



Individual versus corporate responsibility for smoking-related illness: press coverage of the Rolah McCabe trial

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Abstract

Objective

To document representations of the outcome and implications of the Rolah McCabe trial. In this trial, a Melbourne woman was awarded A\$700,000 damages for smoking-attributable lung cancer, when the defendant, British American Tobacco Australasia, had its case struck out due to document destruction.

Design

Thematic frame analysis of 60 opinionated articles from Australian national or capital city newspapers between April 12 and May 9, 2002.

Results

A total of 79 instances of eight frames were identified. Overall, 43% of the 79 instances were positive for tobacco control, 46% were negative for tobacco control and 11% were neutral. The most common frame that was negative for tobacco control (in 35% of articles) was the conception that smokers exert 'free will' in deciding to smoke and should be personally responsible for their smoking and any disease that eventuates from it. A related, but less commonly employed, frame (in 18% of articles) was the fear of a 'slippery slope' of litigation that portrayed smoking as similar to eating fast food or other 'vices'. The most common frame that was positive for tobacco control (in 35% of articles) was the notion that the tobacco industry was 'evil' and, to a lesser extent, that the government should 'do more' to control smoking (15% of articles).

Conclusions

These findings provide a sobering public health challenge to improve communication about the powerful forces that conspire to induce people to start smoking and keep them smoking for decades, despite a strong desire to quit. There is a need to more adequately fund public education programs and quit smoking services to address the complex education task of understanding the nature of addiction to tobacco and the enormity of the health risk.

Introduction

On April 11, 2002, a Victorian Supreme Court jury ordered British American Tobacco Australasia (BATA) to pay Mrs Rolah McCabe, a 51-year-old woman dying of lung cancer, A\$700,000 in damages. The legal case attracted considerable national and international attention, not only because Rolah McCabe was the first Australian to obtain a damages verdict against the tobacco industry, but also due to the remarkable circumstances under which the verdict was reached. After a 16-day pre-trial hearing, Justice Eames struck out BATA's defence and entered a judgement for Mrs McCabe without proceeding to trial on liability, on the ground that BATA and its solicitor Clayton Utz had subverted the process of discovery¹ with the deliberate intention of denying a fair trial to the plaintiff and that the strategy to achieve that outcome was successful (Lieberman 2002). The judgement held that BATA and Clayton Utz had subverted the discovery process by the deliberate destruction of thousands of documents, beginning in about 1985; misleading the court as to what happened to the missing documents; and 'warehousing' documents – that is, having relevant documents held by third parties so as to keep them from discovery, but having access to them should they be necessary to defend a claim.

The Rolah McCabe case occurred at a time when tobacco litigation in the US had experienced a number of significant successes. These included the November 1998 settlement between tobacco companies and 48 US states, known as the Master Settlement Agreement (MSA); settlements between tobacco companies and individual US states such as Minnesota, Florida and Texas; the Engle class action in Florida in July 2000, ordering cigarette manufacturers to pay US\$145 billion in punitive damages to smokers; and several individual cases against companies, including cases brought by Whiteley, Henley and Boeken, which awarded substantial punitive damages to the plaintiffs.

Tobacco control advocates have generally expected that the news coverage about these settlements and cases would serve to highlight the deceptive and misleading conduct of the tobacco industry and emphasise the health hazards of smoking. The hope has been that as more information emerged from the discovery phase of these cases — about the industry's awareness of the health effects of smoking and addictiveness of nicotine, the manipulation of nicotine in cigarettes to deliver the most effective dose to maintain addiction and the

¹ The process of 'discovery' is the process by which relevant documents are brought before the court to enable a fair and informed decision to be reached.

companies' concealment of these issues – so there would be a better appreciation on the part of the public of the need to adequately fund tobacco control programs and regulate the tobacco industry.

