RESPONDING TO ABUSIVE LITIGATION: *SHORT v SHORT*

Bridgette Toy-Cronin*

I am … sick and tired of all that stuff being brought up again and again and again. And His Royal Highness over there thinks he has got the goddamn right to do that again because everybody lets him again and again. It is not acceptable …

Mother's evidence[1]

I INTRODUCTION

How should the court respond to intimate partner violence that uses the court process as a tool of abuse? That was the question raised in *Short v Short* in the Family Court and on appeal to the High Court.[2] This series of cases concerned an application under the Family Violence Act 2018 for a protection order. The mother, represented on legal aid, applied for a protection order to regulate her ex-husband's conduct of Family Court proceedings concerning the care of the daughter. The Family Court found that the father had psychologically abused the mother through the way he conducted Family Court proceedings, but declined a protection order on the basis it was unnecessary.[3] This was because the Family Court had ordered a number of other measures to restrain the father's conduct as a litigant-in-person (LiP), including an undertaking and close case management.[4]

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1 This quote is from the mother's evidence in the Family Court decision, *Tyson v Tyson* [2020] NZFC 2636 [Family Court judgment] at [49]. Due to the nature of the dispute between the parties, the parties' names were anonymised in the published Family Court, High Court and Court of Appeal decisions. The Family Court anonymised the parties as Ms Tyson and Mr Tyson (*Tyson v Tyson*), the High Court anonymised the parties as Ms Short and Mr Short (*Short v Short* [2021] NZHC 1874 [High Court judgment]) and the Court of Appeal anonymized the parties as S (the mother) and R (the father) (*S v R* [2021] NZCA 667, [2021] NZFLR 576 [Court of Appeal judgment]). For ease of reference, this case note uses the anonymised names adopted by the High Court, namely *Short v Short*, when referring to this series of cases.

2 Family Court judgment, above n 1; and High Court judgment, above n 1.

3 Family Court judgment, above n 1, at [93].

4 At [103], [107] and [112]–[114].

The mother's appeal to the High Court was unsuccessful. The High Court considered the "mother had undoubtedly suffered psychological abuse" through the way the father conducted the proceedings, but found the Family Court made "no error" in deciding a protection order was not the necessary or appropriate way to protect the mother from the psychological abuse.[5]

Short v Short raises important issues about how the court should conceptualise and prevent psychological abuse where the method of abuse is the court's own proceedings. If it is a form of violence, as the Court found in *Short v Short*, is a protection order the correct response or are civil procedural remedies best placed to restrain it? This case note discusses the concept of abusive litigation and the Family Court's and High Court's analysis, which frame the father as a misguided LiP. It argues that abusive litigation should be analysed as violence, not as vexatious litigation. It also argues that courts should maintain a coercive control lens when deciding cases of this nature, so that the courts will be better equipped to recognise and respond to this form of abuse.

II THE CASE

The mother and father in *Short v Short* began a relationship in 2003, marrying eight months later. Their daughter was born in 2008 and they separated 18 months after her birth. Since their separation, there has been over a decade of "acrimonious proceedings in the Family Court about appropriate care and contact arrangements for their daughter".[6] Throughout these proceedings, the father made denigrating comments about the mother in court documents and correspondence, and referred to abuse she had suffered at the hands of others. In 2019, the mother applied for a protection order under the Family Violence Act 2018 — some 11 years after litigation began — on the basis that the manner in which the father conducted the Family Court proceedings amounted to psychological abuse. This application was considered by the Family Court and the High Court on appeal.

The Family Court found the father "had psychologically abused the mother through the way he had conducted proceedings in the Family Court".[7] The Judge observed that the references the mother complained of were "repetitious,

5 High Court judgment, above n 1, at [157].
6 Court of Appeal judgment, above n 1, at [6].
7 High Court judgment, above n 1, at [25].

frequently gratuitous and disconnected from the immediate issue".[8] These references were published to third parties, which was "also part of the trauma" for the mother.[9] The father's conduct contributed to the mother's deteriorating mental state, which made her unable to care for the daughter. The Family Court found:[10]

> At times, [the father's] behaviour is overwhelming for [the mother] and exacerbates her vulnerabilities to the extent she has required hospital treatment. It is not the only cause, but it is a contributing factor.

