

MD \$200 000 richer after damning court judgement

Patrick Sullivan

The longest 50 minutes in Dr. Martin Myers' life began at 8 pm on Feb. 27, 1996, when *the fifth estate*, a CBC TV newsmagazine, broadcast a program dealing with the safety of calcium-channel blockers. One million Canadians were watching, and by the time the show ended the Toronto cardiologist felt his professional reputation was in tatters. So he sued.

Three and a half years later an Ontario Superior Court judge has agreed with him and decided that Myers deserved \$4000 for each of those minutes. In a scathing judgement released Nov. 19, Ontario Superior Court Judge Denise Bellamy said Myers had been slandered and awarded him \$200 000. Myers' lawyer, Christopher Ashby, said the award is one of the largest in Canadian history for a case involving no material loss to the plaintiff. Myers had sued the CBC, program host Trish Wood and 3 other journalists.

This spring's 5½-week trial forced Myers to close his Toronto practice for 7 weeks. "Trust me, there are easier ways to make a living than by going to court," said Myers. "I'd have done anything not to have gone through this. I told the CBC right from the beginning that all I wanted was an apology and they said No. It was as if they were saying they could not be wrong."

Bellamy rejected that notion. "In pursuit of a sensational story about a potentially serious drug regulation issue, *the fifth estate* took clips and excerpts of remarks made by a leading cardiologist out of their complex context and presented them in a simplified 'good-guy, bad-guy' format. . . . Given all the facts they had collected and reviewed, I cannot accept that they honestly believed that the highly damaging innuendoes they were conveying were expressions of the truth about the issue."

The program dealt with the safety of a calcium-channel blocker, nifedipine.

Since there was "circumstantial evidence" that its short-acting version posed a risk to patients, some cardiac experts said that the long-acting version, which had been introduced in 1992, might also be dangerous. Bellamy said there is no evidence that it is unsafe, and Myers and other experts maintained that removing long-acting nifedipine from the market would do a major disservice to patients. In the absence of conclusive



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evidence of harm or safety, they argued that the drug should still be used.

Bellamy ruled that because Myers defended the drug, *the fifth estate* painted him as "dishonest" and as a doctor who "realized that nifedipine was killing thousands of patients and did not care." She said "a reasonable viewer" would "conclude that Dr. Myers knew about the health hazards affecting Canadians . . . and that he did not care as much about health hazards and unnecessary deaths as he did about protecting the interests of the pharmaceutical industry." (Myers had conducted a study on behalf of Bayer to determine how to switch patients from short-acting to long-acting nifedipine.)

Bellamy noted: "It is the completeness of the facts that largely confirms

for me that the CBC did not believe that what it inferred about Dr. Myers was true." She also accused *the fifth estate* of "dishonesty" and of "acting in bad faith," and concluded that the defendants "were acting maliciously."

Myers says the case took a heavy personal toll. After the program aired, people called his office and accused him of being unethical. The widow of a former patient congratulated the CBC for "the exposé of Dr. Myers." (She said Myers was responsible for her husband's death and that *the fifth estate* had corroborated her suspicions. Sunnybrook Health Science Centre found the woman's complaints "groundless.")

In terms of factors that mitigated the damage done to Myers, Bellamy wrote that "he was fortunate to have been provided a venue in which to attempt to reverse the impression that had been left by the program. Seven months after the program aired, the *Canadian Medical Association Journal* published an article he wrote about his experience with *the fifth estate*."

In awarding the \$200 000, Bellamy rejected the CBC's call that damages be limited to \$20 000–\$25 000. The public broadcaster will also pick up Myers' legal bills. Ruth-Ellen Soles, a spokesperson for the CBC in Toronto, said no decision has been made regarding an appeal.

Meanwhile, *the fifth estate's* troubles are far from over. A companion lawsuit by hypertension specialist Frans Leenen, who alleges that he was defamed in the same program as Myers, is currently awaiting a verdict in Ottawa.

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References

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