

SUBMISSION TO THE PARLIAMENT OF VICTORIA LAW REFORM COMMITTEE.

OATHS AND AFFIRMATIONS.

The working party was held at the North Victorian Buddhist Association on Saturday 20th July 2002.

In attendance were: Ven. Phuoc Tan, Quang Minh Temple. Ven Santhindriya, North Victorian Buddhist Association. Siladasa and John, the Friends of the Western Buddhist Order, and Judith McDonald, Metta Dharma Circle.

With such a small group we were able to get through the work quite well. These are our proposals which of course are subject to further input from the rest of the Committee, but those present today were in consensus about these recommendations.

1. Re the Swearing of an Oath:

As clearly outlined by Di, there is no appropriate sacred text and other Buddhist vows etc do not have a place in a court. So, we propose the following words:

" In accordance with the Buddhist* precept of truthful speech and mindful of the consequences of false speech, I (name) do solemnly, sincerely and truly declare that I will tell the whole truth and nothing but the truth".

* Re the word "Buddhist" it was felt that it could be omitted whilst still carrying the meaning of a Buddhist promise. What do you think? Christians say "Almighty God".

2. Re the Witnessing of Stat. Declarations:

Yes, it was agreed that it is only right to have ordained Buddhist monks and nuns as possible witnesses.

Certain conditions would need to apply. We suggest the following:

* Should have been ordained for at least 5 years and preferably longer;

* It would be the organisations responsibility to nominate a suitable ordained person for this duty;

* Query whether the organisation or individual should be a member of BCV. (We went through the list of existing occupations who are eligible to witness and found that they all had in

common a final board or association to which they would be accountable. BUT these boards and associations have the right to strike off or deregister members for inappropriate behaviour. The BCV does not have that power and never should have so I don't really know where that leaves us. Except that we could just not say anything about BCV membership and leave it at the first 2 requirements.)

3. Finally re the cross-cultural awareness training for court officials. We think it is very important to have some input to that and suggest that Di's paper be used as a starting-point to prepare a document to use as a background briefing paper for such a training.

Brief History of the Buddhist Council of Victoria Inc.

The Buddhist Council of Victoria (BCV) was formed in 1995 in a response to a need to have a umbrella body for Buddhist temples and organisations. Currently the Council has 35 members from the Vietnamese Cambodian, Korean, Japanese, Sri Lankan, Tibetan, Burmese and Anglo Buddhist communities. The BCV is guided by a management committee of nine, four on the executive and five others. The aim of the BCV is to act as a representative body, which expresses views and opinions of the wider Buddhist community.

Submission to the Inquiry into Oaths and Affirmations with Reference to the Multicultural Community

By Diana Cousens, BA (Hons), MA, (La Trobe), Director, Sakya Choekhor Lhunpo, the Melbourne Sakya Centre.

Answer to Key Questions:

Oaths

1. In recognition of the multicultural nature of Australian society and the increase of secularism across groups that were formerly Christian or may have had a Christian education, I suggest that swearing on the Bible should not be the primary form of oath.

As many people have some religious conviction I suggest that the second option is the best one. That is that the option of an appropriate religious oath be made available or a non-religious affirmation or solemn promise to tell the truth. Assuming that either Christianity or secularism is the 'norm' is culturally biased.

Sacred Texts

1. Buddhism has no one sacred text and it is not customary – or in the Tibetan tradition at least – acceptable – to swear a promise on a text. Buddhists are bound by belief in certain principles, particularly the key concept of cause and effect or karma. The relevance of this belief in this context is that the consequences of good and bad actions are inescapable. Therefore, even if someone appears to 'get away with' bad actions such as lying, killing and stealing in this life, the results will come back to them in a future life.

