷有立法遏止無理纏擾的訴訟。根據該等地方的法律，"無理纏擾的訴訟人"的定義是指親自(*propria persona*)(即訴訟人親身)或自行(*per se*)(即親自行事而無律師代表)進行無理纏擾訴訟的人。隨函附上有關法例的複本(附件1)，以便閣下參閱。

2. 政府當局對法律代表在平衡以下兩個因素方面所發揮的保障作用的~~問題有何看法~~ ——

- (a) 獲得司法服務的憲法權利；及
- (b) 使法院資源更公平分配並用於真正須要解決的爭議上。

B. "無理纏擾的訴訟人命令"的更改／撤銷／取消

3. 在2007年6月21日會議上，法案委員會要求政府當局訂立機制，使"無理纏擾的訴訟人命令"所針對的人即使當其時無意提出任何法律程序，仍可申請將該項命令作廢。

4. 有注意到的是，加拿大《聯邦法院法令》第40(3)條(附件2)訂明，"無理纏擾的訴訟人命令"所針對的人除向法院申請提起或繼續法律程序的許可外，亦可申請"撤銷該項命令"。加拿大安大略省《1990年法院法令》第140(4)(b)條(立法會CB(2)27/07-08(04)號文件附件第6頁)訂有一項類似條文。

5. 在澳洲，《1935年南澳大利亞最高法院法令》第39(3)條及《1933年澳洲首都地區最高法院法令》第67A(13)條均就"無理纏擾的訴訟人命令"／聲明的更改及撤銷訂定條文(立法會CB(2)27/07-08(04)號文件附件第11及13頁)。

6. 政府當局會否考慮訂定一項與上述例子相類的條文？

C. 律政司司長的角色

7. 政府當局建議引入規定，訂明受影響的人須獲得許可，才可提出申請(見該文件第7段)，此舉值得讚許。

8. 閣下諒會知悉，在加拿大某些省司法管轄區(例如艾伯塔省、英屬哥倫比亞省及薩斯喀徹溫省)及聯邦法院，申請"無理纏擾的訴訟人命令"須獲有關檢察總長同意。在加拿大安大略省、馬尼托巴省及愛德華王子島，有關檢察總長有權就要求作出"無理纏擾的訴訟人命令"的申請陳詞。

9. 政府當局是否認為，規定有關無理纏擾的訴訟人的申請須取得律政司司長的同意(作為附加於或替代法庭許可的條件)，或由司長參與該等法律程序，將有助防止有人引用擬議第27條提出缺乏理據的申請？

請閣下於2007年10月18日前以中英文作覆。

助理法律顧問

(鄭潔儀)

連附件

副本致：法律顧問
總議會秘書(2)3

2007年10月11日

m7741

CODE OF CIVIL PROCEDURE

SECTION 391-391.7

Enclosure 1

(a) California Code of Civil Procedure

391. As used in this title, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

391.1. In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.

391.2. At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

391.3. If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

391.4. When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

391.6. When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge

issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

(b) Texas Civil Practice and Remedies Code

CIVIL PRACTICE & REMEDIES CODE
CHAPTER 11. VEXATIOUS LITIGANTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

- (1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.
- (2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.
- (3) "Local administrative judge" means a local administrative district judge or a local administrative statutory county court judge.
- (4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.
- (5) "Plaintiff" means an individual who commences or maintains a litigation.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
- (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been:

- (A) finally determined adversely to the plaintiff;
- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
- (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, in propria persona, either:

- (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
- (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a

vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, in propria persona, a new litigation in a court in this state if the court finds, after notice and hearing as provided by Subchapter B, that:

(1) the person is a vexatious litigant; and

(2) the local administrative judge of the court in which the person intends to file the litigation has not granted permission to the person under Section 11.102 to file the litigation.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A local administrative judge may grant permission to a person found to be a vexatious litigant under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(b) The local administrative judge may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.103. DUTIES OF CLERK; MISTAKEN FILING. (a) A clerk of a court may not file a litigation presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.

(b) If the clerk mistakenly files a litigation without an order from the local administrative judge, any party may file with the clerk and serve on the plaintiff and the other parties to the suit a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order under Section 11.101. On the filing of the notice, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the local administrative judge under Section 11.102 permitting the filing of the litigation.

(c) If the local administrative judge issues an order permitting the filing of the litigation under Subsection (b), the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the

Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101.

(b) The Office of Court Administration of the Texas Judicial System shall maintain a list of vexatious litigants subject to prefiling orders under Section 11.101 and shall annually send the list to the clerks of the courts of this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

(d) If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving defendant need not plead or otherwise respond to the complaint until 10 days after the motion is denied. If the motion is granted, the moving defendant shall respond or plead no later than 10 days after the required security has been furnished.

(4) In addition to any other relief provided in this section, the court in any judicial circuit may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit. Disobedience of such an order may be punished as contempt of court by the administrative judge of that circuit. Leave of court shall be granted by the administrative judge only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment. The administrative judge may condition the filing of the proposed action upon the furnishing of security as provided in this section.

(5) The clerk of the court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The administrative judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a motion for leave to file the action. If the administrative judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

(6) The clerk of a court shall provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants.

(7) The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105.

History.--s. 1, ch. 2000-314.

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(d) Ohio Revised Civil Practice and Remedies Code

2323.52 Civil action to declare person vexatious litigator.

(A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

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(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

(2) If the court of common pleas finds a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims.

(3) A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)(1) A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in division (F)(1) of this section, the period of time commencing with the filing with that court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application,

other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(G) During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

Effective Date: 06-28-2002

(e) Hawaii Revised Statutes

Hawaii Revised Statutes

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[§634J-7] Vexatious litigant; prefiling order prohibiting filing of new litigation. (a) In addition to any other relief provided in this chapter, the court, on its own motion or the motion of any party, may enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this State on the litigant's own behalf without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of this order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of litigation only if it appears, after hearing, that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in section 634J-4.

(c) The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without an order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subsection (a). The filing of this notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within ten days of the filing of such notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subsection (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead until ten days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the supreme court clerk's office a copy of any prefiling orders issued pursuant to subsection (a). The supreme court clerk's office shall maintain a record of vexatious litigants subject to prefiling orders and shall annually disseminate a list of vexatious litigants to the clerks of the courts of this State. [L 1993, c 124, pt of §1] .

Case Notes

Chapter 634J and this section are applicable where a party seeks to maintain litigation in an existing case, such as by the filing of a motion, as well as to the filing of an entirely new case. 102 H. 289, 75 P.3d 1180.

Where vexatious litigant was only restrained from bringing unmeritorious litigation, which could be restricted in any event, litigant's due process right not impacted in present or future cases; as trial court held a hearing to review litigant's objections to prefiling order, order imposed on litigant under this section satisfied procedural due process because it afforded litigant notice and an opportunity to be heard. 102 H. 289, 75 P.3d 1180.

Subsection (a) prefiling order prohibiting a vexatious litigant

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from filing any new litigation in state courts intended to apply only to pro se litigants. 98 H. 95 (App.), 43 P.3d 232.

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**Federal Courts Act
SUBSTANTIVE PROVISIONS**

- Vexatious proceedings** **40.** (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.
- Attorney General of Canada** (2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).
- Application for rescission or leave to proceed** (3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.
- Court may grant leave** (4) If an application is made to a court under subsection (3) for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.
- No appeal** (5) A decision of the court under subsection (4) is final and is not subject to appeal.
- R.S., 1985, c. F-7, s. 40; 1990, c. 8, s. 11; 2002, c. 8, s. 39.

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