

Issue

While Health Canada has decreased the waiting period for cisgender gay and bisexual men to donate blood, it maintains a discriminatory ban that encourages stigma and ignorance around queer men's and trans people's health, as well as undermining Canada's supply of available blood. For a more equal—and safer—blood system, Health Canada should adopt a behaviour-based, gender-neutral and evidence-based approach and work to repair the damage done by other screening policies.

Recommendations for the Government of Canada

1. The federal government direct Health Canada to **end all discriminatory practices related to blood, organ and tissue donation for men who have sex with men and trans people**—instead adopting a gender-neutral donor screening process (i.e. where people are screened the same regardless of sex assigned at birth, gender identity, gender expression or sexual orientation).
2. The federal government direct the Canadian Blood Services and Héma-Québec to **perform outreach and dialogue with communities to establish trust** and to better appreciate the multiple ways in which deferral policies have negatively impacted gay, bisexual, queer, trans and gender non-binary people, as well as African and other Black communities.
3. The federal government clearly demonstrate that policy decisions are being **based on up-to-date scientific evidence and conduct public education campaigns** to dispel stereotypes and fight misconceptions about the community's health.

¹ <https://youtu.be/swLBfSZFBKI>

Background

Canadians everywhere are told that donating blood is a generous act of charity and community—and there is good reason for it. From saving lives to aiding in recovery, a readily available and safe blood supply is a crucial part of a reliable health care system.

Yet for gay, bisexual and other men who have sex with men (MSM), that call for blood donations comes with many more conditions. It wasn't too long ago that a man who had any kind of sex with another man wasn't allowed to donate ever. Despite recent improvements to replace that lifetime ban with a five-year, then one-year and now three-month ban (or “deferral period”), Canada has a long way to go.

A ban may have made sense at one point—but the science, and the world, has changed. New testing methods are better, more reliable and require a shorter deferral period. New treatments and medications are reducing the likelihood of passing HIV between sexual partners. Cultural attitudes around LGBTQ2 people have shifted—allowing more men to create community, organize and educate each other.

These factors, when taken together, mean that a blood ban on men who have sex with men is more about fear and outdated ideas than current evidence. Despite this, Health Canada's policy—operationalized by the Canadian Blood Services and Héma-Québec—prevent these men from participating openly and honestly in the service of blood donation. It is time for change.

I understand that going from five years to one year is a small step in the right direction, but it doesn't make one whit of difference in the vast majority of people who would want to donate but are being prohibited from it.

PRIME MINISTER JUSTIN TRUDEAU
TO XTRA MAGAZINE, 2016¹

What about other donations, like organ and tissue?

When it comes to donating organs and body tissue (like skin or muscle), the process with men who have sex with men (MSM) is a little more complicated.

Under Health Canada regulations, MSM are excluded from donating organs and tissues in line with the deferral period for blood donations.^{2,3} If the male donor is deceased, the physician will check for physical evidence of anal intercourse.

Yet a protocol called “exceptional distribution” allows the physician and recipient to give consent to the donation, even if it comes from a “higher risk” donor. Due to the high demand for organ and tissue donations, MSM donations are often accepted under this protocol—which is not an option for blood donation. Therefore, this report focuses on blood donations.

“Deferral Period” vs. “Window Period”

It is important to note that all blood donated in Canada is tested vigorously before it makes its way into the system. Canada’s blood system has some of the highest standards according to the World Health Organization, and Canadians can be confident that it will continue to be one of the safest programs in the world.

Allowing men who have sex with men (MSM) to donate would not influence these current testing practices. Everyone wants Canada’s blood supply to be tested, safe and readily available.

What MSM across Canada are advocating for is a removal of the “deferral period”—that is, the amount of time they must abstain from sex—including oral—before being allowed to donate blood.⁴

Historically, the deferral period was a conservative calculation based on the “window period”—the time between someone acquiring HIV and when a blood test reliably shows that HIV-positive result.

In 2001, however, nucleic acid testing (NAT) gave clinicians a highly sensitive method of testing—one that reduces that window period to approximately nine days for HIV.⁵ If adopted widely by CBS and other public health agencies, this testing method can help significantly shorten the three-month deferral period.

The data doesn’t support a policy that only excludes men who have sex with men and includes very sexually active heterosexual people with multiple partners. It’s part of a pervasive sense that society deems LGBTQ people to be dirty, unhealthy, and unsafe.”