During these periods of hospitalisation, the daughter was placed in a care home, which created a further issue where the father believed the daughter should be in his care when the mother was not available.[11] The father's conduct in the proceedings was therefore not only violent towards the mother, but its effects on the mother provided grounds for the father to make a further court application for care of the daughter.

The Family Court, having found that this conduct amounted to psychological violence, turned to the question of the appropriate response. Counsel for the mother argued that a protection order should be issued to restrain the father from making references to her being a victim of traumatic violence, denigrating her and attacking her character in proceedings, making threats of future and continuing proceedings, and making multiple complaints about the professionals involved in the proceedings.[12] The Family Court noted this was a novel use of a protection order as it sought to restrain conduct in a legal proceeding.[13]

The Family Court refused to grant a protection order on the basis it was not necessary because it considered that other controls on the father's behaviour would be more effective. The primary mechanism ordered by the Family Court to control the father's conduct was a requirement that he undertake not to "make any repeated, direct and explicit reference" to matters in the mother's history, as specified in any correspondence between the parties or documents

8 Family Court judgment, above n 1, at [58].
9 At [60].
10 At [15].
11 At [15].
12 As summarised in the High Court judgment, above n 1, at [35(d)].
13 Family Court judgment, above n 1, at [116].

filed.[14] The undertaking meant that if, in the Family Court's view, the father breached that undertaking, he could be held in contempt of court.[15] The penalty for contempt included imprisonment or a fine.[16] The father provided the undertaking. Had he not, the Family Court would have issued a protection order.[17]

Accompanying this measure was an order by the Family Court requiring all the father's applications to be "designated as complex and judicially case managed so that [the mother's] exposure to inappropriate, irrelevant or objectionable material is limited by judicial oversight and active case management".[18] The High Court Judge commented that it was also expected that all the father's communications, whether through documents filed in Court or otherwise, would initially be made via the mother's lawyer and:[19]

> It could be expected the lawyer would screen those communications and would ensure they were conveyed to the mother only to the extent counsel considered was necessary to deal with the issue at hand.

The daughter was represented by a lawyer for child who, "in a similar way," would be "able to limit the child's exposure to what [the father] might say in [the] documents" the father filed in the Family Court.[20] The father was also ordered to complete a stopping violence programme.[21]

The mother appealed to the High Court.[22] The High Court dismissed the mother's appeal, finding:[23]

> … there was no error in [the Family Court] deciding that the making of a protection order was not the necessary or appropriate way to protect the mother from the psychological abuse.

14 Family Court judgment, above n 1, at [103].
15 Contempt of Court Act 2019, s 16.
16 Section 16.
17 Family Court judgment, above n 1, at [112].
18 At [107].
19 High Court judgment, above n 1, at [154].
20 At [155].
21 Family Court judgment, above n 1, at [103].
22 High Court judgment, above n 1.
23 At [157].

The High Court focused on the Family Court's powers to control vexatious litigation, noting that:[24]

> … the making of a protection order, with the potential for the sanctions that could flow from that, was not necessary given the Family Court's power to avoid proceedings being brought or conducted vexatiously.

The mother applied for leave to the Court of Appeal. Leave was declined on the grounds that the questions stated for appeal did not involve some interest, public or private, of sufficient importance to justify the cost and delay of a further appeal.[25]

III CONSIDERING THE CASE

A Abusive litigation

The father's behaviour could be variously labelled as "abusive litigation", "legal systems abuse", "paper abuse" or "procedural stalking".[26] The conduct is a form of violence that uses the court process to create a veneer of legitimacy. It is a continuation of family or intimate partner violence that a perpetrator can use to control a victim once the victim has left the relationship. As Heather Douglas observes, "litigation can provide a new opportunity for perpetrators to continue to perpetrate abuse in a way that is apparently legally justified".[27]

As such, abusive litigation needs to be seen in the context of a whole relationship. This can be a stumbling block in a justice system that has long been criticised as tending to "fragment patterns of harm (that are experienced

24 At [114].

25 Court of Appeal judgment, above n 1, at [4] and [10]. Note there is a further decision — *Short v Short* [2021] NZHC 3404 — which concerned an application by a Stuff journalist for access to the court file (submissions and minutes) on the basis that the case is of public interest. The application was denied, with the Judge holding that access to the submissions of the parties was not necessary as the High Court judgment provided sufficient information as to the background of proceedings in the Family Court, relevant decisions made there and a detailed summary of the submissions made by the parties (at [16]).

