

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 5 August 2009

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Ms D. Stone, research director, B'nai B'rith Anti-Defamation Commission.

The CHAIR — The next witness will be Deborah Stone from B'nai B'rith Anti-Defamation Commission Inc. Thank you for attending these public hearings. Firstly, these hearings are to report to the Parliament whether any amendments should be made to exceptions and exemptions to the Equal Opportunity Act 1995. Anything you say or publish before the committee today is protected by parliamentary privilege. However, once you leave the hearing, anything you say or publish outside this room is not so protected.

I would like to invite you now to make a brief statement to the committee on the relevant issues that you consider important to your organisation and we will follow that up with questions.

Ms STONE — Thank you for the opportunity to speak today to the committee. We have reviewed the options paper on behalf of the Jewish community and overwhelmingly find it to be very helpful and very much in accordance with what would be valuable for our community.

We have a couple of concerns. One is in relation to section 38, where there was a question raised as to whether section 38 should be redrafted to comply with the special measures provision in the charter. That special measures provision is about disadvantage and the right of organisations to have special circumstances in order to overcome disadvantage.

I guess my concern with that is to ensure that the right to have particular organisations, schools, welfare groups is not based purely on the need to overcome disadvantage as in minorities may have a wish to maintain culture, educate their children, not in order to overcome disadvantage, not when they feel any disadvantage at all, but simply because that is what they want to do as part of their culture, so I was just concerned that the legislation should be phrased in a way which did not depend on disadvantage as a right to those kinds of minority services.

The other issues that we have are related to sections 75, 76 and 77, which are the sections dealing with religious observances. I will work backwards because section 77, which I know other submissions have dealt with, is not of concern to us. We do not have a problem with the repeal of section 77 because we feel that our concerns are only in terms of protecting community rights to community organisations such as schools and welfare organisations, not to individuals' rights to discriminate based on their own personal preferences. We do not think that should be a protected right or a protected ability.

Section 75 looks at the issue of religious bodies. There was an option to amend 75(2) so that it does not depend on religious sensitivities but only religious convictions. Another option is that the phrasing is reasonably necessary to conform with religious doctrines.

I have some concerns with those phrases because I think they tend to assume that religion is all about faith or conviction, and certainly as far as the Jewish community's schools and services are concerned, it is often not about faith or conviction. It is often about culture or tradition or history or your ability to establish an environment that is sensitive to the needs or preferences of members of your community, not out of faith or conviction, but out of culture and tradition, and that is really a kind of protection that is more related to the cultural sensitivities provisions of the charter than to the religious sensitivities of the charter.

I wanted to draw the committee's attention to that so that we do not get a phrasing which would be amenable to some kind of court battle as to whether someone has faith or conviction or conscience over a certain thing, because I think that is a very narrow way of looking at religion. Religion is not all about faith to everybody. Faith is the key criterion in the Christian religion, but it is not the key criterion for Jews or, in my understanding, for Muslims.

The other issue I wanted to draw the committee's attention to is section 76, which is also concerned with religious exceptions. The options paper suggests quite a number of different options here, one of which is dependence on an 'inherent requirements analysis'. This is in relation to, for example, the employment of staff within a school; the question of whether the secretary of the maths teacher should be able to be preferred. I might say here that the eight or nine, depending how you define them, Jewish schools in Victoria all have non-Jewish teachers and non-Jewish staff. Even among the most religious ones I do not believe that to be an issue.

But at the same time I think there are situations in which schools, for example, would like to be able to have preferences in situations which may not be easily defined as inherent requirements of the job. For example, if you are employing a music teacher, a music teacher can do things in many ways and can draw on many kinds of

music, but if you have the option to employ someone who in addition to doing all the other things you would do in a music program could bring Jewish music into a Jewish school, that would be a more desirable option, and the school would like to be able to do that.

I would want to feel that an inherent requirements analysis, if it were implemented, would not be so closed that it only ends up saying it only matters when that teacher is teaching religious studies, because culture is much, much broader than that. That is all I wanted to bring to the committee's attention.

The CHAIR — Thanks for that. That was a really interesting way of looking at the issues we have been looking at virtually all day. I was wondering if you could elaborate a little about this issue of Jewish schools as cultural entities rather than simply religious entities?

Ms STONE — Sure. Jewish schools and also welfare organisations and other organisations, for example, will tend to work in relation to the calendar of the Jewish year. There are times which are celebratory within the year in and there are other times which are times of mourning. That comes from religion, but it is not purely a religious thing.

