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SENT BY EMAIL

September 17, 2013

Ms. Nancy Noble
Department of Justice – Regulatory Law Section
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

Dear Ms. Noble:

Re: Commissioner's Non-Public Resistance to the Coroner's Summons

I am writing on behalf of the Smith family and CAEFS.

It has come to my attention that the Correctional Service of Canada has filed a motion to resist the issuance of a summons by Dr. Carlisle respecting the testimony of Commissioner Don Head of the Correctional Service of Canada. I understand that you have made a motion for reconsideration, off the public record and without notice to any of the parties. I understand that you have made written submissions to Dr. Carlisle off the record and without any notice to the parties. This tactic is contrary to the law, as set out in section 32 of the *Coroners Act*, which requires that all proceedings “shall be open to the public” (except in cases of national security). It is very disconcerting that earlier this month you would have advised counsel that you had instructions to serve a motion for reconsideration but utterly neglected to advise that you intended to do so *ex parte* and *in camera*. How can it be realistically argued that this kind of tactic serves the public interest? Rather, the distinct sense is that the Commissioner, by virtue of his status as the head of a major arm of the justice system, believes that he is beyond the reach of our public systems of accountability and in effect can make up his own rules.

How should Coralee Smith or all of the constituents represented by CAEFS interpret the actions of the Commissioner? How can one reconcile these kinds of maneuvers to avoid public accountability with the assurances of the Right Honourable Prime Minister Stephen Harper that Correctional Service of Canada would cooperate fully in the conduct of the Inquest proceedings into the death of Ashley Smith? How can one reconcile these same maneuvers to avoid public accountability in light of the assurances of Commissioner Head himself, who stated that “Correctional Service of Canada will continue to cooperate fully with the Ontario Coroner’s office with respect to the official inquiry into Ashley’s death”?

Please forward today all materials that you have filed with the Coroner in respect of the issuance of the summons for Commissioner Head. Please cease and desist from any further *ex parte* overtures to the presiding Coroner.

It is our intention, at the Coroner's earliest convenience, to make all of this a matter of public record in compliance with the section 32 of the *Coroners Act*, and in order to ensure that a full record exists regarding this troubling state of affairs.

Yours very truly,



Julian N. Falconer

cc: All parties (by email)