

Gay Ont. man loses blood donation negligence suit

Donor falsely denied that he had had sex with another man

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A gay Toronto man who concealed his sexual history on a blood donor questionnaire and was sued for negligence by Canadian Blood Services has lost in Ontario Superior Court.

In a decision released Thursday, the court sided with CBS in its suit against Kyle Freeman for "negligent misrepresentation."

The court said Freeman did not have a Charter of Rights and Freedoms defence against the claim of negligence.

The decision essentially upholds the current CBS practice of prohibiting men who have had sex with other men anytime since 1977 from donating blood.

Freeman donated blood several times between 1990 and 2002. Each time, he falsely denied that he had had sex with another man since 1977.

Ban not discriminatory: judge

In June 2002, Freeman donated blood that subsequently tested positive for syphilis. He was permanently ruled out as a donor. Freeman did not know at the time he had syphilis, and did not know how he had contracted it, the judge wrote.

CBS took steps to get any blood traceable to Freeman out of its system, at a cost of about \$10,000. It later filed suit against him.

In her decision, Justice Catherine Aitken ruled that the CBS ban on donation was not discriminatory based on sexual orientation.

"It is based on health and safety considerations; namely, the prevalence of HIV/AIDS and other blood-borne, sexually transmitted pathogens in the [men who have sex with men] populations, and the corresponding risk this creates for the safety of the blood supply system," the judge ruled.

CBS chief executive officer Dr. Graham Sher applauded the decision.

"It is important to understand, and as the judge affirmed, our donor selection policies have always been about protecting the safety of blood recipients, and the [men who have sex with men] policy is no exception."

Freeman was held liable to the blood bank for \$10,000 in damages.

A counterclaim by Freeman against CBS was also dismissed. The court ruled that CBS is not a government entity, and therefore, not covered by the Charter.

Ruling disappoints groups

"We're very disappointed with this decision," Monique Doolittle-Romas, the executive director of the Canadian AIDS Society, said in a statement.

"Although the judge agreed with us that there is no evidence to justify the current deferral period being used, which applies to any man who had sex with another man even once since 1977, the court refused to order a change," she said.

Helen Kennedy of Egale Canada said that because the court found the blood bank's policy was based on safety concerns, the questionnaire did not discriminate against gay and bisexual men.

"The negative consequences this ruling has on Charter rights are enormous," Kennedy said.

Thursday's ruling reverberated even in British Columbia, where the executive director of a Vancouver HIV/AIDS advocacy group called it "misguided."

"In an era when gay men are discriminated against in many ways, I think this is one area where it need not be," said Maxine Davis, of the Dr. Peter AIDS Foundation.

"It does perpetuate a perception that somehow gay men are more promiscuous."