

Comments on the case Mrs Catherine McColl v Strathclyde Regional Council Held in the Court of Session, Edinburgh Judgement given on 29 June 1983

Background

1. On 13 September 1978, Strathclyde Regional Council as a statutory water authority agreed to co-operate with local Health Boards by fluoridating water supplies for which they were responsible.
2. In October 1979 an elderly citizen of Glasgow (Mrs Catherine McColl) applied for an interdict to restrain Strathclyde Regional Council from implementing its decision. This was allowed pending court hearings. Legal aid was granted to Mrs McColl. In brief Mrs McColl's submission was that fluoridation is unsafe, ineffective and illegal.
3. Lord Jauncey was appointed to judge the hearings: Mr Morrison, QC was appointed Counsel for the petitioner and Lord McCluskey, QC was appointed Counsel for the respondent.
4. Expert witnesses were alerted and invited to give written and verbal evidence to the court.
5. The hearings, held in the Court of Session, Edinburgh, commenced on 23 September 1980 and continued (after a few breaks) until 26 July 1982. The Court sat on 201 days making it the longest and costliest case in Scottish legal history.
6. The judge took almost twelve months to consider the massive evidence and gave his verdict at 10 am on 29 June 1983. This was a brief session because there was available at that time a typed 400-foolscap-page report entitled *Opinion of Lord Jauncey*.

The Verdict

The judge sustained the Petitioner's plea in law that fluoridation for the purpose of reducing the incidence of dental caries was ULTRA-VIRES the respondent, and granted the interdict on this point and on this point alone. All her other pleas were rejected.

The judge completely vindicated the safety and efficacy of fluoridation.

In a verbal comment the judge stated that "...in 90 per cent of her submission the Petitioner failed significantly."

The Witnesses

FOR PETITIONER

Dr Yiamouyannis (every discipline)
Dr Burk (biochemistry and epidemiology)
Dr Steveley (biochemistry)
Dr Aly Mohammed (cytogenetics)
Dr Gibson (homeopathy)
Dr Stern (statistics)
Dr Parsons (nephrology)

FOR RESPONDENT

Medicine and Science

Professor Smellie (biochemistry)
Drs Evans, Martin, and Obe (cytogenetics)
Professor Sir Richard Doll (medical statistics)
Professor Newell (medical statistics)
Dr Erikson (epidemiology)
Dr Sharrett (epidemiology)
Mrs Paula Cook-Mozzafari (epidemiology)
Professor Finney (statistics)
Professor Nordin (mineral metabolism)
Dr Wilkinson (immunology)
Dr Robinson (nephrology)

Dental Science

Dr Philip Sutton
Professor Richard Scorer (mathematician)

Professor Murray
Professor Mansbridge

Professor Jackson
Dr Otto Backer-Dirks
Dr Martin Downer

Opinion of Lord Jauncey

The first few pages of the written report gave a background to the case. The following 270 pages gave comment on the medical and scientific evidence as to safety: eighty-one pages were devoted to the dental aspect of fluoridation and twenty-nine pages were concerned with the legal question.

Background

In his opening comments Lord Jauncey made several caustic statements about costs, about Mrs McColl and about her chief witness, Dr Yiamouyannis. He pointed out that the petitioner received legal aid and the respondent's expenses were being met by the Secretary of State and hence by central funds. The total costs were being met by the taxpayer. Lord Jauncey wrote that Mrs McColl had been conspicuous by her absence during the hearings but “...*others attended Court with great regularity and it would be naive to presume that the petitioner alone has an interest in the outcome of this action or indeed that her interests in the outcome is as great as that of others who have attended regularly.*”

On the granting of legal aid, Lord Jauncey questioned whether the expenditure on the action was the most cost-effective way of avoiding the effects of fluoridation. He then went on to say that “*The petitioner has thus been placed in a position far superior to that of a normal person litigating at his own expense, a result which it is extremely doubtful whether the legal aid legislation was designed to achieve.*” One can read into all these comments the judge's sensitivity to the huge costs of the action which have been reported in the press at £1m and his suspicion that Mrs McColl was a frontpiece for a larger group of people.

