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(Accepted 24 March 1995)

Pecked to death by (flying) ducks: court decision may extinguish smoking on aircraft

Simon Chapman

A case this month in the Australian court may force Australia's national airline, Qantas, to make all its flights non-smoking now rather than next year and in the meantime offers hope of compensation to Australian passengers who are refused non-smoking seats. Mrs Leone Cameron brought a case against Qantas for seating her in the smoking section of a Sydney to Bangkok flight after she had booked a non-smoking seat. She subsequently suffered minor illnesses. She and nine other similarly affected passengers claimed that Qantas had misled them. The judge ruled that Qantas had misled passengers in five of the cases though he refused to rule that Qantas had misled those placed in non-smoking seats next to the smoking area. He also refused to order Qantas to make all its flights non-smoking. The ruling is important for enabling other passengers to seek compensation through consumer claims tribunals when refused a requested non-smoking seat. It also brings closer the day when smoking will be forbidden on all flights.

There can be few non-smoking air travellers who fly frequently and have not had the experience of requesting a non-smoking seat at check in only to be seated in the smoking section because all the non-smoking seats have been allocated. And there are many more again who have found themselves sitting next to the smoking section, where the full force of the farcical "magic line" demarcation between smoking and non-smoking becomes apparent moments after the non-smoking sign is switched off. A decision of the Federal Court of Australia handed down in Sydney on 16 June 1995 seems likely to consign these experiences to the archives of travel history.

Mrs Cameron's complaint

Justice Bryan Beaumont ruled that Australia's national airline, Qantas, had been negligent and misled passengers by accepting reservations for non-smoking seats and then failing to seat those passengers in non-smoking seats. Mrs Leone Cameron sued Qantas after a holiday flight from Sydney to Bangkok in 1992 where she had requested but been refused a non-smoking seat. During the trip she experienced nausea, eye dryness, and a raspy throat. Two days after arriving in Bangkok she went to bed and missed various tours that her travelling companions undertook. After she started her action against Qantas, publicity about her case caused nine other people with a variety of similar experiences to join her in the action.

Mrs Cameron and the other members of her group had sought minor compensation for their unpleasant experiences. Their main concerns, however, were to blaze a trail for the health and comfort of future passengers. Besides compensation, they sought declarations from the court that Qantas had acted unconscionably and had engaged in misleading conduct under the Australian Trade Practices Act. They also sought an injunction restraining the airline from repeating their experience with others.

Justice Beaumont's decision refused the unconscionable conduct application; upheld the misleading conduct charge in five of the 10 cases; and awarded compensation to all 10 passengers. One applicant, whose main reaction to the smoke was being unable to sleep, was awarded \$A50, while an asthmatic woman who developed wheeze during the flight was awarded \$A750. Rather perplexingly, however, Justice Beaumont refused to declare "in general terms" that the airline's conduct had been misleading, stating that

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BMJ 1995;311:38-40

Heading towards fully smoke free flights

he was concerned that this might create "a false impression." He also refused to order Qantas to refrain from repeating such misleading behaviour. He argued that its plan to make all flights smoke free from July 1996—in reality, simply following the International Civil Aviation Organisation's goal for its member airlines—and its "impressive attitude to the present problem" should be given considerable weight.

Qantas action not unconscionable

In refusing to declare Qantas's actions unconscionable the judge referred to the failure of the Australian government to exercise its power to ban smoking on all international flights to and from Australia; the legitimacy of Qantas seeking to take into account the possible loss of business in the heavy smoking Asian market; and the airline's impressive record of responding to changing community attitudes about in flight smoking: at present 79% of all Qantas flights are smoke free.

In the five cases where misleading conduct was determined, Qantas or travel agents acting on its behalf had accepted bookings for non-smoking seats, yet had seated these people in the smoking section. This was judged misleading conduct. However, the judge ruled that it was not misleading conduct to seat people who requested non-smoking seats in what Qantas itself calls the "no preference buffer zone"—the non-smoking section immediately next to the smoking section—despite accepting that people seated here would be exposed to drifting tobacco smoke.

