

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

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Ms R. Ives, President; and

Mr R. Dahlitz, Organiser of Speakers, Humanist Society.

The CHAIRMAN — On behalf of the Victorian Parliament Law Reform Committee I take the opportunity to welcome you, Rosslyn Ives and Ray Dahlitz, from the Humanist Society to our hearings today and for the time that you spent earlier in forwarding your submission to us.

Should you have any other thoughts that you would like to convey to the committee please feel free to liaise with the committee staff, Merrin Mason or Kristin Giles. At this juncture I invite you to speak to the committee, following which we would be very pleased to ask some questions.

Ms IVES — Thank you very much for the invitation to be here. I thought I would start by saying something about humanism because you may not be very clear about that. Humanism is an outcome of a long tradition of free thought, and it has inspired many of the world's greatest thinkers. The fundamentals of modern humanism are that it is an ethical, rational position based on reason; that is one of the key features of the way we see the world. It supports democracy and human rights. Humanism insists that personal liberty must be combined with social responsibility and care for the environment. Humanism is a response to a widespread demand for an alternative to dogmatic religion, and so our position is that we do not have any supernatural beliefs. We value artistic creativity and imagination, and recognise the importance of art. So the humanist position is a philosophy or a life stance based on human values, so that is broadly what humanism is.

As an organisation we have groups across Australia. The Australian Humanists are affiliated with an international organisation, the International Humanist and Ethical Union, which formed in 1952. We have just returned from the 50th anniversary congress where something like 50 different countries were represented. This international body has non-government representation at the United Nations, so that gives you some sense of it being a global movement with recognition. It is quite a big movement in other countries but not so big in Australia. That is where we are situated.

We strongly favour the use of an affirmation and the deletion of the idea of an oath. That is our basic position, and we put that position to a similar committee to this which may have met back in 1986 — am I right about that? I think there was a previous investigation into oaths and affirmations, and that was our position at that time. We believe the idea of an affirmation for all people coming before courts is that it is essentially non-discriminatory in the sense that it is the same for everyone who comes forward. It should be fairly simple, and it is as likely to elicit the truth as an oath or other alternatives, and it seems to us to be much more appropriate in a modern secular state.

We take the view that the oath-taking originated in a country where they have a state religion, namely in England. We of course do not have a state religion in Australia: we see our governmental levels as essentially secular, and our position is to see the separation of state and church as a rather importance point. We feel religion is increasingly becoming more of a private matter and is less important in the public sphere. At the time when the oath-taking was put in place religion would have been a very major part of the public sphere, so things have changed over time in that respect.

What has happened, and this has come up in a bit of the discussion we have seen so far, is that religion in Australia is now much more varied. Whereas 200 or 300 years ago you could make the assumption that nearly everyone would be Christian with some minor other threads, now it is much more varied, and this adds a lot of plurality to the situation.

I want to say something about an area that concerns us. Those who want to argue for the retention of the oath will often cite the census figures as giving strength to the depths of the Christian religion, particularly in the Australian community. But if you look at what is going on in Australia now, regular attendance at churches in particular is down to 20 per cent or below, so that is only a small segment of the population; civil marriages and funerals are now increasing — I think the rate for civil marriages is over 50 per cent, and the figure for civil funerals is similar. There is a weak observance of holy days. We still have holy days but it is not a strong part of our feeling in the community, so the whole adherence to religion in Australia is somewhat diminished.

An interesting national social science survey was done in 1993. It used a range of questions to ask about attitudes to church and clergy, and from this multiquestion survey it grouped the people surveyed who, I assume, were checked out as being representative of Australia and therefore Victoria. The survey classed 42 per cent as non-religious; 29 per cent as religious but non-attenders; 22 per cent as religious attenders, meaning they go off to services fairly regularly; and 7 per cent did not respond. From that you get a figure of about 51 per cent of Australians feeling reasonably strongly about religion, and yet the census figures show something else.

We have just come back from overseas and I am not precisely sure of the current ones, but according to the census something in the order of 73 or 74 per cent of people in Australia are classed as having a religion. We have for a long time lobbied because in our opinion the census data comes off one rather small, simple, biased and flawed question. When people get their census form they are asked, 'What is the person's religion?' — it used to ask what is the person's religious denomination — and it leaves people to give a simple little answer.

There is a lovely little Leunig cartoon. A couple are filling out the census. One of them is smoking a hookah and the other is sitting in a spa; and one says, 'We're Church of England, aren't we?'. I think this is what happens with the census. A lot of people think, 'Oh, we must be something. Where did we go to Sunday school?', and they will tick one of the little boxes.

If you look at other census questions — for instance, 'What is the marital status of the person?' — the first choice is 'Never married' and then there are various other categories. But with 'What is the person's religion?' the first choice is not non-religion — which is a negative category anyhow — it lists religions on the strength they were from the census before, so it usually starts with Roman Catholic, Church of England and so it goes down. Right at the bottom there is 'Other' and then 'No religion'. So this sort of a question tends to elicit a bigger percentage of people supporting religion. For that reason it is a weak argument for retaining the oath.