No doubt he had costs in mind when he commented on the fact that some of the petitioner's witnesses came from the United States and another from Australia. Of her principal witness, Dr Yiamouyannis, the judge had this to say: he “*...not only spent twenty-three days in the witness box but he also thereafter spent very many days in Court providing formidable assistance to Counsel in the conduct of the case. This assistance was responsible for many days if not weeks of cross-examination.*” Having made these initial comments Lord Jauncey said that they had no bearing whatsoever on the merits of the petitioner's case which he then outlined.

Medical and Scientific Evidence

As stated previously, this aspect of the case took the vast majority of the time and hence consideration. This is understandable not just because the issues were of a very serious nature but because the evidence was highly technical and very complex, involving as they do many academic disciplines. Serious students of the topic would be considerably advantaged by a detailed study of this section of the OPINION, but they would meet a certain difficulty in that the papers submitted in evidence are referred to by a page number in the Notes of Evidence and not in the usual manner. This was done to ease presentation. As the judge stated in his opening statements the serious

student needs to refer to the Notes of Evidence. The remarks made by any witness and commented on by the judge are given by the page number of the Notes of Evidence. There is appended a list of page numbers relating to the evidence of each witness and upon which the judge made comment.

The evidence ranged from cell biochemistry to mutagenesis to the biochemical mechanism of cancer causation and exacerbation, to cancer statistics to chronic renal failure, to bone disease and all the other harmful effects averred by the petitioner. It is a credit to the legal mind how this wide and complex evidence was mastered and commented on. The judge made his opinion on the quality and logic of the evidence. In a short report of this kind it would be impossible to review every item of evidence and comment and so only appropriate comments will be referred to.

In general the judge was much more impressed by the quality of the witnesses for the respondent than those for the petitioner. On the submission that fluoridation increased cancer deaths he had this to say – *“The Fluoride/Cancer argument, if I may so call it for brevity, has been shown to be substantially based on unsound principles and to have virtually ignored what may be described as the scientifically accepted facts of life about cancer incidence and mortality.”*

The principal witness for the petitioner was Dr Yiamouyannis of the USA. Of this witness the judge had this to say: *“Dr Yiamouyannis, who played so prominent a part in this case is undoubtedly a propagandist as well as a scientist.”* He went on to say that *“Dr Yiamouyannis displayed great ingenuity and a very fertile mind during his evidence. ..but I was driven to the conclusion that he not infrequently allowed his hostility to fluoridation to obscure his scientific judgement.”* On another occasion referring to Dr Yiamouyannis’ views on the carcinogen-dose relationship, Lord Jauncey said *“Thus again like Willie at the Wet Review of 1881, Dr Yiamouyannis marches as the only man in step.”*

And of the other witness who supported Dr Yiamouyannis in his cancer submission, the judge said *“I found Dr Burk’s evidence on this question of excess cancer deaths in the US to be vague and unimpressive.”* On this same topic the judge commented *“The evidence of Sir Richard Doll ...that of Professor Newell, Dr Sharrett and Dr Erikson ...appeared to me to be based on sound scientific principles and was generally of a different quality to the evidence of Drs Burk and Yiamouyannis.”* This was the tenor of his whole judgement on the various submissions made by the petitioner . At the end, he repelled all the petitioner’s submissions about the danger of fluoridation thereby completely vindicating the safety of fluoridation.

