

**ONTARIO
SUPERIOR COURT OF JUSTICE**

MASTER RONALD DASH

) Monday, the 22nd day of November,
) 2010
)
)

BETWEEN:

CORALEE SMITH, on her own behalf and as the
Litigation Administrator of the Estate of Ashely Smith,
deceased, DAWNA WARD and HERB GORBER

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA (in Right of the Ministry of Public Safety),
COMMISSIONER OF THE CORRECTIONAL SERVICE CANADA KEITH COULTER,
DEPUTY COMMISSIONER ONTARIO REGION NANCY STABLEFORTH, WARDEN OF
NOVA INSTITUTION FOR WOMEN ALFRED LEGERE, ACTING WARDEN OF GRAND
VALLEY INSTITUTION FOR WOMEN CINDY BERRY, DEPUTY WARDEN OF GRAND
VALLEY INSTITUTION FOR WOMEN JOANNA PAULINE, ASSISTANT WARDEN OF
GRAND VALLEY INSTITUTION FOR WOMEN LAUNA GRATTON, TRAVIS
McDONALD, KAREN EVES, BLAINE PHIBBS, SHERRY FAIRCHILD, CHARLENE
VENTER, VALENTINO BURNETT, MELISSA MUELLER, LIZ GIBBONS, GAETAN
DESROCHES, KENNETH ALLEN and CORRECTIONAL SERVICES EMPLOYEES JOHN
DOE AND JANE DOE.

Defendants

ORDER

THIS MOTION, made by plaintiffs (“the Moving Party”) for an Order compelling
production of documents from a non-party, was heard this 28th day of October 2010 and the
22nd day of November 2010 at the Courthouse, 393 University Avenue, Toronto, Ontario.

ON READING the motion record of the Moving Party, and hearing the submissions of counsel for the Plaintiffs; counsel for the defendants the Attorney General of Canada (“AGC”), Keith Coulter, Nancy Stableforth, Alfred Legere, Laura Gratton, Travis McDonald, Blaine Phibbs, Sherry Fairchild, Charlene Venter, Valentino Burnett, Melissa Mueller, Liz Gibbons, Gaeton Desroches, Kenneth Allen, Correctional Service Employees John Doe and Jane Doe; counsel for the non-party Ministry of the Attorney General of Ontario (“Ontario”); counsel for the non-party the Office of the Chief Coroner of Ontario, with counsel for the defendants Karen Eves, Cindy Berry and Joanna Pauline and the non-party Waterloo Regional Police Service not appearing:

1. **THIS COURT ORDERS** that pursuant to Rule 30.10 of the *Rules of Civil Procedure* and subject to the terms, conditions and limitations in this Order, Ontario shall produce to counsel for the Moving Party a copy of the Waterloo Regional Police Service records which became part of the Crown brief in relation to *R. v Burnett, Eves, Phibbs and McDonald*, with the exception of any documents originating from the Correctional Service of Canada (“CSC”), on or before January 10, 2011, unless varied on the consent of the parties or by court order.
2. **THIS COURT FURTHER ORDERS** that subject to the terms, conditions and limitations in this Order, the AGC shall produce to the Plaintiffs documents originating from CSC that formed part of the Crown Brief (“CSC portion”), with the exception of

any documents that it takes the position are irrelevant or that duplicate the productions already made by the AGC by January 21, 2011.

3. **(1) THIS COURT FURTHER ORDERS** that any documents produced pursuant to this Order shall be edited to remove or sever the following information:

- (a) References to materials subject to the *Youth Criminal Justice Act*;
- (b) Fingerprints;
- (c) CPIC searches;
- (d) Fingerprint Service Numbers (FPS);
- (e) Foster parent information (name, address and phone number);
- (f) Dates of birth and addresses for witnesses;
- (g) Two pages of handwritten notes containing personal information of identifiable individuals;
- (h) Inmate names, other than those interviewed by the police, or who are relevant to a material issue in the within action;
- (i) Photographs of cell areas, other than those in which Ashley Smith was housed;
- (j) Any reference in police notes to incidents unrelated to this ongoing litigation, and such other redactions as were identified by the Waterloo Regional Police Service as follows:
 - i. Dates of birth, personal addresses and phone numbers, driver's licence numbers, ID card numbers and irrelevant physical descriptions for correctional officers except on a counsel-only basis described in clause

- 3(2), with dates of birth to be provided only in the event that a witness cannot be located;
- ii. Irrelevant personal information about inmates other than Ashley Smith;
 - iii. Motor vehicle numbers (VINs, license plate numbers);
- (k) Any other personal information subject to the *Privacy Act* not relevant to a material issue in the action;
- (l) Names, addresses and telephone numbers of members of the public who are not employees of the Correctional Service of Canada or the Waterloo Regional Police Service and who are not relevant to a material issue in the within action;
- (m) Maps of the inside of federal penitentiaries, except areas where Ashley Smith was housed;
- (n) Names and descriptions of tools used by the Correctional Service of Canada in uses of force and the amounts used, except in relation to uses of force against Ashley Smith;
- (o) The location in which use of force tools are housed;
- (p) Solicitor-client privileged information;
- (q) Personal or business telephone, fax numbers or addresses associated with Correctional Service of Canada employees;
- (r) Numbers identifying particular cells or pods within federal penitentiaries, except those where Ashley Smith was housed.