People who sue tobacco companies find themselves to be the focus of wider public discourses about the issue under consideration in the trial. The media attention surrounding the circumstances and the outcome of the Rolah McCabe case was intense in Australia, and received considerable news coverage around the world. The examination of such news stories provides a window into how the public and media commentators perceive smoking and tobacco companies and, importantly, help to frame the debate for policy makers and the public. Studying patterns of opinionated news coverage in particular can help advocates to understand what issues are ventured as important in the public arena and, as such, provide important lessons for public education and advocacy. News reportage and commentary is neglected as a significant 'background' that needs to be brought into the foreground of explanations about how community and political attitudes change toward supporting tobacco control legislation and program support (Chapman 2002a; Wakefield & Chaloupka 1998).

Frame analysis is a method that is being increasingly incorporated into tobacco control research as a means of explaining the ways that dominant news discourses evolve and come to define the meaning of a problem (Christofides, Chapman & Dominello 1999; Lima & Siegel 1999; Malone, Boyd & Bero 2000). The theoretical argument underpinning frame analysis is that particular aspects of a wider reality are selected in the effort to make these selected emphases more salient, in order to promote problem definition, causal interpretation, moral evaluation and preferred courses of action (Entman 1993; Menasche & Siegel 1998). Accordingly, this paper analyses news reportage of the Rolah McCabe case using a thematic framing analysis.

Method

As part of an ongoing media monitoring strategy, Quit Victoria uses a national newspaper clipping service to obtain copies of all newspaper articles in national, major state-based and regional Victorian newspapers that mention the words 'smoking', 'tobacco' or 'Quit'. Out of the articles obtained, we selected newspaper articles for one month after the day the outcome of the Rolah McCabe trial was announced, namely the period April 12 to May 9, 2002. Articles that had at least one paragraph directly relating to the trial were deemed to be eligible for this study. The articles were drawn from national and capital city daily newspapers as follows: national (*The Australian/Weekend*

Australian and Australian Financial Review); Melbourne (*The Age/Sunday Age, Herald Sun and MX*); Sydney (*Sydney Morning Herald, Sun-Herald (Sunday)* and *Daily Telegraph/Sunday Telegraph*); Canberra (*Canberra Times/Sunday Canberra Times*); Brisbane (*Courier-Mail/Sunday Mail*); Adelaide (*Adelaide Advertiser/Sunday Mail*); Perth (*West Australian/Sunday Times*); and Hobart (*Mercury/Sunday Tasmanian*).

In total, 105 articles in these newspapers had at least one full paragraph concerning the Rolah McCabe case. Of these, 60 were opinionated articles (columns, editorials, letters and cartoons), constituting 57% of coverage about the trial for the period. Every opinionated article focused on the Rolah McCabe case and its implications, rather than mentioning it in passing. Initially, each of the 60 opinionated articles was read independently by two coders in order to identify the frames that were evident in the articles. The two coders then came together to discuss similarities and differences in their identification of frames that were positive or negative for tobacco control, or offered a mixed view or a neutral position in relation to tobacco control. Because a single article often presented a balance between frames, we decided that each article could be coded for up to two dominant frames. Once agreement was reached on frame definitions, both coders re-coded the articles using these definitions, finding agreement in 80% of articles. On articles that had been coded differently, consensus was then reached through discussion between the two coders.

Results

Of the 60 articles, 40 (67%) were letters, 13 (22%) were columns, three (5%) were editorials and four (7%) were cartoons. Within these 60 articles, 79 instances of eight frames were identified, so that 70% of articles had one frame and 30% had two frames.

Table 1 describes the frames appearing in the articles, according to whether they were positive, negative or neutral for tobacco control. Overall, 43% of the 79 instances were positive for tobacco control, 46% were negative for tobacco control and 11% were neutral.

Table 2 indicates the frequencies of each of the frames. Overall, letter writers generated 81% of the 36 frames that were negative for tobacco control but only 50% of the 34 frames that were positive for tobacco control and 33% of the nine frames that were neutral for tobacco control.

