

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

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Mr M. Hodder, Manager, Special Prosecutions Unit, Environment Protection Authority.

The CHAIRMAN — Mr Hodder, on behalf of the Victorian parliamentary Law Reform Committee I thank you for coming along to give evidence to the inquiry into the use of oaths and affirmations in a multicultural society. Should you have issues you wish to raise later with the committee or further information, feel free to liaise with committee staff. I invite you to speak to your submission.

Mr HODDER — Thank you and good morning to members of the committee and its staff. The reason I have asked to appear before you this morning was that after reading the *Age* article suggesting this committee was in place I thought that the first port of call for me as leading the investigators at the Environment Protection Authority (EPA), who are more commonly within the organisation called authorised officers, was that they themselves take affidavits. Through regional Victoria, as well as through the central business district, they represent the community and attend both business and residential addresses, and may wish to take an affidavit of an event that will proceed to court. By doing that they fall into the context of having to provide either an affirmation or oath.

The training that we do at the EPA will change or alter by the decisions of this particular committee if its recommendations are accepted. That is the context of my appearance. I am well aware that the committee — or you, Mr Chairman, and some members of the committee — has recently gone through the powers of authorised officers, and I think this is intrinsically linked to that in the same context.

I refer to the cultural awareness that occurs at the EPA in my particular area — and I do not speak for all of the organisation — because I have an interaction with the human resource area, the outreach section at EPA, other community liaison groups and operational staff. I shall go through what we do in relation to training, and perhaps that will give the committee an insight into what may be beneficial for it to further question me on.

We have an informal and formal approach to training through our nationally accredited course, a certificate IV course. That was instigated with Dr Brian Robinson, who has now left the EPA. We needed to be nationally accredited in relation to our prosecutions and our investigative work. By design this course is unique, and we decided within my unit that it must incorporate multicultural facets in relation to our work.

I suppose in the higher order we look at section 464 of the Crimes Act and what may be required there, and the use of interpreters. It is difficult to talk about cultural awareness without talking about ethnicity and linguistic skills. I also believe it is difficult not to interrelate in a sociocultural context. Importantly, for my officers and for our training, we need to be aware that it is more than just understanding that people are from a different cultural background. It is also an understanding that behind that particular sheet it may be they are suffering from a disability also. It may be they are also suffering from some social impairment; it may be that they are a child.

We need to have depth in what we are asking those people to put a signature to paper over in relation to an affidavit. That is part of the training we go through. It is more than understanding that we are part of a multicultural community; it is understanding that part of being a multicultural community is also understanding that people have disabilities and that there are other facets about training that are important. Specifically, yes, we do go through and talk about what the oath means and the connotations of perjury, and that is explicit in our work and what we ask of others when they provide evidence to the authority.

In a social context there is a responsibility on us, particularly with migrants, to let them know that if they are going to swear or affirm an affidavit that they may go to court, and they need to be aware that there is a process at court where again they may need to swear or affirm the particular piece of work that they have responded to in terms of a witness affidavit. That may include our own internal staff who are also migrants or external people as well. So we have to juggle both a multicultural group of people within our own employment and also the community, because our

own people provide affidavits. They are expected to give evidence; they may go to the County Court. So at the higher end we expect most of our briefs to end up in the County Court. If we plan for that we believe we will not have a problem. If we do not plan for being past the minimum level then we will have problems. If we do not communicate well to our people we will have problems.

We expect that each person we interact with could one day be a juror. They need to be confident of the system we have presented to them. If we have communicated with them and been honest with them, then we have made them aware of the whole situation.

It is incumbent on our trainers to also develop their skills. I am not sure whether you are aware of my background or not. I was thinking about this last night and about who may read this particular document, and I decided to keep it at a particular level otherwise it becomes irrelevant in relation to why I am here, because some members of the community will want to read this document.

There is no point talking at the level of metacognition and cognitive processes whereby you look at who might sign statutory declarations. That does not mean a lot to mainstream people, so I need to keep this at a particular level.

We strive to interact with other members of the community who may help us. Have we got it right? I do not think we ever get it right. Learning is life long, and we must constantly re-evaluate where we are at in relation to our learning. Our particular process at EPA is to revisit what we are doing, to ask if we are doing it well enough and to challenge ourselves. Recently we had a visit from a bilingual member of the National Crime Authority. He had spent considerable time in Asia, and he started off the process by communicating to everyone in Vietnamese. No-one in the audience understood one word he said. That in itself was a significant learning experience in relation to what might happen on the other side of the table.

We are moving to a stage where we want to interrelate with more universities in relation to linguistic skills. Perhaps students will assist there as well. We have to work with interpreters in a legal setting, and there are benefits for students at the undergraduate level to assist us in that capacity as well.

The authorised officer at EPA, who has been referred to as an investigator, must reach competency level before being authorised. At present you cannot be employed at EPA and be authorised. There are requirements that people reach competency levels and for our trainers to be competent as well. Like me, some have formal training in relation to education and others are required to do a certificate IV in workplace training and assessment and need to be accredited.

