

# Ottawa MD makes legal history with huge libel award against CBC

Patrick Sullivan

Dr. Frans Leenen thought his professional reputation had been left in tatters when the CBC broadcast a public affairs program on the use of calcium-channel blockers in 1996. Four years later, the CBC knows exactly how he felt.

In a blistering judgement released Apr. 20, Mr. Justice J.D. Cunningham of the Ontario Superior Court found *the fifth estate* guilty of acting with malice against the Ottawa hypertension specialist. He ordered the CBC to pay Leenen \$950 000 in general, aggravated and punitive damages, plus his legal costs. Richard Dearden, one of the Ottawa lawyers who has represented Leenen since his suit was launched in 1996, says those costs will total more than \$1 million.

Leenen now has the dubious distinction of being part of Canadian legal history. "This is the largest [defamation] award against the media in the history of the country," says a jubilant Dearden.

In the end, the hour-long broadcast may cost the CBC up to \$5 million because of the Leenen ruling and an earlier judgement in favour of Toronto cardiologist Martin Myers, who was awarded \$200 000 for defamation last November.<sup>1</sup> The CBC must also pay his costs.

The hour-long TV program dealt with the safety of a calcium-channel blocker, nifedipine. Since there was evidence that its short-acting version posed a risk to patients, there were concerns that the long-acting version, which had been introduced in 1992, might also be dangerous. Leenen, who chaired the Health Protection Branch's ad hoc advisory committee reviewing CCBs, had told the committee "one cannot assume that the long acting [products] are safe" and "it is critical to get outcome studies on the long-acting agents." However, Cunningham said the CBC never portrayed Leenen's views fairly. Instead, it created "the innuendo that Dr. Leenen supported the prescribing of killer drugs."

Cunningham summarized *the fifth estate's* presentation in 2 searing lines. "In order to portray [Leenen] in the role of the 'bad guy' and in order to disparage his views, the CBC took an eminent research scientist, whom they knew to be a

person of high integrity and reputation, and presented him as a devious, dishonest, bumbling fool in order to advance the story line. . . . This was sensational journalism of the worst sort and should serve as an embarrassment to this so-called 'flagship' investigative program."

In an interview at the Ottawa Heart Institute, where he serves as director of the Hypertension Unit — he is also a professor of medicine and pharmacology at the University of Ottawa — Leenen described how the show changed his life. "There was a change in the way colleagues perceived me," he recalls. "It was almost as if there had been a death in the family. And in a way it was very much like there had been a [professional] death."

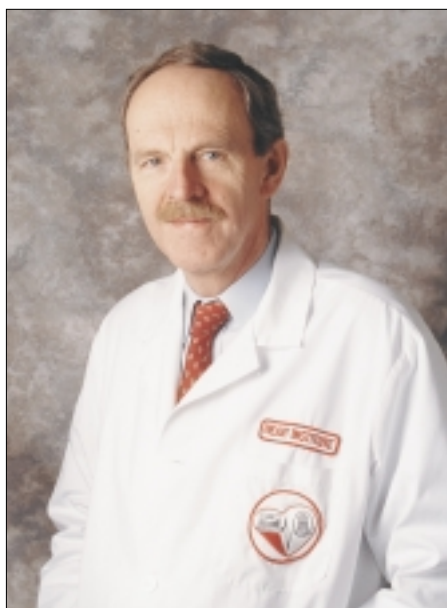
Leenen says a researcher's integrity and independence are his most valuable assets, and the CBC tried to destroy both. "This program," he says, "said I was beholden to the drug companies."

No one involved in producing the show emerges with reputation intact. Cunningham described the group as "parasitic sensationalists." He was particularly vehement about producer Nicholas Regush, accusing him of "self-righteous arrogance" and awarding \$150 000 in damages against him.

He also criticized another defendant, Paul Webster, for being callous about Leenen's financial difficulties.

(Leenen had to remortgage his house to pay his legal bills.) Cunningham said that Webster, whose legal bills were being paid by the CBC, told Leenen "in a callous and insensitive way" that "somebody is going to lose his shirt" and later asked, "How's the mortgage going?" The judge awarded \$50 000 in damages against Webster.

