

Ontario coroner to launch new Ashley Smith inquest

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By Thandi Fletcher

Ontario coroner Dr. John Carlisle has shut down the inquest into the prison death of New Brunswick teenager Ashley Smith and has ordered a new one.

The ruling was sparked by a motion filed last month by the Smith family.

It argued Carlisle — who in June replaced Dr. Bonita Porter — should hear arguments in three legal challenges that were heard by Porter when the inquest began.

“I find that, while some time may be lost in starting a new inquest, it is not likely to be more than would be lost by attempting to carry on the old and may indeed be less,” Carlisle wrote in his ruling, which was released Friday.

Smith fatally strangled herself in a segregated prison cell at the Grand Valley Institute in Kitchener, Ont., in October 2007. Prison guards watching over her were instructed not to intervene until she stopped breathing.

Smith was first incarcerated at age 15 for throwing crabapples at a postal worker. She remained behind bars after racking up hundreds of in-custody charges and spent almost all her time incarcerated in isolation until her death.

The controversial proceedings began last May under Porter and often have been delayed due to jurisdictional and legal challenges.

The inquest was supposed to resume earlier this month under Carlisle but it abruptly halted to hear the motion, which argued the inquest should be officially restarted and all evidence heard during the first three days of the proceedings recalled.

According to the family's lawyer, Julian Falconer, the family asked to re-start the trial because of what it described as multiple "procedural errors" in the original inquest.

"There are times when you have to recognize that the house you are trying to build has been put together on a very poor and defective foundation," he explained. "This is just one of those cases."

To just resume would force the process to continue on "jurisdictional shaky ground," said Falconer.

"This decision represents an opportunity to turn the chapter, and a fresh start is exactly what is called for," said Falconer.

Also at issue in the motion are three rulings which were not delivered by Porter prior to her departure.

She was supposed to decide:

- Whether Quebec videos showing the 19-year-old being drugged and restrained during a prison transfer could be shown to a jury;
- Whether the faces of prison guards should be blurred in videos entered into evidence; and
- Whether lawyers are susceptible to a contempt charge if they share evidence with the public.

The inquest was set to examine the last 11 months of Smith's life, when she was transferred to 17 different federal facilities across the country due to bad behaviour, overcrowding and staff fatigue.

Kim Pate, executive director of the Canadian Association of Elizabeth Fry Societies, said she hopes the new inquest will not exclude any evidence from being presented to the jury.

"We do not want to see the limitations on evidence that were being proposed by the coroner when Dr. Porter was in place," said Pate. "We feel that the full range of what happened to Ashley when she was in federal custody is vital, including the transfers . . . and the forcible treatments."

Although she is glad the inquest is closer to reaching a conclusion, Pate said she would have preferred to see the inquest continue without being restarted.

"All of the hiccups along the way and the delays have been very frustrating," she said. "We're now almost four years since Ashley died, and still have no more answers to questions than we had in the beginning."

Howard Rubel, the lawyer representing the Union of Canadian Correctional Officers, said his client is glad to see movement in the inquest again.

The delays in the previous inquest, which was scheduled to begin in November 2010 but only really got underway a few months later, were frustrating, said Rubel.

The many delays mean more inmates are being left at risk of falling victim to the same fate as Smith, he said.

“It’s been a year and a half since this thing was supposed to have really started, and now we’re back to the beginning,” said Rubel. “That’s getting a little ridiculous when you consider that the whole purpose of the inquest is to find what went wrong so it won’t happen again.”

Rubel said his client is hopeful the inquest will finally shed light on the issue of how correctional officers should deal with inmates who have special mental or emotional needs while in custody.

“But until we actually hear the evidence, and the jury has a chance to consider and to make their recommendations, we’re sort of stuck,” said Rubel.

Irwin Elman, chief advocate for the Office of the Provincial Advocate for Children and Youth, said the coroner’s decision to restart the inquest is a chance to “get it right” this time.

“I think it is really important to examine how we can learn from Ashley’s death and make sure it doesn’t happen again,” said Elman. “It’s oftentimes a good thing when a new person comes in to clear the slate and allow them to write their own story. I think the coroner needed that opportunity in this situation.”

No specific date was provided in Carlisle’s ruling for the inquest’s restart.

Although a new jury needs to be selected, Falconer said he doesn’t expect the process to take much longer than “a couple of weeks.”

“The truly regrettable part about all this is the jury that existed were energetic, enthusiastic and interested folks,” said Falconer.

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