Our organisations also recognises that other people are welcomed for secondment. Recently a solicitor from the Department of Natural Resources and Environment attended our organisation and interacted a lot with the fisheries officers. There was an awareness of what might happen in the community.

The CHAIRMAN — I would like to focus more sharply on a couple of elements in relation to our inquiry. Some questions have been handed in to us. I will go over one area you spoke of a bit beforehand and then, with my colleagues, work through some questions. That would be worth while in terms of the time we have allocated for this segment. Specifically, in the training you give to your investigators, how do you cover the rules in the Evidence Act and the penalties for perjury? Do you do any additional work in that regard?

Mr HODDER — The training includes an external person. It includes our own solicitors' office and a member from the detective training school.

The CHAIRMAN — Have any issues arisen on the part of the people being trained if they ask why they have to take a religious oath rather than make an affirmation, or are people comfortable in using those two forms when they are required to give evidence?

Mr HODDER — At the moment they are comfortable using those two forms.

The CHAIRMAN — Amongst your staff would 100 per cent use the oath or would a proportion use the affirmation method?

Mr HODDER — It varies; there are not questions of why a person may wish to do either, it is an individual's choice. There is no question about the validity of the oath as opposed to the affirmation. A lot see the oath as being very significant. For many from a Muslim background the affirmation is perhaps preferred. Embodied in all is honesty and truth.

Mr LANGUILLER — Why is that? Do you know why they prefer one or other option?

Mr HODDER — They are unsure of the Christian oath. Having discussed it with people whom I feel are comfortable discussing it and with our own employees, they are more comfortable with the affirmation.

The CHAIRMAN — In your view what are the minimum requirements for cultural awareness training for your investigators?

Mr HODDER — I believe there needs to be a more holistic approach to training. There is a marriage here that cannot be divorced. Interracial relationships are paramount. It is difficult to talk about cultural awareness if it is not understood that perhaps 20 per cent of our population is not from an English-speaking background or cannot speak English and 30 per cent of our people, for example, operate small businesses. With a sociocultural approach we need to consider our legal obligations under section 464 of the Crimes Act. We cannot divorce ourselves from those as well, and we must understand that the issues are more than ethnicity and linguistic skills. We need to have depth to how we communicate to people and do it in a correct manner. We have to harness the knowledge of the people we employ, whether at court level or at an investigative level in the EPA. We have to value knowledge then move on with that knowledge and learn in a proactive sense so that there is continuation of learning and that it is revisited.

Mr KATSAMBANIS — Do you think achieving national accreditation for your internal training, as you have done, has assisted in elevating cultural awareness?

Mr HODDER — It has made us address certain issues. Competencies need to be revisited. Lesson plans that are shoved in drawers and used by teachers for years on end are totally inadequate. Learning must be life long. I am passionate about that issue, and I am mindful to keep it at a level of an audience who may read this particular literature. I do not shy away from the multicultural community; I embrace it. A lot can be learnt by embracing other people's beliefs. Shying away from issues dismantles the process whereby we are part of the community.

The CHAIRMAN — From your experience of court procedure are you able to comment on the adequacy of current arrangements in courtrooms in relation to the administering of an appropriate oath or affirmation?

Mr HODDER — Within the scope of what occurs now the courts do it very well. Both magistrates and judges in particular are very sensitive to the issues.

The CHAIRMAN — Are you aware of any situations where oaths or affirmations which your witnesses have taken have been challenged on the grounds that they do not reflect their religious beliefs or has it ever been inferred that a witness was not being truthful?

Mr HODDER — No, I am not, but solicitors will frequently challenge whether a statement or an affidavit provided is correct and question the thought processes of individuals involved in relation to their signing documents and their understanding of the affidavit or oath format at the bottom of those documents. I do not know what thoughts go through people's minds when they sign the final text.

The CHAIRMAN — This next question may go to part of an answer you gave before in terms of law reform in this area. What is your reaction to the following reform possibilities? Should a non-religious affirmation or solemn promise to tell the truth be introduced as opposed to retaining the oath?

Mr HODDER — I will read my answer to that, if I could, Mr Chairman. I have thought about this question and discussed it, and I stress that it is my personal view and not one represented by my chairman or by the deputy chairman.

Personally, I think we need a substantial reappraisal of existing methods, structures and approaches. Pathways for learning involve new relationships between a range of organisations and individuals, and this goes beyond government. Social betterment is achieved through not accepting minimum standards but through a coordinated approach. It needs to be an interactive relationship that involves all those who fill or contribute to the current parameters of this inquiry. Choice of an appropriate religious oath or affirmation reflects our acceptance and acknowledgment of other people's values and religious beliefs, and our wish to respect and incorporate them. It provides lifelong learning in relation to cultural awareness, and we should never shy away from this. Those are my personal thoughts in relation to this matter.

As an investigator, I am not office-bound; I spend a lot of time in the community. I come from a teaching background. As you may have seen, I have been a detective in the Victoria Police. I now work in another community area and have done so for two years. I have worked in such areas as Springvale and Footscray at both a teaching and a policing level. My officers travel as far away as Robinvale.

