

Canadian Blood Services v. Manitoba Human Rights Commission and X

[COMPLETE DECISION PDF](#)

SUMMARY

The applicant filed an application for judicial review of the Board of Commissioner's decision to accept jurisdiction of a complaint by X against Canadian Blood Services under section 13 of *The Human Rights Code*. The complainant alleged that Canadian Blood Services' donor screening criteria that prohibits a man who has had sex with another man, even once since 1977, from donating blood, discriminated against him on the basis of sexual orientation.

The Manitoba Human Rights Commission argued that the Board's decision to accept jurisdiction was correct as Canadian Blood Services activities fall under the provincial jurisdiction over health. Canadian Blood Services argued that its activities and its license to operate is governed by the Food and Drugs Act and its regulations which valid federal regulation and accordingly, any change to the donor screening criteria must be approved by Health Canada and the Commission does not have jurisdiction over Health Canada.

The Court accepted that Canadian Blood Services is subject to federal law and regulation and that a change to its establishment license must be approved by Health Canada. The Court considered the legal doctrine of paramountcy to determine if there was in fact an operational conflict between *The Human Rights Code* and the applicable provisions in the Food and Drugs Act. It found that although the Food and Drugs Act and its regulations do not expressly mandate that the donor screening criteria be followed, Canadian Blood Services must comply with its licence requirements, and to make a change to the donor screening criteria would put Canadian Blood Services in violation of its establishment licence and the Food and Drugs Act and its regulations. Further, the Court found that allowing the Commission to deal with the complaint would frustrate the real purpose of regulating blood safety.

Remedy: Canadian Blood Services was granted an order of certiorari and prohibition as requested and was issued a declaration that the Manitoba Human Rights Commission does not have jurisdiction to proceed with the complaint, and in fact X can file a similar complaint with the Canadian Human Rights Commission if he so wishes.