

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

Members

Mr R. H. Bowden

Ms D. G. Hadden

Mr P. A. Katsambanis

Mr T. Languiller

Ms A. L. McCall

Mr R. E. Stensholt

Mr M. H. Thompson

Chairman: Mr M. H. Thompson
Deputy Chairman: Ms D. G. Hadden

Staff

Executive Officer: Ms M. Mason
Research Officers: Ms K. Giles and Ms S. Kaufmann

Witness

Ms M. Postma, General Secretary, Victorian Council of Churches.

The CHAIRMAN — On behalf of the Victorian Parliament's Law Reform Committee I thank you for taking the time to give evidence before the inquiry. I invite you to contribute to our deliberations today by speaking to your paper.

Ms POSTMA — Thank you for the opportunity to be here. As I have made plain to your executive officer and Kristin, a big part of the problem for me in making an official submission has been the time line we have had. The Victorian Council of Churches has 19 member churches, and I have an executive of 12 members with a few consultants. We distributed your document, but it is a long process to get churches to look at the document and discuss it within their churches and then for me to try to produce something that encompasses the range of views. Having said that, I know that a few churches have made responses. They have made some to me, and there have been some individual ones to you. I am glad to be able to follow Beverley's submission from the Society of Friends.

However, from the response I have had, and maybe the ones you get directly, it would seem to me that, given the shortness of the time frame, they would do one of two things. If they were one of the more traditional churches like the Anglicans or the Catholics there have been no problems with oaths and their response would be to maintain the current practice and that would be a preference for oaths rather than affirmations but probably leaving the possibility of affirmations. If the church were one that has developed in opposition to tradition, a non-conformist church we would call it — the Friends are a good representation of that group, but it would also include the responses I have had from the Baptists and Churches of Christ — they would reserve the right not to make oaths but have a preference for affirmations.

I would say the Friends are one of the churches that have over the centuries developed a policy on this. Some of the other non-conformist traditions do not have a policy as such, but they prefer to make affirmations as individuals. I would imagine that both groups would affirm the right of people from different faiths to make oaths on their own sacred texts or affirmations — to have that choice.

We have a large number of Orthodox churches, and I have not been able to consult with them. It would seem to me that there are two issues that surface there: whether they think that taking an oath on the Christian Bible is more binding than not doing so; and whether they are 100 per cent at ease with swearing an oath. I have no idea. As has already been pointed out, in some of the Orthodox churches their main teaching and tradition comes from the early Councils of the church. Their preaching and teaching is derived from the Scriptures but is referred to from the Councils.

That left me at the point of asking the committee a couple of questions. Do you have evidence that the use of the religious text and the taking of oaths is more binding on people when giving evidence? This is not an area where the churches would have done any research, but maybe it is an area where research needs to be conducted before there is any change. If research demonstrates that people are more likely to tell the truth when sacred texts and oaths are used, then the onus is on the system to provide the sacred texts, but I have no idea what the result of such research would be. When people address the issue of taking oaths on sacred text in their submissions, do they assume a divine judgment if lying under oath or is there concern with the legal consequences? I would think that if the issue is dealt with within religious submissions, the focus is on the extra weight of divine judgment as well as the legal consequences, and that is an issue that faith groups have to take up and discuss more fully.

I will just refer to a couple of issues that you raised in your document. It would seem self-evident that in a multicultural society all government personnel in all parts of the legal system should be aware of cultural differences, whatever they may be, and training provided where that is necessary. With regard to the diversity of people currently permitted to witness affidavits and statutory declarations, it would seem to be best practice if people of all cultures and ethnic communities had people available to whom they could turn to for explanations when swearing or affirming affidavits. Again, here I have no knowledge of the number and the type of people who

are registered to witness affidavits and statutory declarations, but those registered people should have a good idea of the cultural or ethnic mix. If those who are already registered do not sufficiently cover the multicultural nature of our society, it would seem reasonable to encourage the various communities to supply people from the current designated classes first rather than to assume that the current classes need to be extended.

The invitation to make a submission to this inquiry raises some very important issues. I wish that the Christian community had had more time to discuss some of them. I may well be still preparing something that I will distribute for their response in a more formal way, which I will then send to Kristin. It seems to me that some of the issues are so wide ranging that it is a shame that there is not a longer time frame for discussion in the different sectors of our community in Victoria.