He preferred the evidence on asthma and passive smoking presented by Associate Professor A B X Breslin for the applicants to that presented by Associate Professor D K McKenzie from the department of respiratory medicine at the University of New South Wales. McKenzie is an author of a report on passive smoking sponsored by the Tobacco Institute of Australia and published earlier this year which was largely dismissive of passive smoking as a health hazard. Nevertheless, McKenzie also accepted the bona fides of an internal report by a medical officer employed by Qantas which concluded, "Medical authorities . . . now agree that there is sufficient evidence to link passive smoking with aggravation of asthma in existing asthmatics, respiratory disease in children, and, from long term exposure, lung cancer."

Justice Beaumont ruled that Qantas had breached its "duty of care" to the applicants by failing to have warned in its timetables, brochures, or tickets of the possibility that a non-smoking reservation might not be honoured or that a passenger in a non-smoking seat might be subjected to tobacco smoke. One can imagine the flurry of activity now taking place, inserting extra clauses on tickets all around the world.

Qantas had the temerity to try (unsuccessfully) to argue that the meaning of a request for a "non-smoking seat" should be taken literally: simply that smoking

was not permitted in that seat. Justice Beaumont dismissed this argument, accepting that those who requested such seats were reasonable in their expectation that they would be seated in a non-smoking zone. Nevertheless, he failed to agree with five of the applicants who argued that their exposure to drifting tobacco smoke while seated in a non-smoking seat rendered the claims for the status of these seats meaningless.

Ducks not Davids

There are many aspects of this judgment which have disappointed and astonished public health workers. Many were expecting this case to be the stone in David's slingshot that would fell the marketforce Goliaths in the airline industry who put the amenity of the smoking minority ahead of the comfort and health of the (large) non-smoking majority who fly on planes. Nevertheless, the David and Goliath metaphor is generally a poor descriptor of the process of public health advocacy. Far better is the notion of a flock of ducks pecking away at their target. Pecks from single ducks do little harm. But when their numbers swell their persistence can build from initial irritation to eventual capitulation via various attempts at appeasement and reform.

In recent years there have been countless pecks at the airline industry. These have come from its own airline crews—the group most exposed to passengers' smoke; from what worldwide must collectively be tens of thousands of complaints by passengers; from letters written to newspapers; from talkback radio discussions; and from the pioneering, high profile declarations of smoke free flights made first by Canadian Airlines, then Cathay Pacific, and this year Delta.

Case sets precedent for compensation in tribunals

Leonie Cameron, her group members, and the lawyers (barrister Neil Francey and solicitor Roland Everingham, both of whom have been involved in other groundbreaking legal cases regarding passive smoking in Australia) have delivered a particularly precise parcel of pecks on this occasion. The judge has indicated a provisional view that each party should pay its own costs. The advocacy group Action on Smoking and Health supported the action with some \$A5000 towards expenses in the mounting of the case.

In its evidence Qantas tendered information gained from passenger research on reaction to its non-smoking flights. Overall 86% of all passengers, including 38% of smokers, considered non-smoking flights "a good idea." German and Japanese passengers were the only exceptions, being evenly divided on the matter. However, as Qantas pointed out, the fact that such flights were available was not "a major consideration" in choosing an airline: price, schedules, and in flight service were more critical.

The judgment's main importance probably lies in its awarding of damages. While the total damages (\$A3000) were the financial equivalent to Qantas of being flayed with a wet lettuce, their award sets a precedent for travellers with similar flying experiences to seek compensation through the easily used Consumer Claims Tribunal. Here aggrieved parties can have claims for up to \$A10 000 heard by a referee. The decisions of these tribunals are enforceable, and lawyers are generally absent from the proceedings. The precedent for compensation set by this case is seen as important, particularly if antismoking groups were to organise hundreds if not thousands of such cases.

Leonie Cameron wrote complaining to Qantas on 18 July 1992, and the publicity surrounding the case

has been a stone in Qantas's shoe ever since. Qantas is soon to be floated on the stock exchange and plainly will wish to avoid any negative publicity that besmirches its reputation as a passenger friendly international airline. The small Taiwanese company EVA Air has responded a full year in advance of

the International Civil Aviation Organisation's recommendation on non-smoking flights. Many would not be surprised to see Qantas bring forward its deadline for fully smoke free flights.