Table 1 *Frames used in press coverage about the Rolah McCabe trial*

Frame title	Frame description
<i>Frames negative for tobacco control</i>	
Free will: smokers choose their habit	Smoking is a choice: no one forces people to smoke. Citizens should be responsible individuals who accept they are ultimately accountable for their health and well-being. The general public has been well educated about the health risks of smoking, so people who smoke are fully informed about the possible consequences of their habit. Quitting smoking is a matter of engaging willpower and using the resources that are available, such as nicotine replacement therapies. Smokers are citizens making an informed decision to smoke, and as such have rights that should be respected.
The slippery slope of litigation	A culture of litigation will develop in Australia if the Rolah McCabe payment becomes a norm. If tobacco companies can be sued for the consumption of tobacco, next it will be alcohol and food manufacturers. Where will it all end? This is an undesirable trend in Australia: one that will feed the hip pockets of lawyers and raise insurance for everyone else.
Government profits from tobacco consumption	The government acts as a 'hypocritical fiscal middleman' between the tobacco industry and the consumer, deriving huge profit from the tobacco excise. Being financially implicated makes the government complicit with the tobacco industry in deaths resulting from tobacco use.
<i>Frames positive for tobacco control</i>	
No choice: smokers can't help their habit	Tobacco companies use slick and persuasive marketing to promote their product. The individual is not to be blamed for responding to these messages and becoming hopelessly addicted to tobacco. Tobacco companies, not the smoker, should be held responsible if smoking results in disease and death. Nicotine is a highly addictive substance, and quitting a struggle for most smokers. This frame applies when the article is focused on the smoker; not the industry.
Government should do more to control smoking	The government is urged to take action to stop people smoking: it is suggested tobacco companies could be sued or tougher legislation enacted. The government should use its power to regulate the tobacco industry. Providing health care for smoking-related disease is a cost borne by the non-smoking taxpayer. The government is called on to represent the concerns of constituents who are subsidising the health care of others.
Evil industry	The tobacco industry uses clever marketing techniques to promote tobacco in full knowledge of its addictive and lethal properties. It is not surprising they shredded documents to cover up their strategies for addicting more people to tobacco – this is an industry that promotes smoking as sexy and profits from a product that kills people. This frame also includes any sarcastic or humorous response to the tobacco companies' behaviour.
<i>Frames neutral for tobacco control</i>	
Due process of law	The clarification or questioning of legal processes during the Rolah McCabe case.
Unspecified	Articles where the frame is not sufficiently defined to fit into any of the seven other frames.

Table 2 Frequency of frame occurrence

Frame	Letters	Columns	Editorials	Cartoons	Total	% containing this frame (n=60)*
Negative for tobacco control	29	7	–	–	36	na
Free will: smokers choose their habit	18	3	–	–	21	35
Slippery slope of litigation	9	2	–	–	11	18
Government profits from tobacco consumption	2	2	–	–	4	7
Positive for tobacco control	17	12	2	3	34	na
No choice: smokers can't help their habit	1	3	–	–	4	7
Government should do more to control smoking	6	2	1	–	9	15
Evil industry	10	7	1	3	21	35
Neutral for tobacco control	3	3	2	1	9	na
Due process of law	1	3	2	–	6	10
Unspecified	2	–	–	1	3	5

* Articles were coded for up to two frames, thus percentages add to >100.

Overall, the 30% of articles with two frames were mostly consistently positive, negative or neutral for tobacco control. However, seven of these articles used a combination of either oppositional or unrelated frames. Where a positive and negative frame was used, we assigned the article a 'mixed' view. Where a neutral frame was used with a positive or negative frame, the valenced frame took dominance. Thus, considering all 60 articles, 33% were positive for tobacco control, 48% were negative for tobacco control, 8% were of mixed view and 10% were neutral.

