

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

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Mr R. Lloyd.

The CHAIRMAN — On behalf of the Victorian parliamentary Law Reform Committee, thank you, Mr Lloyd, for taking the time to contribute to our deliberations on the use of oaths and affirmations in a multicultural society. You will receive a copy of the Hansard transcript. Should there be any necessary corrections to it, feel free to make them and return it to the committee staff. Noting that all evidence proposed to be given will be disseminated to the wider world and placed on the committee's web site, should there be evidence you would like to give in camera — that is, not on the public record — we can go off the record to take any evidence you may wish to give. I invite you to speak to your submission.

Mr LLOYD — The first point I make is that the law in Australia has inherited from the imperial Parliament and in fact it definitely traces back through Christianity and is based on Christian law. Having said that, I comment that in the Bible it clearly states that we should not swear on the Bible, or in fact on anything. The wording from Jesus himself, according to chapter 5 of Matthew, is, 'Let your communication be yea, yea; nay, nay, for whatsoever is more than these cometh of evil'.

The difficulty that a lot of people may have in understanding the relationship between a law that is based on Christianity and people who have other faiths would be understanding that it would not in any way remove the rights of non-Christians in our legal process but simply that the law of this nation is based on the law of God and from Christianity. When people choose to come to Australia I believe they accept they are coming to this country as it is, not coming here to change it to their beliefs or their way of life. If I were to emigrate to another country, whether it be to Arabia, Malta, China or any other nation, I would go there not with my Australian heritage and Australian beliefs and wishing to impose and expecting respect for that in a court of law or in that society, but knowing, or should know, what that society would impose on me as a citizen of that society.

Therefore, I would say that Australia is under no obligation whatsoever to bend its rules or moderate its standards to accommodate people who voluntarily come to Australia from other cultures. That is not to say I would necessarily wish to impose untoward restrictions on those people. I do not believe that because we have societies represented here who have other faiths our legal system should be altered to reflect their legal heritage and their other faiths.

I have already said that I do not believe it is appropriate for the Bible to be used as a form of taking an oath in a court of law, nor do I believe it is appropriate in any other format. The documents I have from this inquiry indicate that the oaths particularly relate to a court of law — that is, the oath a person would take in a court of law — but equally there are other aspects to the taking of an oath.

One would find it difficult to imagine that you could interfere with the oath that was to be used in a court of law without equally interfering with oaths per se in every other form. You, as members of Parliament, on entering Parliament would have been required to take an oath of allegiance to the Queen and to the law. Any investigation or committee into a part of the law can have severe ripples throughout the whole of the law.

We have a number of acts of the Victorian Parliament that relate to oath taking. We have the Evidence Act, the judiciary legislation and in fact penalties for unlawful oaths come in under the Crimes Act. An unlawful oath is any oath not provided for by the Parliament, particularly if it contains an intention to maim or to kill. If this committee is to investigate oaths, I suggest, with respect, it is not possible to alter the legal structure around the oath in a court without also having an impact on all other oaths that are taken that are considered lawful.

A pertinent one that I believe is relevant at this time is the oath of Freemasonry, which is contained in this video that I am willing and happy to leave with the committee. It is a re-enactment taken by people who were formerly Freemasons that reveals the nature of a Masonic oath. It is in sharp contrast to the oaths we would expect to be taken by people who were swearing to tell the truth, as we do in a court of law. The oaths of Freemasonry contain the words 'to heal,

conceal and never reveal' — and that is in part, I might add. Any person who has taken such an oath would then be ineligible under Australian and Victorian law to actually be in a position of office because our parliamentary oath would be of allegiance to the Queen, and the Queen has sworn an oath to uphold God's law. We inherit that through those processes. If we were to have a member of Parliament or a member of the judiciary who had sworn an oath to conceal and never reveal that oath is in sharp contrast to the oath we present in court, which is to tell the truth, the whole truth and nothing but the truth. There is a very severe conflict between those two oaths.