3(2). THIS COURT FURTHER ORDERS that Ontario and the AGC shall produce to counsel for the moving party information contained in the records, as outlined below subject to the following conditions in addition to the more general conditions of this order:

- (a) For the limited purpose of locating witnesses, counsel for the moving party will be provided with contact information of witnesses, business addresses of Correctional Service of Canada employees, or personal addresses where the individual is no longer a Correctional Service of Canada employee, and in the event that a witness cannot be located with the use of this information, the individual's date of birth;
- (b) Counsel for moving party shall not disclose the documents containing this information or their contents to any person, including a party to the within action and counsel for the moving party may disclose this document or its contents to counsel for another party if that counsel also agrees to the terms in paragraph 3 (2).

3(3). THIS COURT FURTHER ORDERS that the AGC shall produce to counsel for the Moving Party information contained in the records, as outlined below subject to the following conditions in addition to the more general conditions of this order:

- (a) For the limited purpose of determining the proximity of an inmate to Ashley Smith while housed within a correctional facility, counsel for the Moving Party will be provided with the numbers identifying the particular cells or pods within federal penitentiaries where, at the relevant time for this action, inmates were housed who directly saw or heard events relevant to a material issue in the within action;

(b) Counsel for Moving Party shall not disclose the unredacted documents containing this information or their contents to any person, including a party to the within action and counsel for the moving party may disclose this document or its contents to counsel for another party if that counsel also agrees to the terms in paragraph 3(3).

4. **THIS COURT FURTHER ORDERS** that Ontario shall provide a copy of the Waterloo Regional Police Service records which became part of the Crown brief in relation to *R. v Burnett, Eves, Phibbs and McDonald* to the AGC as soon as possible and in any event by December 14, 2010 for the limited purpose of:

- a. Identifying any additional redactions that the AGC takes the position are necessary in accordance with clause 3, above;
- b. Identifying any additional redactions that the AGC takes the position are necessary on the basis of relevance.

5. **THIS COURT FURTHER ORDERS** that the AGC shall make any additional identified redactions in accordance with clause 3, above, to the Waterloo Regional Police Service records from Ontario and return the redacted records to counsel for Ontario before January 10, 2011.

6. **THIS COURT FURTHER ORDERS** that the AGC shall provide to Ontario a list of the documents in the Waterloo Regional Police Service records that it takes the position are

irrelevant before January 10, 2011 and those documents will not form part of the production to the Plaintiffs to be made on January 10, 2011.

7. **THIS COURT FURTHER ORDERS** that any dispute between the parties as to relevance and privilege of documents in the Crown brief will be determined by the Court.

8. **THIS COURT FURTHER ORDERS** that the production of documents pursuant to this Order is subject to the following conditions:

(a) All documents produced pursuant to this order are subject to Rule 30.1.01;

(b) If any party seeks to alter or waive the application of Rule 30.1.01, in addition to any other party to whom notice is required under the *Rules of Civil Procedure*, notice shall be given to the following persons:

1. The Ministry of the Attorney General of Ontario;
2. The Office of the Chief Coroner of Ontario unless the inquest into the death of Ashley Smith is concluded;
3. On a best efforts basis to any person who can be identified in any document over which the application of Rule 30.1.01 is sought to be waived or altered.

9. **THIS COURT FURTHER ORDERS** that the Moving Party shall pay any normal or reasonable production costs incurred by Ontario and the AGC in the course of making the

production ordered to the Plaintiffs. The AGC shall bear his own costs of obtaining his own copy of the material to be produced.


10. THIS COURT FURTHER ORDERS that should any party discover that information clearly covered under one of the categories listed in paragraphs 3, 4 and 6, above, has been inadvertently disclosed, that the party shall disregard this information and cause it to be redacted from their copy of the records, and alert Ontario and the AGC, as appropriate, as soon as possible of the inadvertent disclosure.

11. THIS COURT FURTHER ORDERS that there shall be no costs against the non-parties, with the determination of whether to award costs as between the parties to be left to the discretion of the trial judge.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 29 2010

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



Master Ronald Dash

CORALEE SMITH et al.

Plaintiffs

-and- ATTORNEY GENERAL OF CANADA et al.

Defendants

Court File No: 09-383001

**ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced in Toronto**

357044

ORDER

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