



NSW Legislative Council Hansard Full Day Transcript

Extract from NSW Legislative Council Hansard and Papers Thursday, 15 September 2005.

CRIMES AMENDMENT (PROTECTION OF INNOCENT ACCUSED) BILL Second Reading

The Hon. DAVID OLDFIELD [2.46 p.m.]: I move:

That this bill be now read a second time.

The object of the Crimes Amendment (Protection of Innocent Accused) Bill is to protect the identity of innocent persons who are accused wrongfully, unfairly or, indeed, with malicious intent. It is not the intention of the bill to provide protection of any kind for persons for whom the weight of evidence is such that criminal charges are laid against them. While, of course, innocent people are charged and ultimately found innocent by the court process, the bill relates only to the protection from public exposure of the accused, not those already charged. While we as a society recognise that a person is innocent until found guilty, the bill does not seek to protect the identity of persons charged.

However, it is not fair—indeed, it is entirely unreasonable—that a person who is merely accused of a crime should have his or her life destroyed by the notion of guilt established simply by the media. There is an unfortunate widespread public acceptance that where there is smoke there is fire. I imagine that most honourable members in this House have at some time been the subject of totally unfounded gossip, accusations and, in some cases, matters so serious that the media has speculated on corrupt conduct or the possibility of criminal charges.

Anyone who has ever had a dirty little story invented by an enemy knows full well that there can be lots of smoke without even so much as the tiniest spark. If we believe in the presumption of innocence, why should the innocent suffer the horrendous penalty of public humiliation and vilification as a consequence of widespread media coverage? We all know that accusations will make the front page but, equally, we also know that should nothing come of accusations, apologies are rare. If a person rates media coverage on the basis of accusations and nothing comes of those accusations, chances are you will hear no more and, hence, will never be informed of the spuriousness of the allegations. Does anyone here believe it is right or fair for a person to be publicly dragged through the mud by what may be nothing more than a malicious lie?

This bill in no way attacks freedom of speech. However, it will protect accused from having their identity disclosed. Crime can be reported, the victim can be interviewed, and the only thing the bill prohibits is the identification of the accused until that person's status changes from accused to charged. Until that time, widespread knowledge of the identity of the accused has no more public value than gossip. The public gains nothing from knowing such a person's identity, but the accused may lose almost everything by being publicly identified. While it may be argued that it is appropriate to publicly expose those charged with crime, what of those who are not charged yet suffer allegations through maliciousness or for financial or, possibly, political gain?

The bill does not hinder the safety of the community or justice in relation to the apprehension of suspects for criminal proceedings, because the bill does not apply to a publication authorised by the Commissioner of Police for the purposes of apprehending a person accused of having committed an offence. Nefarious people make false allegations for all manner of reasons. They may be motivated by misplaced notions of vengeance, personal gain—financial or otherwise—different beliefs, or opposing views. Sometimes they are motivated by political persuasion. If the unfortunate target of allegations happens to have a public or, perhaps, an industry profile, the media attention of them proportionately skyrockets. There are many examples of decent, law-abiding citizens having their lives devastated by allegations given widespread media attention.

To some—the media in particular—members of Parliament are unfairly considered targets of opportunity. I expect that the House remembers the terrible treatment received by Joe Tripodi. The difficulties he must have suffered after the disgraceful public assault made on him will hopefully always be a matter the rest of us can only imagine. Mr Tripodi was never charged but if we stepped out onto Macquarie Street and asked a few passers-by or visited his electorate at the time and spoke to a few constituents, what impression do you think they were left with? Perhaps suspicion that he got away with it because he was a member of Parliament.

The Hon. Eddie Obeid was also publicly dragged to and past the point of humiliation but no charges were ever laid; nor were there any adverse findings. Yet, if we asked talkback radio callers about the Hon. Eddie Obeid, would they say he was innocent or guilty? Of course, the Opposition could be smiling at this stage, thinking that that was Labor and we did our best to score political points off the misfortune of those accusations, be they true or not. But the shoe has been on the other foot, and will be again.

