

## **Krever Lawyer - David Harvey - Testimony At Queen's Park on Blood Bill**

### **Mr. David Harvey**

**The Chair (Mr. Peter Tabuns):** Our next presenter is David Harvey. Mr. Harvey, I think you've seen us go through a number of cycles, but if you'd introduce yourself. You have five minutes. I'll give you warnings at the appropriate time.

**Mr. David Harvey:** Good afternoon, committee, and thank you very much for the opportunity to present this afternoon. My name is David Harvey. I'm a retired lawyer and I represented families and organizations touched by tainted blood for about 20 years. I argued blood-related cases in the Ontario Superior Court, the Federal Court, the Federal Court of Appeal, the Ontario Court of Appeal and twice at the Supreme Court of Canada. I represented patient groups at the Krever inquiry. But I'm here today, not in any professional capacity, but in a personal capacity, to share what I've learned over the years and to congratulate the government on bringing forward the legal implementation of one of Justice Krever's primary recommendations.

Now, the issue is also personal for me. In my practice—I'm sorry.

**The Chair (Mr. Peter Tabuns):** No, that's okay. Take a second.

**Mr. David Harvey:** I went to too many funerals. I got too many calls that clients died. I had to call an ambulance in the middle of examining a witness because he was too weak to continue. Ms. Swann's late husband was one of my best friends.

And closer to home, I have sat in a hospital room with my mother and my father and my wife, weakened from chemotherapy, watching blood products drip into their veins, and with my background, you can imagine the kinds of concerns I had. But I was proud to be able to say to them that Canada has learned its lessons. They've reformed the system, and it's as safe as it can be. I'm here today to try and make sure that I can continue to say that.

Now, this committee is going to hear from a number of witnesses today and tomorrow—two days of hearings. It would be foolish to assume that this committee can approach anywhere near the detail that Justice Krever heard over four years.

Justice Krever received and reviewed 175,000 documents totalling over a million pages. He had hearings from February 1994 to December 1995, hearing from 474 witnesses—247 days of hearings, written submissions from 89 parties, 50,000 pages of transcript, 100,000 pages of exhibits. There were witnesses from across Canada and around the world, experts in transfusion medicine, internationally renowned panels, front-line workers. With respect, it's impossible for this committee to come to a different conclusion than Justice Krever in a responsible manner.

I won't take you through the specific recommendations in Justice Krever's final report, but there were at least five that dealt specifically with payment for plasma.

**The Chair (Mr. Peter Tabuns):** You have about one minute left.

**Mr. David Harvey:** All five times it was no, no, no, no, no.

With respect to the issue of shortages of product, we're not talking about that. We're not talking about it, because paying for plasma in Ontario means a private company can collect Ontario plasma—which Justice Krever referred to as a “public resource” in Canada—and send it abroad without any guarantee it ever comes back here. So if you're talking about securing Canadian supply, having private companies pay donors and sell on the international market does nothing for Canadian health care.

I want to talk about the importance of a single operator a little bit, because that's also a fundamental principle from Justice Krever's report. There are many reasons, and I'll give you just one. Having the information on every donor and tracing from vein to vein who gave the blood and who got the blood is essential, because if a donor comes in and later tests positive for an infectious disease, you want to be able to find every recipient of every prior donation from that donor.

**The Chair (Mr. Peter Tabuns):** Mr. Harvey, I'm sorry to say that your five minutes are up. We'll go to the first questioner: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** My first question is a little bit broad, but you can answer it any way you see fit. What do you say to people who say, “That was 20 years ago. We've learned. We have safety precautions in place. All of the safety questionnaires that Canadian Blood Services uses will be used in the for-profit system”? What do you say?

**Mr. David Harvey:** I say to them, that's right. We are very well equipped to fight the last war. But we should be afraid. Afraid is good. Afraid leads to vigilance.

We need to be looking at the future, as Dr. Swann referred to. It's what's coming next that we have to be concerned with. So any change we're making in policy needs to be changing towards increased safety, not falling back on the same kind of scientific arrogance and complacency and denial that we had in the 1980s that led us to say, “There's not really a problem.”

**M<sup>me</sup> France Gélinas:** When there was a serious one.

Do you see a way forward where Canada would be self-sufficient in plasma products?

**Mr. David Harvey:** I do. I was heartened to hear Dr. Sher say that there is a business plan going forward. But I'm also concerned about this attitude that I seem to be hearing, that it's a binary thing, that you either have paid plasma or you have shortages and that there's nothing in between—no.

I compare it to the Ontario electricity system. We didn't want coal plants, but we had them, and we had to rely on them for a while until we could phase them out. We're in the same situation here. We have a reliance on paid plasma products because we have no choice at the moment, but going forward we can shift resources. We can increase our reliance on Canadian, voluntarily donated plasma products. We may still have a percentage that we have to rely on from imported donor-paid products, but we can reduce it, and the more we reduce it the better.