26 Susan Miller and Nicole Smolter ""Paper Abuse": When All Else Fails, Batterers Use Procedural Stalking" (2011) 17(5) Violence Against Women 637; Heather Douglas *Women, Intimate Partner Violence, and the Law* (Oxford University Press, New York, 2021); Heather Douglas "Legal systems abuse and coercive control" (2018) 18(1) Criminology and Criminal Justice 84; Mary Przekop "One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of Their Victims through the Courts" (2010-2011) 9 Seattle Journal for Social Justice 1053; and David Ward "In Her Words: Recognizing and preventing Abusive Litigation against Domestic Violence Survivors" (2015) 14 Seattle Journal for Social Justice 429.

27 Douglas "Legal systems abuse and coercive control", above n 26, at 85.

as cumulative and compounding by the victim) into individual and decontextualised incidents".[28] It is a problem that is evident in the High Court judgment. The mother had suffered violence at the hands of the father during their relationship. The judgment refers to the father "putting a plastic bag over the mother's head as if attempting to suffocate her" in 2007.[29] The High Court characterised that as an "incident" that was "historic".[30] If viewed instead as part of a pattern of coercive control, that "incident" is no longer an isolated, historic event.

Coercive control is "a strategic course of self-interested behavior designed to secure and expand gender-based privilege by establishing a regime of domination in personal life".[31] Perpetrators have a number of tools at their disposal when they live with the victim: violence, intimidation, isolation and control. When a victim has left the perpetrator, like the mother in *Short v Short* had, the perpetrator loses access to some of these tactics but can use the legal system to sustain others. In this case, the father's denigration of the mother in court documents and his inclusion of references to past abuse can be seen as intimidation "to instill fear, dependence, compliance, loyalty, and shame".[32] The father had access to information about past abuse because of the intimate relationship they had shared. Evan Stark emphasises that this is how coercive control is achieved by the perpetrator; it is "[r]ooted in the privileged access intimacy affords to personal information about a partner" so that the perpetrator can carefully adjust the tactics to exert control over the victim.[33]

That tactic had particular power in this litigation. By making denigrating references to the mother's past victimisation, the father was able to trigger mental health crises that resulted in her being unable to care for the daughter and provided grounds for the father to seek care of the daughter.[34] In this way, the father could continue to exert control over the mother and deprive her of an independent life away from violence.

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28 Julia Tolmie and Khylee Quince "Commentary on *Police v Kawiti*: Kāwiti at the Centre" in Elisabeth McDonald et al (eds) *Feminist Judgments of Aotearoa New Zealand. Te Rino: A Two-Stranded Rope* (Hart Publishing, Oxford Portland, Oregon, 2017) at 485.

29 High Court judgment, above n 1, at [84]

30 At [94].

31 Evan Stark "Coercive Control" in Nancy Lombard and Lesley McMillan (eds) *Violence against women: current theory and practice in domestic abuse, sexual violence, and exploitation* (Jessica Kingsley Publishers, London, 2013) at 21.

32 At 23.

33 At 21.

34 The daughter was instead repeatedly placed in a care home.

This was not how the Family Court nor the High Court analysed the father's behaviour. The Family Court judgment briefly mentions the phenomenon of abusive litigation in the Family Court judgment where the Judge commented that the YWCA Vancouver report on "Court Related Abuse and Harassment" was a "useful and an insightful article".[35] The father's behaviour was not otherwise framed in terms of abusive litigation, even though the Court labelled his behaviour as psychological violence.[36] This is problematic. It isolates the behaviour that occurred in the litigation as separate from a longer standing pattern of violence. The incident-based view of the harm seems to have led both the Family Court and the High Court to viewing the father's litigation conduct as a misguided litigation strategy as opposed to a deliberate form of violence.

B Misguided strategy?

The Family Court found that:[37]

> [The father's] motivation has been to square the ledger and the mistaken view that it will aid him to achieve his desired objective, which is to have shared or at least increased and unsupervised care of [the daughter].