TREVOR HART, DIRECTOR, HIV PREVENTION LAB AT RYERSON UNIVERSITY

No Ban Means No Deferral Period

Considering new reliable testing methods, Canada’s political leaders may instruct Health Canada and the Canadian Blood Services to shorten the three-month deferral period to around nine days. This would certainly be an improvement from the status quo—reflecting present-day research and allowing more men to donate with a shorter period of abstinence.

However, advocates and community members are calling for a full removal of the deferral period. Any blanket ban assumes that every sexual encounter between two men is a possible incident of HIV transmission—and this does not reflect the real lives of men in Canada.

For instance, blanket bans ignore:

1. **Sexual practices:** a committed same-sex couple in a monogamous relationship are at a significantly different risk level than a single person having sex with multiple partners. Additionally, the current deferral policy includes activities between men that have been proven to present practically zero risk for HIV transmission—such as oral sex or sex with a condom.
2. **Advancements in prevention for HIV-negative people:** Pre-Exposure Prophylaxis (or PrEP) can stop HIV from taking hold and spreading throughout a body. PrEP is highly effective for preventing HIV acquisition, and an increasing number of gay and bisexual men are taking it.

2 <https://globalnews.ca/news/2141183/canadas-policy-on-gay-men-donating-tissue-is-discrimination-doctor/>

3 <https://www.dailyxtra.com/tories-banned-gay-organ-donors-for-votes-ndp-16693>

4 <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-019-7123-4>

5 <https://blood.ca/en/media/resource/hiv/backgrounder-donor-testing-human-immunodeficiency-virus-hiv>

3. **The uptake of treatment for people living with HIV:** When HIV treatment is effective, and reduces the amount of HIV in one’s blood, there isn’t any risk of passing HIV on during sex. This is known as treatment as prevention (TasP) or undetectable equals untransmittable (U=U). More than 4 out of 5 Canadians diagnosed with HIV are currently on treatment.⁶
4. **Risks of heterosexual sex:** Unlike the blood donation policy, HIV does not discriminate—and the current deferral policies do not focus on sex between heterosexual donors that could pass HIV. Approximately a third of Canadians living with HIV received the virus via heterosexual sex.⁷

Therefore, moving forward Health Canada should consider adopting a donation policy that is based on current evidence of risks and behaviour, rather than sexual orientation and gender.

This future policy may still defer or reject candidates who reach a certain risk profile—and that is a necessary step to maintain a safe blood supply. However, by asking straight, gay and bisexual donors the same questions about their sexual practices and prevention methods, Canada can establish a less discriminatory approach and bring more safe donors into the process.

Global Precedents

Worldwide, there are several countries that have either allowed gay and bisexual men to donate, or never instituted the ban in the first place.

For instance, Italy dropped its ban in 2001, moving instead to a person-by-person risk assessment, and has seen no significant increase in the number of men living with HIV donating as a result.⁸ Portugal followed suit in 2010, as did Mexico in 2012.

Instead of a ban, they’ve adopted risk-based deferrals with questions targeting high-risk sexual exposure. For example, in these countries a man who has sex with men could

be considered “low risk” for HIV if he is in a long-term monogamous relationship and therefore, a “safer” candidate for blood donation. On the other hand, heterosexual men who had multiple sexual partners and condomless sex during the last month could be considered ‘high risk’.

Globally, screening questions have also been made gender-neutral. This is the case in France, where anyone—regardless of gender or sexual orientation—who has had sex with more than one person in the past four months is deferred.

OECD Countries and MSM Blood Deferral Policies

There is a real opportunity for Canada to be a global leader on this issue—embracing science and setting an example to countries around the world.