Ms HADDEN — Currently the state's Evidence Act sets up the Christian oath as the standard form of oath, but allows an affirmation if the person objects to swearing an oath, or it is not reasonably practicable to administer the oath in the manner appropriate to the person's religious beliefs. In practice, do investigators offer witnesses a choice between swearing on the Bible or making an affirmation?

Mr HODDER — They do. Our transportable kits have laptop computers, printers and Bibles.

Ms HADDEN — As a matter of course, do investigators make inquiries about a witness's religious beliefs?

Mr HODDER — Not specifically at the time of an incident. You need to understand that an investigator may attend at a scene and a witness may offer to give evidence at 2.00 a.m. The first object of our approach is the safety of the environment and the community. If a person then offers to contribute evidence and statements, we obtain them. It may be only at the last stage where an affirmation or an oath is required that we become aware of a person's religious beliefs.

Mr KATSAMBANIS — Do you think the current classes of people who are able to take affidavits, in particular, and statutory declarations are sufficiently representative of our various communities? Do your investigators come from a range of backgrounds that are able to reflect the breadth the community?

Mr HODDER — The investigators at EPA come from a variety of backgrounds. There are Greeks, Italians, Malaysians, Chinese — quite a variety. None of them has come forward and said, 'We have a problem with the oath or affirmation'.

Mr KATSAMBANIS — Generally, who are the people who take affidavits?

Mr HODDER — Generally I find it humorous that a school principal, for example, may be the only one who can witness a particular document. Having worked at different levels in schools, I have seen principals who have been there for 10 years relinquish their positions. You

might have a principal who has operated at the school from day one and we cannot say one principal is better than another. It is very hard to meet principals. Most principals I dealt with had a lot of time with individual class teachers and were quite willing to sit down and talk to them about issues such as those that arise when documents need to be witnessed. They had a lot of respect for teachers. Teachers are educators. I think they are an undervalued group in the community who can help pass messages on.

The CHAIRMAN — In your experience what oaths do your investigators administer? Do they use the Bible, take affirmations or use the Koran? Has there been breadth in the method of taking oaths?

Mr HODDER — We have to be seen to be consistent. On advice from our solicitors we have looked at what others are doing, and in relation to teaching and training. It has been important to offer some degree of consistency in what we see as being the first interaction between the court process and some people in the community. At the moment it is the swearing an oath or making an affirmation. For example, no-one has asked to use the Koran.

Mr LANGUILLER — So in your mind consistency means sameness?

Mr HODDER — We have to be mindful of what is happening in the community and within other organisations. We are but one cog in the chain. At the moment consistency is important.

Mr LANGUILLER — To be clear in my mind, for the purpose of consistency we only use a Christian Bible as distinct from the Koran, meaningless as that might be with other faiths and the whole range of people who are Christian and may belong to a whole range of other denominations? For all intents and purposes we are currently consistent although we might be irrelevant to Muslims, Hindus and so on and so forth?

Mr HODDER — That is right, yes.

Mr LANGUILLER — What do you think about that? As an inspector, you would be interested in the truth and trying to extract a commitment from a person to tell you the truth, whatever that may be?

Mr HODDER — I have dealt with some unsavoury people, and I have doubted what they have told me, but we have had to accept what they said. Some people may provide negative affidavits and say they did not see anything and those statements may be tendered in court. A negative affidavit may be tendered down the track because of what a person may later say.

As investigators, we talk quite often with people about oaths and affirmations. We make sure they understand the meaning of honesty and truth and that oaths and affirmations are important. We make sure they understand what perjury is. We make sure that those values are important to them. It may be that with a particular witness we feel uncomfortable with them having signed a particular document without someone else reading it. Their linguistic skills may be terrific, but sometimes people need to understand what they are getting themselves into and not just use us a sounding-board. For example, we may say to them, 'We would prefer you not to sign this now in case you want to speak to someone else about it. You might want to speak to a community representative. Go ahead and do that, and when you are comfortable come back to us and we will witness your signature'.

Mr BOWDEN — Having listened so far, I may have a wrong impression — and please correct me if I am wrong — but is it perhaps that most of the prosecutions and, by volume, interaction in the court process with the EPA, and those that it is dealing being dealt with in the courts, are from minority communities?

Mr HODDER — No, the role of my particular unit is both reactive and proactive. As trainers and investigators we may have to move out into the community and seek representation at different levels. We may contact directors of organisations or people from community groups. We need to be aware that issues could develop down the track, and we need to air them in public forums. Certainly we are in the mainstream in relation to those who would provide affidavits for us, but again realising we also deal with international shipping.

Ms HADDEN — Given that honesty and truth is, as you have said, embodied in both the oath and affirmation in the giving of evidence or making a statutory declaration, as a law reform possibility what would you think about introducing a non-religious affirmation or just a promise to be honest and to tell the truth, given the diversity of our community now?

Mr HODDER — I think you would be removing a learning opportunity in the acceptance of people's different values.

The CHAIRMAN — Mr Hodder, thank you very much for the time you have taken to prepare some comments and to attend before the hearing.

Mr HODDER — Thanks for having me.

Witness withdrew.