CBC Radio-Canada

OFFICE OF THE OMBUDSMAN
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**REVIEW OF COMPLAINTS ABOUT "MEDICARE SCHMEDICARE"**
(Broadcast on The Passionate Eye on December 8, 2005)

Several people wrote to complain about the documentary "Medicare Schmedicare," which they felt was "biased," "a propaganda piece" and lacked "basic journalistic standards."

First of all, I will point out the obvious: this review has taken some time. The broadcast happened before I took over my role as Ombudsman and it occurred in the midst of the federal election. After several drafts, I realized that my function was not to solve the problems of the health care system, but to judge how this particular documentary measured up against CBC's Journalistic Standards and Practices. So, my apologies for the length of time it has taken to produce this review.

**REVIEW:**

The CBC has specific provision in its Journalistic Standards and Practices dealing with "point of view" documentaries. It is worth quoting it here at some length:

> **"Appendix A.**
> **2. GUIDELINES FOR DOCUMENTARIES**
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> The documentary is, above all, a work of non-fiction, a treatment of reality although it is recognized that the author's creative stamp and perspective form a significant part of the production."
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> And later:
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> "Documentaries should adhere to the same standards of accuracy, integrity and fairness as the rest of the CBC's journalistic work. Every effort should be made to challenge or test a partisan view, or reflect the fact that there may be differing perspectives. But if this is not possible in a particular program the obligation to be fair and balanced with the program series or broadcast schedule applies."
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> **2.1 POINT-OF-VIEW DOCUMENTARIES**
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> The term "**point-of-view**" is currently used to describe quite different forms: personalized documentaries, specialist programs as well as works of clear political or social advocacy. Different standards apply to each.

## 2.4 POINT-OF-VIEW DOCUMENTARIES IN THE SENSE OF ADVOCACY

The phrase "**point-of-view**" is also used at times to describe a work of clear opinion, advocacy, or a factually-based polemic which argues a specific remedy or perspective in a controversial matter. While factually based, the work does not fairly portray the range of opinions involved in the issue or story.

The programmer will at times be faced with the decision whether or not to broadcast an entire production which substantially transgresses the CBC's journalistic standards because it openly espouses an opinion on a controversial matter, to the exclusion of other pertinent facts or reasonable views. This form is sometimes the broadcast equivalent of an editorial, a commentary-page article in a newspaper, or an oral case made in a debate. Although the work is factually based, it does not fairly portray all dimensions of an issue, as is required in a CBC production. It goes beyond the natural author's perspective inherent in any work, and becomes an argument for an opinion, a position in a controversy. Such works of opinion are a part of Canada's journalistic tradition, and have their place in broadcasting as well as in print. But great caution should be taken to protect the integrity of the Corporation's impartiality in information programming and its independence of special interest groups.

In considering such works of opinion or argument for broadcast, the CBC has to assure fairness and balance by other means. The CBC should also guard against political or economic interest groups and lobbies exploiting this avenue. Programmers should apply the following tests and procedures:

a. Such a production should be of particular excellence and pertinence in the eyes of the CBC. This policy addresses an exception to normal information policies and is not intended to be a regular or frequent feature of information programming. The Department Head must be consulted in making this judgment.

b. Such a production should be prominently identified as a work of opinion at the beginning and at the end.

c. In the case of a procurement or co-production, the CBC must be completely satisfied that this work is financed independently from any party having a direct interest in the issue; the purpose of this policy is to allow latitude for independent voices, not to give organized interests, governments, or lobbies greater access to the airwaves than less endowed communities or individuals (see *section III, Principles, subsection 6, Program Funding*).

d. Even in a work of opinion, facts should be respected and arguments should reasonably flow from those facts. The CBC cannot abdicate its responsibility for the accuracy of the facts presented on its airwaves and has the obligation to ensure that the argument presented does not rest on false evidence.

e. In most cases, the broadcast of a clearly partisan production from a single perspective obligates the CBC to provide an appropriate reflection of other pertinent points of view, so that the audience may see that different conclusions may also be drawn from the same facts. The CBC should also avoid cumulative bias over time by guarding against one perspective frequently appearing in highly-produced form."

This category would seem to encompass the intent of "Medicare Schmedicare."

The subject is obviously one of intense interest and importance to the Canadian public. And the Corporation should be encouraging full discussion and debate on the topic, including works which have a point of view.

The question before me is whether the subject documentary met the tests set out in Journalistic Standards and Practices, and whether the CBC has met its obligations under the policy.

The author of the documentary is Bob Duncan, a well-respected writer and producer. I think it's fair to say he is particularly known for being a smart, witty and engaging writer. I should point out that I have been acquainted with Mr. Duncan for many years and have had thoroughly satisfactory professional dealings with Mr. Duncan in years past, although we have not intersected in either role within the last decade.