NO DEFERRAL	3-6 MONTHS	1 YEAR		INDEFINITE BAN
Chile Italy Latvia Mexico Poland Spain	Canada Denmark France Japan Netherlands United Kingdom* United States <i>*except Northern Ireland, where it is 1 year.</i>	Australia Belgium Czech Republic Estonia Finland Germany Hungary	Ireland Israel New Zealand Norway Portugal South Korea Sweden Switzerland	Austria Greece Iceland Lithuania Luxembourg Slovenia Turkey

6 <https://www.canada.ca/en/public-health/services/publications/diseases-conditions/summary-estimates-hiv-incidence-prevalence-canadas-progress-90-90-90.html>

7 <https://www.catie.ca/en/fact-sheets/epidemiology/epidemiology-hiv-canada>

8 <https://www.ncbi.nlm.nih.gov/pubmed/23867178>

Timeline of Blood Ban in Canada

(AS OF APRIL 2020)

OCTOBER 1993

- The Royal Commission of Inquiry on the Blood System in Canada is established to investigate how the organizations responsible for supplying blood and blood products to the health care system had allowed contaminated blood to be used. It is lead by Justice Horace Krever, and commonly referred to as the Krever Commission or Krever Inquiry.

NOVEMBER 1997

- Justice Krever tables his final report in the House of Commons, recommending the creation of Héma-Québec for Quebec and Canadian Blood Services for rest of the Canada to operate at arm's length from the federal government. It also made recommendations regarding compensation for persons who had received contaminated blood. The MSM blood ban is carried over from the Canadian Red Cross Society into Health Canada regulations.

- In response to a Charter of Rights and Freedoms challenge launched in 2002, Justice Catherine Aitken of the Ontario Superior Court ruled that Canadian Blood Services is not a government entity, so the Charter of Rights does not apply, and that donating blood is not a right afforded by law.
- In her decision, Justice Aitken wrote that “evidence was lacking of the existence of real concerns that would make a deferral period of 33 years necessary in order to maintain the current level of safety” and that “certainly, there was no such evidence supporting the annual increase in the length of the deferral period.”

90's

80's

FEBRUARY 1982

- The first case of AIDS is diagnosed in Canada.⁷

MID 1980S

- Due to delays in the implementation and adoption of HIV testing, at least 2,000 recipients of blood and blood products from the Canadian Red Cross Blood Transfusion Service contract HIV.

1983

- The Canadian Red Cross Society introduces a donor selection criterion that excludes all men who have sex with men (as of 1977) to protect the blood supply from HIV.

2007

- Canadian Blood Services conducts a review of the MSM blood donation ban. Ultimately, they conclude the ban should be maintained.

2011

- Canadian Blood Services initiates a re-examination of the MSM policy, in consultation with scientists and patient and community

2013

MAY

- Health Canada announces that it will be lifting the lifetime ban on male blood donors who have had sex with men in favour of a time-based deferral of five years since last sexual contact.
- “A five-year ban on the ability for gay men to donate blood is not science based and is still just as discriminatory as a lifetime ban.”— New Democratic Party health critic Libby Davies and LGBTQ critic Randall Garrison, in a statement following the announcement.

9 <http://publications.gc.ca/collections/Collection-R/LoPBdP/CIR/935-e.htm>

2015

SEPTEMBER

- The Liberal Party of Canada, under Justin Trudeau, campaigns on a promise to end the blood donation ban for men who have sex with men.

2019

MAY

- Health Canada approves reducing the deferral period for MSM from one year to three months.

JUNE 2019

- The federal Standing Committee on Health, made up of members from all political parties, endorse a report of recommendations on how to improve the health of LGBTQ2 Canadians. This includes an explicit call to end discriminatory donation policies at Canadian Blood Services among men who have sex with men and trans people in favour of donor screening policies that are evidence-based, gender-neutral, and behaviour-based.

SEPTEMBER 2019

- The federal Liberal, New Democratic and Green parties campaign on ending the MSM blood ban. Conservative and Bloc Québécois also signal their support in media interviews.

2016

- Health Canada approves Canadian Blood Services' proposal to reduce the blood donation ineligibility period for men who have sex with men from five years to one year.
- Health Canada also announces \$3 million for research projects that aim to close knowledge gaps impacting donor eligibility for men who have sex with men.
- The Canadian Medical Association urges blood service providers and Health Canada to adjust eligibility for blood donors to behaviour-based and not based on sexual orientation.

Thirty years ago, our understanding of HIV was nowhere near where it is today. Then, a blanket ban on gay men's blood may have made sense. Today, with advances in science, research, and our understanding of HIV transmission, we know better.

DR. NATHAN LACHOWSKY,
RESEARCH DIRECTOR,
CBRC

Misgendering in Blood Donations

It is important to note that Health Canada policies around cisgender gay and bisexual men negatively affect other members of the LGBTQ2 community as well.

