



Court case may affect way police take notes

Shannon Kari, National Post

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The rules on what a police officer in Ontario is allowed to do in the hours after any incident involving serious harm or death to a civilian are at the centre of a closely watched Superior Court hearing in Toronto this week.

The families of Douglas Minty and Levi Schaeffer, two men fatally shot last year by Ontario Provincial Police officers in unrelated incidents, are asking the court for guidance, in a case that could affect police across the province.

The dispute is over the notes that officers are required to take as a result of their normal professional duties.

The families want the court to order a halt to a common practice in Ontario where police officers make two sets of notes, if they might be subject to a probe by the Special Investigations Unit. The civilian investigative unit looks into any incident where there has been serious injury or death as a result of police force.

The first set of notes is presented to the lawyer representing the officer. Once the lawyer has approved the "draft" notes, they are transcribed into the memo books and turned over to the SIU.

The officers in the shootings of Mr. Minty and Mr. Schaeffer were "expressly authorized and instructed to delay completion of their notes," say legal arguments filed in Superior Court on behalf of the families. "The officers' conduct (and that of their superiors) in relation to the SIU investigations, is with respect, embarrassing to the administration of justice," writes Julian Falconer, lawyer for the families of Mr. Minty and Mr. Schaeffer.

The SIU did not lay charges against any officer in either of the fatal shootings.

The practice of permitting both a "subject officer" (someone who might face criminal charges) and a "witness officer" to retain the same lawyer should also be stopped, the documents say.

Lawyers representing the SIU have joined in support of the position of the men's families, at the hearing scheduled to begin tomorrow.

The arguments filed by the SIU stress that notes may not be used against an officer in a criminal prosecution, yet they are required to be written in a timely and accurate fashion. "Officers have a

professional duty to make independent and contemporaneous notes of an incident for the administration of criminal justice and other purposes," says the SIU in its court filings.

The issue is not specific to Ontario, the SIU notes. It refers to the findings of the Taman Inquiry in Manitoba last year, which was highly critical of the note-taking practices of officers investigating a colleague charged in a fatal impaired-driving incident.

The officers involved in the two shootings and OPP Commissioner Julian Fantino are arguing that it is not for the courts to change regulations in the provincial Police Services Act related to the rights of officers.

"That is the role of the legislature, which has itself declined to act on these comments and recommendations," state arguments filed on behalf of the OPP officers.

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