To begin the review, I sent Mr. Duncan a number of questions that were prompted by viewers and by my screening of the program. I am grateful that he responded to all of them quickly. Since this is a complicated subject and in order to give the fullest perspective to this, I will include the questions and his responses, with minor editing for space and style. I will make observations where pertinent with a summary at the end.

Some questions concerning "Medicare Schmedicare," prompted by viewers' letters.

1. What was meant by "television essay"?

**PRODUCER**: It was to differentiate it from a normal documentary—more and more I'm becoming interested, as a film-maker, in a personal point of view approach in which the narration takes an essay style approach and marries that to the pictures and sound and music. The approach to use for this is Griersonian in that Grierson argued that propaganda should come FROM the People TO the Government; that filmmakers should go out and look for the truth and bring it back and report on it. They should not make films from the status quo nor the government's POV but rather search out issues and expose them.

**OMBUDSMAN**: As noted above, there is appropriate policy to cover point-of-view documentaries

2. Why were there multiple, professional-looking proponents of private health care (mostly doctors) and one non-professional looking fellow (not a doctor) on the other side? It was noted that he was sitting in front of a picture of Tommy Douglas who the narrator has described as an Emperor with no clothes.

**PRODUCER**: The show set out to give examples of the existence of private health care and the people who were running the private facilities. So obviously, when the show sets out to examine an existing "black market medicine" there have to be examples. At the end of the first act the audience is told that we are going to see existing examples of two-tier health care—that's what we got.

In the Canadian Labour Congress Office in which we interviewed the "spokesman" for the Canadian Health Coalition, he had a large portrait of Tommy Douglas. He agreed to be filmed with the Tommy Douglas portrait behind him.

**OMBUDSMAN**: Although a POV documentary, other opinions should be reflected fairly. I understand that at least one noted medical expert on health care was interviewed but did not appear in the piece. It is not uncommon for interviews to be dropped, but it is worth nothing, as pointed out in the question, that a number of doctors were shown on one side of the question and one person, not a doctor, on the other. Also, I am not sure what "black market medicine" means since, as we will see, there has always been provision for procedures outside of Medicare.

3. That description (Emperor with no clothes), by common meaning, refers to someone who is deliberately deluding him/herself and forces or impels others to share in the delusion. It is not clear in the piece what part of Douglas' advocacy of universal health care is delusional.

**PRODUCER**: The Emperor has no clothes line refers to a common belief in Canada that there is only one tier of medicine and that it is there for the good of all. This was the Tommy Douglas mantra. This show argues that this is now nonsensical. There are at least two tiers and the philosophy of Tommy Douglas, seen in 2005, reflects that the idea is dead, the philosophy has failed us…the emperor has no clothes.

**OMBUDSMAN**: My reading indicates that neither Tommy Douglas nor the Health Act called for "one-tier" medicine, but for universal coverage, a different concept.

4. The essay makes the point several times (it's what most of the letters took as THE point) that "one-tier" medicine is dead. A number of people writing in make the point that one-tier medicine never existed—that doctors have always been allowed to opt out of the system in some jurisdictions, or bill non-covered expenses in others. Many question

whether the distinction was adequately made between so-called "one-tier" medicine and universal health care. The latter appears to be the system under which we live. But many took the essay as equating these two quite distinct concepts.

**PRODUCER**: The real point here is that one tier medicine (Medicare) used to include dentistry, physiotherapy, and drugs. It did not make allowances for things like the Workers' Compensation Board, which creates a two-tier system. Since the WCB came into being there have been at least two classes of patient—hence two tier in a one-tier world. The argument here is that one tier health care is a myth and that universal health care, because it has failed us, is under serious attack from market forces. They are not that far apart—universal health care was supposed to deliver general one tier care for the population. There have always been exceptions. Our piece argued that the exceptions were snowballing.

**OMBUDSMAN**: In fact, Medicare was never a "one-tier" system. While it was "universal" in what it covered, it has always allowed, to a greater or lesser extent depending on the province, "private" health care. It never included dentisty, optometry or drugs. In the program, it states that the system "no longer covers" some of these things when it never did. My reading is that in-hospital surgical dental services were covered, but they occur rarely. Inpatient physiotherapy and inpatient pharmaceuticals were covered and they still are. It is a legitimate point that as more care moves out of hospital and into the community, more things move beyond the scope of Medicare.

Also, the producer argues in his reply that the system "did not make allowances for things like the Workers' Compensation Board, which creates a two-tier system." But the WCB was excluded from the beginnings of Medicare. (see the Canada Health Act).