In 2016, the Canadian Blood Services (CBS) introduced a new screening process for trans donors where, if they had not received genital surgery (or “bottom” surgery), they are evaluated by their gender assigned by birth. In other words, trans women who had not undergone bottom surgery are screened as “men,” and likewise trans men are screened as “women.”

This is a flawed policy that misgenders trans people, as well as perpetrates harmful myths about the trans community,

including that all trans people undergo bottom surgery. Many trans people do not ever undergo surgery—either as a personal choice, or because they are not able to—and they should not be misgendered because of it.

CBS is entitled to ask questions about sex assigned at birth and surgeries—as, just with cisgender and heterosexual donors, these can affect how the blood is used and who it goes to. However, a gender-neutral screening process that focuses on specific practices and behaviours—rather than gender—would also help blood collection agencies avoid the misgendering of donors.¹⁰

Making Reparations in Education

The policies held by Health Canada—and operationalized by CBS and Héma-Québec—have not only prevented gay, bisexual, trans, Two-Spirit, and queer men from donating blood, but have also contributed to the stigma around the perceived “safety” of these communities.

Homophobia, biphobia and transphobia have taken these policies and twisted them to work as evidence that queer people are a threat or a public health danger. Even as deferral periods are lifted or shorted in Canada and around the world, such policies are still being weaponized today as a legitimate basis for discrimination.

Therefore, in addition to lifting the ban in favour of screening policies that are evidence-based, gender-neutral and behaviour-based, CBS and Héma-Québec must also engage in public education campaigns to dispel stereotypes and fight misconceptions about the community’s health.

The same should be done for other groups who have similarly not been allowed to donate, such as Black Canadians. Together, these groups have been marginalized—and it is important that as policies change and deferrals are lifted, Health Canada, CBS and Héma-Québec work in and with these communities to make reparations and reinforce positive change.

The Ban and Blood Shortages

In total, whole blood donations can be stored for up to 42 days. Given this short shelf life, the need for blood is constant. Additionally, cancer patients, accident victims and people with blood disorders rely on blood transfusions every day.

Over the past several years, CBS has made increasingly desperate calls for donors. In 2017, CBS made a plea for a minimum of 20,000 units of blood, having between 12,000 and 14,000 units of blood on hand.¹¹ In 2018, CBS made three more “urgent calls” for over 67,000 donations in order to meet patients’ needs.¹²

Banning gay, bisexual and other men who have sex with men contributes to these shortages. The ban also extends beyond just

men who have sex with men—it also applies to trans women, and for cisgender women who’ve had sex with gay or bisexual men the deferral period is still a full year.

In CBRC’s 2018 Sex Now Survey of 3,500 gay, bi, queer, trans and Two-Spirit men, more than **90 per cent** of participants said they would donate blood if they were eligible able to. With that sample alone, there is a pool of more than 3,000 new donors possibly able to provide for CBS and the Canadians relying on blood. In the Engage study, in-depth interviews with 47 HIV-negative gay, bisexual, queer and other men who have sex with men across Canada also revealed a strong reported willingness to donate blood if eligible.¹³

10 <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-019-7123-4>

11 <https://www.cbc.ca/news/canada/toronto/critical-blood-shortage-1.4164669>

12 <https://blood.ca/en/taxonomy/term/1947>

13 <https://www.engage-men.ca/our-work/articles/>

An Emotional Toll

In June 2016, 49 people were killed and another 53 were wounded during a mass shooting inside Pulse, a gay nightclub in Orlando, Florida.

When the local blood service officials were publicly calling for more volunteers to donate, many of the friends and loved ones of the victims could not donate themselves—as the United States’ policy similarly prevents gay and bisexual men from

donating. This compounded feelings of helplessness in the community.

As LGBTQ2 people continue to face disproportionately higher experiences of violence and harassment in Canada, it is crucial that the friends and partners of victims be able to help in the healing and lifesaving support—including by donating their blood.

All Party Support to End the Blood Ban

The Standing Committee on Health is a group of elected Members of Parliament from all political parties who review and discuss issues that relate to Health Canada, including bills and regulations.

In the summer of 2019, this Committee heard testimony from expert witnesses from across the country on how to improve health outcomes for LGBTQ2 Canadians.

