

## CORONERS COURT

IN THE MATTER OF the *Coroners Act*, R.S.O 1990, c. 37  
AND IN THE MATTER OF the Inquest into the Death of Ashley Smith

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### NOTICE OF APPLICATION

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**TAKE NOTICE THAT** the Moving Parties, Dr. Loys Jane Ligate, Dr. Carolyn Jean Rogers and Dr. Sam Swaminath (hereinafter referred to collectively as "the moving parties"), will make a motion to the Presiding Coroner, Dr. John Carlisle, M.D. ("Dr. Carlisle").

#### THE APPLICATION IS FOR THE FOLLOWING:

1. That Dr. Carlisle quash the Order and/or Direction provided by Jocelyn Speyer on September 10, 2012 and titled "SCOPE AND ISSUES IN FOCUS FOR ASHLEY SMITH INQUEST";
2. That in its stead, following submissions from and consultations with the Parties by the Presiding Coroner, Dr. Carlisle substitute a scope for the Inquest that is within the constitutional powers of a creature of the Ontario Legislature;
3. That the Presiding Coroner shall set a date whereby he will receive submissions from the parties with respect to the scope of the Inquest; and
4. Such further ancillary Orders and/or Directions as may be necessary to give effect to the foregoing.

#### THE GROUNDS FOR THE APPLICATION ARE:

1. *Constitution Act*, 1867 (U.K.), 30 and 31 Vict., c. 3, s. 92(13)
2. *Constitution Act*, 1867 (U.K.), 30 and 31 Vict., c. 3, s. 92(16)
3. *Constitution Act*, 1987 (U.K.), 30 and 31 Vict., c. 3, s. 91
4. Ontario's *Coroner's Act*, R.S.O. 1990, c. C. 37 ("the *Coroner's Act*").

### **Overview**

1. Ashley Smith died while in custody in the province of Ontario on October 19, 2007.
2. A mandatory inquest was ordered under Ontario's *Coroner's Act*.

### **The Scope of the Inquest**

3. The scope of the inquest as circulated by Coroner's Counsel on September 10, 2012 exceeds the jurisdiction of the Coroner by purporting to investigate matters outside the borders of the Province of Ontario and outside the constitutional jurisdiction of the Ontario Legislature, contrary to and beyond the authority conferred by the *Coroner's Act*.
4. In the alternative, the scope of the inquest does not limit the sphere of the inquest to matters which are within provincial legislature jurisdiction and within the authority conferred by the *Coroner's Act* and the *Constitution Act*.
5. The scope of the inquest as presently constituted contemplates an inquest which is *ultra vires* and proposes an investigation into matters within the exclusive legislative jurisdiction of the Government of Canada that can only be dealt with through the authority of Parliament and into matters within the exclusive legislative jurisdiction of one or more other Provinces, that can only be dealt with by those respective provinces.
6. Death, and the investigation of its causes, is constitutionally within the exclusive jurisdiction of each provincial legislature as constituting a matter of local or private nature in each respective Province.
7. The proposed scope purports to direct the inquest to investigate the death of an inmate in an adult Penitentiary operated by the Correctional Service of Canada (CSC). The CSC is a federal undertaking.
8. The Coroner's only authority is conferred through provincial legislation which limits the Coroner's authority to the province of Ontario.

9. The proposed scope is *ultra vires* in that it threatens to invade the legislative jurisdiction of other provinces, contrary to the *Coroners Act* and the division powers.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE PROVIDED IN SUPPORT OF THE APPLICATION:**

1. The Notice of Application, herein;
2. The Compendium of the Moving Parties;
3. The Moving Party's Factum and Book of Authorities; and
4. Such other documents and evidence as counsel may advise and the Presiding Coroner may permit.

DATED this 27th day of September, 2012

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