

LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 2 August 2002

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Witness

Mr J. Kakos, Registrar, Justices of the Peace and Bail Justices Registry, Department of Justice.

The CHAIRMAN — Mr Kakos, my name is Murray Thompson; I am the Chair of the Victorian parliamentary Law Reform Committee. You will receive a copy of your Hansard record, which you will have the opportunity to correct, if necessary. We are grateful to you for coming along this afternoon to give us your insights into your field of expertise in the justices of the peace and bail justices registry in the Department of Justice. I invite you to speak generally to your submission, following which we will ask you a number of questions.

Mr KAKOS — Thank you. Generally I do not have much to add other than what I have mentioned — that I believe the current system works well, but if a new system were to be introduced where a non-religious oath or affirmation were introduced, I would not have a problem with that, especially in today's secular society. As mentioned previously, I think legal sanction rather than any religious wrath tends to be the greater deterrent of the two.

The CHAIRMAN — I pose the question: would not a person who, under oath, gave incorrect evidence still be rendered liable for perjury if they had used the oath process?

Mr KAKOS — It is no different from if they had taken an affirmation.

The CHAIRMAN — Yes.

Mr KAKOS — It makes no difference at all.

The CHAIRMAN — There is still the potential for legal sanction either way, if someone gives incorrect evidence?

Mr KAKOS — That is correct.

The CHAIRMAN — Under the current system?

Mr KAKOS — Yes, that is right.

The CHAIRMAN — Please continue.

Mr KAKOS — Do you want me to speak about any particular issue?

The CHAIRMAN — We can pose questions to you, then, if that is your general statement in principle.

Ms GILES — John received a copy of these, as well.

The CHAIRMAN — Thank you. Question 1: the terms of reference for the inquiry require the committee to consider whether the current persons authorised to witness affidavits and statutory declarations are representative of and accessible to the diversity of the Victorian community.

Can you comment on the selection process for justices of the peace and bail justices, and whether consideration is given to ensuring that persons from a range of ethnic and religious backgrounds are selected? And do you keep records of factors related to ethnicity, such as languages spoken other than English, which appears as a question on the application form?

Mr KAKOS — We do give consideration to the ethnic background of applicants. That is usually a factor in determining who is appointed after they have satisfied the two initial criteria. We do keep records of languages spoken, and that is something that is requested on the application form. We do get quite a large number of applicants from ethnic communities applying to be justices of the peace and bail justices, but probably more so justices of the peace. So yes, we do keep records of languages spoken for both positions.

The CHAIRMAN — Do you feel you have a sufficient proportion of JPs covering a range of ethnic groups, both recent arrivees and those of longer term citizenship?

Mr KAKOS — Yes, I would say we pretty much cover almost every race and ethnicity and almost every language spoken, including some of the more obscure languages. We cover quite a number of languages.

The CHAIRMAN — How would a person who spoke, say, the Somali language or an Eritrean or Ethiopian dialect track down someone who is language proficient and had the skills of a JP?

Mr KAKOS — We keep those records at our office and anyone who contacts us is given details of the JPs who speak that particular language — if indeed there are any, and usually there would be.

The CHAIRMAN — What bridges the gap between the time of arrival and the appointment of people with that language speciality?

Mr KAKOS — We do not control how many applications we receive; suffice it to say that we do get a large number of applications from ethnic community groups.

The CHAIRMAN — By way of applications, you respond to applications rather than understanding that there were a significant group of refugees, for example, arriving in the country that might have specific dialects?

Mr KAKOS — We do not seek out applications from any particular group.

The CHAIRMAN — Is age an impediment to people being appointed as justices? Would someone being, say, 78 be an impediment to them being appointed as a JP?

Mr KAKOS — No; there is no longer any retirement age for justices of the peace, only for bail justices, who are considered to be judicial officers. They have a retirement age of 70, which is the same as other judicial officers.

Mr LANGUILLER — What are the impediments to someone becoming a JP?

Mr KAKOS — Criminal history would be one, but also a large number of existing justices of the peace in a locality, or if an applicant has not had sufficient years of voluntary community service. They are the two criteria — the need in the area where they live and their years of voluntary community service. They must satisfy those two criteria first before we can consider other aspects, such as work-related needs, language skills, and so on.

Mr LANGUILLER — If you were to reject an application you would write to the applicant and indicate what?

Mr KAKOS — We write to all applicants regardless of whether or not they are successful to advise them of the outcome of their applications.

Mr LANGUILLER — Would you state the reasons why he or she was approved or disapproved — primarily disapproved?

