

## Legislative Council

Wednesday, 18 May 2011, Page 2881

### GILBERT, MR R.

**The Hon. A. BRESSINGTON** (16:42): I move:

That the Legislative Council condemns the slur against the then Burnside city councillor, Mr Robert Gilbert, by the member for Newland in the House of Assembly on 14 October 2010 and calls on the member for Newland to correct the record through an apology.

I move this motion to bring to this parliament's attention what I believe to be a serious abuse of parliamentary privilege and what has been described to me as a malicious slur by the Hon. Tom Kenyon, the member for Newland, against then Burnside city councillor, Mr Robert Gilbert, in the House of Assembly on 14 October 2010. Members in this place will no doubt be familiar with Mr Gilbert who, for over a decade, served the Burnside community with passion and integrity as a member of the council.

He was also instrumental in the establishment of the investigation into the conduct of the Burnside City Council by Ken MacPherson, the former auditor-general, colloquially known as the 'MacPherson inquiry', having written to the minister over the course of a number of months, alleging deep-seated corruption and petitioning for such an inquiry to be held. As I will detail, his independence led to a campaign to discredit him by those he was accusing. I fear that through the actions of the member for Newland this parliament was dragged into this campaign.

Rising to speak to the Appropriation Bill 2010, apart from the budget estimates process in which opposition members are given rein to emphasise the budget's failings, the member for Newland instead took advantage of the flexibility afforded not to highlight that budget's few positives but instead to attack the reputation of the then Burnside city councillor and mayoral candidate, Mr Robert Gilbert, in the following address:

I rise today to reveal serious claims about illegal activities on the Burnside council. My attention has been drawn to an incident that occurred on 16 February 2010. This incident does not yet appear to have been investigated appropriately. During the course of the Burnside council meeting on 16 February, the council went into a confidential session. There is nothing unusual in that; it is a regular occurrence in council meetings around the state. As members would know, the Local Government Act provides for this in order that councils can deal with confidential and sensitive information.

He goes on to say:

If an elected member of the council is the subject of a confidential discussion then they must declare an interest and remove themselves from the chamber. On the occasion of 16 February, councillor Rob Gilbert was the subject of the confidential discussion. The subject at hand was his harassment of a female staff member, which is a breach of the code of conduct in force at Burnside council. In what I believe may be a breach of the federal Listening Devices Act, councillor Gilbert left a recording device, which was in fact recording the meeting, on his desk. When another councillor pointed this out to the meeting, the acting CEO removed the device from the chamber. This may also be a breach of the Local Government Act.

I have two statutory declarations attesting to these events and am somewhat shocked at the behaviour of the member of council, who has enough experience to know he was breaking the law. It is open to conclusion that councillor Gilbert has deliberately broken the law. As members know, statutory declarations are very important documents and penalties apply to persons who use them to make false allegations. These declarations are not made lightly and they are made in the full knowledge of requirements for truthfulness and accuracy. There is a clear need for justice to be done in this case and the matter to be fully investigated.

Madam Speaker, I am referring these matters to both the Federal Police and the Anti-Corruption Branch of South Australia Police. Councillor Gilbert is a former used car dealer, with a reputation that makes the Dodgy Brother s look angelic, and he is now running for mayor of Burnside. In my opinion, the allegations of Rob Gilbert's flouting of the law and potential criminal behaviour make him unfit to hold further public office. His association with another dubious member of the Burnside council, Jim Jacobs, is further proof of his unsuitability for the office of mayor. I warn voters in the Burnside council to be very careful about whom they vote for when voting for mayor.

As I will demonstrate, a simple Google search reveals this to be a malicious slur on Mr Gilbert's reputation that has so far gone uncorrected—again, quite ironic and quite hypocritical, given minister Gago's objections in this place to the question asked by the Hon. Rob Lucas, where she claims no proof of allegations made, no documentation and no substantiation of comments. It is a little like the pot calling the kettle black, I would think.

Central to the member for Newland's smear against Mr Gilbert was the allegation that he had committed a criminal offence by intentionally leaving a recording device in the Burnside city council chambers after excusing himself due to a conflict of interest. Forgetting that he is a member of the parliament and not of the judiciary, and ignoring the principles of due process and innocence—which was another comment made in this chamber today about a question asked of a member of the government—people are now guilty until proven innocent. Perhaps this government needs to look at its own standards and values and its own conduct.