The Committee’s final report, endorsed by its members, includes an explicit call to end discriminatory donation policies, specifically that “the Government of Canada end all discriminatory practices related to blood, organ and tissue donation for men who have sex with men and trans people and adopt donor screening policies that are evidence-based, gender-neutral and behaviour-based.”

Additionally, during the 2019 federal election campaign, the Liberal Party of Canada, New Democratic Party and Green Party of Canada included a pledge to end the men who have sex with men blood ban in their election platforms. Collectively, these campaigns earned more than 50 per cent of the popular vote. Then Conservative Leader Andrew Scheer and Bloc Québécois Leader Yves-François Blanchet also indicated their support to end the ban.

Clearly, there is political will from all sides to adopt a blood donation policy that is evidence-based, gender-neutral and behaviour-based.

Conclusion

When we rely on sexual orientation to make policy decisions instead of specific practices that lead to HIV transmission, everyone loses. Stigma persists, and regulations become out of touch with the science of HIV transmission.

CBRC is lead partner on a number of research projects funded by the \$3 million federal investment administered through Canadian Blood Services' Centre for Innovation to find an evidence-based solution to this deeply entrenched problem. CBRC's Sex Now Survey is helping inform CBS' understanding of gay men's contributions to Canada's blood supply, and is advocating to policymakers to develop a rigorous, safe and science-based

approach that doesn't discriminate against any member of the LGBTQ2 community. In 2020, CBRC is also conducting interviews with blood recipients about this issue to hear their opinions, and completing a phone survey of Canadians to see what changes they might support.

The federal government must continue this work with a goal of achieving full equality for all donors—based on science and behaviour, not labels.

Our health agencies must move past stigmatization of gay and bisexual men and fully embrace current science and technology with regards to HIV testing and transmission.

Research with gay, bisexual, queer and other men who have sex with men across the country makes a simple point clear: People want a policy that doesn't discriminate and doesn't stigmatize. It is imperative that policy decisions are being based on up-to-date scientific evidence, including research assessing ways to ensure the safety of the blood supply under policies not based on MSM-specific abstinence periods.

DR. DANIEL GRACE, ASSISTANT PROFESSOR, DALLA LANA SCHOOL OF PUBLIC HEALTH, UNIVERSITY OF TORONTO

Terms Used

MSM – “men who have sex with men.” A term cognisant of the fact that not every man who has a sexual experience with another male-identified person identifies as gay or bisexual.

LGBTQ2 – “lesbian, gay, bisexual, trans, queer/questioning, Two-Spirit.” An umbrella term used by the Government of Canada to describe the communities of people whose sexual orientation or gender identify is outside the heterosexual, cisgender majority.

Two-Spirit – a term used by some, but not all, Indigenous peoples to describe having sexual and/or gender diverse identities, as well as traditional third-gender roles grounded in specific spiritual beliefs. The term was created in 1990 at the Indigenous lesbian and gay international gathering in Winnipeg.

Cisgender – having a gender identity (the gender they consider themselves as) corresponds to their sex assigned at birth.

Transgender – having a gender identity that differs from the gender normally associated with one’s sex assigned at birth. The term includes people who identify with binary genders (i.e. trans men and women) as well as those whose gender identity is not binary (i.e. non-binary, gender non-conforming, genderqueer, agender, etc.).

HIV – “human immunodeficiency virus.” It is a virus that attacks the immune system, which is the body’s natural defence system. Without a strong immune system, the body has trouble fighting off disease. If left untreated, HIV can lead to acquired immunodeficiency syndrome (AIDS)—which is a chronic, potentially life-threatening condition.

Sex Now Survey – The Community-Based Research Centre’s principal community-based research initiative and Canada’s largest and longest running survey of GBT2Q men’s health. Often referred to as “the gay census,” Sex Now has become an essential source of data on the health and well-being of GBT2Q in Canada, and is widely used by community, public health, research and policy stakeholders.

The Engage Survey – Engage is a 5-year Canadian collaboration between researchers and community-based organizations on HIV and sexual health among gay, bi, and queer men, including trans men and other men who have sex with men (gbMSM) in Canada. It is funded by the Canadian Institutes for Health Research (CIHR), the Ontario HIV Treatment Network (OHTN), and the Canadian Foundation for AIDS Research (CANFAR).

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