In a general but important comment the judge said *“If any amount of fluoride however small was toxic when ingested, it would follow that not only the petitioner, who is fond of tea, but every other tea drinker in the United Kingdom is poisoned when either he or she has a cup of tea. A large proportion of the population would in that event be in a permanently toxic state.”*

Dental Evidence

In contrast to the medical and scientific evidence the dental evidence was dispatched (over thirty-two days) with greater speed, probably because it was more direct and less complex. Again the judge was impressed by the contrasting evidence of the two sets of witnesses and had no difficulties in deciding that *“Fluoridation of water supplies in Strathclyde would be likely to reduce considerably the incidence of caries.”* At the same time he said that it *“...would be likely to produce a very small increase in the prevalence of dental mottling which would only be noticeable at very close quarters and would be very unlikely to create any aesthetic problems.”*

Dr Yiamouyannis was again the principal witness for the petitioner and was supported by Dr Sutton of Australia. Their submissions were those which have been well publicised on previous occasions, namely fluoridation merely delays the onset of caries, and that studies have not been scientifically acceptable because of sampling errors, choice of control communities, diagnostic errors, the inadequacy of the DMF (dmf) index and so on.

The judge made his opinion on the totality and volume of the evidence. On the question of delay the judge said “...*the theory of delayed eruption or delayed incidence does not accord with the weight of the evidence.*”

On the question of scientific inadequacy of clinical investigations the judge had this to say “...*in a perfect world each study might have been carried out in a more perfect manner in one or more details*”. Nevertheless “...*the message is loud and clear from all parts of the world. Water fluoridation reduces the incidence of caries. With evidence such as this available, it is not surprising that the majority of the dental profession in the United Kingdom favour the fluoridation of water supplies.*”

He repelled each of the petitioner's submissions one by one and by his judgement completely vindicated the respondent's claim that fluoridation significantly reduces the incidence of caries.

Questions of Law

No expert witnesses were called in this examination. The judge made his opinion on the existing statutes and on the submissions of the two Counsels. Mrs McColl petitioned that fluoridation was ULTRA VIRES, a nuisance, a breach of the Water (Scotland) Act 1980 and a breach of the Medicines Act 1968.

The judge repelled all these petitions except that of ULTRA VIRES. To those not versed in nuances of the law, interpretation of the law is not always easy and certainly causes some problems even for the legal mind. The judge reviewed other similar cases particularly that of Lower Butt, New Zealand, but of course their findings were not binding. The sticking point was this: fluoridation in no way facilitates nor is incidental to the supply of “wholesome” water as required by statute and hence is outwith the powers of the respondent.

Because there was no evidence that fluoridation would have an adverse effect on health the plea that fluoridation was a nuisance failed. Because fluoridation did not mean the supply of a medicinal product within the meaning of the Medicines Act 1968 the judge ruled that there was no need for a products licence and hence the petitioner's plea that fluoridation constituted a breach of the Act was repelled.

Conclusions

Because Mrs McColl was successful in being granted an interdict to restrain Strathclyde Regional Council there is a danger in thinking that this was a body blow to fluoridation. In reality the findings of the judge constituted an unequivocal vindication of the safety and efficacy of fluoridation. How far his ULTRA VIRES ruling affects England and Wales is as yet uncertain but on the best advice it could have some bearing. Some water authorities in England and Wales have repeatedly requested legal clarification. This could be achieved by some minor alteration to the Water Act (1980), and clearly this is a matter which will need to be considered by Parliament at an early date.

Certain press reports have suggested that the judge gave an opinion on the ethics of fluoridation to the effect that this measure is an infringement of personal rights. It is a matter of fact and not opinion that if water is fluoridated, an individual has little alternative but to consume the fluoridated water whether he likes it or not and this is undoubtedly a restriction of the freedom of choice. The judge stated as much but did not make any moral judgement. He stated that an “...individual’s right to choose how to care for his own body should only be encroached upon by statutory provisions in clear and unambiguous language.”

This is a legal comment and not a moral judgement. It is in keeping with his overall legal judgement, namely that the law needs to be clarified if fluorides are added to drinking water.

Postscript

The law was subsequently clarified by enactment of the Water (Fluoridation) Act 1985 (now consolidated into the 1991 Water Industry Act).

Reference

Lord Jauncey (1983): *Opinion of Lord Jauncey in causa Mrs Catherine McColl (A.P) against Strathclyde Regional Council*. The Court of Session, Edinburgh.