That might mean, for example, that the times at which you schedule a school fete or a school concert or something which is not a religious event is sensitive to that calendar. That is part of the education you are giving the children, that the calendar is a part of the pattern of your life. That is an example. I can give you many examples, but that would be one. Another would be with kindergarten children, for example, the ability to run integrated programs.

If you are running an art program or a literacy program you could run a program which — when you are teaching kids what are the words beginning with 'b' they come up with a range of words that are all the words they come up with everywhere else, but they also come up with words that are perhaps particularly referenced or where you might integrate the language programs — things like that. Those are options that those schools would like to have available to them.

The CHAIR — The other question is: do Jewish schools and Jewish organisations only service the Jewish community or what is the situation?

Ms STONE — No, they do not, although they do primarily, because it is a small community. There are non-Jewish kids at some of the Jewish schools but not in very large numbers, and those who do come are happy to learn about the culture and be part of the culture; otherwise they choose a different school. There are plenty of options.

Mrs PEULICH — The running of tuckshops, the tendering out of services, they would also — —

Ms STONE — There would be the issue of dietary laws, and different schools would have different opinions on what constituted adherence to the dietary laws depending on what interpretation of the faith or culture they take. The schools in our community are very varied in that regard.

Mrs PEULICH — I am surprised that under 77 there are no implications for the Jewish community?

Ms STONE — I feel that those implications should probably be able to be covered by a reasonable inherent requirement to a job. Look, I am not very clear on that, I have to say.

Mrs PEULICH — For example, I am thinking about the entering of a synagogue by a female gentile may be offensive to those who are — —

Ms STONE — No, I do not think that would be a problem. There would be expectations of dress and so forth, but I would have thought those things would just be covered by issues of respect. These are privately owned, they are not public spaces. A synagogue is owned by its community, I guess. But I am not aware of issues particularly — —

Mrs PEULICH — Because it would apply to everything?

Ms STONE — Yes. I have to say I am not terribly clear on 77.

Mrs PEULICH — Could you perhaps get back to us if there is further illumination?

Ms STONE — Yes, I will, because I do not understand it well.

The CHAIR — I must also add that I do not understand section 77 either.

Ms STONE — Section 77 seems to be about complying with a person's genuine religious beliefs, which is very broad. What an individual believes is different from the doctrine of a society.

Mrs PEULICH — Yes and no. It may be that a person does not believe in abortion, for example, and therefore genuinely cannot comply to perform one or to assist in the performance of one. I would be surprised if there were no implications for the Jewish community in some way; I would be very surprised.

Mr LANGUILLER — Thank you for your submission. These public hearings are a good opportunity for us as individual and collective members to further inform, if not educate, ourselves, and there have been many examples throughout the last couple of days. I wish to refer to section 38 and the potential capacity of a particular school, in this case a Jewish school, to exclude persons based on race. In your submission, as I understand, you argue that race should remain a basis for separate education. Is that correct?

Ms STONE — I do not believe we argued that race should remain a basis. We may have argued for the existence of religious schools, but that is a different matter.

Mr LANGUILLER — Is race an issue to you?

Ms STONE — We always run into the problem of what you define as 'race'; but no, I do not think that race is an issue to us at all. No.

Mr JASPER — Whether it is in or out of the legislation.

Ms STONE — I do not think it is an issue to us. I guess we would tend to define ourselves more in terms of either a religious community or a cultural community rather than as a racial community.

Mr LANGUILLER — I must say to you that that is not what I have heard from Jewish friends. In fact, they have put to me why it is different in the case of the Jewish people, and why race is in fact an issue, and that is why I am asking you.

Ms STONE — Jewishness is something one inherits. One is Jewish because one is born to a Jewish mother — I am still not sure if 'racial' is the right word — so in that sense it is not merely a matter of conviction. I do not think we would argue that the fact somebody is born to a Jewish mother should be a defining characteristic that determines whether they are allowed to be a teacher at school. It is more about whether they have knowledge of the culture.

Ms PULFORD — We had some discussion with representatives of the Sikh community around the question of dress. I was wondering if you have anything to add to that in terms of the way it may affect members of the Jewish community?

Ms STONE — I do not think that members of the Jewish community tend to experience the kind of prejudice that members of the Sikh community currently do, possibly simply because we have been around longer in this place.

Mrs PEULICH — Better organisation!

Ms STONE — Yes, but the same issues apply. There are people who, out of religious conviction, wear a beard or keep their head covered or choose to wear modest dress, and they need that right retained under the act. That is certainly true.

The CHAIR — Thanks a lot for making your time available and adding to the work of the committee and our future deliberations on the Equal Opportunity Act. It has been very useful. Thank you, Deborah.

Witness withdrew.