

## **An Unjust Ban**

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Bans or prohibitions enacted and enforced within a society are expected to be righteous and fair. However, since 1977 in Canada and most of the Western cultural world, no man having had sex with another man is able to donate blood. Such a ban is outdated and unjust; a vast number of people have written about this topic – this essay will cite some popular and scholarly sources in effort to cover all angles of the issue. Moreover, it is clear that such an outdated and unjust ban should not be in place, because it breaches universal human rights established within Canadian society, highly unacceptable in contemporary society.

Jeffrey Simpson writing for the ‘Globe and Mail’ underlines that the act of blood donation is a gift, rather than a right, therefore if gays do not like it, so be it – the choice delivered by a judge says so – and such is what citizen must follow. Simpson’s opinion is a symptom of a more widespread issue – homophobia, still present in Canadian culture – which does not see the individual rights recognized, even if gay, a blood donor is still a person and should be recognized with dignity, rather than discriminated against. By contrast, Joanna Smith of ‘The Star’ underlines the fact that regulations on blood ban for men who have sex with men are “obsolete” and wants the Government to relax the rules(1). Joanna Smith also notes that “there have been lots of changes in the environment, (and) lots of changes in testing”(ibid). Such technological improvements have opened the door for a better future for men having sex with men who wish to give blood.

It is also interesting to look at medical scholarly publications for answers, to better understand the issue and its challenges.

In December 2007, Health Canada changed its indefinite deferral to a five-year deferral period for organ donation by men who have had sex with men, in response to Canada’s low rate of organ donation and the life-saving potential of such procedures. This decision seems to have been based on a consideration of relative risk and the supply and demand of available donors. Were the numbers of individuals willing to donate blood to diminish, there is little doubt that current restrictions on men who have had sex with men as blood donors would be relaxed. (Wainberg, 1323)

As this research illustrates, if men having sex with men are safe organ donors, why is then an issue with blood? It should be obvious that if men who have sex with men are fit organ donors, then they can also be fit blood donors. Moreover, a blood donation ban is clearly possible, rather than just a likely possibility. In light of Jeffrey Simpson’s own opinion on the matter, since it is one that resonates prominently in popular culture, it is worth looking at the data presented in the British Medical Journal by Bob Roehr. In fact, as he states:

They have continued to refine this model, plugging in the effect of newer, more accurate screening tests and better epidemiological data on the changing face of the epidemic, which reduced the risk even further. Speaking from the audience during a panel discussion at the October annual meeting of the AABB, formerly known as the American Association of Blood Banks, Dr. Germain told the international conference, “If we relax the criteria to one year, with the new analysis we estimate there would be one additional case of HIV every 2000 years.”(1)

These numbers and this data show that it is likely possible and safe to grant to men who have sex with men the right to donate blood. Moreover, as the data itself reveals, there is practically no danger for the blood recipient, especially in light of the modern contemporary testing standards. In addition to such research it is worth taking a look at the numbers of HIV positive people and their social breakdown within Canada.

This research has been conducted in recent years and it shows a very discouraging trend, in regard to the general population, while a positive outlook for former stigmatized groups and gays. “Canadians must recognize the changing profile of HIV/AIDS, particularly the increase in female infections and the high rates of infection among aboriginals and marginalized populations.”(GPI, 11) By contrast, men who have sex with men is a declining trend in such statistics, due in part to the fact that the socio-economic status of this group is higher than the one hit by HIV.

From a perspective that deals with legal issues, it is valuable to look at Rachael Lake’s publication on the journal *Appeal*. Equality is valued nearly everywhere but practiced almost nowhere. As an idea, it can be fiercely loved, passionately sought, widely valued, legally guaranteed, sentimentally assumed, or complacently taken for granted. As a reality, in lives lived or institutions run, it hardly exists anywhere.(141)...A gay man who attempts to donate blood and is rejected because he is gay would most certainly feel as though his dignity had been harmed.(145) ...Explicit recognition of the links between gay oppression, judgments that reify monogamy and discriminatory government policies may eventually lead to the elimination of the blood donation ban and the future of a more equitable society.(149)

Moreover, even though Lake’s focus is mostly in regard to article 15(1) of the Charter of Rights and Freedoms, it is possible to see the ban as a breach of a few other articles, namely article 7 and 28. Certainly, one can see the discrimination act through the analysis of article 15(1), however, that is not the only undemocratic breach in the process of banning men who have sex with men from donating blood. Especially, when considering the most up-to-date data – it is learned that HIV and other health issues are not the key of the issue, rather they only represent a sad portrayal of a somewhat still homophobic society not understanding of its “Other” members. Therefore, it is also of great importance to review the meaning of article 7 and article 28. “Everyone has the right to life, liberty and security of the person and the right not to be deprived there of except in accordance with the principles of fundamental justice”(Charter, art.7). Article 7 is critical, since through blood it is possible to see life, security and livelihood, yet those are not guaranteed to gay men and lesbian women. It is surprising that a country as ahead as Canada allows such situation to take place.

Moreover, “notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons”(Charter, art.28). If, as underlined by the charter itself, the rights listed apply to both male and female, men who have sex with men are definitely male, those rights should not be withdrawn, since they are an essential part of what defines Canada’s advancement and democracy. For this reason, among other medical one, it is time that the Canadian Blood Service as a government agency should follow Charter regulations, not only in relation to the discrimination section, indeed, in light of the value of article 7 and 28 as well. For such reasons, the ban must be taken away not just because “obsolete”(Smith,1), but also for its unjust role in discrimination and breach of universal human rights.

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