



Canadian Hemophilia Society
Help Stop the Bleeding
Société canadienne de l'hémophilie
Arrêtons l'hémorragie

Blood safety case begins in Ottawa CHS has intervener status

OTTAWA – September 28, 2009 – The civil case of Freeman vs. Canadian Blood Services (CBS) and Health Canada began in Ontario Superior Court today and will last until mid-December. The Canadian Hemophilia Society has been granted intervener status so as to represent recipients of blood and blood products, and is represented by Tough and Podrebarac LLP.

The case originated in 2002. Kyle Freeman had donated blood on 18 occasions between 1990 and 2002; however, after the last occasion in June 2002, he informed Canadian Blood Services in an anonymous e-mail that he had lied when responding to the questionnaire, specifically with regard to Question # 19, *Male donors: Have you had sex with a man, even one time, since 1977?*

CBS was able to discover his identity and sued Freeman in civil court for negligent misrepresentation and damages. In subsequent discovery proceedings it was established that Freeman had lied to four questions of the blood donor questionnaire, including one related to his sexual history of having had sex with other men (MSM). According to Health Canada regulations, men who have had sex with other men, even once, since 1977 are permanently deferred from giving blood because of the increased risk of transmitting blood-borne pathogens, notably HIV and hepatitis B. Had Freeman replied honestly to these questions, he would have been ineligible to give blood.

Freeman countersued CBS and Health Canada on grounds that the question violated his right not to be discriminated against based on sexual orientation, a right guaranteed in Section 15 of the Canadian Charter of Rights and Freedoms. He asked the court to find that “he need not answer truthfully” and that the court should order a change to the MSM question.

The trial is divided into two parts: the liability case against Freeman, heard during the last week of September, and Freeman’s charter challenge, to be heard over the course of the autumn.

In 2006 the CHS requested and received intervener status. The CHS goal is to represent recipients of the blood system and to support maintenance of the current MSM donor deferral criteria. The CHS will argue that, whether or not the Charter of Rights and Freedoms applies in this case, the MSM question is justified under Section 1 of the Charter in the interest of public health and reducing risks to the blood system.

CHS expert witnesses will be heard in early December.

Key CHS public messages

- The Canadian Hemophilia Society (CHS) is intervening in this case to protect the rights of all people who rely on the safety of the blood supply system in Canada.
- The Canadian Hemophilia Society's interest in blood safety comes from its experience of Canada's tainted blood tragedy and the devastation this tragedy caused its members, and from its mandate to serve the many people with bleeding disorders who continue to be frequent users of blood products. The CHS is committed to ensuring a safe and secure blood supply for all Canadians so that such a tragedy never happens again.
- The CHS supports the position of Canadian Blood Services and Health Canada in maintaining the current MSM donor deferral criteria. The position of the CHS is that the safety of the blood system is all-important.
- The CHS believes public health science and the precautionary principle should determine donor deferral criteria. These indicate that any relaxation in the MSM donor deferral criteria would make the blood system less safe. MSM donors, as a group, introduce an additional, measurable, preventable risk of infectious disease to the blood supply. Other groups, sometimes for different reasons, also pose an increased risk, and are deferred.
- People only use blood when they need it, and when they have no option. They are completely dependent on the stewards of the blood system to ensure that blood is as safe as possible.
- No matter how small a risk may be, it is a risk that is borne 100% by the recipient of the blood and 0% by the donor.

The CHS requests that chapter members, volunteers and staff refer all media inquiries to the CHS National Office. Chantal Raymond, CHS communications coordinator (craymond@hemophilia.ca or 1-800-668-2686), will direct inquiries to official CHS spokespeople.