



## Be vague about how many times you shoot, officers in SIU probes told

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Officers under investigation for shooting civilians should be vague about how many times they fired their guns, a police lawyer recommends.

Most people who shoot at armed suspects are unsure how many times they fired and officers must allow themselves some margin of error so their accounts stand up with investigators, Gary Clewley advised in a Hamilton Police Association newsletter in 2009.

In that same newsletter, the Ontario Court of Appeal was told Wednesday, Clewley suggested how officers might explain a shooting in their notes or reports to the Special Investigations Unit, the independent civilian agency charged with probing the use of deadly force by police.

“The obvious needs to be said again and again,” the lawyer wrote. “ ‘He pointed the firearm at me and, fearing for my life and the life and safety of my fellow officers and members of the public, I fired at him several times.’ ”

Police in Ontario often prepare two sets of notes after a shooting — one for their lawyer and another version for public consumption, the court was told Wednesday, with officers commonly instructed not to write up anything for the SIU without speaking to a police association lawyer first.

The problem, argues SIU director Ian Scott, is that it becomes impossible to know whether an officer’s notes are a truly independent recollection of what happened.

“It’s a stunning situation that police officers being investigated for the death of a citizen keep two sets of notes,” said Julian Falconer, a lawyer representing the families of Douglas Minty and Levi Schaeffer, mentally ill men shot dead by Ontario Provincial Police two days apart in June 2009.

“Nowhere else in our justice system does that happen.”

The families want a court to rule on whether keeping double sets of notes and other practices commonly engaged in by officers involved in SIU investigations are authorized by law.

The case in many ways has become a battleground for control over SIU investigations, Falconer told appeal court justices Robert Sharpe, Robert Armstrong and Paul Rouleau.

Lined up against the families are police chiefs and police unions from across the province, who persuaded a Superior Court judge that the Mintys and the Schaeffers have no authority to bring their question before a court. The families are appealing that decision.

In many cases, police delay calling the SIU after a shooting and police association lawyers are sometimes on the scene before SIU investigators, Falconer said.

Minty's mother and siblings are questioning why the OPP waited until one hour and 23 minutes to notify the SIU after he was shot on June 22, 2009.

The delay gave the OPP a chance to speak with two civilian witnesses to the shooting first and take statements from them before the SIU interviewed them, the court was told.

Minty, 59, was shot five times after becoming agitated by a visit from a door-to-door salesman. Reports from the scene said he was waving a utility knife when he was shot just after 8 p.m.

The O.P.P. didn't contact the SIU until 9:40 p.m., when Minty died.

The situation was serious from the outset — “they put five bullets into him” — and “there would be no reason under the sun” for police to wait before reporting what happened, Falconer said in an interview.

Schaeffer, 30, was camping on Osnaburgh Lake in Northwestern Ontario on June 24, 2009 when he was questioned by OPP officers investigating the theft of a boat. One of them fired two shots and Schaeffer was dead.

In her notebook later, Const. Kris Wood observed that police lawyer Andrew McKay had informed her that her notes about the incident were “excellent” and that she should go ahead and write up her notebook.

The appeal continues.

