

## ***Xuarez & Vitela (No 3)* [2017] FamCA 1108 (22 December 2017) – Family Court of Australia**

‘Abuse of process’ – ‘Child-related proceedings’ – ‘Systems abuse’ – ‘Vexatious proceedings’

Case type: Application by both parties for a vexatious proceedings order.

Facts: Mr Xuarez and Ms Vitela (both pseudonyms) had been involved in court proceedings in relation to parenting orders for over 10 years ([7]-[21]). The father had filed 19 separate Applications in a Case between 11 April 2012 and 16 November 2017 ([16]), which were all dismissed, and Notices of Appeal in relation to the dismissals ([17]). Both the mother and the father filed applications for a vexatious proceedings order pursuant to s 102QB of the *Family Law Act 1975* (Cth).

Issues: Whether the Court should make the vexatious proceedings order against the mother or the father or both.

Decision and Reasoning: The application made by the mother was granted, while the application by the father was dismissed. An order was made prohibiting Mr Xuarez from instituting proceedings against Ms Vitela or any of her legal representatives and dismissing all extant applications ([45]).

Justice Carew at [29] cites Perram J in *Official Trustee in Bankruptcy & Gargan (No 2)* [2009] FCA 398 to set out 11 principles to consider when making an order in relation to vexatious litigants. Applying the principles to the father’s conduct, Carew J highlighted the facts that most of the applications were instituted without reasonable grounds, the father sought orders that the Court did not have jurisdiction to make, and the repetitive nature of the applications amounted to an abuse of process ([34]). It was noteworthy that in 2010, the father was declared a vexatious litigant in another court, in relation to proceedings where the father stalked the mother’s former legal representative ([37]). These facts justified the order being made against the father.