5. The documentary at several points lets the proponents of private health care give what sound like authoritative numbers of wait-times and even about people dying on waiting lists. Those numbers do not appear to have been checked in any way. An admittedly quick look at provincial statistics does not show any waiting times approaching those mentioned by the proponents. Of course, they have a large financial stake in the proposition that wait times are hurting, if not killing people—a point not explicitly made by the piece.

**PRODUCER**: These numbers were checked and double checked. We spent weeks poring over government records and collecting evidence from doctors and patients. The wait list is real. We had doctors in Saskatchewan complaining about having to book ultra sounds for 12 week pregnancies—before conception. We had patients in the film who'd been waiting two and half years for a hip replacement. To deny these numbers is ludicrous. The show gives concrete examples of wait lists.

**OMBUDSMAN**: The producer helpfully shared the statistical information on which his work was based. However, without going in to fine detail, there are a number of problems with the information. The producer says that information was not available to some jurisdictions (Ontario, for example), but, in fact, that information was available and does not reflect the extreme waits alluded to in the documentary. Also, there appears to be some

confusion between "median" times and "average" (or mean) times. Although not a statistician, my understanding is that "median" times reflect the experience of the "middle person"—i.e., the point where half are above that time and half below. The average includes all examples, best to worst, added together and divided. Average numbers tend to be higher, especially if there are a few really high numbers. The producer found real examples of people waiting what anyone would agree were daunting amounts of time. However, those examples do not seem to reflect the experience of most Canadians. In addition, but beyond the producer's ken, recent moves—notably in Alberta—seem to show that the universal system can be modified in such a way as to deal with many of the problems cited. There have also been recent system modifications in Ontario and British Columbia that would seem to provide a broader context for judging whether the system is, in the words of the documentary, "brain dead."

6. Some wondered why no time was given to examining why there are wait times and what role doctors have in creating them; doctors who will greatly benefit from there being long wait times.

**PRODUCER**: This is simply scandal mongering. No doctor we interviewed wanted to benefit from wait times and spent most of their time fighting against them. The problem here is that there would be no need for a private system if the public system worked—our position in the piece is that the public system, for quality of life injuries, does not work.

**OMBUDSMAN**: A fair conclusion from the producer's point of view.

7. Several people, including one expert in health care policy, wondered about the reference to people "dying" on wait lists: how many, of what cause? If someone is on the wait list for knees or hips (the longest) and he/she dies from a heart attack, is that counted?

**PRODUCER**: People die on waitlists for many complicated reasons. If you wait three years for a hip replacement you can't exercise, get fat, die of heart failure then there is no official tie in to "dying on the wait list"—but every physician we talked to and the lawyer who represented his clients at the Supreme Court made that argument. We feel it unlikely that a Supreme Court argument would be simply facetious.

**OMBUDSMAN**: Such as serious conclusion should have been more adequately sourced.

8. Also, the data available to me shows the median wait for hips in Ontario (largely elective) is less than 4 months, not the 3 to 4 years I believe was mentioned in the piece. I am told that BC is similar, but I have not checked that yet.

**PRODUCER**: That's not our data. As you will see from the patient we followed and the doctor who attended him, and the woman patient in the wait room and the lady who had the hip replacement in the US—real people who talk about waiting for years. What's the source

of your data, is it possible that it refers to people who have finally been put on a list for surgery—getting to that list takes years.

**OMBUDSMAN**: There is continuing controversy about when wait lists begin: from the moment a patient sees a general practitioner? From the moment a patient sees a specialist? From the moment where surgery is determined to be the right choice? The producer is free to use appropriate data and cases to reinforce his case. And people much smarter than I have not yet agreed on when the clock starts.

9. Some people questioned the apparently unquestioning acceptance of many of the tests performed by the for-profit clinics. Several recent articles in professional journals such as Applied Radiology, Diagnostic Imaging, the American Journal of Roentgenology and the Journal of Clinical Oncology raise questions about the effectiveness of the wholesale use of such technology on apparently healthy people. An article in Clinical Oncology says that "it is commonly viewed as of no harm, when in fact there are harms associated with every known screening test. Indeed, many screening experts believe a screening test should only be used when the potential for benefit clearly outweighs the potential for harm." And a Radiology review of another article says that "…cancer risk varies with age. Among 45-year olds, for example, a single full body scan will cause fatal cancer in one in every 1250 people who have the exams. One full-body scan increases a person's lifetime cancer risk by a fraction of 1%." The point is not to argue the clinical data, but to point out that the discovery of one case of renal cancer may be more than balanced by cases caused by the largely unnecessary scanning by these for-profit clinics.

**PRODUCER**: Good point and there is an on-going medical debate about full body scans. The private clinic which does the $1250 annual check up does not perform full body scans.

