



Speech by

**Mrs LIZ CUNNINGHAM**

**MEMBER FOR GLADSTONE**

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Hansard 8 December 1999

### **QUEENSLAND LAW SOCIETY AMENDMENT BILL**

**Mrs LIZ CUNNINGHAM** (Gladstone—IND) (5.56 p.m.): I rise to speak on the Queensland Law Society Amendment Bill in great measure because of the representations made to me by people who will be affected by the legislation retrospectively and because of the impact that will have on them, not only emotionally but also financially.

When I was first made aware of the incidents on the Gold Coast that predicated much of this activity, I was advised not by one of those involved in the incident but by another person, "Don't worry too much about their concern. Those people were greedy. They wanted something for nothing. They were looking for high interest. When the deal fell through, they wanted their money back." I met with representatives of the association that has since been formed called the Smith Action Association. The information provided by them was far from that situation.

I will give two examples just to show that we are debating a Bill that in part affects real people. It is not just a theoretical exercise. One lady, an 87 year old, partially blind widow is unlikely to get any compensation for \$10,000 taken from her by a Brisbane solicitor. This solicitor, acting for Ada David, took the money and invested \$10,000—it was her life savings—in a company. However, one of the directors of the company believed—no doubt on the basis of an assertion by Ada David's solicitor—that the \$10,000 was to repay an earlier debt. The debt was accumulated by an associate of Ada David's solicitor. Unbeknownst to her, in circumstances beyond her control, she lost what to her is a great deal of money. She is 87 years old and \$10,000 would add greatly to her quality of life.

Another spokesperson for the Smith Action Association has said that most of the solicitor's clients involved in this incident were retirees who had lost their life savings. They had planned to live off them as superannuation. One particular lady, Lorna Bartholomew, lost \$270,000. Under the legislation, many of these retirees will receive no compensation at all because their interest payments already equal the amount they originally handed over to the solicitor.

I think it was the member for Warwick who said that we would be rotable if we deposited money in a bank and subsequently went to retrieve that money and were told, "Sorry, we have had your money for 10 years. The interest that we have paid you on a yearly basis accumulates to more than the principal. Therefore, we do not have to give you the principal back." There would be letters flying everywhere. But that is fundamentally what this legislation is asking those people to accept—that if their initial amount has been equalled by interest payments over a protracted period of time, then they should not expect to receive any of the principal back.

Most of the people involved are in their sixties. Some of them have had to get jobs to be able to survive since that solicitor defrauded them of their money. There are those who have cancer and cannot afford the treatment. I met one of the victims of that solicitor who had cancer. One could not be anything but impressed by her courage. In spite of how she feels, she is determined to see this issue through, not because she has a great deal of confidence that she will regain the principal amount but because she believes that there is a moral responsibility on her part, on the part of others in that group, and on the part of those of us who are decision makers, to call to account those who are responsible. Her attitude during that meeting was such an encouragement to me, and I would like to be part of a Parliament that can give her some confidence in the process.

A number of people attended that meeting. They said to me, "Why is the Attorney-General doing this to us?" At that time, the Bill had not long been tabled, and I was seeking answers myself. The member for Ipswich West has been through a breakdown of Law Society funds. The member for Warwick was challenged by the Attorney-General: do you believe that the Government is responsible for some of this debt—for some of this fund deficit? I think that, in great measure, the answer to that is: yes. Over a long period, money has been taken from the trust fund and used for legal aid. It also has been allocated—as the member for Ipswich West said—to a number of other functions. However, a great deal of it has gone to legal aid. And in part, that draws Parliament—irrespective of who is in Government—into the equation of solving this problem.

I have been advised—and I seek clarification from the Attorney-General—that levies from the fund, that is, the levies on lawyers, were not paid directly into the fund but into a separate account and, therefore, this fund looks worse than it actually is. That was an assertion that was made to me, and I would certainly be interested in the Attorney-General's response.

The other accusation that has been made of the Smith Action Association is that they were looking for, as I said earlier, a greater return or an unrealistic return on funds invested. They have advised me that they were not; they were getting 1% to 2% above bank interest, and that is not unreasonable. That particular solicitor was a family friend to most of the clients. He was also a teacher, a fellow Catholic and a well-known local identity. He was well respected, and people trusted him. He offered first mortgage investments. He never bought any properties, although he made out that he did. When people asked for documentation, he supplied them with bogus information. But because they trusted him and because he had good standing in the community, they continued reinvesting their funds.

