

FORM 37A - NOTICE OF MOTION
Rules of Civil Procedure, (Rule 37.01)

Court File No: 162/11

IN THE MATTER OF an inquest into the Death of Ashley Smith**AND IN THE MATTER OF** an application pursuant to section 2 of the *Judicial Review and Procedure Act*, R.S.O. 1990 c. J1**AND IN THE MATTER OF** an application for relief in the nature of *certiorari* and *mandamus* in respect of the ruling of Dr. Bonita Porter, Coroner, dated March 28, 2011**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT****BETWEEN:****CORALEE SMITH, PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH
and THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES****Applicants****and****BONITA PORTER, Coroner at the Inquest into the Death of Ashley Smith
("The Coroner")****Respondent****NOTICE OF MOTION**

THE Moving Party, the Correctional Service of Canada will make a motion to the court on April 18, 2011, or as soon after that time as the motion can be heard, at 130 Queen Street West.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- in writing as an opposed motion under subrule 37.12.1(4);
- x orally;

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THE MOTION IS FOR:

- a) An order quashing or setting aside the Summons to Witness, directed to Don Head, Commissioner, Correctional Service of Canada, dated April 7, 2011; and
- b) Costs of the motion.

THE GROUNDS FOR THE MOTION ARE:

- a) The purpose of the Summons to Witness, directed to Commissioner Don Head is to solicit information for purposes of the Inquest into the death of Ashley Smith, namely: videos of Ashley Smith on July 22, 23, and 26, 2007 at Joliette Institution; videos depicting duct taping of Ashley Smith on April 12, 2007; and all documentary records pertaining to the above-noted incidents;
- b) The Coroner's Inquest into the death of Ashley Smith is currently scheduled to begin on May 16, 2011. The start date for the Inquest has already been delayed numerous times from November 1, 2010, to January 10, 2011, to January 31, 2011, to April 4, 2011, and finally to May 16, 2011;
- c) On March 25, 2011, Dr. Porter issued a Ruling in which she dismissed a motion to obtain the additional material described in paragraph (a), and further refused to issue a summons to the Commissioner of Correctional Service of Canada;
- d) A judicial review of that Ruling was commenced by way of Notice of Application, issued on March 31, 2011;
- e) The judicial review has been scheduled to be argued before a panel of this Honourable court on May 2, 2011;
- f) The relief sought through the summons is the exact relief that was sought at the motion before the Coroner, and is set to be judicially reviewed May 2, 2011;
- g) Commissioner Head has no knowledge of issues relevant to the Application for judicial review of Dr. Porter's Ruling dated March 25, 2011;
- h) The Commissioner of Corrections "has the control and management of the Correctional Service of Canada and all matters connected with CSC, under the direction of the Minister." Commissioner Head was not the Commissioner at the time of Ashley Smith's death;
- i) Commissioner Head's personal knowledge and involvement with the Ashley Smith matter as it unfolded is extremely limited and would not assist the court in considering whether or not Dr. Porter's decision at issue was appropriately decided;

- 2 -

- j) The materials sought are neither relevant to the judicial review application, nor are they material or necessary to the "verdict" that an inquest jury is mandated to arrive at, and in any event that is the determination that this Honourable court will make on the judicial review application on May 2, 2011;
- k) There is no reasonable and relevant evidentiary basis for the issuance of the summons;
- l) Dr. Porter's decision regarding the additional information should stand, until this Honourable court has had the opportunity to hear arguments regarding whether or not her decision was taken in error – that is the very purpose of the judicial review application;
- m) The applicants' issuance of the summons is an improper attempt to circumvent the judicial review process. The Coroner's decision must stand absent this Honourable court's upcoming decision on the judicial review of the Ruling at issue;
- n) The summons to examine Commissioner Head pursuant to Rule 39.03(1) is an abuse of process and contrary to the due administration of justice;
- o) It is contrary to the due administration of justice to require the Commissioner of Corrections to attend merely to provide videos and documents of which he has no special knowledge;
- p) Allowing the summons to stand will undermine the administration of justice by circumventing the judicial review process as well as to delay it, which consequently will also delay the already re-scheduled start date of the Inquest, and thus ought to be set aside;
- q) Such further and other grounds as counsel may advise; and
- r) Rules 25.11 and 39.03(1),(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) Summons to Witness, dated April 7, 2011 and cover letter;
- b) Affidavit of Jenie Sing, sworn April 13, 2011;
- c) The Motion Record filed in support of this Motion to Quash Summons; and
- d) Such other materials as counsel may advise, and this Honourable court shall permit.

April 13, 2011

DEPARTMENT OF JUSTICE

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CORALEE SMITH, THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH, AND THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES
Applicants

BONITA PORTER, CORONER AT THE INQUEST INTO THE DEATH OF ASHLEY SMITH ("THE CORONER")

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceeding Commenced at Toronto

**NOTICE OF MOTION
(MOTION TO QUASH SUMMONS)**

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