DRAFT CIVIL PROCEEDINGS (VEXATIOUS LITIGANTS) (JERSEY) LAW 200-

Lodged au Greffe on 16th May 2000
by the Legislation Committee

STATES OF JERSEY

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Report

The purpose of this draft Law, as its long title indicates, is to empower the Royal Court to restrain vexatious civil proceedings. In England and Wales, there has long been a filter whereby, on an application made by the Attorney General, the High Court may order that no civil proceedings be instituted by an individual without the leave of the Court. This power in the High Court, which has existed in one form or another for more than 100 years, is now contained in section 42 of the Supreme Court Act 1981. That Act provides that, before an order against an individual can be made, two things must occur -

(i) the Attorney General must make the application; and

(ii) the Court must be satisfied that the individual has habitually and persistently and without any reasonable ground instituted vexatious proceedings, whether against the same person or against different persons, or has made vexatious applications in any proceedings.

In Jersey, the Royal Court is empowered under Rule 6/13 of the Royal Court Rules 1992 to strike out any vexatious claim or pleading or generally any claim or pleading which is an abuse of the process of the Court. However, this does not fully address the problem created by persons who habitually or persistently without any ground institute vexatious proceedings and go on to pursue appeals to the Court of Appeal (and on occasions to the Judicial Committee of the Privy Council) when in reality their arguments are bound to fail. It is a fact of life that Jersey, in common with other jurisdictions, is from time to time faced with the problem of vexatious litigants representing themselves, who abuse the civil proceedings of the Court in this way. The absence in Jersey of any power similar to section 42 of the Supreme Court Act 1981 has increasingly caused difficulties for the Courts in Jersey and was the subject of comment by the Jersey Court of Appeal in a judgment delivered in 1998. The Court of Appeal observed that -

> "*It is a matter of concern ... ... litigants in person may pursue too large a number of applications or actions and appear before the courts on too many occasions, without good effect ... ... There would be something to be said for the Authorities looking generally at the position of litigants in person, and considering whether there should be any filter by which they are enabled to come to the courts to pursue actions and applications ... ... It is important that some consideration should be given to this with a view to seeing whether the process of the Court would be assisted by imposing some form of filter on such proceedings.*".

Following that judgment, the Bailiff, the Deputy Bailiff and the Rules and Procedure Sub-Committee of the Jersey Law Society all wrote to the Legislation Committee requesting the Committee to adopt legislation along the lines of that which existed in the United Kingdom.

The Legislation Committee has received the advice of Her Majesty's Attorney General in this matter and has also submitted the draft Law to the Royal Court, the organising judge of the Jersey Court of Appeal, the Law Society and the Judicial Greffier as part of the consultation process. Without exception, the scheme of the draft Law, which would implement a system similar to that under section 42 of the Supreme Court Act 1981, has received strong support.

The Committee itself considered carefully the need for such legislation. The following factors have weighed with the Committee.

1. There is no doubt that an inordinate amount of time is spent both by the Royal Court and by the Court of Appeal in considering hopeless and misconceived applications by litigants in person.

2. Irrespective of the provision of legal aid, there will always remain (even in a relatively small jurisdiction such as Jersey) a hard core of persons determined to pursue any point however hopeless on their own behalf.

3. The proposed legislation would not bar a litigant from bringing any potentially successful or reasonably arguable claim or application before the Courts, but would enable the Court to order that, for the future, any claim or application by the named litigant should only be made after leave of the Court had been obtained. Where the claim was reasonably arguable, the Court would grant leave to bring proceedings and the case would then proceed as normal.

4. Section 42 of the Supreme Court Act 1981 has acted to some extent as a vehicle for giving vexatious litigants some guidance as to what claims they might properly bring and what would be improper and inappropriate. In the absence of the 'filter' of section 42, many litigants in person, albeit that they may have an arguable point, do not know how to put it properly and often bring proceedings against the wrong defendants and, by making hopeless points, conceal other points which might validly be argued. The requirement to obtain leave could in certain circumstances afford a measure of guidance to would-be litigants in person.