In part, I believe that the Law Society itself has some responsibility to carry. That particular solicitor was operating in Queensland. And after his licences was removed here in Queensland, he moved to New South Wales to practise. A letter from J. W. Shaw, Attorney-General, to the Queensland Attorney-General stated—

"The Law Society has advised me that, although"—

the solicitor—and I will take the lead of the member for Warwick and not mention his name simply because there could be legal action pending—

"... held a NSW practising certificate and was entitled to practise as a NSW solicitor, he commenced practice in NSW on 16 September 1996 after practising in Queensland from 1986 and after surrendering his Queensland practising certificate when being investigated in Queensland. The authorities in NSW were not informed of the surrender of his certificate or the investigation in Queensland until 20 February 1998. Meanwhile"—

the solicitor—

"... misappropriated a further amount in excess of \$3 million while practising in NSW."

I am also advised that the clients of that solicitor were not advised by the Law Society that the solicitor had had his licence removed.

So under the circumstances, and on the basis of all the information, there is a shared responsibility in this issue to see that those people—almost 30, I think—are not disadvantaged. It has been mentioned that New South Wales has agreed to pay in full the loss incurred to clients in New South Wales at the hands of that solicitor, and the New South Wales Attorney-General is himself querying why Queensland is not prepared to do the same thing.

I have already dealt with the fact that this Bill is going to ask people to accept a nil restitution if the interest paid to them over the period since the investment was purported to have been made by the solicitor is equal to the principal. As I have said, that is completely untenable.

The amendment that I have had circulated in my name intends to remove a section from this Bill. I notice that there are a number of amendments, so it will be quite busy at the Committee stage. The intention of this amendment is as a result of speaking with the Smith Action Association and also, in great measure, to address an issue that I find quite incredible in an amendment that will deal with legal matters. Clause 8 says—

"A claim may not be made against the fund for reimbursing pecuniary loss suffered"—  
and this is what I find offensive—

"because of the practising practitioner's unlawful conduct in relation to the amount."

So people are not going to be eligible for recompense if the action of the solicitor is unlawful. Yet here we are dealing with people whose whole goal in life—one would have expected—was to act to uphold and confirm the law.

The only other issue that I want to raise is what I believe is the key to why people felt so deeply aggrieved by the direction that this Bill is taking. The victims in the incident that triggered much of this Bill and the victims of the Bill are the consumers. They are the people who go to the legal practitioners with an expectation of getting quality advice and quality work—albeit at a price.

The levy that is applied to solicitors at the moment—other than the special levy—is \$20 a year and \$100 maximum for the term of the solicitor's licence. Most people would find that reprehensible. Solicitors would be one of those groups of people who would be seen by the community as earning an income in the higher echelons. I will just list a couple of their professional fees: for an associate solicitor, the fee is \$200 an hour; for an articulated clerk, up to \$80 an hour; for a clerk on the Supreme Court scale, \$125 an hour; photocopying \$1.50 a page; and faxing, \$5.50 for the first page, \$1.50 per page thereafter.

I am sure that members of the legal profession get tired of having these amounts thrown back at them, but it appeared to me, in my discussions with people who were aggrieved by this legislation, that they believe that the legal profession should share an obligation like many other professions, that is, to share liability created by their peers. There are quite a number of other associations that are required to pay levies and fees to build up a bank or a trust of money to be able to address illegal activities by peers of that particular employment stream.

One would have to say that the income of people in the legal profession is high, and that they should be able to see their way clear to contribute more than \$20 a year, or \$100 for the life of their practice, towards a fidelity fund to cover these sorts of illegal activities. I acknowledge that additional levies have been placed on lawyers. However, I still believe that a great deal of the aggravation displayed by members in this debate has been because they believe that the legal profession is attempting not to live up to its obligations. Consumers believe that many elements of this Bill disadvantage them. I have touched on only some. However, I look forward to the Minister's reply and also to the Committee stage, which should clarify some of these concerns.

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