The Court also accepted that the father had a "genuine desire to advance his contact and a misguided view that this can be achieved by the methods which he has adopted"[38] and that he had included denigrating and abusive material "in the misguided belief that it better serves his objective".[39]

The Judge was perhaps influenced by the idea that LiPs can be overly emotional and make poorly thought out advocacy decisions.[40] The Judge referred to the need to make allowances for LiPs "whose appreciation for procedure, rules of evidence and the appropriate way to express a point is limited".[41] Framed in this way, the father was a fumbling LiP who had "crossed

35 Family Court judgment, above n 1, at [72], referring to Andrea Vollans *Court-Related Abuse and Harassment* (YWCA Vancouver, 2010).

36 Family Court judgment, above n 1, at [91] and [114].

37 At [91].

38 At [64].

39 At [85].

40 Bridgette Toy-Cronin "Leaving emotion out: Litigants in Person and Emotion in New Zealand Civil Courts" (2019) 9(5) Oñati Socio-Legal Series 684 at 698.

41 Family Court judgment, above n 1, at [84].

the line",[42] but his rights to access the court process must be protected: "[t]he lawful pursuit of his objectives as authorised by statutory processes, cannot be arbitrarily, unreasonably or unfairly constrained."[43] Having framed the issue in this way, the Family Court considered the father's behaviour could be ameliorated with civil restraints and education, while protecting his "rights to express himself".[44] It was assumed his lawful objective was access to the daughter.

Another interpretation — if a coercive control lens is applied — is that the father's objective was not shared care for the daughter's benefit, or even to "square the ledger", but that it was a strategic and highly successful strategy to continue to control the mother, while asserting "patriarchal rights over children rather than concern for their well-being".[45] When the father did have access to the daughter, he did not use that time for the daughter's benefit but instead talked to her about the proceedings.[46] There were also other indications that the father had a long-standing pattern of not acting in the daughter's best interests. For example, there had been a 2011 Family Court direction that the father was "not to undertake any genital examination of [the daughter]", who would have been aged three or four at the time.[47]

The Family Court did recognise and label the father's conduct as family violence.[48] The Court's reasoning would have been strengthened by situating that violence within the wider patterns of harm in the relationship. This approach would have avoided framing the father as a misguided LiP and

42 At [85].

43 At [32]; and High Court judgment, above n 1, at [148].

44 Family Court judgment, above n 1, at [106].

45 Lori Chambers, Deb Zweep and Nadia Verrelli "Paternal Filicide and Coercive Control: Reviewing the Evidence in *Cotton v Berry*" (2018) 51(3) UBC Law Review 671 at 684. The authors also note that perceived court losses in child contact cases — which had occurred several times for the father — "may leave the father 'seething with rage and a desire for revenge and retaliation'" citing Kieran O'Hagan *Filicide-Suicide: The Killing of Children in the Context of Separation, Divorce and Custody Disputes* (Basingstoke: Palgrave Macmillan, 2014).

46 High Court judgment, above n 1, at [99]. There is insufficient information in the judgment to interpret this but it is perhaps an attempt by him to gather evidence against the mother. This dangerous and damaging behaviour would be another factor the Judge could have taken into account in examining the father's motives.

47 High Court judgment, above n 1, at [66].

48 Family Court judgment, above n 1, at [28], [30], [91] and [114].

consequently the potentially misplaced optimism the father would change his behaviour.[49]

A Vexatious litigation controls

A focus of the High Court decision was examining the existing statutory powers of the Family Court to regulate the conduct of litigation. The High Court found that:[50]

> … the Family Court has the power to prevent an abuse of proceedings and the psychological abuse of another party through the way proceedings are conducted in the same way as both the Court of Appeal and the High Court have recognised courts would be able to do through declaring someone a vexatious litigant.

The High Court was not making a finding of vexatiousness (or that equivalent civil restraints applied). Instead, it was using an analysis of restraints on vexatious litigation to support the Family Court's conclusion that the father's conduct amounted to family violence and to find the Family Court had the powers to implement the package of measures it had constructed to deal with the father's actions. Emma Fitch and Patricia Easteal have suggested that vexatious litigation controls could be used to control abusive litigation.[51] Given the High Court's discussion, this may be an avenue that is pursued in future cases. It is worth pausing, therefore, to consider the relationship between vexatious and abusive litigation.