Frames that are negative for tobacco control

Free will: smokers choose their habit

This frame represents the smoker as an informed individual who actively chooses to start and continue smoking. Overall, 35% of articles contained this frame, making it the most commonly used frame that was negative for

tobacco control. In the main, this frame was articulated by the lay public, rather than journalists, with 18 of the 21 instances of the frame appearing in letters to the editor. Smokers described the agency they attribute in relation to their own smoking, as explained in one letter:

I smoke a packet of cigarettes a day. I know that smoking is harmful. I know that by smoking I dramatically increase my risk of getting cancer as well as a list of other smoking-related ailments. Yet I still choose to smoke. What's more, I enjoy smoking. I enjoy all those injurious little tars and resins. It is my choice to smoke. I have exercised my free will and accept the negative health consequences. (D'Cruz 2002)

The idea that one 'chooses' to smoke necessarily entails accepting personal responsibility for the consequences of smoking. The notion that smokers are powerfully addicted to cigarettes is minimised or even disregarded in this frame. As one smoker stated:

I have been smoking for 56 years and thoroughly enjoy it, but I am not going to sue the company which supplies my cigarettes if I die because of this habit. We are not forced by them to smoke; it's our responsibility. (Wilkinson 2002)

This reasoning was extended to judgements made of Rolah McCabe, who was seen as having been awarded 'a massive payout against a company marketing a legal substance. Whatever happened to people taking responsibility for their own actions?' (Leeman 2002). It was maintained that Mrs McCabe should have been aware of the health effects of smoking, but chose 'to disregard the bombardment of TV, radio and newspaper advertising alerting everyone to the perils of smoking' (O'Riley 2002).

The slippery slope of litigation

In 18% of articles, mostly by letter writers, fears were expressed that a culture of litigation would result from the Rolah McCabe lawsuit. The case was seen as indicative of ' "the blame and claim" culture that had led us to the personal liability insurance crisis in which we now find ourselves' (Olive 2002) and 'symptomatic of a broader trend in Australian society to reject a notion of individual responsibility; a trend to reject individual responsibility and assign blame to the deepest pockets' (D'Cruz 2002).

Writers expressed fears that Australia would follow the litigious path of the US. They explored potential litigation scenarios, portraying smoking behaviour as no different from eating high fat foods. For example: 'If someone indulges themselves eating hamburgers or other fast foods and ultimately becomes

obese, perhaps leading to heart disease, can they then sue hamburger retailers?’ (‘Rex’ 2002). And again, ‘I’m going to sue Cadbury. I blame them for my weight problem. I eat too much.’ (‘Sweet tooth’ 2002).

As with the preceding ‘free will’ frame, the role of personal responsibility is emphasised and the role of addiction in preventing people from quitting smoking is ignored. As one letter writer advises, ‘We need to learn to take responsibility for our actions before the habit of litigation makes our daily existence a nightmare.’ (Price 2002).



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Government profits from tobacco consumption

Overall, 7% of articles, equally letters and columns, focused in a satirical way upon the profit the government derives from tobacco consumption, through its policy of taxing tobacco sales. For example, it was contended by one writer that smoking will never be banned, because the government is seen to ‘want the enormous revenue from the tobacco excise’ (McGuinness 2002). As another columnist suggests, ‘if the price of a fag is death for her [Mrs McCabe] and \$700,000 for me, what must we make of governments that make billions by setting themselves up as fiscal middlemen?’ (Sweetman 2002).

Because the government receives revenue from the sale of tobacco products, some writers challenged the government as being complicit with tobacco companies in promoting smoking: ‘Why are people suing only the tobacco companies? Should the tobacco companies not seek to have their co-conspirator, the Government, joined as a co-defendant in each case?’ (Hodgson 2002). This frame stops short of demanding tobacco control action by the government, but rather adopts a cynical approach to the purely revenue-raising function they perceive is being applied by the government in respect of tobacco products.

Frames that are positive for tobacco control

No choice: smokers can’t help their habit

Overall, 7% of articles contained this frame and these were mostly columns. Within this frame, the smoker is represented as battling an addiction.

I find it interesting that there still are people who try to defend cigarette manufacturers by saying that smokers only have to say ‘no’. The very nature of addiction means that people don’t have control of their actions. (Burnett 2002)

The columnists emphasise smoking addiction is not the result of a choice and highlight the role that sophisticated tobacco company marketing plays in people becoming addicted to tobacco.

One writer refers to ‘cigarette companies’ claims that it’s as safe as houses – with home warranty insurance, presumably’ (Williams 2002). Another columnist relates to the powerful messages tobacco company advertising generates, allowing for a sympathetic representation of Rolah McCabe.

