

## Why so secretive? Ashley Smith inquest becoming a bad joke

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Dr. Bonita Porter is photographed leaving Coroners Court in Toronto on May 24, 2011 as an inquest into Ashley Smith's death continued.

After hours of legal argument this week, after a dozen lawyers had pounded her about the head over the importance of freedom of expression and an open and public inquest in a free and democratic society, Bonnie Porter offered what appeared to be a sincere thanks.

Pointing in particular to the media lawyers – Peter Jacobsen, who had acted for The Globe and Mail and CTV, and Paul Schabas, who was representing the Toronto Star and CBC – the presiding coroner at the Ashley Smith inquest beamed and said, “I assure you, the seriousness of the issue is not lost on me.”



[Ashley Smith incident in Grand Valley prison](#)



[Ashley Smith in prison days before her death](#)



[Prison video: Guards remove Smith's ligature](#)

The inquest adjourned then – Dr. Porter was reserving her decisions on three issues, one of which directly affects the scope of the inquest into the prison death of the 19-year-old Ms. Smith – and as people gathered up their things, there was optimism in the air, soft little cries of, “By Jove, I think she’s finally got it!”

Alas, if the seriousness of the issue wasn’t lost on her for that shining moment late Wednesday, it got lost in a whacking big hurry.

Perhaps Dr. Porter changed purses the next morning, and forgot to put the issue in the new one; perhaps it accidentally fell into the toilet (such things happen); perhaps she mislaid the damn thing on the subway.

But certainly, the first thing she did, or the Crown counsel advising her did on her behalf, the very next day was decide to delay the proceeding and shroud that hardly Earth-shattering decision in her usual secrecy for no apparent reason but that this is how she does business.

All but the media lawyers, Mr. Jacobsen and Mr. Schabas, were notified via “confidential memo” about the delay and the expected length of the delay. The lawyers who were informed about both weren’t allowed to tell the other lawyers what they knew, or anyone else.

The jurors, as is absolutely proper, were notified first, and according to the coroner’s senior counsel, Eric Siebenmorgen, “advised that their attendance will not be required next week.” What Dr. Porter apparently hadn’t yet figured out was exactly how much time she would need to write her decisions, and for some not-explained reason, the jurors apparently couldn’t be reached again until Monday to give them the anticipated return date.

Who cares? They knew enough not to come back to court for a week. Surely that much information could have been given to the two lawyers hired by the four news organizations. *You won’t get a decision for at least a week; the jurors have been told they have a week off.*

How hard would that have been?

But no, Dr. Porter decided – the confidential memo came with a cover e-mail noting it was being forwarded “at the Coroner’s request” – not to pass along the news to Mr. Jacobsen and Mr. Schabas.

As well, none of the reporters who have covered the inquest for two weeks, and who every day have filled out the absurd forms the coroner requires every time we want to get a copy of an exhibit, and whose e-mail addresses are on every one of those stupid forms, were notified either.

Instead, at about 7 p.m. on Thursday, a singularly unhelpful news release was put on the ministry’s site. I learned of it only secondhand.

None of this matters a pinch of coon-dung in the big scheme of things.

Dr. Porter has three decisions to make, all of which in my view could be made in a few minutes by a chimpanzee.

One is: must reporters be made to continue to use the stupid form?

Two is: should Dr. Porter rescind her order threatening lawyers with contempt if they share with reporters properly filed exhibits (in the interests of time and deadlines)?

Three, and most important: should she accept a joint submission from all counsel (but one, who took no position) that she should seize videos from Quebec's Joliette Institution that show poor Ms. Smith being forcibly injected with drugs just a few months before she strangled herself in her cell?

It was a *joint submission*. It means lawyers for all the parties with their diverse interests agree that these videos would help the jurors understand Ms. Smith's frame of mind at the time of her death. (Let's see: Three months before she ties a ligature around her neck, she's nine times drugged against her will. ... Hmmm. Could it have affected her state of mind?)

These are the issues, all affecting the openness of the inquest and one crucial to the breadth of its scope, which will take Dr. Porter at least a week to figure.

The delay seems massively excessive to me. But fair enough; she's entitled.

What's telling is that even this minor decision – the delay and for how long – she has turned into a state secret.

Funny, but one day this week, I got a note from a Globe colleague who was reading about the difficulty we were having with exhibits at the inquest. He is plugged into the Rana terrorism trial going on in Chicago, and is receiving e-mails from the fellow in charge of posting exhibits online the same day.

America, now there's a country where freedom of expression actually means something.