It is rare that people are declared vexatious and the type of conduct that is ultimately labelled as such varies considerably.[52] As Michael Taggart observed:

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49 At [99]. We do not know whether the optimism was in fact misplaced. Early signs did not seem promising, however. The Family Court judgment was issued on 23 April 2020 and set out the undertaking the father was required to provide and provided him with counsel to explain it to him. Nevertheless, on 27 May 2020 (a few days before the undertaking was required), the father swore an affidavit in support of an application for parenting orders "in which he … made a number of assertions intensely denigrating as far as the mother is concerned": High Court judgment, above n 1, at [82].

50 High Court judgment, above n 1, at [137].

51 Emma Fitch and Patricia Easteal "Vexatious litigation in family law and coercive control: Ways to improve legal remedies and better protect the victims" (2017) 7 Fam L Rev 103 at 103. Although this article proceeds from a position that litigation abuse is a form of vexatious litigation without examining the claim.

52 Note that the Senior Courts Act 2016, s 166 introduced a series of civil restraints, replacing the previous procedure for restriction on institution of vexatious actions (Judicature Act 1908, s 88). While the Senior Courts Act 2016 does not use the language of "vexatious litigation", I have adopted that language here as it is still commonly used in practice and the previous case law still applies (as demonstrated in the High Court judgment, above n 1).

"[o]ften this small but apparently growing class of litigants are spoken of as if they all conform to a stereotype, but that is not the case".[53] While the type of behaviour that might ultimately be labelled vexatious varies considerably, there are some important distinctions that might be lost if abusive litigation is subsumed within the category of vexatious litigation.

Vexatious litigation focuses on whether the litigation has been exhausted; that is whether there is no point in continuing on with the litigation and the right of access to the court can legitimately be restrained because there is nothing left to litigate.[54] As Lord Bingham CJ put it:[55]

> The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.

This is unlikely to be the case in care of children cases where changes in facts (which can occur frequently) can provide a prima facie ground for the litigation. In *Short v Short*, the litigation itself created new facts for the father to rely on: every time the mother broke down, he had a new ground for the claim that he should have care of the child.

Vexatious litigation often features a "widening circle" of defendants who are drawn in because of their association with the original defendant.[56] Similarly, in abusive litigation (including in this case) the abuser may turn on those who they perceive are helping the victim. The ever-widening circle has a different quality in vexatious litigation to that in abusive litigation. The vexatious litigant may perceive a growing group of people who have wronged them or who form targets for the relentless litigation in an attempt to push away finality. The abusive litigator may instead be tactically isolating the victim from their key supports. Isolation is a well-recognised tool of coercive control and one lawyers may recognise. For example, in a study I conducted with a colleague on pro bono practice, a lawyer reported:[57]

53 Michael Taggart "Vexing the Establishment: Jack Wiseman of Murrays Bay" (2007) NZ Law Review 271 at 272.

54 *Attorney-General v Barker* [2000] EWHC 453 (Admin), [2000] 1 FLR 759 (QB) at [19].

55 At [22]. See also the Senior Courts Act 2016, s 167 which refers to litigation that is "totally without merit".

56 High Court judgment, above n 1, at [132], quoting *Brogden v Attorney-General* [2001] NZAR 809 (CA) at [2].

57 Previously unpublished quote from the research underpinning Kayla Stewart and Bridgette Toy-Cronin "What is pro bono and how much do lawyers do?" (2020) NZLJ 414.

> The husband, he found out that I was … doing it pro bono and he was so enraged by that, that he made a complaint to the Law Society about all sorts of things … that weren't held up. Then he took it to the LCRO [Legal Complaints Review Officer].

This pattern of behaviour is, as this lawyer observed, about undermining the victim's power and isolating them from their supports.

Rendering abusive litigation as vexatious litigation also obscures the gendered nature of the conduct. While vexatious litigation may include misogynistic elements,[58] it is not a defining element. If the vexatiousness lens is applied to abusive litigation, it is no longer squarely a family violence issue but becomes equated with querulent or crank litigation. This tendency is apparent in *Short v Short* with the Family Court slipping into equating the mother's and father's conduct as equally problematic.