The CHAIRMAN — Thank you. If the committee were to recommend the retention of religious oath, do you have a view about which sacred text should, as a minimum, be made available at courts?

Ms POSTMA — If you are going to be serious about this then I would say you have to contact all the faiths and ask if they have a sacred text, and the courts would have to make them all available.

Ms HADDEN — If the committee decided to recommend the retention of a religious oath for the giving of evidence in a court, do you have a view about which sacred texts should, as a minimum, be made available to courts?

The CHAIRMAN — We have just covered that.

Ms HADDEN — Are you aware of any examples of situations where court officers have made what you consider to be inappropriate reference to or inquiries about someone's religion?

Ms POSTMA — No, I am not. However, again maybe with questions to the faith communities, I could ask that.

Mr LANGUILLER — It appears that you would suggest that we should retain options, including that of covering all of the religious texts available, should people wish to have them. Why do you suggest that?

Ms POSTMA — Because I have not had good consultation with all the people of other faiths I am just not too sure of the value of oaths on people who are giving statements in court. As the previous witness mentioned, many people take oaths and then continue to say what they intended to say so the oath taking has no bearing on the evidence they give or the statements they make. That is a personal view.

The CHAIRMAN — If I could interrupt, if you were to give evidence in court in a matter that was of profound importance to individuals or the community, which form of undertaking would you be more comfortable with, an oath or affirmation?

Ms POSTMA — I am part of a church tradition that has not gone through the agonising process that the Friends went through, and I have no trouble taking an oath.

The CHAIRMAN — Have you had occasion to do that?

Ms POSTMA — I have; I was a witness in a car crash incident and took the oath and did not think twice about it. Again, because I am part of the mainstream for me that was not an issue.

Mr LANGUILLER — Are you implying that if you were not part of the mainstream but you were part of a minority in a religious, ethnic, language sense, maybe you would not feel as comfortable?

Ms POSTMA — I may not be as comfortable in either the handling of the text or in swearing an oath.

Mr LANGUILLER — Can you elaborate on that?

Ms POSTMA — That is more difficult given that I am not. Some people use sacred texts. Even if you are part of a faith group some handle a sacred text more than others, so I am not too sure how they would feel in that regard. However, I think the onus is really on looking at whether there is any evidence that people swearing an oath on a sacred text actually tell the truth more often than those who do not. Whether or not they designate that they are part of that 65 per cent, it is hard to know what they believe when they take an oath. When some of the Christian groups or some of the other faith groups say they want to keep the oath and they think it should be on a sacred text because they believe that people have a sense of a divine retribution if they do not tell the truth, do people mention that in submissions? Is it valid anyway? I think that is a big issue for the faith traditions to take up.

Mr KATSAMBANIS — I think you raised that question in your submission. On a personal basis, do you think our legal system should be concerned with divine judgment or is that an issue between the individual and the divine power?

Ms POSTMA — I would say the latter, but in terms of what you want to do about having the best outcome in terms of truthful evidence or truthful statements in court, you have to decide the best way to achieve that, and if affirmations are sufficient that would seem that would be the best way to go.

Ms HADDEN — The commonwealth Evidence Act gives witnesses a choice — they must either take an oath or make an affirmation before giving evidence — whereas under the Victorian Evidence Act they must take the Bible in their right hand and speak in a loud and clear voice. If someone objects they have to make an objection in the witness box in the court and the magistrate then determines why they are making an objection before they can make an affirmation. Given that in this state the commonwealth Evidence Act covers Family Court matters, which deals with families, where they have a choice to swear on the Bible or make an affirmation, should that not then be equivalent with state matters?

Ms POSTMA — Definitely; I think there should be consistency between the different jurisdictions, and people should have the option always of making an affirmation. That should be made plain early in the process and not once a person is in the witness box, which is an intimidating experience even for people who are not usually intimidated.

The CHAIRMAN — Do you believe churches would have a view if there were a recommendation that an affirmation be the more Orthodox or mainstream form of oath taking in the court context in terms of the underpinnings of the Australian society or the Judaeo-Christian ethic which underpins the development of the common-law system as it has evolved?

Ms POSTMA — Would the churches mind if it was moved from one to the more general affirmation only?

The CHAIRMAN — Yes.

