

Appeal judges skeptical about police “note vetting” claim

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Tracey Tyler Legal Affairs Reporter

Police officers involved in use of force against civilians are not getting their notes vetted by legal counsel before handing them over to investigators, a lawyer insisted Thursday.

But a panel of Ontario Court of Appeal judges challenged lawyer David Humphrey’s assertion.

After 30-year-old Levi Schaeffer of Peterborough was shot dead by an Ontario Provincial Police constable on June 24, 2009, police association lawyer Andrew McKay pronounced the officer’s initial report on the incident “excellent” and told him to go ahead and write up his notebook.

“It’s very difficult to avoid the inference that what we have here is (an officer) saying ‘Here are my draft notes’ . . . the lawyer looks at them and says, ‘Hey, they’re terrific,’ ” remarked Justice Robert Sharpe. “So how is that not asking a lawyer to vet the notes?”

“We’re just trying to understand whether it’s appropriate to have your notes vetted,” added Justice Paul Rouleau. “Because that’s what’s happening under any other name.”

Humphrey, who represents McKay, the lawyer who described the notes from the Schaeffer shooting as “excellent”, told the court the initial account an officer provides to a lawyer is a privileged document that functions as “instructions” to counsel.

While it would be “quite improper” for a lawyer to tell a client what to say, there is nothing wrong with giving legal advice to officers before they prepare their formal notebook entries for the Special Investigations Unit, the independent agency that probes these incidents, Humphrey argued.

Everyone benefits because it allows officers to prepare more detailed accounts, he said.

The “optics” are bad, argued Julian Falconer, a lawyer for the families of Schaeffer and Douglas Minty.

Minty, 59, was killed by an OPP bullet two days before Schaeffer. Both men suffered from mental illness.

Their families want a court to rule on whether practices commonly followed by officers in the course of SIU investigations, including the “lawyering” of police notebooks, is authorized under law or Police Services Act regulations.

The panel reserved its decision.



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