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Court to hear families' appeal in separate police shootings

Linda Nguyen, Postmedia News
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Family of Douglas Minty — John Minty, left, his mother Evelyn Minty, centre, and sister Diane Minty, right — are going to be back in court on Wednesday. Photograph by: Peter J. Thompson, National Post

TORONTO — The families of two men who were shot and killed by police two years ago in unrelated incidents are heading to Ontario's highest court for an appeal on whether changes are needed to how police forces co-operate with the province's independent police investigator.

A three-justice panel of the Ontario Court of Appeal will hear the potentially precedent-setting case beginning Wednesday to determine whether police officers involved in incidents that lead to serious injury or the death of civilians should continue to be permitted to consult with lawyers before submitting their notes to the province's Special Investigations Unit.

The families of Douglas Minty and Levi Schaeffer, along with the SIU, argue that notes may become tainted if current provisions continue, allowing witness officers to confer with anyone, including lawyers, and wait until the end of their shifts before producing them to investigators.

"These notes are used in court processes, they are relied upon to give evidence and it's very important that the notes are untainted and not influenced by any sources," said SIU director Ian Scott on Tuesday.

He said "firm guidance is needed" because in the past, investigators with the agency probing police have had to wait hours before being called to a crime scene or receive any incident notes.

In June 2009, Minty, 59, was fatally shot after approaching an Ontario Provincial Police officer with a knife outside his mother's home in the small town of Elmvale, 120 kilometres north of Toronto.

Two days later, Schaeffer, 30, was killed by another officer near a remote lake north of Thunder Bay. Both men had a history of developmental or mental issues.

None of the officers involved faced criminal charges in the shootings.

In the past decade, out of 45 fatal death investigations, only one police officer has been charged by the agency.

Last month, a number of changes to the province's Police Services Act came into effect as a result of the legal action by the families and a report released last April by former Chief Justice Patrick LeSage.

The provisions now prohibit witness officers and officers under investigation from sharing the same lawyer, require notes to be written by the end of a shift except if they're excused by the police chief and explicitly prohibit officers directly involved in the same incident from communicating with each other until the SIU completes its interviews.

But Minty's sister, Diane Pinder, said these changes are not enough.

"This was a tragedy that never should've happened but we're determined to see it through and hopefully changes are made," she said.

Pinder said not immediately segregating witnesses at a crime scene just because they're officers, or allowing them hours before taking their statements, "throws into doubt" the whole transparency of the investigations by the SIU.

"It really challenges your faith in the justice system," she said. "We could do nothing and what happened to our brother could happen again to someone else, and it could keep happening."

Schaeffer's mother, Ruth, called for a "complete overhaul" of the laws governing the police and the limiting powers given to the SIU.

"I still have a lot of questions because there are a lot of disparities, huge disparities," she said. "My son was killed by a police officer. I will never know the truth of what happened there."

Last year, Ontario Superior Court Justice Wailan Low ruled that the changes being pursued were a matter of government policy, not law. In dismissing the case, Low also ruled that the families had no public or private interest in the matter.

Their lawyer, Julian Falconer, said this case is about the "ongoing struggle" between the SIU and police forces in this province.

"To this day, the Schaeffer and Minty families find it very difficult to accept that they don't have a very compelling interest and a special interest in the investigation in the deaths of their loved ones," he said.

The police forces argue that the officers should have the same rights as civilians and be able to consult a lawyer before being investigated.

A number of other provinces, including Manitoba and British Columbia, have also recently reviewed the note-taking practices of officers being investigated for possible criminal incidents.

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