

Smith family's lawyer protests coroner switch

CHRISTIE BLATCHFORD, Postmedia News
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The troubled and oft-delayed Ashley Smith inquest has hit yet another snag - and this time it cuts to the very integrity of the Ontario coroner's system.

Lawyers for the family of the mentally ill teen who strangled herself in her jail cell and for the Canadian Association of Elizabeth Fry Societies Wednesday filed a motion for a special hearing into why the presiding coroner was abruptly replaced last month.

On June 29, Ontario Chief Coroner Dr. Andrew McCallum announced in a brief news release that Dr. John Carlisle would take over from Dr. Bonnie Porter, whose rulings during and conduct of the inquest were much criticized.

"This isn't about a specific adjudicator but whether we have independent adjudicators and whether the coroner's system has fallen prey to some form of political interference," lawyer Julian Falconer told Postmedia Wednesday in a telephone interview from Thunder Bay, Ont.

In a not-very-veiled reference to Porter, Falconer said: "If today's unpopular adjudicator can be replaced, what can happen tomorrow is that a courageous adjudicator can also be replaced."

The only hint of the reason for Porter's sudden replacement was a line in the news release that pointed to her pending retirement this fall.

With the inquest on hold until September and expected to last as long as a year, the easy inference was that she couldn't see it out to the end.

But Falconer, who represents Smith's family, and Breese Davies, for the Elizabeth Fry group, say in their motion that a coroner can be replaced in mid-proceeding only for reasons of incapacity.

And, they say, there's nothing to suggest Porter was unable to continue.

In fact the lawyers say "all evidence suggests" just the opposite - Porter's own letter to counsel on June 29 where she said she was exercising "her retirement option;" the fact that just the week

before she was replaced, she had convened court to tell the lawyers she was going to have the inquest webcast, and her promise to deliver three long-awaited rulings by June 30.

Clearly, the lawyers suggest, she was planning to stay at the helm.

Because the Coroners Act says a coroner can be replaced only if he or she "is unable to continue presiding over an inquest for any reason," Falconer and Breese say McCallum's intervention sets "a dangerous precedent" that leaves the system vulnerable to political machinations and the whims of personal convenience.

The lawyers say that in the absence of information surrounding the switch of coroners, "a reasonable apprehension exists that these proceedings have fallen victim to interference from 'on high' on the basis of convenience rather than true incapacity of the adjudicator."

They're seeking what's called a Section 25 hearing, held before Mc-Callum.

The lawyers also say Carlisle, who has been charged with issuing the rulings Porter was considering, is "not legally entitled to rule" on matters that were argued before her.

The inquest has been plagued by delay, controversial legal rulings - particularly Porter's refusal, later overturned by the Ontario Divisional Court, to see Quebec prison videos that show Smith being forcibly injected with anti-psychotic drugs - and allegations of secrecy since it belatedly stuttered to the start line last May.

The five-member jury heard little more than a week's evidence before the proceeding adjourned, at first temporarily, finally until the fall.

Smith's journey through the federal prison and hospital system came to an end at Kitchener's Grand Valley Institution early on the morning of Oct. 19, 2007.

The 19-year-old, who had developed a habit of "tying up," or wrapping ligatures around her neck, died alone in her segregation cell.

She spent most of the last three years of her life in custody, first as a youth, then as an adult, almost all of it in isolation.

Ironically, Falconer is in Thunder Bay this week for what amounts to another instance of the coroner's system under attack. There, he represents the Nishnawbe Aski Nation, a political organization.

Thursday, as the opening order of business, the inquest into the death of 15-year-old Reggie Bush will at least hear evidence about how juries are chosen and if they are truly representative or if, as it appears, they may exclude natives.

The native teen's body was pulled from a local river on Nov. 1, 2007, but as that inquest, and another, first began, families raised concerns that the jury rolls didn't include natives living on nearby reserves - and indeed, it appears that for the past decade, that was the case.

It was only this March that the Ontario Court of Appeal ordered provincial court officials to "give evidence of the jury roll" at both inquests.

In its decision, the court noted "the unwillingness" of officials and coroner's counsel "to be forthcoming" about whether natives living on reserves were included on the jury rolls.

In other words, McCallum, and the government, may have more to worry about than complaints about individual inquests. The ground beneath the coroner's system itself appears to be trembling.

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