

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

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Mrs B. Polzin, Yearly Meeting Secretary, Religious Society of Friends.

The CHAIRMAN — Mrs Polzin, on behalf of the Victorian Parliament Law Reform Committee I welcome you to our hearing today on our inquiry into oaths and affirmations with reference to the multicultural community.

You will receive a copy of your *Hansard* transcript in due course, and should there be any necessary corrections you would wish to make, feel free to do so.

I also take the opportunity to thank you for giving of your time today to appear before our inquiry and invite you to speak to your submission.

Mrs POLZIN — I wondered if it would be useful to do it in three stages: I will tell you a little bit about the Society of Friends and how it has come to its position regarding oaths and affirmations; I will be prepared to answer any questions; and I also have personal experience as a worker — I had been a worker in an Office of Housing rooming house for about eight years and had the duty to go to the former Residential Tenancies Tribunal on numerous occasions, so I had to put my principles into practice many times in regard to oaths and affirmations.

I am a Quaker — that is, a member of the Religious Society of Friends, and it is usually just called Friends. We are a small Christian denomination totalling about 1000 members in Australia with a similar number who like to worship with us and who we call attenders.

The Quaker movement began 350 years ago in the north of England. It was a radical group of people who were committed to doing away with the trappings of religion. They waited in silence in their meetings, which they called meetings to wait upon the Lord. There are still no paid priests or ministers. All Friends are called to that responsibility and the meetings for worship, based still on silent waiting, are unstructured in the sense that no-one leads them.

One of the important beliefs of Quakers is the belief that there is that of God in every human being — sometimes it is called the spark, sometimes it is called the seed of God — and it is our responsibility to answer to this spark or seed in all those we encounter. Another matter leading from this is that if we are to answer that of God in those we meet we are certainly never called on to destroy it. Therefore Quakers belong to that small group called peace churches: that is to say that most Quakers would be pacifists.

Regarding oaths: in 1693 the Quakers were refusing to take the oath — at that time the oath of allegiance in England — and they were suffering for it. Friends underwent much hardship before provision was made by statute allowing them to affirm. In fact, it was because of Quakers' efforts in this regard that the law in England was eventually changed and the right of affirmation for everyone was acknowledged. It became then one of what we call our testimonies to truth and integrity. Other testimonies we have are testimonies to simplicity, to peace, and equality.

In 1782 it was written:

Advised, that our Christian testimony be faithfully maintained against the burden and imposition of oaths ...

But above all things, my brethren, swear not; neither by heaven, neither by the earth, neither by any other oath; but let your yea be yea; and your nay, nay; lest ye fall into condemnation.

In one of our *Books of Discipline*, which are in fact the British publication of the Religious Society of Friends but they are part of our Australian discipline as well and written in 1911, I read:

... the law permits all those who object to the taking of an oath on religious grounds, or because they have no religious faith, to affirm. We encourage Friends to spread a knowledge of the law so that all those who share either of these objections may take advantage of its provisions. We regard the taking of oaths as contrary to the teaching of Christ, and as setting up a double standard of truthfulness, whereas sincerity and truth should be practised in all dealings of life.

In 1957 the same *Book of Discipline* in relation to a juvenile court says:

We believe the oath, as at present enforced, is undesirable and suggest that a simple promise to tell the truth should be required of all persons giving evidence in a juvenile court. To 'swear by Almighty God' is merely to recite the oath children hear day by day from the mouth of the 'man in the street', if not from their own parents. To a large extent it is meaningless. To be required to speak the truth is straightforward and meaningful and the promise to speak the truth would be adequate to deal with the giving of false evidence.

Finally, in what we call our *Advices and Queries* — our book of discipline — we read:

Taking oaths implies a double standard of truth; in choosing to affirm instead, be aware of the claim to integrity that you are making.

I hope that was not too long.

The CHAIRMAN — No. Thank you very much. I ask my colleagues to start with a number of questions.

Mr BOWDEN — In the court process in determining an outcome of the court proceedings it is understood that the goal is to get the consciousness and the conscience of the witness to understand truthfulness is expected. It is the suggestion and the information that you are providing today that oaths are not supported by your organisation, but the establishment, acceptance and requirement to tell the truth is part of the information you are giving us today. So, if a non-religious statement that is attested by the person giving the information were to be provided, that would be acceptable to your organisation — in other words, the person is required to tell the truth?