I just want to reinforce what I already said. We believe a simple, secular affirmation will be fairer and as likely to elicit the truth as any other forms.

The CHAIRMAN — Thank you.

Mr LANGUILLER — Would it be fair, based on your claim that people have moved away from religion, to suggest that perhaps people have moved away from the institutions that represent religions — the buildings and the people on earth who represent the institutions but not necessarily a God or gods?

Ms IVES — That is right.

Mr LANGUILLER — I wish to suggest that perhaps we cannot equate the two things and put them at the same level. Fair enough, plenty of people are suggesting that they remain very committed to their religion, but they are very cynical about and object to the institutions, whether they be Greek Orthodox, Roman Catholic, Presbyterians and so on. I am just trying to clarify that.

Ms IVES — I think what you are saying is fair enough, but this then supports our contention that religion is becoming increasingly more private in that it is something that people will hold personally; but it is not an element of the public sphere, which is part of our argument that when you bring people into a public court then it really has no necessary place there.

Mr LANGUILLER — When one walks into a court of law, presumably one would wish to obtain or achieve the greatest level of justice. When one walks into a court of law, justice should be fundamental, whichever side of the fence one may be on. Do you think that freeing the judiciary from the influence of religion may assist in delivering or adding value to the acquiring of justice? In other words I am suggesting quite openly that perhaps the fact that the jury, the judge, or whoever may know that I am a Muslim, a fundamentalist or a Jewish fundamentalist may have an impact on the operation of justice and that consequently if we freed the court system from

religion or the knowledge of a person's religious background we might assist the fundamental objective, which is to deliver justice, whatever that means?

Ms IVES — I would hope what you are suggesting would be right, but I do not think you could say that could apply if the case were linked in some way to an influence of religion. The case before the court may be a consequence of religious beliefs, so in those cases the influence of religion could not be left outside the court.

Mr BOWDEN — What would be your response to the argument that people with strong religious beliefs would consider an appropriate religious oath to be more binding on their conscience than a non-religious affirmation?

Ms IVES — I could appreciate that they would hold that view, but I would like to put to you that in many walks of life we have to fill out forms which ask us to honestly state various facts — for instance, if you are applying for a licence or something like that. They do not carry with them a religious overlay. Surely this is an individual conscience thing. I cannot believe that people would still not tell the truth if they were taking an affirmation versus an oath if it was understood that everyone took an affirmation. Maybe there would be a little changeover period because people have had the experience of oaths, but after a passage of time it would cease to be relevant.

Mr KATSAMBANIS — In your submission you state that retaining the option of a religious oath would 'maintain an invidious discrimination between believers and non-believers'. That is almost implying that at the moment there is a form of discrimination against people that you may have called non-believers — a term I am not comfortable with. Do you have any examples of where that discrimination may have taken place in a court context?

Mr DAHLITZ — A celebrated example of that occurred in 1936 before Judge Foster. A young boy who was a witness was asked to make a statement, and they said to him, 'If you don't answer correctly you will go to hell'. Judge Foster intervened and said, 'No, no, Sonny there is no hell'. Of course, all hell broke loose in the papers the next day! But they took the view, seeing the boy's name was Ryan, that he would have been an Irish Roman Catholic brought up in the correct Catholic way and that therefore they could use the teachings of the Bible as an example of what would happen if he did not tell the truth. But that was overruled by Judge Foster, who was an atheist and founding member of a Rationalist Association of Australia Ltd 1925.

That is an example that I think would be replicated in plenty of other cases whenever they try to move on the idea of giving a religious interpretation of what should be an objective evaluation of whether something is true or false. In other words, you would have to say the separation of church and state is involved in this, and that is where the humanists come down very much in favour of that separation — what is the responsibility of the state in view of our multiculturalism and the increasing multiplicity of the legal systems? To bring that into the legal apparatus in the way that it has been left for so long is retrograde and does not keep pace with understanding and indeed the really great increase in the secular attitude towards these life and death matters. I think it confuses the issue, or certainly complicates it from a bureaucratic point of view, and it brings in extraneous influences which are not appropriate to the situation.

The CHAIRMAN — Just one small point of clarification. Is the case you alluded to an Australian case?

Mr DAHLITZ — Yes, in the state of Victoria. Judge Foster is very well known — Alfred Foster, who ended up on the arbitration court. He was one of those who gave a very important legal interpretation which enabled the 40-hour week to become law.

The CHAIRMAN — Do you recall the name of the case, the citation?

Mr DAHLITZ — I can give it to you. It is in my book, *Secular Who's Who* (page 95/Ref.Entry/2029). I should have brought it. The 1936 case dealt with an internal family matter, just from memory. I can certainly give it to you quite easily, and it is well known indeed.

The CHAIRMAN — Ms Ives and Mr Dahlitz, thank you very much for giving your time to present evidence to this committee today.

Witnesses withdrew.