With regard to sacred texts, the word 'sacred' is a very loosely defined term. Any group with a little diligence, I imagine, would be able to convince that a text was sacred, or at least sacred to them. When we include or allow other texts than the Bible to be used as a vehicle for swearing an oath, unless we have scrutinised as a society what those sacred texts would contain we could be including a text that has standards very different from Christian standards. There could well be, and I say this without pre-empting what is in the texts because I have not studied those other texts and I would not want to belittle any of the sacred texts, but it is conceivable that a sacred text could contain intent to be unchristian.

We base our law on the Ten Commandments. Am I to know about a person who has another religion that their sacred text does not give them permission, for instance, to murder all white-skinned, blue-eyed babies? I am not suggesting it is there, but what protection as a citizen of Australia do I know is in place so that these other sacred texts that are proposed are free from that type of content?

If we go back to the Australian constitution, it includes in its first paragraph that the different states 'humbly relying on the blessing of Almighty God' agree to form an indissoluble union. Our nation is attached to, for most people, what would be a Christian God — although it does not state it, a God of the Old and New Testaments. Our law is based on that. There is the possibility that when we meddle with the oaths we take there is an intention to remove the connection between our legal system and our religious system upon which this nation is based. I would resist that temptation. That is not to say I believe the Bible nor any other sacred text should necessarily continue to be used to form an oath.

In conclusion, I return to that simple commandment of Jesus, which says to let your communication be yea, yea; nay, nay, for anything more than these cometh of evil. I suggest we have an affirmation or an oath but without the necessity — and that is already present — to swear upon the Bible. I think that is all I would like to offer at this stage. I would be happy to answer any questions you wish to put.

The CHAIRMAN — Thank you for your contribution. Earlier today we had submissions from the Victorian Council of Churches and from the Religious Society of Friends. The submission of the Religious Society of Friends reflected some of the elements of your submission to us today. Do my colleagues have any questions?

Mr LLOYD — Is there a process through which I offer this video? Is there a formal way of tendering that?

The CHAIRMAN — Yes; thank you for that.

Mr BOWDEN — What is the source of the video?

Mr LLOYD — It is from a television program that was broadcast in the United States of America. I wrote by electronic communication to the producers of that program. They ran the program over a series of weeks. They gave me a copy of their master tape and through a friend of mine, who has some sort of a taping duplication business, I have had a number of the tapes produced to pass on to people who should know about what they are.

Mr BOWDEN — So it was a tape from an American broadcast?

Mr LLOYD — It is a tape from an American television program. It is an investigation into Freemasonry, and as it sits with Christianity. It was presented from a Christian perspective and challenges some of the claims of Freemasonry. It is only a short segment of the entire video. That is only about a 9-minute segment, which restricts itself to a re-enactment of the taking of an oath by a Freemason.

The CHAIRMAN — I have just one question. I note the word ‘solemn’ implies a religious connotation. Would you be able to amplify on that point?

Mr LLOYD — Simply from a dictionary definition the word ‘solemn’, as part of the definition, implies a religious belief. So to use the word ‘solemn’ does not necessarily mean that it is a non-religious oath.

I think there is one other aspect. We often hear of justice not only being done but being seen to be done. I think that part of the faith of the Australian people in the legal system would come from a perception that the court system in particular is not something that you meddle lightly with, and the oath and being sworn on the Bible, whether it be scripturally correct or not, has popular support because many people, in my opinion, would feel that it was a much bigger thing to go in and tell a lie when they are under oath than simply having a yarn down the pub, where it is quite acceptable to stretch the truth if the occasion arises. But the concept in the Australian community — by and large; obviously not in every instance, but in the community at large — is that it is a far more serious thing to tell a lie when you have sworn on the Bible. Even though you may not personally have a religious belief, there is a greater duty to tell the truth in that circumstance.

The CHAIRMAN — Thank you for coming along this afternoon.
Committee adjourned.