



**QUEENSLAND COUNCIL OF SOCIAL SERVICE (QCOSS) and
NATIONAL EDUCATION AND EMPLOYMENT FOUNDATION (NEEF)
Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

Chief Justice Paul de Jersey AC

I have been asked briefly this afternoon to address the subject, 'Poverty and the Law'. The extent of poverty within this sophisticated Western nation is a blight of major proportion, but a blight which has to this point proven ineradicable. Bodies such as our hosts QCOSS and NEEF strive valiantly to foster at least more enlightened awareness of the extent of the problem, and more innovative efforts to secure a socially just distribution of available resources, including of course empowering individual persons to exploit beneficially their own, personal resources.

The work being done through NEEF at Marsden High, under the leadership of Don Whitehouse, provides a good example of that empowerment. We look forward very much to hearing from Jasmine Nelson. I shall try to be brief: Jasmine is much more likely to inspire than I am.

"Poverty and the law": where those without resources confront the law, particular tensions can emerge. I will come to some of those in a moment. But first it is of some importance to acknowledge respective responsibilities.

When we speak of 'the law', we contemplate the legislature which enacts it, the police service which enforces it – at least on the criminal side, and the courts of law which ensure the delivery of justice according to law.

It must be remembered that the charter of the courts is not to do justice, but to do justice according to law. Subjective notions of justice vary immensely from person



**QCOS and NEEF Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

to person. The legal system would be unworkably uncertain and unpredictable if judges applied their idiosyncratic notions of what is just. Accordingly, judges – and police officers, are constrained by the law enacted by the people's elected representatives in the Parliament.

That is not to deny that in many areas, discretions fall to be exercised, both by courts and police officers, and in those cases, the entity concerned must be astute to secure a fair outcome. But even there, courts, and the police service, have been concerned over the years to render those outcomes as predictable as may be, through the development of guidelines which influence the exercise of the discretions involved.

The ultimate object, in summary, is predictability: a just outcome, in accordance with the law, one which can, so far as possible, be foreseen as the likely result in the situation as it has developed.

Now from the court's perspective in particular, I must mention the judicial oath. The judge swears in these terms: 'I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the laws and statutes of the realm and of this State to the best of my knowledge and ability without fear favour or affection.'

The stipulation is for equal justice, of which the probably best-known symbol of the Supreme Court is the statue of Themis standing with dignity before the courthouse in George Street. She is quite regularly displayed in television coverage of legal proceedings. That regular 'air time' probably increases her notoriety, but more fundamentally, it reflects her enduring iconic status – an ancient goddess whose influential message still defines modern civil society.

Our portrayal of Themis is customised to Queensland – on her belt she bears a casting of the Supreme Court seal. In an apparently misconceived attempt once to



**QCOS and NEEF Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

emphasise her female status, she was in the dead of night additionally embellished with a purple pedicure: needless to say what that gender, or fashion conscious, joker may have considered an improvement, was not permanently adopted.

Our Themis stands with eyes firmly focused, holding sword and scales. While the female form is sometimes blindfolded, it sometimes is not, as with our own. The blindfold is generally seen as confirming that justice is incapable of being swayed by the senses. The sword symbolises the rigour of justice, which does not hesitate to punish, and the scales suggest judgment by which each litigant receives what is due, no more and no less.

Our Themis' scales are firmly welded in place, an expedient necessitated by a degree of souveniring which characterised earlier years – again no doubt in the dead of night.

The stipulation for equal justice epitomized by Themis of course does not mean that when resolving the problems which confront courts, the personal circumstances of the party to the proceedings are irrelevant. Daily, courts have close regard to the deprived personal circumstances of offenders against the criminal law when for example determining penalty. That is especially so, as regrettably necessary, with indigenous offenders. That said, the law binds all, and is not differentially applied: the universal application within our community of a certain, ascertainable system of law binding on all citizens is central to maintenance of the rule of law.

None of this precludes, however, rational discussion within the community about the reasonableness of particular laws, especially those which may be felt to burden, unreasonably, and unnecessarily, particular segments of the community. I return to those afflicted by poverty, or disadvantaged generally.



**QCROSS and NEEF Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

Our host organisations demonstrate a clear focus on those individual persons within our communities who lack advantage: unfortunately there are too many of them. A graphic illustration of the extent of that disadvantage is to be seen in the homeless. Unless one walks the alleys and parks at night time or serves at the soup kitchens, one could not begin to comprehend the large extent of that problem. Homeless persons are inevitably vulnerable at the hands of those who would exploit them, including, as we know, physically imperil them. Relevantly for today's theme, they are also subject to particular risk when confronting the criminal justice system.

