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Controlling Persistently Vexatious Litigants

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Our contribution to this well deserved *Festschrift* – the first for an Australian woman legal scholar¹ – examines the statutory power to prevent persistently vexatious litigants from undertaking future litigation (without leave of the court). This power originated in late 19th century English legislation, and since has spread throughout much of the common law world. The topic has received some attention in Australia,² but very little in the rest of the Anglo-Commonwealth world. This is surprising given the draconian nature of the power and the number of cases in which the statutory power has been invoked. In this essay we examine briefly the genesis of the English Act of 1896, chart its transplantation in New Zealand law and report on the New Zealand experience.

The genesis of the English Act: The vexatious Mr Alexander Chaffers

It is highly unlikely that those persons declared vexatious litigants pursuant to statute would know to curse Alexander Chaffer for their

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- 1 See M Taggart, "Gardens or Graveyards of Scholarship? *Festschriften* in the Literature of the Common Law" (2002) 22 *OJLS* 227 at 232. To the best of our knowledge, this is only the second *Festschrift* for a female legal academic lawyer in the Anglo-Australasian common law world. The first appeared only recently, honouring another outstanding woman administrative lawyer. See P Craig and R Rawlings (eds), *Law and Administration in Europe – Essays in Honour of Carol Harlow* (Oxford University Press, 2003).
 - 2 GL Fricke, "The Injustice Collectors" (1978) 52 *ALJ* 316; I Freckelton, "Querulent Paranoia and the Vexatious Complainant" (1988) 11 *Internat J of Law & Psychiatry* 127; S Smith, "Vexatious Litigants and Their Judicial Control – The Victorian Experience" (1989) 15 *Mon LR* 48. The last article grew out of Simon Smith's LLM thesis entitled "Abusive Litigation and Its Judicial Control" (Monash University, 1988).

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