No advertisement, to my memory, ever said smoking was tough. I just knew it was because all the action heroes in the movies smoked. And, Mrs McCabe may well have noted, so too did all the vamps and heroines. In the battle between common sense and misplaced vanity, the odds were stacked against the individual, particularly when faced with the wiles of marketers and the science of advertising. (Sweetman 2002)

Government should do more to control smoking

The 15% of articles in this frame were predominantly letters from the public demanding the government take legislative and/or legal action to reduce tobacco smoking in Australia. The Rolah McCabe case was perceived to create

‘an ideal opportunity for the Federal Government to take action on behalf of all Australians against these companies’ (Penman 2002).

A range of measures was suggested: ‘People, particularly very young people, should be strongly and clearly discouraged from taking up smoking. But at present there is no legislation in this sense. It’s about time something is done!’ (Gartner 2002).

Writers recommended a range of measures the government should take, from banning tobacco completely through to more active attempts to seek redress through the legal system.

I would be the first to applaud if governments were to sue the tobacco companies, as has happened in the US. (Olive 2002)

Letter writers defended the Australian taxpayer, who was seen to have ‘borne the bulk of the financial costs caused by the industry’s lethal product’ (Olive 2002). One writer claimed the Australian taxpayer would only be compensated for payments towards the costs of treating illnesses relating to tobacco ‘when the government has the intestinal fortitude to stand up to this multinational!’ (Funnel 2002). The government was called upon to take responsibility for the way they are perceived to have contributed to tobacco companies’ ability to produce tobacco products. One writer warned ‘if the federal Government, which we democratically elect, continues to allow people to smoke after this legal decision, surely they will be just as liable as any cigarette company.’ (Jarvis 2002).

Evil industry

The tobacco industry was negatively portrayed as an ‘evil industry’ in 35% of the articles, making this frame equal with ‘free will’ as the most commonly used frame overall. This frame appeared in similar proportions in columns, editorials and cartoons (11 occurrences) and in letters (10 occurrences). Interestingly, three of the four cartoons in the articles used this frame in delivering sarcastic representations of tobacco company behaviour.

This frame focused on exposing the perceived unethical workings of the tobacco industry in both general terms and in relation to the Rolah McCabe case. The tobacco industry was described as ‘making millions from peddling death and disease – and lying about it’ (Williams 2002) with full knowledge that their ‘finest blends kill over 4200 Australian before age 65 each year’ (Chapman 2002b). One writer flatly stated: ‘This is the industry that has knowingly been flogging a toxic, addictive and ultimately lethal substance to children for years.’ (Carr-Gregg 2002).

Document shredding and concealment were seen as consistent with behaviour generally practised by a disreputable industry. Tobacco company documents were described as telling ‘a story of knowledge concealed from the public, of false reassurance offered to smokers, of products that were developed to be more addictive, yet sold as a health alternative to quitting’ (Penman 2002). The case was portrayed as furthering an already tarnished company profile, as one journalist bluntly conveyed: ‘The Rolah McCabe case has left the giant British American Tobacco’s reputation smelling like your clothes after a night in a smoky bar.’ (‘Smokescreen of death’ 2002).



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Frames that are neutral for tobacco control

Due process of law

A small proportion (10%) of articles were concerned with elaborating on the legal processes of the Rolah McCabe case. The majority of such articles

interpreted the legal processes as unflattering to British American Tobacco's reputation. As one columnist described:

So outraged was Justice Geoffrey Eames, he refused to hear arguments about whether British American Tobacco (BAT) could be held liable for 51-year-old Rolah McCabe's terminal lung cancer. Instead, he found that BAT's 'document retention policy' – a quaint euphemism for the destruction of sensitive or embarrassing material – had already ensured McCabe would never receive a fair trial. (Jackman 2002)

Another columnist offered a measured legal analysis of the case.

