

*Commission of Enquiry into Poverty — Poverty and the Legal Profession in Victoria — Research Report*, by Jeffrey M. Fitzgerald.

The aim of the report by Dr Fitzgerald is a commendable one. Much of the material in it should give serious food for thought to members of the profession in this State. The relevance of many of the questions to the profession's role in providing assistance to the poor is great indeed.

However, there are, in my opinion, a number of matters which reflect upon the accuracy of the picture which the report purports to present.

I do not propose to canvass the whole report in detail and dissect the various questions and answers.

One serious gap in the report occurs because country practitioners were not surveyed. There are now approximately 650 country practitioners in Victoria and these practitioners have had and do have a great experience in providing services for the poor. Their experience is important because they practice in more close-knit communities than many of their urban and suburban brethren. Speaking from my own experience as a country practitioner, I can point out that the information that could have been ascertainable from country practitioners would have been of great significance. It is not possible to do an adequate report on poverty and the legal profession in Victoria and ignore approximately one-fifth of the practitioners in the State. The report, because of this omission, becomes a report on poverty and the urban legal profession in Victoria only.

Secondly, the report, by an omission to interview practitioners who are engaged fully in work for the disadvantaged (I prefer that word) — including both the destitute and the poor by other definitions (namely practitioners employed in the Australian Legal Aid Office in Victoria, by the Legal Aid Committee and in the Public Solicitor's Office) misses the benefit of the views of a significant part of the profession. The report is therefore one on the private sector of the legal profession in Victoria, and not on the whole of the legal profession. The importance of the opinions of the salaried practitioners involved in the provision of legal aid and their views is reflected by the reference by the then Commonwealth Attorney-General Mr R. J. Ellicott in his second reading speech in support of the Commonwealth Legal Aid Bill, in which he said:

I would also like to emphasize that it is the Government's intention that the provision of legal aid through salaried Officers should continue. Many of the initiatives in legal aid have come through the work in recent years of salaried Officers in the Australian Legal Aid Office.

To give a fuller picture, there ought to have been an accompanying report setting out the views of 'the poor' on the services provided by the profession to them. This would have given a double faceted and more valid view of the professions role in relation to the poor.

I would also take issue with Dr Fitzgerald's assertion on page 3 of the report that, with a high degree of confidence, the results of the survey can be generalized over the whole legal profession in the Melbourne and Metropolitan area. . . . The sample of 237 solicitors of a total population of 2,315 and 49 barristers from a total population of 440 is, in my opinion, too small to enable the results to be of sufficient significance in the drawing of conclusions.

Nor can I agree that the minor imbalance in favour of city practitioners compared with suburban practitioners is not statistically significant.

Of the sample interviewed, 71% are from city practices, 21.4% from suburbs and only 4.6% from the western and northern suburbs where, as the report itself points out, there are many more low income persons. The picture revealed would have been more significant had a greater proportion of practitioners from western and northern suburbs been interviewed.

At times the conclusions drawn by the author appear, because of their necessary subjectivity, to be open to criticism on that account. For instance, on pages 2 to 3 the author comments on the question 'How valid is the criticism that the legal profession as a whole has failed to deal adequately with the legal problems of the poor?' He says that 34.9% thought the criticism totally valid and 22.3% thought that it was essentially true, whilst 34% thought there was at least some validity to it. He then goes on 'Put another way, almost two-thirds of those responding to the question thought there was at least some validity to the criticism. . . .' This is of course true, but it is a misleading way of looking at the figures. From the largest group of answers the author produces a result which he appears to seek.

Further, the concluding sentences on pages 2-6 read as follows:

Only three respondents volunteered that such difficulties mean the respondent cannot render as high quality service as he otherwise would. In view of the strong ethical emphasis upon service regardless of the means of the client it is surprising that so few respondents would volunteer such an admission, even if it were felt to be true by a large number.

The comments in the last sentences are *non-sequiturs*. They assume that an admission that the legal profession does not deal adequately with the legal problems of the poor implies that they give bad service when acting for poor people, rather than — as may well be the case — that it fails to make sure poor people are aware of their rights and have access to legal assistance. The author also says that the respondents answers to the preceding questions indicate that a substantial proportion of the profession does not believe that the profession's services to the poor are perfectly in accord with the ethical exhortations discussed at the start of the chapter. Such a general assessment, he says, is a useful starting point for this enquiry. This proposition does not appear to have been established by the preceding paragraphs except as to the 'three respondents' mentioned in the last paragraph on page 2-6.

The report would have been fuller had it invited interviewees to suggest areas and means whereby the profession could give greater assistance to the poor.

It would certainly appear that a significant number of persons with legal problems failed to seek legal assistance. One of the largely contributing factors, in my submission, occurs because there is a need for better communication by practitioners with the public, so that the public is able to recognize when they have a legal problem and also recognize the part lawyers can play in solving these problems. The free advice service conducted by the Australian Legal Aid Office and by voluntary legal services should go a great deal of the way toward remedying this situation. However, the problem is part of the overall situation now being considered by professional bodies, of publicization to the community of the professions' role and services. The publicization of specialist activities and the setting up of specialist sections in the profession may well go part of the way toward avoiding this problem. The relationship between the Australian Legal Aid Office, and other legal aid bodies, with Social Welfare bodies of a governmental and voluntary nature, is also assisting to make known and available to the poor the assistance which lawyers can provide. The most significant and widespread developments in this area have probably, however, occurred since this report was commissioned.

Although one cannot gauge from the statistics how widespread the attitude is, one can feel some disturbance at the remarks of some of the interviewees that salaried lawyers would provide a secondary service. One cannot comprehend, and I speak from experience both as a private practitioner and as a salaried lawyer, how it could be broadly said that salaried lawyers would be any the less energetic and dedicated than their brethren in private practice. Remarks to the effect that they are not would be just as invalid as any remark by a salaried lawyer that practitioners in private practice are motivated only by profit and not by concern for their clients. Indeed, I would go so far as to suggest that salaried lawyers, because of their involvement with the poor, have led in initiatives and in areas of law concerning the poor.

The report reflects, at least, some suggestion that some members of the profession's attitude toward, and treatment of, the poor could be changed. How significant, and how widespread those attitudes are, I cannot express. Equally, and again on a basis of significance which I am unable to assess, the report reveals much that is commendable in the attitude and efforts of members of the profession. There certainly remains substantial legal needs amongst poor people, which are not being met, but the institution of services, such as the Australian Legal Aid Office, have gone a long way towards meeting those needs, particularly towards those who are really destitute.

It is my experience that the provision of free advice is a particular assistance to those who are destitute and gives them an access to the law which they otherwise would not have had. I commend, notwithstanding these criticisms, the author for the scope of his enquiry. It is indeed significant.

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