Smoke, don't smoke – two steps forward one step back

Letter from Brazil

John Dunn and Ronaldo R. Laranjeira

The mayor of São Paulo, Paulo Maluf, has a bullish approach to arguing and is not renowned for his subtlety. Despite this he has been a key campaigner and instigator of various public health policies that form part of an international "healthy city" initiative. The most successful of these has been the introduction of a law making the use of car seat belts compulsory, which has led to a massive reduction in the number of fatal road traffic accidents. An attempt to prohibit cigarette smoking in restaurants has been less successful owing to a number of legal challenges that have left the legislation in a consitutional and legal limbo – but the fight goes on.

Prior to Maluf's anti-smoking decree, the previous municipal administration passed a law in 1990 stating that restaurants with more than 100m^2 of floor space had to reserve 50% of the area for non-smokers. Restaurants with less than 100m^2, tended to allow smoking anywhere on the premises. In September 1995 all this changed when Maluf introduced a complete ban on smoking in all restaurants and bars whatever the size. The decree was backed up by a system of fines and a small army of what might best be described as "smoking wardens". These wardens visit restaurants at random and impose hefty on-the-spot fines (R$394.90 or £280.00) to any customer found smoking and also to the restaurant owner. Maluf is a strong advocate of fines and was recently quoted as saying, "Brasileiros não entendem leis sem multas [Brazilians don't understand laws without fines]". In addition, all restaurants have to place prominent and standardised "no smoking" notices on their walls; failure to do so leads to another fine being imposed.

The public and media's reaction to the law depended on whether they belonged to pro- or anti-smoking camps. The pro-smoking faction hid behind the civil liberties banner, claiming that the law was an infringement of their right to smoke. As is usual in such arguments the rights of non-smokers not to have to suffer the effects of passive smoking were ignored. The anti-smoking faction took a public health stance and were quick to point to the literature on passive smoking and its adverse effects on health. The decree was seen as an important public health statement that added restaurants to the list of locations, such as elevators, buses, cinemas and the underground, where smoking had already been prohibited. The media, as always, could be relied on to lower the tone of the discussion by suggesting that Maluf's ulterior motive for introducing the decree was to avoid having to take his wife, who is a smoker, out for dinner!

Fig. 1. Paulo Maluf – São Paulo's anti-smoking mayor. Photograph reproduced by the kind permission of the Assessoria de Imprensa do Prefeito.

The first challenge to the law came from a group representing restauranteurs, who claimed that the decree was unconstitutional. They took their

case to the Tribunal de Justica (the highest state court), which after due deliberation ruled that it was not and that the ban could continue. However, for reasons that had more to do with party politics than public health, the State legislature passed, with unseemly haste, a law that in effect reiterated the pre-existing municipal law allowing restaurants with more than $100m^2$ to reserve half their floor space for non-smokers. This led to a constitutional war of words between the municipal and state governments, with each claiming that their law took precedence. Inevitably this was followed by a further legal challenge to the Tribunal de Justica, with restauranteurs claiming that a state law was superior to a municipal decree. The final decision of this court is still awaited and may take many months, but in the meantime restauranteurs have been granted leave to follow only the state law and create smoking and non-smoking areas in their establishments. After hearing about this defeat Maluf made the following statement: "I would prefer to go down fighting for the health of the people than to win on the side of multinationals selling cancer".

Undeterred by early legal defeats, Maluf proceeded to extend the decree to include shopping malls and shops. However, encouraged by the success of the restauranteurs a small number of individuals who had been fined for smoking in shopping centres decided to take their case against paying the fine to the Tribunal de Justica and won. While this opens the gates to further claims by individuals who have been fined, the decree itself still stands, albeit in a somewhat debilitated state.

Such constitutional problems are reminiscent of the row between London's GLC and the Conservative Government over the reduction in fares on the London Underground. The Law Lords ruled against the GLC and Mrs Thatcher sealed the argument by abolishing the GLC. This does not seem to be a likely outcome as far as the municipal government is concerned, but elections, to be held later this year, could see another administration installed, who may be less disposed to anti-smoking legislation.

However, when all seemed to be lost, the federal government unexpectedly came to the rescue. On 23 April 1996, Law No. 156 finally received approval by both houses of the Brazilian Parliament and now is only awaiting the signature of the President before taking effect. The law prohibits smoking in enclosed places to which the public have access, including buses, planes, shopping centres and restaurants. It anticipates the possible use of police force to remove or even arrest anyone who refuses to cooperate. In addition, it allows municipal and state legislators to regulate the finer details of the legislation, for example, the size of any fines to be imposed and the creation of demarcated areas for smokers. The mayor of São Paulo now plans to appeal to the Tribunal de Justica, arguing that his decree is compatible and supplementary to the federal law and, therefore, should stand.

An unforeseen benefit to the municipal's anti-smoking policy was that it became interested in having some hard scientific evidence to back up its public statements on passive smoking. This led to the funding of a research programme aimed at measuring expired carbon monoxide and saliva cotinine (a nicotine metabolite) levels in non-smoking waiters working in restaurants prior to the ban and there are plans to fund further research into passive smoking in nightclubs and bars.

In terms of public health, the true gain from the whole exercise has been that passive smoking was transformed from being a mere nuisance of marginal interest to anyone but the most rabid of anti-smokers, to a bona fide public health issue on which everyone was expected to have an opinion. Even the on-going legal battles have helped the cause by keeping the story in the news and in the minds of the population. All this publicity has done Maluf no harm either. As the legal saga unfolds, his photograph and quotes appear almost daily in newspapers and he frequently pops up on television news programmes giving the-mayor-is-not-for-turning type soundbites. As Oscar Wilde once said, "There is only one thing worse than being talked about . . ." – a tactic anti-smoking groups are becoming increasingly aware of.

*John Dunn, *Visiting Researcher, and* Ronaldo Laranjeira, *Post-doctorate Researcher, UNIAD, Departamento de Psiquiatria, Escola Paulista de Medicina, UNIFESP, Rua Botucatu, 740, São Paulo – SP, Brazil, 04023-900*

*Correspondence

https://doi.org/10.1192/pb.20.11.688 Published online by Cambridge University Press