Mr KAKOS — No, not in the letter, but in any subsequent phone calls we would outline the reasons to them. We just give them a general letter stating that they were not accepted and that the reason was not owing to their standing in the community.

Mr LANGUILLER — But you would explain privately in a phone call?

Mr KAKOS — Yes.

Mr LANGUILLER — Why they were effectively rejected?

Mr KAKOS — The selection panel usually outlines the reasons for not approving an application, and I would state those reasons to any applicant who was not successful.

Mr LANGUILLER — How many JPs are there in Victoria?

Mr KAKOS — Approximately 3670.

Mr LANGUILLER — Are you able to provide the committee with a breakdown of how many are women, how many are from non-English-speaking backgrounds, how many are from Aboriginal communities, and so on and so forth?

Mr KAKOS — Not at the moment, because that is currently being compiled by another officer within our department, Suzanne Cumming, who is currently compiling a report on the gender breakdown, languages, skills and so on of both justices of the peace and bail justices. That is about to be completed, but unfortunately I do not have those details today. All I can say is in general terms the majority of justices of the peace and bail justices are male, but there are quite a large number of both JPs and bail justices from most ethnic groups in Victoria.

The CHAIRMAN — Thank you.

Mr BOWDEN — I would appreciate your assisting us on a question about training of justices of the peace from the perspective of your office. Could you elaborate on the guidelines pamphlet you mentioned in your written submission? Does the registry have any involvement in the oversight of the training of JPs?

Mr KAKOS — Yes. The registry provides its own guidelines pamphlet called ‘Guidelines for authorised witnesses’, which is this one here, which is given to all newly appointed justices of the peace and bail justices. But the in-depth training is conducted by the Royal Victorian Association of Honorary Justices on behalf of the Department of Justice. We do provide oversight in that we request a copy of the training material which is given, such as this one here, and that we also have monthly meetings with representatives of the association to clarify any other outstanding issues that may occur.

Mr BOWDEN — From a registrar’s perspective, in the training is there an emphasis on the need for caution by the justices and the bail justices when they attest documents? Is the importance of correct attestation highlighted in the training?

Mr KAKOS — Yes, it is. I would say that justices of the peace and bail justices generally do their work very well and are very careful with the way they administer oaths and affirmations. Unfortunately I could not say the same regarding other authorised witnesses, because they do not get the same training that JPs and bail justices get — such as pharmacists, accountants and so on. They are pretty much left to their own devices with no training at all, whereas JPs and bail justices get quite substantial training in the process of witnessing documents and administering oaths and affirmations.

The CHAIRMAN — Does the registry have a complaints mechanism to receive and investigate complaints about JPs, and if so, have there been any complaints about issues germane to this inquiry — for example, lack of availability of appropriate religious texts, inappropriate questioning about religious beliefs, or inappropriate assumptions about religious beliefs based upon ethnicity or other factors?

Mr KAKOS — The registry does have a complaints mechanism to receive and investigate complaints, but in my years of involvement with the registry I have never had one complaint about the lack of availability of alternative texts, or even inappropriate questioning about religious beliefs.

The CHAIRMAN — You note that you do not believe that any lack of sacred texts on the part of justices of the peace or other authorised witnesses is of major significance, particularly given the lack of demand for such texts in the wider community. Do you think people are aware that they can swear an oath in accordance with their own religion?

Mr KAKOS — I believe they are aware, and any person who has a strong religious belief would usually object to the taking of a Christian oath and instead request an oath in keeping with their own religious belief. We do not even provide Bibles to JPs and bail justices, which would be the overwhelming majority of the oaths they administer. So to say there would be a need for other texts — I would not agree that that would be a need at all, and I have never had one request for a Koran or other religious text from any of our JPs.

The CHAIRMAN — How would requests for other religious texts reach you?

Mr KAKOS — Usually through a telephone call. For example, one newly appointed JP asked me if we provide them with Bibles, to which I said no. Generally inquiries would be made over the phone or through the Royal Victorian Association of Honorary Justices, which may convey that to me. But I have never had any complaints or even inquiries or requests for other religious texts.

The CHAIRMAN — The application form for appointment as a justice of the peace requires the application to be supported by three nominations from community-based organisations or individuals of good standing within the community. How many nominations are received from ethnic community or religious organisations?

Mr KAKOS — We do not keep statistics on the number of nominations from ethnic groups, or from any other groups for that matter. All I can say, generally from empirical evidence, is that a large number of those would come from community groups or ethnic organisations. Many people believe that the appointment of justices of the peace is for ethnic communities.

The CHAIRMAN — Are the preponderance or majority of applications from people within ethnic communities based upon those who might be in more entrepreneurial roles within the community as opposed to those who might be leaders of community organisations?

