



Speech by

SHAUN NELSON

MEMBER FOR TABLELANDS

Hansard 18 October 2000

DEFAMATION AMENDMENT BILL

Mr NELSON (Tablelands—IND) (10.35 p.m.): I rise to speak to the motion that is before the House. I do support the idea of sending it to the Legal, Constitutional and Administrative Review Committee. I would like to assure the members on this side of the House that the committee will deal with it in a most expedient manner. I hope that it will certainly come to a conclusion that will be beneficial both for the House and for the constituents who have a need to air their grievances with members on all sides of the House. That is the issue at the heart of the matter.

As has been said—and I suppose I will rehash the issue—as members of Parliament we do sometimes deal with issues that are quite contentious. I daresay that most of our work and the correspondence that we receive from our constituents is at times contentious and in a fair few cases the issues that are raised in letters to us could very easily be libellous. People write to us because they want to get something done about a matter that has been raised. When people write to their member of Parliament, I think that very few of them would believe that they may be put in a situation where they could be taken before a court because of what they have said in a letter or even what they have said on tape or in person in an interview with their local member of Parliament.

I suppose it is a very interesting point of law. I am not a lawyer, but it is a very interesting case that we have in society now. It is very unfortunate that we live in a society that has gone down the path of litigation and law suits at every turn. All that does is feed Labor lawyers and people in the legal profession—people who sometimes do not need feeding because they look as though they have more than enough food under their belts.

A Government Member: Sharks.

Mr NELSON: Not that I can talk. Sharks, sharks!

Mr Lucas: Obviously not referring to me.

Mr NELSON: I could not possibly refer to the member for Lytton. My question this morning goes to show—and there will be more on that subject—that, though there are many very good people in the legal profession and many of them are represented in this Parliament, there are many people in the legal profession who can be considered less than ethical in the manner in which they do their business.

Mr Lucas: It's no different from any other profession.

Mr NELSON: No different from any other organisation or any other employment in the world, but we must admit that lawyers are one of the most maligned groups of professionals in the world and, as some former serving police officers might say, deservedly so. The fact of the matter remains: we do live in a society that has gone down the path of litigation and sometimes very vexatious claims are made.

Another very valid point that should be made is that Australians are known for their sense of humour and are known for being straightforward and coming to the point. We live in a society where that has been the normal thing for people to do, but unfortunately with the advent of litigation and people being able to sue for defamation, it can quite often be a dangerous character trait for some people to have. If they go around telling the truth, they can find themselves in a fair bit of trouble. We

live in a society where someone could end up getting into a fair bit of trouble for describing something the way it is.

To me, this is a sad indictment on society. It is very much a part of the Americanisation of our Australian culture where we see people being taken to court for very trivial things. I do not want to see a situation arising where we have such things as Judge Judy on television. I do not want to reach the stage where we have personal claims that are so outrageous that they become the subject of TV shows.

Society needs to be protected from this rampant use of the defamation laws. Everyone would agree that a person has legitimate cause for complaint if he is maligned in public, particularly if he is maligned to the extent that it is going to affect his livelihood or his income. It is especially a problem if the claims are not true. A citizen should be afforded the right to defend himself.

This raises the interesting point of parliamentary privilege. I know that during my time on the committee this was a matter that was raised on many occasions. Parliamentary privilege is afforded to parliamentarians to guarantee that we have the right of freedom of speech. That is something that is fundamental to a democracy. It guarantees the Australian people the freedom that I believe they sometimes take for granted. As members of Parliament, we are afforded this protection in order to allow us to do our job. It enables us to raise issues, whether or not we agree with the issues and whether or not they are palatable to us. We are able to raise those issues in the public arena.

On a few occasions I have received letters which I thought should be taken further. However, I thought that if the letters were passed on to the relevant authorities there could be ramifications. People could take offence at what was written in those letters and could use the letters as a political tool against the writers of the letters.

