



The fluoride case

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The Strathclyde fluoridation case of 1980-81 was the longest civil case in Scottish legal history. Robert McKechnie, along with Professor K.W. Stephen of Glasgow University, attended the court for two days every week for two years, briefing QCs and answering queries. Here he recalls his experience of what has come to be regarded as the most thorough examination of fluoridation that has ever been carried out.

In 1978 the four Health Boards covering the area of Strathclyde Region decided to ask the Regional Council to progressively fluoridate their water supplies. Preparations were made: for example it was decided that initially only the largest supplies would be considered.

However in 1980 an elderly lady, a Glasgow resident, raised an interdict against Strathclyde Regional Council to stop them going any further with their planning. She applied for and was given legal aid and then she proceeded to select a legal team and with her advisers began to approach many well known opponents of fluoridation throughout the world.

At the same time Strathclyde decided to resist the interdict, and as they were supported by the Secretary of State for Scotland the costs of both opponents and supporters would be covered by the State.

As the Chief Dental Officer to the Greater Glasgow Health Board I was closely involved with my colleagues in the other health authorities in Strathclyde, and once the trial date was set and the Judge appointed I shared with Professor Stephen the task of advising and helping the Region's legal team. This involved travelling to Edinburgh for two days a week for two years. Professor Stephen did the same for the two other days a week on which the Court sits. The Region's legal team consisted of QCs and solicitors, and our job was to advise them, particularly during cross-examinations, find relevant papers and answer the many questions which arose and needed an immediate response.

A trial of this kind in the highest court of the land is quite unlike a scientific enquiry. In this case the Judge is the final and only arbiter. He listens to a long list of eminent and scientific witnesses from both sides, much of it in language which it is doubtful he has heard before. Much of this evidence is based on important scientific papers which are all very specialised and must be difficult for those outside these specialities to follow. The Judge's task in this kind of trial is far from easy. Because Mrs McColl, the petitioner, and the Regional Council were both funded by the State, both were able to search widely for the most eminent witnesses no matter where they came from. This resulted in a dazzling array of stars from all over the world being brought to Edinburgh. The trial, because of the quality of the evidence, is now recognised as the most thorough and complete scrutiny of the whole process of fluoridation that has ever been carried out.

An important part of the legal process is that all papers on which evidence is to be based must be submitted to the Court long before the trial starts: this allows both sides time to examine them in great detail. The procedure and progress of the case is clearly laid down; much of this is to make the Judge's position clear to everyone. Both sides are very aware

that the Judge is by far the most important person in Court and that it is in their best interests to remember this. (A suggestion, made by the Judge, that perhaps the proceedings should be interrupted for lunch is immediately agreed enthusiastically by both sides!)

It was almost as interesting to watch the people who attended the trial as to watch the action in the Court. The petitioner herself, Mrs McColl, appeared once at the beginning and never showed up again. Even Lord Jauncey commented on this. He said: "It may be her absence was due to lack of funds. However, others have attended the Court with great regularity, and it would be naive to assume that the petitioner alone has an interest in the outcome of this action or indeed that her interest in the outcome is as great as that of others who have attended so regularly."

In contrast her major scientific adviser, Dr John Yiamouannis, spent many months of the two years either in the witness box himself or helping her legal team. He was a personable young man, the stereotypical American go-getter. He was passionately anti-fluoride and Lord Jauncey suggested that often this passion obscured his scientific views. He had been involved for many years in the U.S. in propagating a number of herbal products and had a large following whom his opponents regarded as flat-earthers. Yiamouannis was not just an opponent of fluoridation: he had made his opposition into a crusade, and a full-time career.

Of all the witnesses, the person who impressed me most was Professor Sir Richard Doll. He, of course, was famous for showing unequivocally that smoking was responsible for thousands of deaths every year, through lung cancer and heart disease. He clearly impressed Lord Jauncey as well. In the witness box he spoke clearly and decisively. He did not, like some of the other witnesses, prevaricate or waffle. His evidence was straightforward and he could always back it up with sound scientific research. Lord Jauncey on several occasions went out of his way to show Sir Richard a sympathetic, helping hand. For example, he would ask him if he would like a rest after a long stint in the witness box - or would he like a seat? Sir Richard was not a young man when he gave his evidence, over almost a fortnight, but he never showed signs of flagging or of losing his sharpness. When cross-examined he showed his extensive and detailed knowledge – so much so that the opposing QCs were after a short time clearly at a loss on how to question him further.

Footnote: In the end Lord Jauncey decided that although all the scientific, medical and dental allegations against fluoridation had been shown to be baseless, the process was ultra vires – i.e. beyond the legal power of Strathclyde Regional Council. The Water Act of 2003 confers this power on strategic authorities after they have consulted their local communities. This provision is due to come into force in November.

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