

## Coroner at Ashley Smith inquiry abruptly replaced

BY LINDA NGUYEN, POSTMEDIA NEWS JUNE 29, 2011



A Global TV frame grab of Ashley Smith, a 19-year-old Ontario inmate whose death at a Kitchener, Ont., prison is the subject of a coroner's inquiry.

TORONTO — The high-profile inquest into the death of inmate Ashley Smith in Ontario took a surprising turn Wednesday when the embattled coroner heading the proceedings was abruptly replaced.

Deputy coroner Dr. Bonita Porter will no longer be overseeing the hearings, which have faced numerous delays since they began.

A replacement was needed because Porter, who is scheduled to retire in November, was going to be unable to see through the anticipated nine-month inquest, according to a statement by the Ontario coroner's office.

Dr. John Carlisle has assumed responsibilities over the hearings, which will resume Sept. 12. Carlisle holds both medical and law degrees. Ontario Chief Coroner Dr. Andrew McCallum said in a statement the replacement was a result of scheduling and not Porter's capabilities.

This is just one of many controversies arising from the fact-finding inquest which has been tasked with determining the circumstances surrounding the 19-year-old Smith's death and whether similar deaths could be prevented.

The mentally troubled New Brunswick teenager died nearly four years ago after tying a ligature around her neck in a Kitchener, Ont., cell as prison guards watched.

The inquest will look at the last 11 months of her life during which time she was shuttled among 17 prisons across the country because of bad behaviour, overcrowding and staff fatigue. Smith was first arrested at age 15. The majority of her incarceration was spent physically constrained and in isolation.

From the start, Porter had attempted to maintain a tight rein on the proceedings and on a number of occasions expressed concern over media and public access to evidence.

Three rulings which were expected this week from Porter following a month of consideration have also been postponed and will eventually be decided by Carlisle, according to the coroner's office.

Carlisle will have to rule on whether to approve a publication ban request by Corrections Canada to blur the faces of all the prison guards in surveillance videos for their safety. He'll also have to decide if he will reverse an earlier ruling by Porter to exclude videos taken of Smith at Quebec's Joliette Institute months before her death showing her strapped to a gurney, forcibly injected with medication and duct-taped during a prison transfer.

A three-justice panel at Ontario's divisional court that reviewed the ruling found that Porter erred. One justice said it resulted in a "denial of natural justice" for Smith.

He will also review whether Porter was correct in threatening a contempt charge on lawyers involved in the proceedings if evidence was copied or distributed without the office's permission.

Meanwhile, some critics say missteps during coroners' inquests are a result of a flawed system that relies too heavily on medical examiners expected to run quasi-judicial legal proceedings without adequate training.

Lawyer Julian Falconer said the Smith family is "extremely frustrated" with Porter stepping down and does not know how a new coroner would be able to take over the proceedings without delay.

"Weeks, literally weeks have been lost," he said Wednesday. "The process has lost its way, quite simply. . . . It really calls into question the capacity of the chief coroner to run these cases."

He pointed to the number of judicial reviews of Ontario coroner's decisions — an average of six to 10 a year — as an indication of why these proceedings are not completing their mandate in a timely manner to "speak for the dead to protect the living."

"Four years is a long time; it is particularly troubling when one has regard to the fact there are people suffering from mental illness in our jail system that continue to be in peril," said Falconer. "We need to get down to the job at hand."

While refusing to comment on any current inquest, and speaking in general terms, he added that although coroners receive advice from their own lawyers, they're still in a "no-win scenario" when expected to apply the same level of knowledge as a judge or lawyer.

"Therein lies the problem. The doctor understandably, a very bright, intellectually accomplished person, is not simply a puppet for a lawyer," said Falconer, who co-wrote a book on the subject called the Annotated Ontario Coroner's Act. "They're going to make up their own mind in the end. Therein lies the problem with people who don't have process expertise."

"The bottom line is that these are judicial processes, best done by a judge unless there is a compelling reason," said Dr. Christopher Milroy, an Ottawa-based forensic pathologist who has worked on more than 500 death inquiries in Canada and the United Kingdom. "When we have fraud trials, we don't have accountants in charge of the court. When we have personal injury negligence cases, we don't have a surgeon in charge of the tribunal."

In Ontario, coroners who preside over inquests receive 3 1/2 days of legal training which is updated with a two-day review every two years.

Some provinces, such as Quebec, Nova Scotia, Alberta and Manitoba, head their death inquiries with lawyers or judges.

Montreal-based criminal lawyer Eric Sutton said the original purpose of a presiding coroner was to wade through complex medical facts but that is no longer required when most evidence can be explained by experts acting as witnesses.

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