



Coroner swap could imperil Ashley Smith inquest



An undated family handout photo of Ashley Smith, who took her own life in a federal institution on October 19, 2007. The photo was taken before she was incarcerated. (THE CANADIAN PRESS/Tom Hanson)

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TORONTO — The abrupt replacement of a coroner presiding over a high-profile inquest into the death of a troubled young woman in prison may have been improper and could throw the hearing into doubt, the teen's family asserted in a motion filed Wednesday.

As a result, they argue, the change should be undone and Ontario's chief coroner needs to fully explain why he removed Dr. Bonita Porter from the Ashley Smith hearing.

"The disclosed circumstances as to the removal of Dr. Porter raise far more questions than answers," Smith's family says in the motion.

"Failure to ensure that the current substitution order is legally valid could ultimately imperil the validity of the entire proceeding."

Smith, 19, of Moncton, N.B., choked herself to death in her cell in Kitchener, Ont., in 2007 after several years in custody and numerous prison transfers.

For months before the inquest finally got underway May 16, her family had been pressing Porter to make the process more open and accessible to the public.

On June 21, Porter promised to rule on three issues she had under reserve, but on June 29, Ontario's chief coroner, Dr. Andrew McCallum, replaced her with Dr. John Carlisle.

The change left Smith's family in a state of "utter shock and disbelief," according to their lawyer, Julian Falconer.

The motion to be argued before McCallum in September says none of the 13 parties with standing was given any notice about Porter's replacement nor given the chance to argue its merits.

The motion notes the change came just days after Porter promised to rule on three issues that had been the subject of much wrangling, but never did.

Instead, Porter said in a June 29 letter to the parties that she had decided to retire in November.

She and McCallum agreed it would be best to change coroners immediately because the inquest had only heard three days of evidence, she wrote.

McCallum then said the new presiding coroner would decide the various issues that had already been raised.

The family's motion maintains McCallum only had the right to remove Porter in the "rarest" of circumstances -- if he believed she was truly unable to continue presiding over the inquest.

"The prospective exercise of a retirement option some five months later cannot meet the definition of 'unable to continue' as contemplated by law," the family's motion states.

In addition, the family says Carlisle is not legally entitled to rule on the three matters that were argued before Porter.

Cheryl Mahyr, a spokeswoman for the coroner's office, said Wednesday it would be "inappropriate" to comment on the new motion.

At the time of the change, Porter was considering a court order as to whether the inquest should include videos from a Quebec prison that Smith's family says depict her being restrained and forcibly injected with medication.

She was also mulling a request from Correctional Service of Canada for the faces of prison guards to be blurred in videos.

The inquest is slated to resume Sept. 12.