(Accepted 19 June 1995)

Collings report on general practice in England in 1950: unrecognised, pioneering piece of British social research?

Roland Petchey

Collings's grim description of postwar general practice in England and his sombre analysis of its prospects created an immediate sensation. In addition to its value as a historical document, the report is also regarded as a turning point in the postwar history of British general practice. The study is also interesting for another reason, which has not been acknowledged: Collings merits recognition as a pioneer of ethnographic research at a time when it was largely unknown elsewhere in British social research.

J S Collings's survey of English general practice was published in the *Lancet* on 25 March 1950.¹ His grim description of postwar general practice and his sombre evaluation of its prospects (box) created an immediate sensation. His report, however, is of more than antiquarian interest. Within British general practice it has acquired semimythical status. It has been acclaimed a "classic report,"² "the most devastating attack on the image of the family doctor,"³ and "an Exocet fired right through the basis of general practice."⁴ More positively, it has been hailed as a turning point,⁵ the single most effective factor in mobilising opinion in favour of constructive change,⁶ and a seminal contribution to the formation of the Royal College of General Practitioners.⁷ I will argue that Collings also deserves to be recognised as a pioneer of ethnographic method in British social research.

Origins and publication of the report

The Collings report is unusual in several regards. Firstly, Collings seems an improbable choice as researcher. An Australian, he had previously worked in New Zealand as a general practitioner and in Canada as a medical officer of health. At the time of the report he was a research fellow at Harvard University School of Public Health. Despite this wide ranging experience, he had never visited Great Britain so was unfamiliar with the health system and conditions there.

Secondly, Collings was funded by the Nuffield Trust, which had hitherto been exclusively concerned with representing provincial voluntary hospitals in the national health policy debate.^{8,9} Collings's research was its first excursion into general practice. Apart from one later survey,¹⁰ the trust's interest in general practice at this time was confined to funding pilot health centre projects.

Thirdly, the report's status was ambiguous. Almost uniquely, Collings's study was not published by the trust. It did approve it—but only after it had been edited by Theodore Fox, editor of the *Lancet*. There are other indications that the trust failed to anticipate the report's impact. Although a later source refers to the sensation it created,¹¹ in contemporary official records it was completely unreported.¹² Indeed, elsewhere, it is described as an unofficial document.¹⁰

Collings's main findings and recommendations

Findings

"The overall state of general practice is bad and still deteriorating"

"The development of other medical services . . . has resulted . . . in wide departure from both the idea and the ideal of family doctoring"

"Some [working conditions] are bad enough to require condemnation in the public interest"

Inner city practice is "at best . . . very unsatisfactory and at worst a positive source of public danger"

Rural practice is "an anachronism" and suburban practice a "casualty-clearing" service

Recommendations

"An attempt should be made to define the function of general practice within . . . the NHS"

"Group practice units . . . should be formed"

Finally, the form of the published article is perplexing. In 1950 the *Lancet* did not consistently observe the modern conventions of scientific publishing.¹³ The format of articles therefore varied considerably. Even so, Collings's report stands out in several respects. That year the *Lancet* published 356 Original and Special Articles. Their median length was two pages (interquartile range 2-4). Only 21 articles (6%) exceeded six pages and, apart from the Collings report, the longest was 12 pages.¹⁴ Collings's article was 30 pages. It deviated stylistically in two further respects: it was the only article reporting original research that was not headed as either an Original or a Special Article and it alone was entirely unreferenced.

Methodological issues

What makes the report distinctive are two features of its method rather than the departures from publishing convention of its printed form. Collings's procedure for obtaining a sample of practices for study was the more controversial feature at the time. His method of data collection was not as controversial, but it is perhaps ultimately the more important.

SAMPLING METHOD

To obtain his sample, Collings initially identified three regions which he was advised "would present the general picture." No other selection criteria are given, other than that he had been warned to exclude London because of "its aggregation of teaching hospitals and many other complicating factors peculiar to a city of this size." In two regions he selected practices on the advice from regional officers of health, medical officers of health, and consultants, relying on their judgment of what were good, fair, and bad practices. Again, no