

Corrections officials withholding dead inmate's records: lawyer

By Laura Stone, Postmedia News July 24, 2010



OTTAWA — The Correctional Service of Canada is still withholding information that is critical to piecing together the short and tragic life of Ashley Smith, a teenager who killed herself while incarcerated at an Ontario prison, an advocacy group is charging.

In April, after a lengthy legal battle, the Canadian Association of Elizabeth Fry Societies won the right to access Smith's prison files.

It had been trying to access them since before the 19-year-old hung herself in a cell at the Grand Valley Institution in Kitchener, Ont. Initially it was a bid to get the inmate help, but after her death, the group continued its fight in the hopes of preventing similar cases in the future.

Lawyer Kris Klein, who represents the offender-rights group, said that in April a federal court judge ordered the correctional service to release Smith's records up until her death on Oct. 19, 2007.

After abandoning an appeal of the decision, the correctional service provided Smith's records to Fry's executive director Kim Pate at the end of last month — but only until June 2007.

“Unless the government does release the information . . . we'll have no choice but to somehow get back to court,” said Klein.

“We’re pleased that at least we got that, after such a long battle. But it’s bittersweet, because probably the most relevant, pertinent, and important information is the information from the last few months of her life,” said Klein.

Before her death, Smith formally requested on May 31, 2007, under the Privacy Act that the service release her private records to the Elizabeth Fry Society and Pate, who regularly works with inmates.

Pate filed on Smith’s behalf an access-to-information request in June of that year asking for detailed records of Smith’s incarceration, including staff assaults, prison transfers and psychiatric evaluations. She was told the service needed 30 extra days on top of the normal 30 to complete the request.

When the information never arrived, Pate filed another request in early October 2007, updating her previous request to include the time that had passed.

Less than a month later, Smith was dead.

The correctional service eventually turned down Pate’s requests, saying it could not hand out information of a deceased inmate. Pate took the case to federal court, and on April 29 of this year, Federal Court Justice Michael Kelen ordered the “personal records of Ms. Ashley Smith” that were filed with the court “shall be disclosed to the applicant forthwith.”

The service contends it has complied with the first of two requests that was made by Pate on behalf of Elizabeth Fry, and has “released the information we can make public.”

“We are aware of their second request and are currently reviewing the matter,” said spokeswoman Christelle Chartrand.

“Information included in any offender’s files is subject to the Privacy Act. Disclosing personal information publicly can lead to legal action against the Service under Canadian law,” said Chartrand.

She added that the service “respects Canada’s legal process and the decisions of the courts.”

Smith was imprisoned in her native New Brunswick at age 15 for breaching her probation after an original incident in which she threw crab apples at a postal worker. She racked up institutional charges that saw her time behind bars continually extended.

When she reached 18, she was transferred to New Brunswick adult-correctional system and then to the federal prison system, where she spent most of her time in segregation.

It was later determined that Smith was suffering from mental-health problems. The ombudsman of the federal prison system released a report last year that found serious, “preventable” failures in the prison and health care systems leading up to Smith’s death.

Her case has also been taken up by youth advocates who protest the proposed changes to the Youth Criminal Justice Act.

Pate said she hopes Minister of Public Safety Vic Toews will encourage the correctional service to release the documents up until Smith's death, so the details will finally be known.

"To not be able to have access to this kind of information, even to know what really happened, only compounds the tragedy and the injustice," she said.

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