

**Submission  
No 152**

**INQUIRY INTO ANTI-DISCRIMINATION AMENDMENT  
(COMPLAINT HANDLING) BILL 2020**

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Submission

Stop Vexatious litigation. We are becoming a country where we cannot even have a personal opinion without the thought police being sent out by someone whose “feelings” may have been vaguely hurt but they are determined someone will pay for it.

Why should a person/complainant be able to file a lawsuit when the person alleged to have made a discriminatory comment is not in any way commenting against the complainant or personally connected to him.

<https://legaldictionary.net/vexatious-litigant/>

A *vexatious litigant* is a person who files multiple lawsuits, without legitimate grounds, with the intention of harassing or quieting another person. A vexatious litigant may file lawsuits that are frivolous, burdensome, and/or unwarranted, and the filing of such lawsuits is considered an abuse of the legal system. Vexatious litigants may suffer sanctions as a result of their malicious behaviour. To explore this concept, consider the following vexatious litigant definition.

### **Definition of Vexatious Litigant**

#### **Noun**

1. A person who files multiple lawsuits with the intention of annoying or subduing the other party.

### **What is a Vexatious Litigant**

A vexatious litigant is someone who files multiple lawsuits against another person for the purpose of “burying him in paper.” For example, a vexatious litigant is inspired to file a lawsuit against another person so as to harass that person, or to otherwise quiet him on an issue. Usually, a litigant will not be deemed “vexatious” after filing only one lawsuit. He becomes vexatious after having a pattern of instigating frivolous legal actions over a period of time. If these types of lawsuits are filed by an attorney, he and his firm may be risking sanctions by the court, and perhaps eventual disbarment. Some jurisdictions actually publish lists of people who have a history of abusing the legal system.

For example, the state of California maintains a list of individuals and entities declared vexatious litigants by the courts. This list is updated monthly, and made [available to the public](#) on the court’s website.

Because attorneys and their firms recognize that filing vexatious lawsuits could get them disbarred, they typically refuse to represent vexatious litigants. Therefore, vexatious litigants are often found to be acting *pro se* (“on one’s own behalf”), or representing themselves in the courtroom. If a litigant has been found to be vexatious by the courts, they are then usually forbidden from taking any further legal action. Else, they are required to obtain permission from a senior judge before pursuing any legal action in the future.

In liberal democratic jurisdictions, judges are reluctant to call someone a vexatious litigant. This is because the practice of vexatious litigation is taken very seriously, and judges would rather not censor someone who wishes to bring his case before the courts.

## **Vexatious Litigant Legislation**

In California, vexatious litigant legislation defines a vexatious litigant as someone who has engaged in any of the following behaviors:

### **1. Filing of Frivolous Lawsuits**

Vexatious litigant legislation describes a vexatious litigant as one who has filed at least five lawsuits in the past seven years in courts other than small claims. The suits must have been determined to have been made adversely toward the other party, and/or were unjustifiably allowed to remain in a pending status for at least two years. This means that the Plaintiff never pursued the case to a hearing or trial – keeping the defendant tied to the matter – with no legitimate reason to explain why this never happened.

### **2. Re-Litigating an Action**

California's vexatious litigant legislation also defines a vexatious litigant as one who repeatedly re-files, or attempts to re-file, a lawsuit after a decision has already been made in the case. For example, a vexatious litigant may challenge the validity of the decision, or any of the other issues of fact or law, that are made in the case, in an attempt to "nit-pick" the decision.

### **3. Wastes Paper and Time**

A plaintiff can be found to be a vexatious litigant if he repeatedly files motions, pleadings, or other papers, or engages in unnecessary discovery, all of which are nothing but a waste of time, adding nothing to the case. These are considered frivolous tactics that are intended to do nothing more than cause delays, and waste the time of everyone involved, from the attorneys to the courts.

### **4. Has a History**

It goes without saying that an example of a vexatious litigant is a person who has been previously declared to be a vexatious litigant by any state or federal court. This is especially true if the lawsuit the litigant is filing is similar or identical to any facts or events that have been previously filed. Those who have been found to have filed vexatious litigation in the past are typically required to represent themselves in any lawsuits going forward. This is to prevent attorneys and their firms from risking their reputations and livelihoods in defending vexatious litigation.

It is important to note that lawsuits can be considered frivolous after a final determination has been made in the action. Appeals do not count as final determinations, nor do writs, because the existence of an appeal or writ signals that not all avenues have yet been exhausted in the matter. A judgment is final when there is nothing else that can be done in a case. If someone continues to file motions in a case where all avenues have been exhausted, then those motions can be considered so lacking in value that they are nothing more than an obvious abuse of the legal system.