**The Chair (Mr. Peter Tabuns):** You have 30 seconds left.

**M<sup>me</sup> France G  linas:** So this 30% that goes out and comes back, you think, could grow and could—

**Mr. David Harvey:** Absolutely. There are going to be some products where the market in Canada is just too small. We can't buy enough because these are made in huge pools. For us to send 30,000 units down to be pooled to make a particular product that we only buy a handful of vials of doesn't work—

**The Chair (Mr. Peter Tabuns):** I'm sorry to say that we're going to have to go on to the next party. The government: Mr. Fraser?

**Mr. John Fraser:** Thank you very much, Mr. Harvey, for being here today, and thank you for your work. You've spent a lot of time working to help people, find justice and try to create a system that will be better for all Canadians. I want to say that I was really glad to hear you bring up that paid-for plasma does not necessarily mean products that remain in our country. It hasn't been brought up by anybody today. It does not ensure supply.

I also liked your analogy with regard to coal-fired plants. We need to take a balanced approach, just because that's the prudent thing to do. That doesn't mean that you don't continue to work towards what your ideal is. To work towards your ideal, you have to uphold certain principles.

I'd like you to, if you could, tell me why you think that the voluntary blood system is so important to Canadians and Ontarians.

**Mr. David Harvey:** Dr. Swann covered that to some extent. It is safer. It's universally acknowledged to be safer to take blood from people who are donating for altruistic purposes. They've got nothing to gain.

If you walk in and they ask you, "Have you been to Britain in the last five years?", because there are CJD concerns—it's a valid question currently being asked—for the voluntary donor, they say, "Yes, actually, I went last summer." For the donor who is not voluntary but is there to make money, they're going to think: You know what? I feel

really well, and if I say I went last summer or five summers ago, I'm not going to get my \$20. So: "No, I've never been there."

You can't test for CJD. There's no test, so your front-line defence against that disease is the honesty of the donor. If you don't pay, you get a more honest answer.

**Mr. Granville Anderson:** That's common sense, for those of us who have it. It's logic. It's human nature. It's just a fact of life.

**Mr. John Fraser:** So why do you think it's important for us to pass this legislation quickly?

**The Chair (Mr. Peter Tabuns):** You have 30 seconds.

**Mr. John Fraser:** Quickly.

**Mr. David Harvey:** Okay. It was important. This is a fundamental recommendation of Justice Krever's. It wasn't necessary up until this point to put it into law because there was nobody actually proposing to open clinics. As soon as that happened, it became necessary to deal with it quickly.

**Mr. John Fraser:** Thank you.

**The Chair (Mr. Peter Tabuns):** Thank you very much. Now to the opposition: Mrs. Martow?

**Mrs. Gila Martow:** Thank you for your presentation. I think that everybody, whatever their presentation or their line of questioning is, agrees that we obviously want the blood supply, our blood products and our plasma products, to be as safe as they can be. We all know that, but, given the circumstance—which is that, as you said yourself, there are some products where it is not feasible—and given the fact that 70% of certain blood products are coming from the States, where people are being paid for the products, we just can't ignore that. We have to accept that.

I agree that we want to encourage people to donate whenever they can. We have to make it easier, but it's actually getting harder for people to donate. We're having an aging population. We're having a crisis in the GTA in terms of traffic; if people are spending more hours in traffic, they have less time to go donate blood. I've had people say to me that they used to donate regularly, but now that it's taking them an extra hour a day, they're not donating anymore, because that was the time that they would have used to donate.

On principle, don't you feel that we're better off not backing ourselves into a corner where we might not have the actual products that we need, versus looking at other options?

**Mr. David Harvey:** I don't think we're in that corner. I think there's a lot of room for expansion within CBS to collect blood. Even if we were in a position where we had absolutely no choice but to pay, then the preferable procedure, for me, would be to have CBS pay.

**Mrs. Gila Martow:** I know, but if this legislation—

**Mr. David Harvey:** There's an exemption in the legislation for CBS which would permit that. It prevents the fragmentation of the system. It prevents losing all of those benefits of having a single operator, and it prevents blood from leaving Canada, never to return, except in the form of profits for a private corporation.

**Mrs. Gila Martow:** But right now, there are certain products that we're not even able to manufacture here. So why do you feel that that's acceptable?

**Mr. David Harvey:** We custom-manufacture them by sending our plasma to the factory and getting back our plasma. By doing that, we can choose from among the best manufacturers with the most advanced, safest processes in the world.

**The Chair (Mr. Peter Tabuns):** Thirty seconds left.

**Mr. David Harvey:** We're not bound to one place. We're not bound to political pressure to support the Canadian company and preserve the jobs. We saw what happened when we did that with Connaught. It was a disaster. It cost a fortune; it cost lives. We can't put ourselves in a captive position like that again.

**Mrs. Gila Martow:** It's about oversight and ensuring that the regulations are in place and, obviously, regulated.

**The Chair (Mr. Peter Tabuns):** Ms. Martow, thank you.

**Mrs. Gila Martow:** Thank you very much.

**The Chair (Mr. Peter Tabuns):** Thank you very much, Mr. Harvey. I appreciate it.

**Mr. David Harvey:** Thank you.