

Families push for changes to SIU rules

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Evelyn Minty, left, lost her son in OPP shootings this year. She wants a judge to change how such deaths are investigated.

Robyn Doolittle Crime Reporter

In a landmark case, the families of two men shot dead by OPP officers this summer have asked a Superior Court judge to forever change the way police lawyers handle such cases.

Across Ontario, police officers involved in fatal shootings are being instructed by superiors to speak with union lawyers and have their notes vetted before speaking to the Special Investigations Unit.

The SIU is a civilian agency that decides whether to criminally charge police officers in cases of serious injury or death.

In some cases, the same lawyer deals with both the subject officer and any witness officers. This, some have suggested, provides an opportunity for collusion, and at the very least could taint the memory of anyone involved.

In September, SIU Director Ian Scott cleared an OPP officer of wrongdoing in the shooting death of Levi Schaeffer, declaring there was no way to determine what happened, because

the two officers involved – there were no other witnesses – had their notes approved by a lawyer before the SIU could read them.

Lawyer Julian Falconer, who is acting on behalf of the families, has asked a judge to stop this practice.

"The families are going to court to get a judge to tell the OPP how to behave in shooting investigations. That this should even be necessary is a sad commentary," he said. "It's high time that the courts bring an end to this kind of nonsense."

A lawyer representing both the subject and witness officer, as in the Schaeffer shooting, is required to share information between the two. Falconer and Scott argue this contradicts a section of the Police Services Act that states: "The chief of police shall segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews."

Similarly, notes are to be prepared independently and directly after an incident.

In the Schaeffer case, the officers prepared a set of confidential notes for their lawyer. Once those were approved, they created a second set for their official memo book.

Ruth Schaeffer, 50, whose schizophrenic son was killed June 24 by an OPP officer north of Thunder Bay, said her family would never have closure. "We're going through with this court case because no mother should ever have to go through this," Schaeffer said.

She was joined by members of Douglas Minty's family. Minty, who had a mental disability, was fatally shot by police on June 22. Scott cleared officers of wrongdoing.

Andrew McKay, the lawyer who represented the OPP officers in the Schaeffer shooting, said he had not had time to fully read the application, but it was interesting.

"The inference that the officers and the lawyers are colluding to cook the notes is preposterous. That simply doesn't happen," he said, adding this has always been the practice and "we've done absolutely nothing wrong."

Reached Wednesday night, the SIU's Scott said: "I hope this application leads to the SIU being able to conduct more thorough investigations by being able to rely on independent and contemporaneous notes from police officers."