If the average person on the street—or, more particularly, in the electorate of Pittwater—was asked about John Brogden's financial conflicts of interest alleged to the ICAC in the lead-up to the last election, what would they say? That they are suspicious about that matter? That he is innocent or he is guilty? Members of this House should not delude themselves into thinking that such public disclosures aid one side or the other at any given time. All politicians are brought into disrepute by such allegations, so no side should think it will be advantaged by being able to slur the other at any given moment through the media's willingness to jump on the so-called good story. The experiences of the Hon. Peter Breen provided a good example of how allegations made to ICAC can so unfortunately slur a person's reputation, although, as with those mentioned previously, no charges were ever laid.

The Hon. Peter Breen: Point of order: I am reluctant to intrude into the honourable member's second reading speech but I am the fourth member he has mentioned as having been the subject of allegations, all by the Independent Commission Against Corruption. His bill amends the Crimes Act to protect so-called innocent accused. None of the members he has mentioned, including me, was ever accused of any crime. I ask the honourable member not to refer to members who are not the subject of inquiries and investigations in the context of criminal accusations.

The Hon. DAVID OLDFIELD: To the point of order: I am surprised the Hon. Peter Breen has raised this point of order. Essentially I am defending him against what took place with him and saying it was wrong. The bill relates to people who are accused of a crime. Someone who is taken to ICAC is potentially going to be charged with a crime. I am merely making the point that simply using ICAC to slur someone in the media should not be done. So, ICAC is appropriate in the sense that one is being exposed publicly as a consequence of that which will perhaps lead to charges or lead to serious accusations.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! There is no point of order. The honourable member may proceed.

The Hon. DAVID OLDFIELD: Of course, there is the practice of simply referring false allegations to ICAC and then alerting the media, hence creating the story that the accused is under investigation for corruption. This very tactic has been used maliciously against me. I have not raised these specific incidents to relive events. Those members have my sympathy. Indeed, I am on the public record as defending Joe Tripodi, the Minister for Roads. I have defended him not because I know him—I do not know him really—but because what was done to him was unfair. I simply refer to those matters to highlight that members are far from immune from the matters this bill seeks to rectify. Many people would say that politicians are fair game. But should that be extended to us being unfair game? Do we deserve to suffer the effects of false or unproved allegations? Where there is smoke, is there always fire? Will it be your life and the lives of your loved ones that are one day destroyed by false allegations?

It may be considered that existing defamation laws provide adequate redress, but the damage is already done. Often, such legal action is not realistic. A case takes years and the expense excludes most people from even trying, especially against the billions of dollars at the fingertips of the media. Successful defamation under such circumstances is to be applauded, but the compensation only helps to ease the pain that this bill seeks to avoid. A recent case in the United Kingdom brought against television personality John Leslie sparked British Ministers to consider a bill similar to this one. A BBC report stated:

Labour's convenor of the parliament's justice committee Pauline McNeill, MSP for Glasgow Kelvin, said the case against John Leslie raises serious questions about the current system. You have to consider the consequences on all sides when anonymity is not granted. I think you would have to consider what the specific reasons would be that you would not be granting anonymity.

Although the Commons Home Affairs Committee recommended that suspects should not be named up to the point of charge, the members of Parliament could not agree on whether such protection should extend to the trial itself. In correspondence I received in the last 24 hours from the member just referred to, I am informed that that matter is still pending. Following the court case, it was said that the Leslie scandal was "the latest example of the evil consequences of publicity, police and prosecutors combining to trial by media". After the charges were dropped against Leslie, the prosecutor, Richard Howell, said in court of Leslie:

The prosecution gladly acknowledges that he will leave this court without a stain on his character from this investigation.

That statement is in complete denial of the damage that had already been done to Leslie's character and his career. After months of media speculation and gossip, Leslie was arrested on 5 December 2002 and charged in June 2003 with two counts of indecent assault. During that time he was sacked from his \$600,000 a year job. Yet charges were dropped only one month after they were laid. In an interview with the *Daily Express* newspaper in the United Kingdom Leslie told how his weight seesawed as he stopped eating and then binged on poor quality food. He no longer felt like playing the piano or playing tennis and football. Leslie said:

From successful TV celebrity, I had suddenly become portrayed as a vile monster and I could not defend myself. I thought the best thing to do would be to do away with myself.