The judge saved some of his harshest criticism for an Ottawa physician, Michelle Brill-Edwards, who was "clearly an unhappy and disgruntled employee of the [Health Protection Branch]. . . . It would not have suited the story's thesis for the producers to inform viewers that Dr. Brill-Edwards was found unqualified for the position of director and that she had lost her case in the Federal Court. I am satisfied that Dr. Brill-Edwards' concerns about the regulatory process and the



**Dr. Frans Leenen: "I would have settled for an apology and \$10 000, and the \$10 000 was negotiable."**

safety of these drugs as expressed in this program had more to do with her long-standing bias against the [HPB] and her superiors than it had to do with public safety."

Cunningham concluded that the "nasty little story," which "wasn't an important story at all," caused "devastating damage to Dr. Leenen."

Asked how the program had affected him professionally, Leenen responded: "It created a glass ceiling for me as far as Canada is concerned. I can see higher but I cannot go higher." He hopes the court ruling, and particularly the size of the judgement, will change this.

He remains bitter that the CBC refused to settle the matter 4 years ago with an apology and payment of \$10 000. "And the \$10 000 was negotiable," says Leenen.

His lawyer says the CBC should have taken that offer. "I told Frans in 1996 that this was the strongest libel suit I had ever seen," says Dearden. "But the CBC played dirty from the start."

Leenen concludes that "any time you take on the CBC, you're David because it is Goliath. In dealing with *the fifth estate*, you're confronting an organization that takes a scorched-earth approach to defending libel actions, backed by the financial resources of Canadian taxpayers."

Now, he simply wants the matter to end. "The CBC must stop trying to defend the indefensible," he says.

He shouldn't hold his breath. Spokesperson Ruth-Ellen Soles says the CBC is currently reviewing the Leenen decision and "considering its options." It has not issued an apology to him, and has already filed an appeal over the Myers' ruling. Meanwhile, the interest clock keeps ticking. Dearden says he will ask that an additional \$250 000 be added to Leenen's damages to cover interest on the award.

David Bazay, the CBC ombudsman, says his office does not comment on cases that are before the courts. "We have a policy," he says. "You can come here or you can go before the courts, but not both. I usually inform complainants they should be aware that if legal action is taken, we stand aside."

Cunningham, meanwhile, said that he could not stand aside. "The CBC has enormous power and an incredible ability to inflict damage . . . . In light of the defendants' reprehensible conduct, I have concluded that a message must be sent. Parasitic sensationalists should not be allowed to prey upon society's obsession with scandal and to reap personal benefit from their irresponsible actions."

*Patrick Sullivan is News and Features Editor at CMAJ.*

## Reference

1. Sullivan P. MD \$200 000 richer after damning court judgement. *CMAJ* 2000;162(2):101.

# Benefits of genetic research must be shared, international genome organization warns

**Heather Kent**

**A**lthough the race to complete sequencing of the human genome is nearing completion, attempts to deal with ethical and other concerns arising from the huge project are only beginning. Scientists attending the Human Genome 2000 meeting in Vancouver this April appeared to realize this, and responded by approving a statement on the need to share benefits arising from their groundbreaking research.

Although they agreed that private-sector involvement is needed to speed product development and that patenting helps encourage research, they are also worried about the misuse of data and about attempts to patent and commercialize genes, thus depriving others of the potential benefits. For example, Celera Genomics Group in the US has applied for 300 patents relating to its DNA-related research. It is the private company competing with the publicly funded Human Genome Project to complete sequencing of human DNA. The company recently announced that it had decoded the

human genetic sequence for the first time, although what it actually has are raw data from 1 person, which it is now starting to assemble like pieces of a jigsaw puzzle.

The project has been controversial because Celera obtained about half its data from publicly available genome information, yet charges people for access to it. (Data from the publicly funded genome project are available at [www.ncbi.nlm.nih.gov/genome/seq](http://www.ncbi.nlm.nih.gov/genome/seq), where they are updated every 24 hours. A Web-based genome browser for looking at chromosomes and gene maps will be ready by next month.)

To obtain its patents, Celera has to demonstrate the usefulness of the genes. "If the application potential is not there, there is no incentive to patent," says Dr. Mark Adam, Celera's CEO.

Dr. Gert-Jan van Ommen, past president of the Human Genome Organization (HUGO), would like to see the 20 000 patents already granted "in error" rescinded because