Mrs POLZIN — That is right, and I have myself taken that affirmation on many occasions. The gentleman before was saying, 'Why do people do it?'. I have just said, 'I would prefer to take the affirmation'. I think the referees in the Residential Tenancies Tribunal and at times when I have been to the County Court have just accepted that. They probably think I am not a Christian; I do not know, it does not matter. It is what I have preferred to do.

Mr BOWDEN — But there should be some statement of truthfulness that is given by the person providing the evidence?

Mrs POLZIN — Yes.

Mr BOWDEN — In some form?

Mrs POLZIN — A simple promise to tell the truth.

Mr KATSAMBANIS — On your experience in the residential tenancies area, be that in the old tribunal or the current Victorian Civil and Administrative Tribunal, have you experienced any situation where your expression of your preference to take an affirmation has been queried or cross-examined?

Mrs POLZIN — No, because what you had in those days — and I left that job in 1998 — was a sheet of paper with 'I swear by Almighty God' on it, underneath which was the affirmation. So it was literally a preference that people could make. But I remember one occasion when I said I would prefer to take the affirmation the tenant that I was bringing to the tribunal said, 'What's the difference? Why do we take the affirmation and why do some people swear by Almighty God?'. The referee's explanation was, 'If people believe in God they swear by Almighty God; if they don't believe in God, they take the affirmation'. That was the way he chose to describe it, but of course I did not question that in that situation. However, it has stuck with me because I thought, 'No, that's not the reason'.

Mr KATSAMBANIS — You found that inappropriate, I take it?

Mrs POLZIN — Yes, but we were there for a much larger matter.

Mr KATSAMBANIS — Have you ever had the impression that by taking the affirmation rather than the oath, in the eyes that you were giving the evidence to, that that in any way diminished the strength of the evidence that you were giving?

Mrs POLZIN — I have heard people say, ‘I swear by Almighty God’ and then tell terrible lies.

The CHAIRMAN — In court?

Mrs POLZIN — At the Residential Tenancies Tribunal.

The CHAIRMAN — I encourage you to take those matters up with — —

Mrs POLZIN — That is all past me. I just used to shake my head. It was not up to me to make judgments of course, it was up to the referees.

Mr LANGUILLER — We Catholics can fix it on Sundays. For the record, I agree with you. I do not believe that if a person does not want to take an oath he or she is or not a believer in God. I do not think that is the case at all. I know many people who refuse to take an oath, and in fact they are very strong believers. Are there any religious or theological objections in relation to taking an oath and what are they? I just want to get that clear in my mind.

Mrs POLZIN — From the point of view of the Society of Friends, to which I belong, it would be seen that what we are saying is that the truth is relative: sometimes people may be telling the truth and other times they may not. I think it would be a very strong testimony on which we would be very firm that if I, as a Quaker, say something it is truthful, and whether I take an oath or do not take an oath that must be the criteria by which I live.

Mr LANGUILLER — Is it important for you that people not be made aware of your religious background? If you were in a court of law would you prefer it one way or the other?

Mrs POLZIN — No, it would not matter to me, but it sometimes does not seem relevant. If I am in a court of law on a particular matter and wish to take the affirmation the reasons why I wish to do that do not necessarily belong to that court of law. That is how I look at it.

Mr LANGUILLER — So you do not think that religion comes into it? Is that what you are saying? What do you mean by ‘it does not seem relevant’?

Mrs POLZIN — It is not relevant to the judge or the magistrate why I am taking the affirmation. That is how I would see it. If you would like to ask me about being a Quaker, I am very happy to talk about that. But you would be there for a different purpose, would you not?

Ms HADDEN — In your view is cultural and religious awareness training important for judges, judicial officers, magistrates and tribunal members?

Mrs POLZIN — I think it would be very helpful to have that awareness.

Mr LANGUILLER — Are you suggesting that they require additional training in that area?

Mrs POLZIN — I do not know what training they have, Sir.

Mr LANGUILLER — In other words, do you think that they are not up to scratch in relation to religious training?