The Family Court judgment is replete with references to "conflict" between the mother and father, as if both were behaving poorly, rather than focussing on the fact of the father's abuse towards the mother. The Judge considered that "[a] resolution is difficult to discern given the history, the issues, their personalities and the positions they have adopted"[59] and observed "the parties must fundamentally change their interactions and patterns of behaviour, however difficult that may be. The outcomes if they do not seem very bleak."[60] His Honour had similarly characterised the mother's and father's dispute as "a prolonged and destructive conflict" in a judgment delivered a few months prior.[61] Counsel for the mother and lawyer for the child raised this issue in the High Court, pointing out the Family Court analysis "suggested some equivalence" between the father's abuse and the mother's conduct of the litigation, but the Judge rejected that submission.[62] If a coercive control framework is used, such an error is less likely as the father's conduct would be more clearly spotlighted. Vexatious litigation controls have the intention of "freeing defendants from the very considerable burden of groundless

58 See for example, the discussion of the *Twiss Libel Case* in Michael Taggart "Alexander Chaffers and the Genesis of the Vexatious Actions Act 1896" (2004) 63 CLJ 656. Those proceedings gave rise to England's first piece of legislation to prevent vexatious litigation. The litigation that began Alexander Chaffers' litigation mania concerned Chaffers alleging that a society woman had an affair.

59 Family Court judgment, above n 1, at [4].

60 At [16].

61 High Court judgment, above n 1, at [72], quoting from a 4 December 2019 Family Court judgment.

62 At [57]-[65].

litigation".[63] But it is a stretch to suggest these controls are designed to prevent "the psychological abuse of another party through the way proceedings are conducted".[64] Vexatious litigation controls are primarily to protect the *court* from abuse of process, which in turn protects the defendants from groundless litigation.

Another problem that arises from framing abusive litigation as vexatious litigation is that vexatiousness directs the focus to protecting the abuser's rights of access to the court rather than stopping violence. Vexatious litigation controls are seldom exercised because of the emphasis on the right of recourse to the legal system. As a Family Court Judge observed in *TMS v AIT*, another case regarding the care of children:[65]

> It is clear that the [vexatious litigation] provision has far-reaching implications and I cannot ignore that it is an intrusion into rights of natural justice and therefore it breaches the fundamental constitutional rule that every citizen has a right of recourse to the legal system. There must be very good grounds for it.

The measures that the Family Court implemented in *Short v Short* carefully walk the line between recognising the violence and restraining the behaviour, allowing a level of judicial control via case management and the father's undertaking, without preventing "recourse to the legal system".[66]

It was unfortunate, however, that the Family Court ordered these measures without first seeking the views of the mother or the lawyer for child, an approach the lawyer for child labelled as "unorthodox".[67] Perhaps keen to avoid giving the father more opportunities to engage with the Court, the Family Court ordered the undertaking without the benefit of additional argument from the parties. There was also a hint of paternalism: the Family Court noted the mother did not understand that a breach of a protection order would give rise to criminal prosecution, which suggested the Court regarded this as relevant to refusing the protection order.[68] This reduced the mother's agency

63 At [134], quoting *Brogden v Attorney-General* [2001] NZAR 809 (CA) at [20].
64 At [137].
65 *TMS v AIT* (2008) 27 FRNZ 31 (FC) at [32].
66 At [32].
67 High Court judgment, above n 1, at [37(d)].
68 Family Court judgment, above n 1, at [49] and High Court judgment, above n 1, at [35(e)].

in addressing the violence and furthered her powerlessness in her relationship with the father.

IV CONCLUSION

The package of measures imposed by the Family Court in *Short v Short* provide a potentially useful precedent for managing abusive litigation. The High Court upheld the use of an undertaking by the father and close case management, but left open the possibility of a protection order where these measures are inadequate. The case can be seen as an important step forward in recognising abusive litigation as the Courts did recognise the father's conduct in the litigation was a form of family violence. It is important, however, that a lens of coercive control is sustained in the analysis, rather than reverting to an incident-based view of the harm. Seeing abusive litigation in the broader context of the parties' relationship will minimise the possibility of seeing the perpetrator as a misguided litigant and avoid putting too much faith in the perpetrator's willingness to curb their conduct.

While vexatious litigation controls might provide a statutory basis for individualised measures, they are not ideally suited to controlling abusive litigation. Abusive litigation has a number of different features that mean it should not be viewed as vexatious conduct, but rather as violence. *Short v Short* is a somewhat imperfect, but still important, step forward towards recognition by the courts that — as the mother said in her evidence — litigation abuse "is not acceptable".[69]

69 The mother's evidence as recorded in the Family Court judgment, above n 1.