The member for Newland saw fit to proclaim publicly that 'councillor Gilbert has deliberately broken the law'. It is the circumstances of the incident that give rise to any potential illegality and yet, clearly without knowing the circumstances, the member for Newland proceeded to allege that Rob Gilbert had flouted the law. This is despite no action being taken by Mr Gilbert's fellow councillors, who I believe readily accepted that Mr Gilbert, who was of the regular practice of openly recording council proceedings—something he felt compelled to do due to the suspected editing of the council's recordings—had simply forgotten to take out his recording device when leaving the chamber after claiming a conflict of interest.

Further, to have committed an offence Mr Gilbert would have had to have recorded proceedings to which he was not privy; this did not occur, as his device was noticed and removed prior to any confidential discussions commencing. The honourable member placed great emphasis on the fact that he had referred the supposedly illegal activity of Mr Gilbert to the Federal Police and the Anti-Corruption Branch of South Australia Police.

I am curious to know whether the member for Newland has actually followed through on his serious claims and contacted the agencies to which he referred to ascertain their response. If he had done this, as Mr Gilbert obviously did, he would have learnt that the officer in charge of the Anti-Corruption Branch found absolutely no substance to the allegation of criminal conduct, further adding that the Anti-Corruption Branch saw no need to interview Mr Gilbert. The serious claims of the member for Newland were so baseless that the police did not even need an interview to establish as much.

In making what were serious allegations, the member for Newland purported to rely on two statutory declarations, yet failed to identify whose signatures they bear. Given the very real potential that they do contain false allegations—for which, as the member noted, penalties apply—I call on the member for Newland to release these statutory declarations for scrutiny. His failure to do so should reveal to all his true character. The content may also reveal why these individuals waited over eight months—eight months—before raising their concerns, and why they approached the member for Newland and not the appropriate authorities.

As I mentioned at the outset, Mr Gilbert's independence had led to previous attempts to discredit him. One such attempt at character assassination was the allegation that Mr Gilbert had bullied a female employee by failing to talk to her. Despite the employee not submitting a formal complaint nor, from my information, feeling as though she had been bullied, the then chief executive of the Burnside council took it upon himself to pursue the allegation, filing a complaint on her behalf. In an attempt to discredit Mr Gilbert this was then leaked to the media anonymously.

Pursuing the story, a journalist contacted Mr Gilbert, who confirmed that he was the subject of an allegation and denied being a bully. Seizing the opportunity, Mr Gilbert was then accused by the chief executive of breaching the members' code of conduct by releasing confidential information—which, by the way, he did not release. This allegation was then pursued in preference to the baseless bullying claim, which was subsequently dropped.

The resulting investigation by a lawyer from Norman Waterhouse surprisingly found that Mr Gilbert had not leaked damaging information about himself. Accepting this report, the Burnside City Council rightly resolved to make an unreserved apology to Mr Gilbert on 16 February 2010. However, despite the bullying allegation being withdrawn and Mr Gilbert being cleared of breaching the members' code of conduct, and the apology being offered, the member for Newland saw fit to repeat the allegations in the other house.

In the honourable member's defence, that apology had been suppressed, curiously, with the majority of the Burnside councillors—the same councillors who had voted to pursue the evidently groundless allegation—resolving not to release the apology for 12 months. The stated rationale was that the disclosure of the report and associated documents would be an unreasonable disclosure of the personal affairs of the woman concerned. It was, of course, simply coincidental that the 12-month delay in the report's release would deny Mr Gilbert the opportunity to clear his name prior to the council's election.

However, this defence is lost, given that the apology did receive media coverage, despite its suppression, and with *The Advertiser* running an article on 4 March 2010 entitled 'Burnside councillor demands public apology'. The article, which is readily available online and can be located with ease through Google, reveals that the allegations against Mr Gilbert were found to be groundless in a report prepared by Norman Waterhouse lawyers, that an apology had been made to Mr Gilbert by the Burnside City Council and that the apology and report were subject to suppression.

Given that the apology was, through this article, public knowledge and readily accessible, there is simply no justifiable excuse for repeating the allegations some eight months later—unless, of course, the member for Newland was intent on assassinating the character of Mr Gilbert. This intention becomes evident when one considers that the member for Newland, not content with labelling Mr Gilbert a criminal who bullies female staff, went one further by stating:

Councillor Gilbert is a former used car dealer , with a reputation that makes the Dodgy Brothers look angelic.

