



Ontario court ruling a win for families of people killed by officers

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Police under investigation for killing a civilian must complete their notes rapidly and without them first being vetted by lawyers, Ontario's highest court has ruled.

The Ontario Court of Appeal found that apprehensive officers can too easily be tempted to refashion their recollection of events if they have received advice from a lawyer before they make their notes.

"Reliable, independent and contemporaneous police officer notes are central to the integrity of the administration of criminal justice," the court said on Tuesday.

The decision was a victory for the families of people killed by officers in the course of their duties. Many such families have accused police of omitting or altering information that might show they were reckless or broke the law.

The case was launched by the families of two Ontario men shot dead by police in separate incidents in 2009 – Douglas Minty and Levi Schaeffer. Lawyers for the two families said police had not acted within the law when the province's Special Investigations Unit investigated their cases.

The Court of Appeal refused to go as far as to prohibit officers from speaking to a lawyer before making their notes. It said that police may speak to a lawyer provided their notes are completed before the end of their shift and the lawyers do not offer any advice that could influence the information the officers put in their notebooks.

A lawyer for the families, Julian Falconer, said that Tuesday's decision will pave the way for considerably fairer and more reliable internal investigations.

“The judgment is a huge step forward in the battle against police manipulation of SIU investigations,” he said.

Paul Burstein, president of the Criminal Lawyers Association, praised the court for accepting two key points put forward by the CLA. “Namely, that the integrity of police notes is essential to a reliable system of criminal justice, and that defence lawyers can be expected to act ethically when advising clients caught up in a criminal investigation,” Mr. Burstein said in an interview.

Mr. Minty, a 59-year-old man with psychiatric problems, was shot in 2009 by an Ontario Provincial Police constable who had been summoned to deal with a disturbance. Mr. Schaeffer, a schizophrenic, was shot in the same year by another OPP constable.

The ruling – written by Mr. Justice Robert Sharpe on behalf of Mr. Justice Robert Armstrong and Mr. Justice Paul Rouleau – reversed an earlier trial decision finding that the families had no right to pursue their case in the courts.