A recent public seminar at the Supreme Court highlighted that risk. The subject was the impact of public order law in this State, particularly the *Vagrants Gaming and Other Offences Act*, which is being revised. That 1931 Act dates from the era of the Great Depression. One section of the Act creates an offence of vagrancy, attracting a maximum penalty of a \$100 fine or six months imprisonment. The species of vagrancy under the legislation include having no visible lawful means of support; being an habitual drunkard and behaving in a disorderly manner in a public place; and loitering in a public place in order to beg. One of the speakers at that seminar rather vividly, and with some rhetorical flourish, suggested that our legislature 7 decades ago had thereby criminalised the state of poverty, the condition of alcoholism, and the act of begging for survival (Ms Tamara Walsh, Queensland University of Technology). She also provided some data on the extent to which persons are being charged under that legislation.

The data was startling. In the year 2001-2002, 203 persons were convicted of begging, 959 for being drunk and disorderly, 2523 for offensive language, and 7 for having no visible means of support. Another survey, of some 57 persons charged under such provisions in February this year, showed that 60% were very poor homeless people dependent solely on social security payments, 41% were indigenous, 39% were aged between 17 and 25 years, and 10% were said in court



**QCOS and NEEF Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

to suffer from severe mental illness or intellectual disability. Most of those persons were fined, with the average fine for the poor and homeless being \$194.

It is not my province this afternoon to comment on any social utility in such legislation, or to contend that persons are being charged who should not be charged. The police service faces very difficult choices in enforcing legislation of this character. My point is to illustrate the jeopardy in which the strikingly disadvantaged of our community stand. Sometimes of course this type of offending leads to incarceration.

Prisons are an unfortunate necessity. The need for them is a blight on an otherwise sophisticated society. They are expensive to run, and generally unproductive. From time to time, they are, we are told, overcrowded. For the inmate with prospects of a decent life, the tedium of the experience must be mind numbing. However modern the facility, prisons, or correctional centres as we call them these days, are often places where fear, despondency and regressiveness prevail. I do not say this critically of prison authorities who do their best. It is, however, inherent in the concept.

Having visited prisons ourselves, we Judges can assure those inclined to criticise the system as unduly generous to the prisoner, that the presence of television, a gymnasium and the like, are pale compensation for the essential detriment, lack of freedom, including freedom to choose your friends and associates. Society has struggled to devise alternatives to imprisonment. The system of probation and community service is generally beneficial and well utilised, and the drug court innovation, though expensive to operate, is worthwhile. Judges are acutely aware of the need to treat imprisonment as a penalty of last resort, but the sad fact is that many offences must be visited with imprisonment, and not just crimes of personal violence. The community rightly demands it, often for its own protection. One suspects that those without advantage who are incarcerated will often find their disadvantage compounded.



**QCOSS and NEEF Luncheon: Parliamentary Annexe
19 October 2004, 12.30 pm
'Poverty and the Law'**

The responsibility borne by the legislature in ensuring, as best it can, a beneficial legal framework for society; that borne by the police service in administering Parliament's laws responsibly and fairly; that borne by the courts of law in predictably and reasonably applying the laws, and fairly exercising discretions: all of these responsibilities are immense, and critical to the good government of the people. Likewise the broad responsibility assumed by our host organisations. For established institutions can become complacent, and the advantage to be gained by a bit of lateral thinking should not be passed up. Organisations like QCOSS and NEEF can inspire such beneficial re-examination.

When the Court of Appeal admits newly qualified legal practitioners to the profession, we always remind our new professionals of the essence of their professionalism, public service, and admonish them to deploy their talents in relief of those without advantage in our community – the weak, the marginalised, the friendless. I am pleased to confirm that the pro bono thrust within Queensland's legal profession is flourishing, and the altruistic devotion of many lawyers to the plight of the poverty-stricken and generally disadvantaged is marked.

There is nevertheless great importance, and utility, in keeping the plight of disadvantaged people within our community continually in mind – so that the Parliament, the police service, the courts of law, and many other institutions and individual persons will be astute to do what they can to recognise, and alleviate, the adverse consequences of that disadvantage.