



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

20 October 2023

Justice Committee

Submission in support of the Victims of Family Violence (Strengthening Legal Protections) Legislation Bill

1. Thank you for the opportunity to provide this submission on the Victims of Family Violence (Strengthening Legal Protections) Legislation Bill (the **Bill**).
2. This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Journal**). The Journal is the only academic publication solely dedicated to publishing legal scholarship about gender justice. The primary aims of the Journal are to promote awareness about gender justice in the law and to support women in the Aotearoa New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.
3. Overall, the Journal supports the policy objective of the Bill to strengthen the courts' statutory powers to protect victims of litigation abuse in family proceedings.¹ The Journal has recently published an article by Dr Bridgette Toy-Cronin entitled “Responding to abusive litigation: *Short v Short*”, which discussed how the court should respond to intimate partner violence that uses the court process as a tool of abuse.² The Journal considers the Bill provides a much-needed mechanism for the courts to curb abusive litigation practices.
4. The Journal generally agrees that the Bill strikes the correct balance between offering a pathway to victims of abusive litigation to obtain relief while ensuring procedural fairness for respondents. Given this position, the Journal does not propose to set out the proposed amendments but turns straight to its suggestion below.

¹ Victims of Family Violence (Strengthening Legal Protections) Legislation Bill (285-1) (explanatory note).

² Dr Bridgette Toy-Cronin “Responding to Abusive Litigation: *Short v Short*” (2022) 7 NZWLJ 64. The article can be accessed [here](#).



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The Bill should address costs in the event of a successful interlocutory application for the relevant orders

5. The Bill provides that a Judge may, at any time during the course of the proceeding, on the court's initiative or *on an interlocutory application for the purpose*, make relevant orders restraining a party from taking further steps in proceedings or from commencing a new proceeding, given certain criteria are met.³
6. Where a victim of litigation abuse makes an interlocutory application for the relevant orders and successfully obtains those orders, the Journal considers the Bill should provide that there is a presumption the applicant's costs will be met by the respondent. Ultimate discretion to award costs should remain with the Judge.
7. The Journal considers this would appropriately recognise that abusive litigation is distinct from more general claims of vexatious litigation: abusive litigation is intimately connected to its family violence context as another mechanism by which to entrap and control a victim. The Journal submits that including a presumption that a respondent will meet a successful applicant's costs is consistent with viewing abusive litigation as part of a wider pattern of abuse involving coercive control.⁴ It also acknowledges that such constant harassment has a significant effect on a victim's time, mental health, and financial position. Any measures the Bill can take to reduce those effects are worthwhile.

Conclusion

8. The Journal commends Hon Ginny Anderson for introducing the Bill. It is a necessary step to strengthen the courts' statutory powers to protect victims of litigation abuse in family proceedings.

³ Victims of Family Violence (Strengthening Legal Protections) Legislation Bill, cls 5, 11 and 15.

⁴ 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, cited by Toy-Cronin, above n 2, at 69. See also Toy-Cronin, above n 2, at 66–67.



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9. Thank you for the opportunity to submit on the Bill. The Journal looks forward to seeing how it progresses. Members of the Journal are available to discuss this submission if necessary.

Ngā mihi nui,

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