This raises another issue which I think is very important. I am referring to people working for Government departments who want to raise issues. In my electorate I have many Government employees who come and talk to me personally and pass on really wonderful little juicy tidbits that I use when I come down here and work my magic. Of course, we have the whistleblowers legislation and such things if the matter gets out of hand.

However, there are cases where people make claims in letters against their employers. If such a letter was to be made public and circulated throughout the relevant Government department there could be ramifications. Regardless of which side of the Chamber we occupy, these issues are of genuine concern to all honourable members. They genuinely affect the way we do our work.

I wish to return to the subject of freedom of speech. Freedom of speech guarantees us the right to come into this Chamber, regardless of our political persuasion, and air views that we feel are important in our electorates. Members of Parliament are protected from litigation that may arise from the valid airing of a grievance on behalf of a constituent.

Mr Feldman interjected.

Mr NELSON: The name "coward's castle" is quite a nasty term. I do not think it is very fair. I believe that anyone who comes into this Chamber is far from a coward. To put one's name on a ballot paper and run for election is something that not many people in society would do. I think that anyone who comes into this Chamber, regardless of his or her political persuasion, has had a bit of guts at least to put his or her name on a ballot paper and have a go. It is too easy for people in our society to sit down and malign political representatives. I used to do that quite a bit. However, I have now discovered that it is not all beer and skittles. It can be a very hard job. I have maligned a few members of Parliament in the past. I look back now and think that they were probably not so bad; it was probably just my opinion.

We are afforded protection under parliamentary privilege. This allows us to air the grievances of our constituents. However, let us say that a Minister raised an issue in this House in a ministerial statement and he alluded to the fact that he had received certain letters or documents. Say, for example, a citizen thought, "Wait a minute, one of those documents mentions my name. I am pretty sure that Joe Bloggs wrote a letter to the Minister." That person can obtain that document under freedom of information legislation. I do not know quite how Cabinet confidentiality works—perhaps the acting Attorney-General could pick me up on that—but that person could then use that letter to launch litigation against the person who wrote the letter. Therein lies the heart of the problem.

We have a situation where a person has raised a legitimate concern with his local member of Parliament. The local member of Parliament has then done his job—

Mr Feldman: All in good faith.

Mr NELSON: All in good faith, as a member of Parliament. The member believes that he has done the right thing by raising the issue. Suddenly, this guy finds himself being dragged before a civil court under the Defamation Act and having to fork out whatever amount of damages is set by the court.

Regardless of how one looks at the situation, that is wrong. As far as I am concerned, it stifles freedom of speech in a de facto manner. It also stifles the ability of a member of Parliament to work with his constituents and raise issues that are important to him and to the area that he represents. As I read it, that is the heart of the Bill that is before the House.

I believe it is a very good idea to take this Bill to the Members' Ethics and Parliamentary Privileges Committee because the committee will be able to look at the Bill. Quite often when Bills are brought before the Parliament they need amendment. Lately, we have seen a lot of Bills being amended in the House. A lot of work needs to be done on Bills to ensure that they are correct when they come before the House.

It is my hope that this Bill will go to the committee and that the committee, in its infinite wisdom, will look at the Bill and make the necessary changes promptly and efficiently. The all-powerful Members' Ethics and Parliamentary Privileges Committee is the height of efficiency when it comes to committees of the House. It would be impossible for the committee to do anything but expedite its work on this Bill.

Mr Feldman interjected.

Mr NELSON: I am not trying to curry favour any more, or anything like that. I believe that the committee will do the best thing by the Bill and will do it expediently. If one looks at the notice paper, it is evident that the committee does not have too much on its plate at the moment. I think the committee is looking for work now that the Olympics are over. I believe this Bill will be a good thing for the committee to consider. I am pleased to see that the committee will take this Bill into consideration. It will be an opportunity to have a matter of great importance addressed in an appropriate manner.
