

EPISODE 12

WHEN DOES PERSISTENCE BECOME VEXATIOUS LITIGATION?

Understanding Access to Justice, Abuse of Process and the Right to Be Heard

Estimated Reading Time: 6–7 minutes

Introduction

Imagine that you genuinely believe you have been wronged.

You approach the courts seeking justice.

Your first application fails.

You discover new information.

You return to court.

Another application follows.

At what point does persistence become abuse?

When does a citizen exercising the right of access to courts become a vexatious litigant?

These questions lie at the heart of one of the most debated areas of civil procedure.

This episode explores the legal concept of vexatious litigation and why balancing access to justice with the efficient administration of the courts is important in every constitutional democracy.

What Is Vexatious Litigation?

The law recognises that every person should have reasonable access to the courts.

At the same time, courts have a responsibility to protect their processes from genuine abuse.

Generally speaking, vexatious litigation refers to legal proceedings that are repeatedly instituted or conducted in a manner that the law regards as an abuse of the judicial process.

Determining whether litigation is vexatious is a matter for the courts, applying the relevant legal principles to the facts before them.

The Case Study

One of the issues arising from my own litigation concerns an order declaring me to be a vexatious litigant.

That experience raises broader educational questions.

For example:

- Should every previous application be examined individually?
- How should courts distinguish between repeated litigation and abusive litigation?
- Can new evidence justify further proceedings?
- How should the right of access to courts be balanced against the need to prevent abuse?

These are questions that extend well beyond any one case.

This episode uses them to explain the legal principles without determining whether any particular decision was correct or incorrect.

Why This Matters

A vexatious proceedings order can have significant consequences.

It may limit a person's ability to institute future legal proceedings without first obtaining permission from the court.

For that reason, these applications are serious.

They require careful judicial consideration.

Citizens should therefore understand both:

- the importance of access to justice; and
- the responsibility to use court processes properly.

OUBAS Analysis

Access to justice is one of the foundations of a constitutional democracy.

At the same time, every justice system must protect itself against genuine abuse.

OUBAS believes that these two objectives should never be viewed as enemies.

They should complement one another.

Public confidence is strengthened when courts clearly explain how they distinguish between persistence and abuse.

Equally, litigants should understand that repeated litigation does not automatically become vexatious simply because there have been several applications.

Each matter should be assessed according to the applicable law, the evidence presented and the specific circumstances before the court.

Transparency in judicial reasoning helps citizens better understand how this balance is achieved.

OUBAS Reform Proposal

OUBAS proposes that consideration be given to:

- clearer public guidance on the legal principles governing vexatious proceedings;
- greater public education for self-represented litigants;
- clearer explanations of the reasoning supporting orders that significantly restrict future access to courts;
- continuous review of court procedures to improve both efficiency and public understanding.

Justice should protect both the integrity of the courts and the constitutional right of citizens to seek lawful remedies.

Key Lessons

After reading this episode you should understand that:

- access to justice is a fundamental constitutional principle;
- courts also protect themselves against abuse of process;
- vexatious proceedings orders may have significant legal consequences;
- each case depends on its own facts and the applicable law;
- transparency strengthens confidence in the justice system.

OUBAS Knowledge Check

1. Why do laws dealing with vexatious proceedings exist?

- ☐ To prevent abuse of court processes while protecting access to justice.
 - ☐ To prevent all litigation.
 - ☐ To increase court fees.
 - ☐ To reduce the number of judges.
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2. Does bringing several court applications automatically make someone a vexatious litigant?

- ☐ Yes
 - ☐ No
-

3. Why are vexatious proceedings orders important?

- ☐ They may affect future access to the courts.
 - ☐ They determine election results.
 - ☐ They replace appeals.
 - ☐ They remove judges.
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4. According to OUBAS, what strengthens public confidence?

- ☐ Transparency in judicial reasoning.
 - ☐ Longer court delays.
 - ☐ More complex procedures.
 - ☐ Less public understanding.
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5. Which principle best reflects the OUBAS philosophy?

- ☐ Institutions should continuously improve.
- ☐ Institutions should never change.
- ☐ Innovation is unnecessary.
- ☐ Citizens should not question institutions.

OUBAS Public Sentiment Survey

1. Before reading this episode, were you familiar with the legal concept of vexatious litigation?

☐ Yes

☐ No

2. Do you believe every citizen should have reasonable access to the courts?

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree

3. Do you believe courts should explain decisions that significantly restrict future access to litigation?

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree

4. Which should receive greater emphasis?

☐ Protecting access to justice

☐ Preventing abuse of court processes

☐ A careful balance between both

5. In one sentence, what would you change to improve access to justice?

OUBAS Innovation Challenge

Imagine you have been asked to redesign the legal framework governing vexatious proceedings.

How would you protect:

- the constitutional right of access to justice; **and**
- the courts from genuine abuse,

while ensuring that the process remains fair, transparent and understandable to ordinary citizens?

Share your proposal with OUBAS.

Outstanding ideas may be published in future **OUBAS Reform Papers** and discussed within the AAP professional community.

Share Your Experience

Have you ever represented yourself in court?

What challenges did you encounter?

Did you find court procedures easy to understand?

Your experience helps OUBAS educate others and contributes to the **OUBAS People's Index**.

Continue Your Learning

 Visit the **OUBAS Bookstore** for books exploring civil procedure, constitutional rights, access to justice, litigation strategy and institutional accountability.

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Next Episode

Episode 13

Why Does the Foundation Debt Matter Before Sequestration?

Before a court grants sequestration, should it first establish the legal foundation of the creditor's claim?

Join us as we explore one of the most important concepts in insolvency law and why creditor standing matters.

OUBAS exists to educate, stimulate informed discussion and inspire practical solutions.

Knowledge grows when it is shared. Institutions improve when people participate.

The only constant in every successful institution should be innovation and continuous improvement.

Join the conversation. Join AAP. Help build a better Africa.