In years to come, advocates in higher courts will argue Justice Eames's consequence for breaking the rules was discipline too strictly administered. Others will claim it was an entirely appropriate sanction, a timely reminder that rules should be respected. (Lobez 2002)

The ongoing legal implications of the case were explored in one editorial, which asked, 'what are the implications for other actions pending against tobacco companies? How prevalent is the practice of "document retention" that might affect other trials in other places?' ('Documents up in smoke' 2002).

Discussion

This study found that news coverage of the Rolah McCabe case evidenced views that were more often negative than positive for tobacco control. The most commonly used frame underlying a sentiment that was negative for tobacco control was the conception that smokers exert free will in deciding to smoke and, as such, should be personally responsible for their smoking and any disease that eventuates from it. Another less commonly employed, but related, frame was the fear that a culture of litigation would develop that would inevitably lay the blame for other disease at the doorstep of any party other than the individual.

Despite public education efforts to date, it is daunting to acknowledge that the public trivialises the addictiveness of smoking by comparing it to a habit akin to eating chocolate or fast food. As pointed out by Chapman (2002c), 'the acres of documentary evidence now available on industry nicotine manipulation ... evoke nothing less than imagery of scheming industrial chemists setting out to maximise addiction'. The addictive nature of smoking is emphasised by population survey results, which show that around 90% of smokers want to stop and almost 80% of Australian smokers have tried in

the past year but have been unsuccessful (Tan, Wakefield & Freeman 2000). On any single unaided quit attempt, more than 95% of smokers will fail (USDHHS 1990).

The strength of this discourse of ‘free will’ emphasises only too well that public education efforts still have a long way to go in helping smokers to understand the nature of addiction to tobacco and the enormity of the health risk. To the extent that smokers view their own smoking as an issue of personal responsibility, their openness to taking up effective smoking cessation programs and products may be low. The tendency for smokers to grossly underestimate health effects of smoking relative to other risk behaviours, to find it difficult to personalise the risk (Hanson & Kysar 2001) and to discount the addictiveness of smoking means that the public education task is extremely complex. Adequate funding for sustained and coordinated public communication campaigns and efforts to require tobacco companies to better inform consumers are required.

In contrast, frames that are positive for tobacco control highlight the unacceptable conduct of the tobacco industry, or, to a lesser extent, the need for governments to do more to help people quit smoking and deal more effectively with the tobacco industry. Previous surveys have found that the public holds the tobacco industry in low regard. For example, a population survey of over 800 South Australian adults in late 1998 found that tobacco company executives were rated the lowest out of seven professional groups with regard to honesty and ethics, with 74% of respondents judging them to have low or very low standards (Wakefield, Miller & Woodward 1999). In the US, despite several years of televised corporate image advertising, Philip Morris scored second to last in 2001 in a survey of corporate reputations conducted by the Reputation Institute and Harris Interactive (Alsop 2001).

We found the source of views that were negative or positive for tobacco control to differ. Letter writers generated 81% of the frames that were negative for tobacco control, but only 50% of the frames that were positive for tobacco control. Outrage at perceptions of lack of personal responsibility may be more likely to elicit letter writing, whereas outrage at the tobacco industry may be more difficult for the public to muster in an era when unethical corporate behaviour has been so much under the microscope (Barry 2002; White 2002). In addition, it may be the case that victim-blaming invective better lends itself to articulation in the shorter news pieces that typically comprise letters to the editor, while concern about tobacco industry behaviour may be more complex an issue to convey in a succinct fashion.

It is important for tobacco control programs to build measures of the prevalence of these public sentiments into their monitoring and evaluation systems, including population surveys. In essence, such measures in part reflect the success or otherwise of public education campaigns and media advocacy for tobacco control, but also tap the effectiveness of public relations efforts by tobacco companies.

In summary, this study indicates that a discourse of personal responsibility for smoking and smoking-related illness may still pervade Australian culture. However, portrayals of the tobacco industry as ‘evil’ and requiring more attention by policy makers is equally evident in news coverage. Tobacco control advocates need to take heed of these widely used public discourses in framing future arguments for improved funding for tobacco control and in designing public education programs.

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