5. The absence of a requirement to obtain leave places persons against whom proceedings are instituted at risk of incurring considerable legal expenses themselves in defending claims and applications which have no arguable validity. More often than not such defendants are unable to recover any costs from the litigants in person.

6. The unfettered right of a vexatious litigant to bring hopeless applications means that precious time of the Court is taken up in such matters, to the prejudice of those with legitimate claims whose cases therefore take longer to come to trial.

7. Applications to the Court by the Attorney General under the new legislation would be made only in the public interest and would be rare. The Court itself would be careful to protect the rights of the citizen both in connection with any application made by the Attorney General and any subsequent application for leave to bring proceedings if a vexatious litigant order were made.

8. Any order of the Royal Court, either to declare a litigant as a vexatious litigant or, subsequently, to refuse a vexatious litigant leave to bring particular proceedings, would be subject to appeal to the Court of Appeal.

Conclusion

In conclusion, the Committee would quote from the Supreme Court Practice (the official guide to the Rules of the High Court in England) where it is said as follows in relation to the reasons for the introduction of the power to declare a person a vexatious litigant, contained now in Section 42 of the Supreme Court Act, 1981 -

> *"The compulsive authority of the State vested in the courts and the judiciary should not be invoked without reasonable cause to the detriment of other citizens and that, where someone takes that course habitually and persistently, he should be restrained from continuing to do so unless he has reasonable cause."*.

It goes on to say -

> *"The power to make an order was no doubt a drastic restriction of [a litigant's] civil rights but there were at least two reasons for doing so. First, the opponents who were harassed by the worry and expense of vexatious litigation were entitled to protection and secondly, the resources of the judicial system were barely sufficient to afford justice without unreasonable delay to those who had genuine grievances, and should not be squandered on those who do not."*.

For the reasons set out in this report, the Committee believes that it is in the interests of justice to introduce legislation allowing a litigant who habitually and persistently brings vexatious proceedings, to be declared a vexatious litigant and thereafter to require the leave of the Court to bring any new proceedings.

Explanatory Note

This draft Law would empower the Royal Court to order that a person who without reasonable grounds has instituted vexatious civil proceedings before, or who has made vexatious applications to, the Royal Court must seek the leave of the Court before being able to institute or continue further civil proceedings in the Court.

CIVIL PROCEEDINGS (VEXATIOUS LITIGANTS) (JERSEY) LAW 200-

A LAW to empower the Royal Court to restrain vexatious civil proceedings sanctioned by Order of Her Majesty in Council of the

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(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

(1) If, on an application by the Attorney General, the Royal Court is satisfied that a person has in the Royal Court (whether before or after the commencement of this Law) habitually and persistently and without reasonable grounds instituted vexatious civil proceedings, whether against the same person or against different persons or made vexatious applications in civil proceedings, whether instituted by him or another, the Court may, after hearing that person or giving him an opportunity of being heard, order that -

(a) civil proceedings shall not be instituted by him;

(b) civil proceedings instituted by him before the making of the order shall not be continued by him;

(c) an application (other than one for leave under this Article) shall not be made by him in civil proceedings instituted by any person,

except with the leave of the Court.

(2) An order under paragraph (1) of this Article may provide that it shall cease to have effect at the end of a specified period but, if it does not, it shall remain in force indefinitely.

(3) The Royal Court shall not give leave for the institution or continuance of, or for the making of an application in, civil proceedings by a person who is the subject of an order for the time being in force under paragraph (1) of this Article unless it is satisfied -

(a) that the proceedings or application are not an abuse of its process; and

(b) that there are reasonable grounds for the proceedings or the application.

ARTICLE 2

This Law may be cited as the Civil Proceedings (Vexatious Litigants) (Jersey) Law 200-.