



**MEDIA RELEASE**

## **Canadian Hemophilia Society welcomes Superior Court decision upholding blood safety**

Montreal – September 9, 2010 – The Canadian Hemophilia Society (CHS), which acted as an intervener in the trial, welcomes the Ontario Superior Court decision in *Canadian Blood Services v. Freeman* released today. Justice Aitken found that the current blood donor deferral for men who have sex with men (MSM) is not discriminatory. It makes distinctions not on the grounds of sexual orientation but rather for reasons of health and safety.

Responding to the decision, David Page, executive director of the CHS, stated, “This judgment will support efforts to make the blood supply as safe as possible for Canadians who rely on it.”

Mr. Page identified four key principles the CHS supports which are confirmed by the Court decision:

1. Safety of the blood supply must be the primary concern for operators of the blood supply. Judge Aitken stated that in the wake of the 1980s blood tragedy, “Canadians have decided that blood safety is to be the paramount consideration in the blood supply system [and] that does not leave any room for any move in the direction of safety standards.”
2. Any proposed changes to the operations of the blood supply should result in a system that is as safe as or safer than the current system.
3. When weighing the rights of blood donors and recipients, it must be remembered that the recipients bear 100% of the risk of blood-borne pathogens and the donors bear none. Judge Aitken wrote on page 177, “The impact... of gay and bisexual men being denied the opportunity to give blood... is not in the same league as the impact on a blood recipient who has to use blood or blood products in order to survive or make life livable, and who is asked to accept lower safety standards even though an adequate supply of blood could be provided if higher safety standards were imposed.”
4. Donating blood is a gift, not a right; therefore, there is no discrimination when that gift is refused for reasons of health and safety. Justice Aitken states, “Put simply, blood donation is a gift. A gift is freely offered, but must also be freely received or freely declined. Canadian law has never recognized a duty or requirement to accept the gift of blood from anyone.”

Mr. Page stated that the CHS is sympathetic to individuals who may find the current donor questionnaire objectionable. As a population, however, epidemiological evidence shows that men who have sex with men are much more likely to be infected with HIV than men who have not had sex with men. Justice Aitken states, “A reasonable person in the position of a gay or bisexual

prospective blood donor, would not conclude that MSM/non-MSM distinction is discriminatory on the basis of sexual orientation, but would conclude that the distinction relates to the actual characteristics of the two groups relative to blood donation.”

In the Court decision, Justice Aitken notes that the current deferral of men who have had sex with men, even once, since 1977 may no longer be appropriate. The threat of emerging pathogens, however, must be considered when establishing deferral periods for populations at high risk for sexually transmitted infections. Pathogens may enter the blood supply and remain undetected or badly understood for many years. HIV and hepatitis C are two such examples. On this, Judge Aitken states, “A deferral period... for MSM... in excess of 10 years might well be considered reasonably prudent in all the circumstances to meet the objective of a safe blood supply.”

The CHS is not opposed to an eventual change in donor deferral criteria, but, as stated as, any modification must be made based on science and good public health policy and result in a blood supply system that is as safe as or safer than what currently exists.

Justice Aitken also states, “It is of critical importance to our health system, and to the well-being of the users of that system, that a high level of trust in the blood system be fostered.” The CHS believes today’s decision helps build this trust.

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