10. At one point the narrator says that Medcan's 8000 patients have "opted out of the system." However, I suspect that if any of the expensive diagnostic tests showed anything, most of the patients would be treated within the universal health care system. Some viewers claim that the piece generally avoided saying that if anything serious (non-elective) showed up, most of the patients would be treated (and, in their view, treated quite effectively) under the universal system.

**PRODUCER**: The point is that 8,000 people have opted out of general practice medicine. Of course they would go back into the public system if something serious was found—as per our example of the cancer patient…The argument in the piece wasn't that life threatening diseases should not be treated in the public system---the argument was that a two tier system exists—in parallel with the public system.

**OMBUDSMAN**: It is not an exercise in semantics to say that they have NOT opted out of the system, unless their doctors have, as provided for in many provincial laws.

11. There were also complaints about the editorial use of sound: the use of what one viewer called a "snarky" version of Maple Leaf Forever at two points in the piece, both involving people who support universal health care.

**PRODUCER**: I've never felt the Maple Leaf forever to be "snarky," I prefer to think of it as director's choice. The use of the music was to indicate an historic cornerstone.

**OMBUDSMAN**: I agree with the viewers, that the out-of-tune version was for editorial purposes, but that is the prerogative of the producer, particularly in a POV documentary.

12. Many of the correspondents understood that the piece was a "point of view" documentary, but asked whether other points of view were dealt with factually and fairly.

**PRODUCER**: If it is my point of view, and outlined as such as an "essay" then the nature of the piece was not "journalism": as practiced by newsgathers. Other points of view were included, the CLC spokesman provided the views of those opposed to two-tier medicine.

**OMBUDSMAN**: Without interfering with the integrity of the essay, I think it would have been more appropriate to reflect that there is a much wider base of professional support for universal health care than one researcher at the Canadian Labour Congress. Also, some viewers did not realize the piece was a "point-of-view" documentary since the only labeling was the word "essay" at the beginning of the program.

13. Some correspondents raised particular questions about references to the Chaoulli decision. Although based on a set of facts and circumstances specific to Quebec, the narrator quotes, apparently with approval, the notion that there's no point in giving a "heart transplant" to a system which is "brain dead." One particular writer, in a piece written for a British Columbia publication, The Tyee, argues that powerful and wealthy people in Montreal with a large financial stake in private health care are trying to make that city the centre of private medicine, that Chaoulli is not just an ordinary family doctor but a Senior Fellow at the Montreal Economic Institute. The writer argues that the Institute is "on a mission" to destroy Medicare. I have no information on that, but I note that there has not been widespread coverage of Chaoulli's political and economic views.

    The same article raises a number of other points about the financing and motivation of people used in the piece. Again, I have no direct knowledge of these matters, but there are some interesting questions raised.

**PRODUCER**: I read the Tyee Piece which said I had a crony relationship with the CBC. In fact I've produced two shows for the CBC in the last five years—hardly cronyism. However,

like my piece I think his piece was an essay… we differ in our views but I should tell you that if I were writing a piece about him I would have contacted him or the network he worked for. The writer of the Tyee piece did neither and it was interesting to note that the response to his column in the Tyee was not generally positive.

**OMBUDSMAN**: A fair point.

**CONCLUSIONS:**

This might not be an exhaustive list of questions but I think it covered the main points that were raised. And Bob Duncan has answered forcefully and directly.

The CBC rewrote its policies on documentaries fairly recently in order to reflect the wide range and diversity of documentary production taking place in various program areas of the CBC. The latest edition of the policy book contains the explicit provisions on "point of view" documentaries quoted above.

"Medicare-Schmedicare" is a provocative, even argumentative essay obviously designed to prompt people to consider alternatives to our current health care system. It clearly is not supposed to be an even-handed assessment of the system. It does fit within CBC's policy framework.

That being said, my remarks above indicate that I think there were shortcomings in relation to policy: Even a point of view documentary should acknowledge and state fairly views opposite. Also, some of the statements in relation to "two-tier" medicine are just not correct.

Another policy test is to ensure that the film was independently funded. The producer, the CBC programmers and my examination of the funding documents indicate that the financing met that test.

I should point out that the policy does not place responsibilities solely on the film maker. It calls for the program stream to reflect various opinions on controversial matters within a reasonable time frame. The person in charge of the documentary stream indicated that he felt that extensive news coverage of the issue was sufficient to meet those responsibilities. I disagree. A carefully crafted, hour-long argument that the current system is "brain dead" and in need of fundamental revamping calls for equitable treatment for other points of view. Also, I think the CBC producers of the series would have been better advised to label the piece more clearly so that all viewers understood what was being presented.

Yours truly,

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