Ms POSTMA — I find it difficult to give an opinion on that. It is difficult to know exactly what the responses from the churches would be. I am implying that if people make submissions I suspect they will make them in light of what they already believe, but I have not had a strong sense from anybody, from the heads of churches or from their representatives on the Victorian Council of Churches, that we should be arguing that there be a move to general affirmation only.

Mr LANGUILLER — Can we be clear here: you are saying that for those who do believe, they should have the option of an oath?

Ms POSTMA — Are you asking if I am advocating that?

Mr LANGUILLER — Yes. You are not saying that for everyone, including those who do not believe in God, whichever God, but you are saying for those who are believers there should be that option?

Ms POSTMA — In a couple of responses I have had from members of the Victorian Council of Churches that is their position. As I say, I have not had responses from all the churches and I would hope by another week or so I can say that of the 19 member churches, 50 per cent say this and 50 per cent say something else. Those who are from the more traditional churches — and I have had that from one of the Anglican responses and I believe one of the other churches has made a comment on the inquiry — believe the system should not be changed. Again, Ms Hadden, I am not sure if they mean it should only be oaths or if they mean it should be mainly oaths with the option of an affirmation, and I have not had a chance to find out the position of all the churches on that.

Mr LANGUILLER — How do you feel about a Muslim who walks into a court of law and has to raise a Christian Bible?

Ms POSTMA — If we are to use sacred texts then it should be the sacred text of that person's faith. A Muslim should not have to take an oath on a Christian text.

Mr LANGUILLER — Again we are speculating, but you do not think that the churches you represent would object to that? When they say, 'Let's not change it', they are not objecting to having other texts, are they?

Ms POSTMA — Again I have not raised that question specifically with them. If they as Christians are wanting to say the Bible should be used because it is a sacred text, they are saying the Bible is meaningful to that person making the oath. If the Bible is not meaningful or sacred to the person making the oath, then it has no value in terms of being a sacred text. Therefore, the person would be far better to either be making an oath on their own text or an affirmation, and he strong believer in 'let your yea be yea and nay be nay.'

Ms HADDEN — I was going to raise that matter. I would be interested in reading a written formal submission from the council of churches. If the council of churches submission is that you keep it to the tradition of swearing, then how does that fit within Matthew 5, because I find a great dichotomy there?

Ms POSTMA — As I said, to be fair to the churches, I think they received a copy of the document that I had and with a couple of them their head of church is now overseas and they tried to get a response within a time frame, so they went with what they normally practised without there being extensive discussion, even within their own church tradition.

Mr LANGUILLER — You referred to divine judgment.

Ms POSTMA — I did.

Mr LANGUILLER — Without being too controversial about it, even with my Catholic background, would you say there is a distinction between Protestants and Catholics insofar as those of us with a Catholic background at the end of the day have Sunday and what we used to call confession and what is now called reconciliation? So, as far as divine judgment is concerned, if I were to speak as I used to as an altar boy I would say, 'I can fix that on Sunday', whereas you Protestants may not be able to do that.

Ms POSTMA — I grew up in a country school in Western Australia, and we always envied our Catholic school friends because they could do what they wanted. Of course that is a total misuse of confession and forgiveness, as we all know. The one thing we do find in the ecumenical movement is there are more differences within traditions than across traditions. I suspect in all our various churches there are those with a strong belief in divine retribution, whether Catholic, Protestant or Orthodox, and there would be those who would disavow any sense of divine retribution across all those church traditions.

The CHAIRMAN — Do you believe there is any discrimination in the court processes between those who might choose to take an oath as opposed to those who might take an affirmation?

Ms POSTMA — I have no experience of that. Again, it is difficult to know the presuppositions that people bring to oath taking and affirmations. So long as oath taking seems to be of a higher order, and I do not know if it is or is not that way, but if it is considered to be of a higher order then affirmations will always be seen to be a second-level commitment to telling the truth, and that would be very unfortunate.

The CHAIRMAN — Who would be making that observation?

Ms POSTMA — You asked if it was my experience that within the courts there seemed to be a difference of acceptance of the evidence given under oath or that given under an affirmation, and I do not know. Again, if you are to move in this area I think it needs the research.

The CHAIRMAN — Should you wish to provide the committee with any further material, please feel free to do so.

Witness withdrew.