

SUPERIOR COURT OF JUSTICE – ONTARIO**MASTER DASH:**

Action: Smith v. Attorney General of Canada
Court File Number: Cv-09-383001

Conference held: April 6, 2010

Counsel:

Julian Falconer and Jackie Esmonde, fax no. 416-929-8179, *for the plaintiffs*
Nancy Noble, fax no. 416-973-5004, *for the defendant AGC and various employee defendants*
David Brooker, fax no. 416-225-7112, *for the defendant Pauline*
Reginald McLean, fax no. 416-512-1212, *for the defendant Eves*
Bijon Roy, fax no. 1-613-567-2921, *for the defendant Berry*

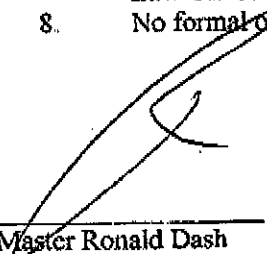
Endorsement:

[1] In this case managed action the family of Ashley Smith claims damages from the AGC and various Corrections staff arising out of Ashley's death on October 19, 2007 while incarcerated. The claim is based on breach of law and policy, conspiracy, negligence, infliction of mental suffering, abuse of public office, false imprisonment and breach of fiduciary duty. It is alleged that the defendants unlawfully transferred her and maintained her in segregation without required review and that guards watched Ashley choking herself without assisting as they were instructed not to enter her cell unless she had stopped breathing. There have been several investigations into the death and a date for an intended inquest has yet to be set. The AGC has not filed its statement of defence. The statement of defence served did not list each individual defendant being represented by the Department of Justice in the document title on page 1 and on the back page and as a result was not accepted for filing by court staff. It must be redone. The AGC and the other individual defendants have been contemplating a motion to strike the claim as against the individual defendants, probably under Rule 21, but no motion has yet been served. It appears that documentary production, particularly from the AGC, will be extensive. The AGC, who has known of this action for approximately five months asks for a further six months to serve their productions so that it would be as complete and organized as possible. I agreed with the plaintiffs that that was unreasonable and would result in unnecessary delay. Further, as the same productions will be made by AGC whether or not the individual defendants are removed from the action, documentary production need not await the result of any Rule 21 motion. Criminal charges against four of the defendants were withdrawn during the preliminary inquiry and the plaintiffs now seek production of the Crown Brief and will serve a *DP v. Wagg* motion.

[2] Order to go as follows:

1. The defendants Attorney General of Canada and individual defendants represented by the Department of Justice shall revise, serve and file and their statement of defence by April 9, 2010.
2. The defendant Attorney General of Canada shall serve its signed List of Documents and all other parties shall serve sworn affidavits of documents together with copies of Schedule A productions by July 15, 2010. Parties are encouraged to serve their productions electronically and to avoid paper production of a duplication of documents.
3. If a motion to strike the claim as against the individual defendants is to be brought, the moving parties must book a return date for the motion in Motions Scheduling

- Court and serve their motion records no later than May 21, 2010.
4. Responding materials to the motions to strike must be served by June 30, 2010.
 5. In any event, all defendants shall advise the plaintiffs as soon as instructions are received whether they are or are not bringing a Rule 21 motion.
 6. If the defendants are instructed not to bring a motion to strike, the plaintiffs shall propose and all parties shall attempt to agree upon a discovery plan. In the event that the parties cannot agree, any party may request a case conference.
 7. The plaintiffs' motion under rule 30.10 for production of the Crown Brief shall be heard by Master Dash in his regular motions court on **May 31, 2010** (60 minutes to be set aside). The motion record must be served on the defendants and on the Crown Law Office Civil by April 16, 2010.
 8. No formal order is required.



Master Ronald Dash
Date: April 6, 2010

Notes:

The registrar for Master Dash is Ms Christine Meditskos, 416-327-9355
The case management fax number is (416) 326-5416

Telephone conference arrangements are made by the responsible person connecting all parties on the telephone conference line and then calling in to Master Dash at (416) 326-8106. Any administrative inquiries shall be directed in advance to Master Dash's registrar at (416) 327-9355. If your office does not have conference facilities, use the Conference Operator service provided by your telephone service provider.