Mr KAKOS — No.

The CHAIRMAN — Is there an element between business development and having the role of JP as an accompanying title?

Mr KAKOS — No, I do not think that business needs come into it, with community groups. The large number of applications from members of ethnic communities would come from leaders of ethnic communities themselves, or others who hold positions within ethnic organisations. They would usually nominate someone from that organisation to become a JP in order to witness documents for their specific ethnic community. I do not find there is a large number of business-related applications from ethnic community groups.

The CHAIRMAN — Is there an understanding of the volume of work undertaken by individual JPs? Would some be signing 50 affidavits a week and someone else one every 12 months or every two years?

Mr KAKOS — Yes, I find that generally there is not a great understanding of the volume of work required.

The CHAIRMAN — Would that be a useful statistic for you to have?

Mr KAKOS — I do not think having it as a statistic would help, but perhaps just as general advice to applicants that some areas have a high demand for the services of a JP whereas

others do not. For example, a country area would not have a high demand for the services of a JP, whereas an inner suburban locality can often have a very high demand for the services of JPs.

The CHAIRMAN — Is there any annual contact with JPs? I guess there would be the general instructional or information dissemination meetings and presumably annual general meetings held by JPs, where there would be a popular understanding of what their work volume would be, but do you have any other methodology at your disposal to assess or directly work out the work flow of JPs? For example, there is no annual registration?

Mr KAKOS — No, there is no longer an annual registration requirement under legislation, as there had been previously. We do issue information bulletins from time to time, usually on an annual basis, but not necessarily. That generally does not provide information about the need in particular areas.

The CHAIRMAN — Do you know how the number of JPs at the moment would accord percentage-wise with Victoria's population base? Would there be that demographic balance within JPs or would there be a traditional weighting of people who might have more of an English, Scottish or Australian background?

Mr KAKOS — No, the selection panel takes a fairly positive view of the need to appoint JPs from various ethnic backgrounds, and although in the past many were of Anglo-Saxon and Celtic backgrounds I would say that in recent years that has changed quite substantially, and a large number of appointments are now made from members of ethnic communities.

The CHAIRMAN — The answer to this question may not be in the public domain, but of all the applications you receive is there a rough percentage of people who might be successful in being appointed as JPs?

Mr KAKOS — On average approximately 80 per cent of all applicants are successful and 20 per cent are, obviously, unsuccessful.

Mr LANGUILLER — I wish to revisit your comment when you said you are comfortable with the current act as it is, which essentially is that the oath comes first and, if objected to, then you have the affirmation option.

Mr KAKOS — Yes.

Mr LANGUILLER — I have had a few documents witnessed over the years by JPs and they have done a tremendous job, but to be perfectly honest I have no recollection of ever being told there were options in relation to the oath — in other words, that if I were a Muslim or from various other religions that I could swear appropriately or that I could have the document affirmed instead of taking the oath. Can you take us through the procedure? What would a JP typically do if someone approached a JP and said, 'This is what I need'? What would the JP say to the person?

Mr KAKOS — Generally JPs would ask them whether they have an objection to the taking of a Christian oath, but not all JPs would. If there were obvious indications of a person's ethnic background — for example, the wearing of a turban — then that would alert a JP to ask a question about the religious beliefs of that person and whether they would object to the taking of an oath, whereas perhaps a Anglo-Saxon-looking person might not necessarily be asked that question. There is no requirement for JPs to make any inquiry of the deponents coming before them. It is left to their discretion to see if the deponent requests anything other than the taking of an oath or affirmation. I would estimate that generally, for 99.9 per cent of the time, they would be given a choice of either an oath or an affirmation if they objected to the taking of an oath.

The CHAIRMAN — Are you aware of any areas that could be reformed in this general area of the law to make it a more efficient and functional element of operation?

Mr KAKOS — Education and training is one area that can always improve, but I do not believe there is a great need for it. The training currently given is more than adequate to cover these situations. As I mentioned earlier, the demand for other sacred texts is so small that it does not present a problem, although that does not mean that with the progression of time it will not become a problem, and it may do so. However, at the moment I have not had any complaints coming to my attention owing to the lack of a text being provided or any other issues relating to not providing a sufficient service to multicultural communities. Generally the comments I get back are quite positive.

The CHAIRMAN — Thank you very much for your evidence today and for giving of your time to attend. Should you have any other thoughts in conversations with your colleagues which you would like to subsequently convey to the committee, please feel free to do so.

Mr KAKOS — Thank you very much.

Witness withdrew.