

Ont. lawyers pulled from SIU case against OPP

Thursday, May 13, 2010

CBC News

Ontario Attorney General Chris Bentley is defending the removal of four government lawyers from a case involving the province's Special Investigations Unit, the Ontario Provincial Police, and the force's commissioner, Julian Fantino.

Just hours before the court case began Thursday in Toronto, the government lawyers from the Ministry of the Attorney General withdrew their representation for the SIU, which has alleged that Fantino and OPP officers violated the Police Act regarding SIU investigations.

Earlier this week, it came to light that Ian Scott, the director of the SIU, together with the signed backing of the four provincial government lawyers, had taken the unprecedented step of siding with a pair of grieving families of two men shot and killed last summer by OPP officers.

Bentley said the four government lawyers withdrew — allowing the SIU to get independent counsel for the case — because there was a concern the government lawyers were becoming the focus of the case.

New Democrat MPP Peter Kormos noted other government lawyers are still working on the case, representing Fantino.

SIU accusations

The SIU has accused Fantino and a number of his officers of breaking the law by failing to properly co-operate with probes into the shootings.

The watchdog has accused Fantino of failing to ensure officers promptly notified the SIU of one case last June.

In a second incident, Scott has accused Fantino of failing to ensure officers were properly segregated by allowing them to consult the same lawyer and to prepare two sets of notes — only submitting a final version of events vetted by their lawyer.

The SIU had the four Ministry of the Attorney General lawyers draft its legal position and sign the statement of facts prepared for Thursday morning's court hearing.

Seeking dismissal

In court Thursday, Justice Wailan Low heard a motion by the Ontario Provincial Police Association to have the case thrown out. The association says that what its members did was legal.

Several other police groups, including the Police Association of Ontario and the Ontario Association of Chiefs of Police, were seeking intervener status in the case.

Also in court were about 25 family members and friends of the two dead men — Doug Minty and Levi Schaeffer.

Minty, a 59-year-old with a mental disability, was shot five times on June 22, 2009, by an OPP officer. Minty had become agitated as the result of a visit from a door-to-door salesman, and police were called to the house.

"I want answers to Doug's death," said his mother, Evelyn Minty. "It should never have happened."

John Minty, a brother of Doug, said he was astounded at how many police organizations were in court.

"I guess if I was in any way cynical, I'd believe they are trying essentially to spend us out of the case, that we'll run out of money before they will," he said.

Schaeffer, 30, of Peterborough, Ont., suffered from schizoaffective panic and personality disorder. On June 24, 2009, Schaeffer was camping near Osnaburgh Lake when he got into an altercation with the OPP, which resulted in an officer shooting twice and killing him.

Lawyer Andy McKay, who represented the OPP officers in both the shootings, denied getting a draft set of notes about the events in question.

"There was no draft set of notes," he said. "There was none whatsoever. It was privileged communication between a lawyer and his client."

During the court proceedings, the judge challenged the family's lawyer, Julian Falconer.

"Had your clients brought a civil action, this issue of the law could have gone to court, you could have a motion with a full evidence record, and this matter could go to trial," Low said.

Falconer replied that would leave families waiting four to six years for answers, if the families weren't wiped out by the legal costs.

Falconer pointed to a series of judges reports and a 2008 report by Ontario's ombudsman calling for change in the police note-taking practice.

"It's been looked at repeatedly. There is political paralysis on this," explained Falconer on why they are asking the court to wade in with a ruling.

"The concern expressed by police interests is an awesome lobby. Laws don't get followed. People make people not follow the laws because of this powerful [police] lobby. Police chiefs have all allowed it to happen, and officers don't get segregated."

Falconer pointed to the dozens of family and friends of the slain men in the court, as well as the numerous policing groups asking to intervene in the case, as proof of the intense public interest and a reason the judge should hear the case.

The hearing is to continue Friday.