Even if swearing on texts was acceptable, which it is not, texts are also problematic because there are major divisions in what are considered sacred texts not only between countries but also within countries. For example, in Tibet there is a whole group of texts that are only partially acceptable to three out of four of the Buddhist traditions. These are called 'discovered' texts or *terma*, and yet, to the fourth group, these are the most highly valued of texts. Also, for Sri Lankans and Thais, texts must be in the Pali language, and are quite different in content to the texts in use in Tibet which are all in Tibetan. Original Buddhist texts are also in different languages, most famously Pali and Sanskrit, but they may also have their first edition in Khotanese, Tangut, different forms of Chinese and other early Indian languages. Buddhism was originally transmitted orally so all written scripts came later.

2. Taking vows in the Buddhist context is commonly associated with a religious practice such as prostrating to an image or lighting incense. However, in the secular context of appearing before a court no outward sign of worship is appropriate. Buddhists commonly repeat the vows they have taken so as to remember them with no more introduction than, 'I will keep from the eighteen root infractions', or, 'I will keep, without exception, the secondary pledges'. Reciting a promise out aloud is the common form of oath taking.

After some discussion at the Buddhist Council of Victoria's Committee meeting (11/7/02), it was agreed by those present that an oath to the effect of, 'Having full awareness of the law of cause and effect, I (name) do solemnly, sincerely and truly declare that I will tell the whole truth and nothing but the truth.' While I realise the President of the BCV is undertaking research into the applicability of this oath to other groups who were not present, I believe that it would be appropriate. As stated, Buddhists do not swear on the Buddha or on a text.

There are no particular cultural practices that court rooms need to be aware of with lay people, however, with monks, particularly Theravadin monks and nuns, there may need to be extreme caution about contact between the monks and nuns and the opposite sex. Therefore, a female court official may have to put something on a table for a monk to pick up, rather than handing it to him directly.

Provision of sacred texts

As stated, sacred texts vary widely within the Buddhist community and it is not expected that courts should be supplied with Buddhist sacred texts. Buddhism is strongly focused on the path to enlightenment and not on the secular ordering of society. Buddhism does not have specific marriage customs or funeral customs – in fact, the text wishing for auspiciousness – the *Mangala Sutra* – is used at both weddings and funerals. The Buddha did not set up a judiciary. Legal matters are secular matters.

The one common prayer that is shared between all Buddhists is the recitation of refuge, which at its most simple is, 'I go for refuge to the Buddha, I go for refuge to the Dharma, I go for refuge to the Sangha'. This prayer does not have a place in the court room.

Information on taking oaths

As already stated, court officials should offer people the available options in terms of possible oaths and affirmations. A Buddhist oath has been proposed.

I am not in a position to make any comment on cultural awareness training received by court officials. In terms of Buddhism, Buddhist cultures vary across countries. Tibetan culture is different to Thai culture – there is not one single Buddhist culture.

Obviously Buddhists must not be assumed to be Christian or asked to swear on a Bible. Buddhists believe that there are five fundamental ethical faults. These are lying, killing, stealing, becoming intoxicated and

sexual misconduct. A Buddhist using the oath proposed above would be obliged to tell the truth, unless they were already committed to lying regardless.

Witnesses to affidavits

It is not proposed that all ordained persons, monks and nuns, be given the right to witness affidavits. However, it is proposed that those people who are respected within the community and have been given a position of responsibility could be given this role. To be precise, this would be the Abbots of monasteries or the Directors of dharma (Buddhist) centres, in those monasteries or dharma centres that are affiliated with the Buddhist Council of Victoria. Not all Buddhist groups are authentic, but all those that are members of the BCV are authentic. There are, of course, some authentic monasteries, etc, that have not joined the BCV, but this would be the simplest method of selection.

As it is presently the case that only Christian ministers have the right to witness affidavits I propose that this is unrepresentative and should be changed.

Translation

I have no opinion on translations of oaths. Best to ask other translators. To repeat, it is completely invalid to ask a Buddhist to swear on a Bible. Such an action has no meaning at all, it would only create hostility. I think the argument that is 'a part of cultural traditions still dominant in Australia today', is fanciful. If it is perpetuated, it is dominant, if it is not perpetuated it ceases to be dominant. However, it is profoundly inappropriate to non-Christians.

Yours sincerely,

Diana Cousens