Show business manager Jonathon Shalit said:

He (Leslie) has been tried by the media and a whispering campaign, and by people who could not substantiate their claims.

Publicist Max Clifford agreed:

He's got to win the hearts and minds of the British public again, and that's going to be an uphill struggle.

After all charges were dropped Leslie's solicitor, Paul Fox, said:

His life has been really a nightmare. His job is being in the media in the public eye, and yet he's almost had to become a sort of monk. He's had to retire from public life whilst these police investigations went on. He's lived his life under a cloud.

One of the most glaring examples of double standards in public identification of accused is the law in regard to the treatment of juveniles as opposed to the treatment of adults. Juveniles are not named. I understand that is to protect them. Why does the law fail to protect adults? Is it because society has determined that young people are entitled to make mistakes which should not be held against them for the rest of their lives? Do we say they are young and can be excused? By doing so, does not society recognise the lifelong damage that is done from being associated with crime?

In the case of juveniles we do not just protect the innocent accused, we protect the guilty as well. It does not matter how often they are proven guilty, we just keep saying, "It's okay, we understand you are young. We understand you have been convicted 50 times for stealing cars. We understand you have been convicted a dozen times for robbery or a few times for assault or a couple of times for rape, or maybe you have murdered only one other human being. It's because you are young and young people make mistakes. So we will make sure the media never tell anyone you are a dangerous violent offender." We keep secret the identity of convicted teenage murderers, but we broadcast the names of adults who later turn out to be the innocent accused.

Do members see the hypocrisy and the double standard that is applied in law: protect the guilty convicted children and expose the not yet charged, potentially innocent adults? I note the Hon. Peter Breen says "No", he does not see the hypocrisy. It is inconceivable that he cannot see the hypocrisy in protecting guilty convicted children time and time and time again, yet exposing not yet charged potentially innocent adults. I simply point out that innocent adults should at least be afforded the same protection that is enjoyed continuously by criminal juveniles.

Many people have described to me how they have been tried, convicted and executed by the media, only to find later the accusations go nowhere. They come from all walks of life: the famous and the unknown; professionals such as doctors, and workers such as security personnel; others innocently accused through vindictiveness or from being in the wrong place at the wrong time. Until a person is charged, there is no justifiable public interest in his identity. There is no issue of freedom of speech. If we truly uphold the presumption of innocence, then we must accept allegations as little more than gossip, at least until the person is charged.

It may be argued that by not naming the accused the public will be denied due process, including knowledge of the accused. Such arguments are wrong. Without charges, accusations should be considered gossip. Gossip is not a matter of public interest. Gossip is an unsustainable matter of public snooping and nosiness, an invasion of privacy. It may be argued that by not naming the accused, the media will not be able to report the story. That notion is also plainly wrong. A *Sydney Morning Herald* headline read, "Judges upbraid 'little thug' over sentence appeal". Because some of the little thugs mentioned in the case were juveniles they were not identified. Yet they were criminals who had already been found guilty by the court. Although these criminal kids were not named, the media was still able to inform the public about the trial. Why not afford adults, who have not even been charged, at least the same protection?

The Crimes Amendment (Protection of Innocent Accused) Bill will not prevent public awareness of crimes or the perpetrators who committed them. The bill will not prevent the airing of television shows such as *Australia's Most Wanted*. The bill does not protect the guilty or those seeking to avoid prosecution through non-identification. The innocent accused are just that—innocent accused—and they deserve to have the fundamental right of being presumed innocent until it is shown to be reasonably otherwise. Comments that victims, like John Leslie, who were innocent accused are now okay because they have a job and are back on their way in their chosen careers are offensive at best.

How many members would suffer in this manner and then write it off as bad luck on life's journey? I implore members to seriously consider the free reign of the press to pick and choose whom they destroy. I am not stuck hard and fast on this bill in its present form; I am open to amendments. I expect members to suggest improvements to the bill. I welcome any amendment that improves the bill whilst still preserving the principle of protection for the innocent accused. When those members who choose not to support this bill find themselves the innocent accused, I hope that as they loudly profess their innocence they will remember they were warned.

Debate adjourned on motion by the Hon. Don Harwin.