Again, a simple Google search reveals the latter to be an untruth and, as such, highly slanderous. In fact, if the honourable member had made even the most rudimentary inquiries, he would have soon learnt that quite the opposite was the case, with Mr Gilbert enjoying a 30-year unblemished record in the second-hand car sales industry.

It is my understanding that the only complaint against him in this time was later found by a court to be without basis, which I will summarise. Despite Mr Gilbert's best attempts to have the vehicle repaired in accordance with the statutory warranty, diagnosis of the problems proved difficult and lengthy, and the customer grew impatient. Seemingly convinced that he would get no reprieve, despite the evidence to the contrary, the customer approached *Today Tonight*, which shortly thereafter went to air with a piece alleging that Mr Gilbert's business was shonky and reneged on customers' warranty rights.

This being plainly false and highly defamatory, Mr Gilbert sued *Today Tonight's* parent body, South Australian Telecasters. The resulting judgement, which is available on AustLII and can be located through Google, finds in Mr Gilbert's favour, imposes damages of a total of \$139,927 and makes clear that, far from having a reputation that 'makes the Dodgy Brothers look angelic', as the member for Newland stated, Mr Gilbert was highly regarded in the industry. In fact, having heard testimony that Mr Gilbert was held in high esteem and was known for his honesty and personal integrity, His Honour Judge Sulan stated, when assessing damages:

I conclude that Gilbert had, over 30 years, developed a fine reputation in the motor trade industry. I accept Gilbert's evidence that he considered his reputation to be of great importance to him.

To assist the honourable member to find this judgement, the full title is: Bob Gilbert Motors P/L & Anor v SA Telecasters Ltd No. DCCIV-98-84 Judgment No. D38 [1999] SADC 38. As I said, it is available on the free database, AustLII, and is the first item returned when the name 'Gilbert' is searched.

Having insinuated that Mr Gilbert is a criminal who bullies female staff with disregard to the council's code of conduct and is shonky, with a reputation that 'makes the Dodgy Brothers look angelic', the member for Newland reveals his true intent with a warning to prospective voters in the soon-to-be-held Burnside city council election. He says that Mr Gilbert is 'unfit to hold further office' and, further, is 'unsuitable for the office of mayor'. How dare he?

While it would be improper for me to suggest the member for Newland's motives, it should be abundantly clear that he rose to his feet on 14 November last year with the intention to assassinate the character of Mr Gilbert and destroy any opportunity he may have had in the Burnside mayoral elections. Further, there should be no doubt that he abused parliamentary privilege to do so. Parliamentary privilege, as the minister Gago pointed out today—or, more specifically, the privilege of freedom of speech enjoyed by this parliament—is intended to enable members to raise, in this place and the other, matters they would otherwise be unable or reluctant to broach.

It is intended that members will recognise that, with this great immunity, comes a corresponding obligation and responsibility in the best interests of those we serve. I contend this intention was lost on the member for Newland on that day. There is simply no justification, and hence excuse, for the highly insulting—and, in any other forum, defamatory—remarks made by the member for Newland. As minister Gago often challenges the Hon. Rob Lucas: step outside and make those comments. Step outside, on the steps, and make the comments that you made in this house—I will guarantee that he will not. However, under the cloak of parliamentary privilege, the honourable member clearly felt no fear or

shame in vilifying a serving member of a local council and a mayoral candidate. No doubt, he believed that no consequences would be brought to bear.

I moved this motion out of the simple recognition that a grave wrong was committed against one of our constituents and, as I argued in this parliament at that time, it has been revealed that no other member dared to have it corrected. It is my hope that, upon its passage, an apology is forthcoming and the record stand corrected.

Given that SA Telecasters was forced to pay just shy of \$140,000 to make right *Today Tonight's* wrong against Mr Gilbert, an apology by the member for Newland is the least that must be offered to restore his standing in the community . It may also serve to restore the member for Newland's credibility, who, in his own words to somebody who rang to complain about the speech he made, he allegedly stated, according to this constituent that 'it was just politics'.

The moral compass of this government is in doubt, and this address in the House of Assembly has done nothing to counter that doubt. To put on the record comments that damage the character and reputation of a constituent and, moreover, a dedicated person who has served the members of his community for a very long time for nothing more than 'just politics' is reprehensible, especially given the circumstances I have outlined here today. I commend the motion to the house.

Debate adjourned on motion of Hon. T.J. Stephens.