Mrs POLZIN — I do not know. I have been a witness in the County Court once and had to hold up proceedings while I asked for them to get the affirmation, but there was no question about it. Then I had to go on the same matter again, so I said to the court officer, ‘You remember,

I was the person who held you up last time because you didn't have the affirmation ready', and he had it ready that time. But nobody said, 'Why are you doing this?'. I imagine if you were scared, lacking in confidence, really terrified of going to court — which can be really intimidating — you may not have the confidence to say, 'Excuse me, I don't feel comfortable taking the oath of swearing on the Bible'. By not being offered an alternative we might find people who may prefer the affirmation not being confident enough to ask for it. Just the assumption that you swear on the Bible is perhaps not good enough.

The CHAIRMAN — Which ethnic communities are represented within the Society of Friends?

Ms POLZIN — Unfortunately not many. It is very much Anglo-Saxon. We have several Aboriginal people who are part of our society in Australia, but generally I would think we are mostly of Anglo-Saxon background.

The CHAIRMAN — Do you have a view about law reform in this particular area? How did you find out about our hearing today and what led you to come along?

Ms POLZIN — I represent Friends on the Victorian Council of Churches and it was mentioned there. I was also telephoned to see if I was prepared to come and give what we would see as a Quaker viewpoint, and I am really happy to do that.

The CHAIRMAN — Are you comfortable with the current dichotomy under the Evidence Act with some people having the power to give an oath and some the option of giving an affirmation as such?

Ms POLZIN — Are you asking for suggestions?

The CHAIRMAN — Yes.

Ms POLZIN — I would hope that in our multicultural society the norm may be the affirmation and that anybody may have the choice to swear by Almighty God. To me that seems the norm. As one of the little things I read out from 1957, for many people I think to swear on the Bible may be meaningless. We might be asking them to compromise themselves just because it has become a form or something that is not really taken very seriously.

The CHAIRMAN — In the latest census I think it mentions that 65 per cent or so of the Australian population acknowledges an adherence to a Christian belief, so to speak. Do you think that is in conflict with the view you have just stated about the affirmation being a more appropriate form of oath taking if there is this level of religious adherence, albeit nominal?

Ms POLZIN — In my view it is not, because I belong to a Christian group and do not find that my truth telling would be any less than those who perhaps would be prepared to swear on the Bible; I hope not anyway.

The CHAIRMAN — Thank you. Do you have a view of whether the classes of people currently authorised to witness affidavits and statutory declarations is sufficiently accessible to and representative of the Quaker community? Do you think the classes need to be extended?

Ms POLZIN — I am sorry, I do not know who is able to do that; chemists, doctors, JPs — this is just off the top of my head — ministers of religion, I guess. I would find somebody if I had to sign an affidavit, but whether it should be extended, I have no opinion on that.

Mr LANGUILLER — Can I take you back to 1693? Why was it that those Christians objected to the oath then? What was the background to it?

Ms POLZIN — My understanding is it was an oath of allegiance to the King, and also when they were brought before the courts.

Mr LANGUILLER — Not Charles I, of course — he was not around by then.

Ms POLZIN — When they were brought before the court at that time because they were meeting illegally — as a group of Seekers as they were called at that time — they would not take the oath just because what they were saying would be, in their view, truthful. I did not bring the biblical reference, which I think is Matthew something and which says, ‘You have heard it said in old times you could do these things, but I say to you ...’ Maybe it was James.

Ms HADDEN — It is Matthew 5.

Ms POLZIN — Yes, let your yea be yea and your nay be nay. It was that sort of basis for refusing to swear.

Mr KATSAMBANIS — So it was not a refusal based on the fact that the King was the head of another religious order?

Ms POLZIN — Not as far as I know, but it must have been quite — —

Mr KATSAMBANIS — In English law it is always that.

Ms POLZIN — It was a struggle I think for them and many of them were thrown in prison because of that. It is interesting that it was back in the 17th century that the first affirmation was made. I read that last night and it was for, ‘The people called Quakers and Moravians’. I do not know who Moravians were. That was that little reference there.

The CHAIRMAN — On behalf of the committee, I thank you very much for giving of your time to enlighten us as to the position of the Quakers. Your evidence will be very helpful.

Witness withdraw.