

## No lawyer vetting of notes for investigations of police: court

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**The Ontario Court of Appeal ruled Tuesday sided with the families of two men shot dead by police in separate incidents, saying officers should not have the right to have their notes vetted by lawyers before submitting them to the independent Special Investigations Unit. Photograph by: Graphic, The Province**

Ontario's highest court has sided with the families of two men shot dead by police in separate incidents, saying officers should not have the right to have their notes vetted by lawyers before submitting them to the independent Special Investigations Unit.

Officers finding themselves under investigation still have the right to legal advice, even before preparing their note, "provided that advice can be obtained without delay and subject to the limitation that the advice not relate to the content of the notes the officer is required to prepare," said Ontario Court of Appeal decision, which was released Tuesday.

The case was brought to the higher court by family members of Douglas Minty and Levi Schaeffer.

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, Ont., 120 kilometres north of Toronto.

Two days later, Schaeffer, 30, was killed by another OPP officer near a remote lake north of Thunder Bay, Ont.

Both men had a history of developmental or mental issues.

None of the officers involved faced criminal charges in the shootings following investigations by the Special Investigations Unit (SIU), which looks into matters in Ontario when someone is killed or injured during police activity.

Justice Robert Sharpe wrote in Tuesday's decision that "the interpretation I have (of existing law) offered assures that the SIU investigators will have the same reliable record of the incident that is available in any investigation, but at the same time, that the officers will have the benefit of legal counsel before and during the SIU interview."

The families' previous attempt at the lower court last year was dismissed because the court decided the changes asked for were a matter of government policy, not for the courts.

The appeal court disagreed, however, saying "the need to balance competing interests does not, and cannot, preclude the court from exercising its customary role of interpreting the legal instruments that the legislature has provided."

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