

# Winnipeg Free Press

## Ontario top court rules police under SIU probe cannot have lawyer vet notes

By: Colin Perkel, The Canadian Press  
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TORONTO - Police officers under investigation by a civilian watchdog have no right to legal help in preparing their notes, Ontario's top court ruled Tuesday in a landmark decision.

The ruling is a major victory for the families of two men shot dead by police who had earlier lost their bid to get the courts to intervene in how officers deal with their notes.

The families, who were also awarded \$100,000 in costs, had sought a court declaration that the officers involved in the killings had violated laws on how police co-operate with the province's Special Investigations Unit, which probes such cases.

In overturning a lower court ruling that the families had no legal standing to press their case, Ontario's Court of Appeal issued the declaration they had sought.

"Police officers involved in an SIU investigation do not enjoy the right to have a lawyer vet their notes or to assist them in preparation of their notes," the Appeal Court found.

"Police officers do, however, have the right to obtain legal advice as to the nature of their rights and duties with respect to SIU investigations."

Any such advice, the court said in its decision, must not interfere with officers completing their notes before the end of their tour of duty.

"This judgment is a huge step forward in the battle against police manipulation of SIU investigations," said lawyer Julian Falconer, who represented the families.

The court also dismissed a police motion that it had no jurisdiction to issue the declaration even though Ontario had already moved to tighten legislation surrounding the note-taking.

"Reliable, independent and contemporaneous police officer notes are central to the integrity of the administration of the criminal justice system," the Appeal Court said.

"The use of legal counsel to advise or assist in the preparation of notes would be inconsistent with the purpose of police notes and with the duty imposed on police officers to prepare them."

In separate incidents in June 2009, Ontario Provincial Police officers shot and killed Doug Minty, 59, and Levi Schaeffer, 30.

In clearing the officers of any wrongdoing, SIU Director Ian Scott issued a scathing statement in which he said he could not determine what had happened because the police notes were unreliable.

On Tuesday, Scott said he was "heartened" by the ruling, saying it will help the SIU investigate when police are involved in incidents causing death or serious injury.

In their application to the court in November 2009, the families asserted that allowing the officer who pulled the trigger and officers who witnessed the incident to consult the same lawyer effectively amounted to collusion.

They also said the officers first provided notes to their lawyer for vetting, before turning them over to the civilian investigators.

Police groups argued the officers were simply exercising the same rights as any other citizen — the right to consult a lawyer of their choosing.

In dismissing the case in June last year, Ontario Superior Court Justice Wailan Low found the issues in dispute were a matter of government policy, not law.

The court, Low said, should not act "as the policy maker of last resort."

Minty, from Elmvale, Ont., who was mentally challenged, was shot five times outside his home, apparently after threatening the officer with a small utility knife.

Two days later, Schaeffer, from Peterborough, Ont., who had mental-health issues, was shot dead at a remote lake in northern Ontario following an altercation with two officers.

Ruth Schaeffer, the mother of Levi Schaeffer, said she was "gratified" by the Appeal Court decision.

"All we ever wanted was an investigation into my son's death that our family could trust and that the public could trust," Schaeffer said in a release.