

## ABOVE THE LAW

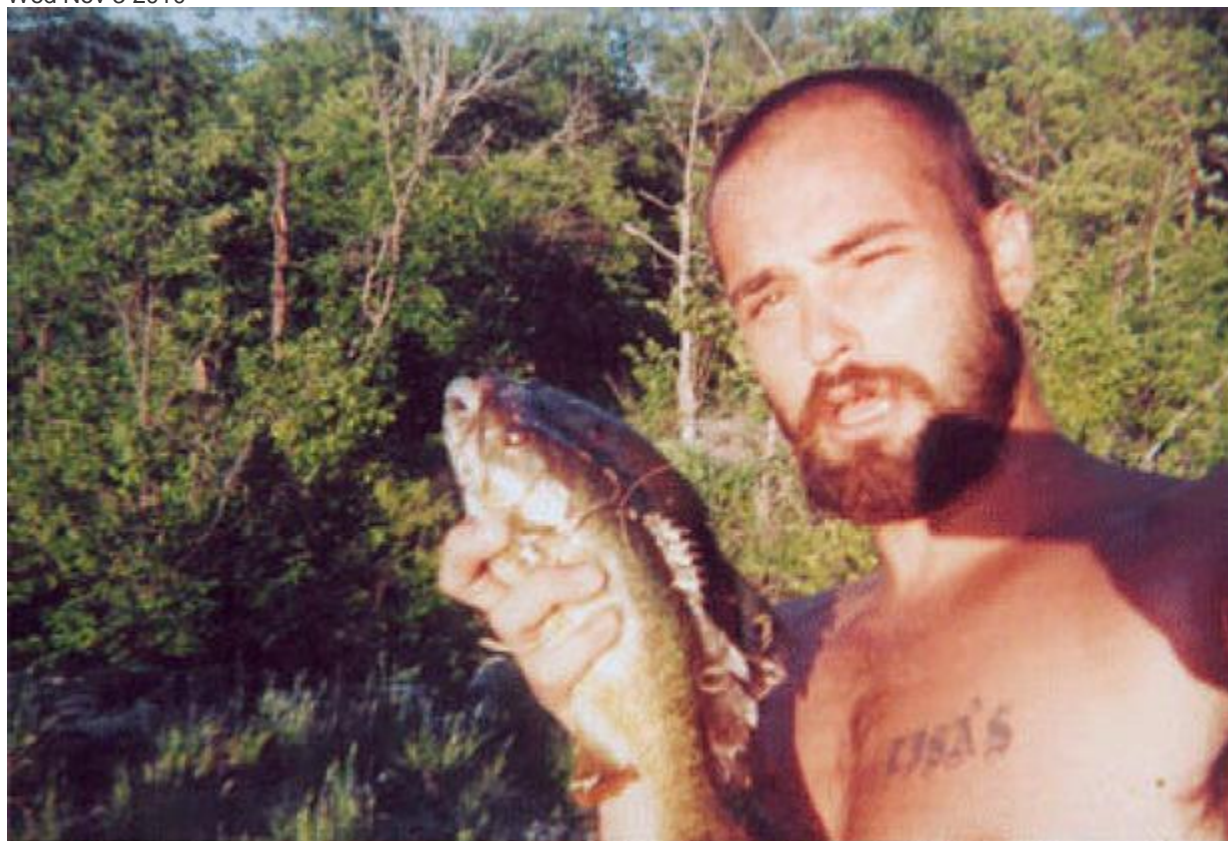
### A SERIES PROBING POLICE CONDUCT IN ONTARIO

A [Star investigation](#) has found lack of results and little accountability from the \$7 million a year Special Investigations Unit that probes police accused of injuring or killing civilians.

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## Police notes questioned after man fatally shot

Wed Nov 3 2010



Levi Schaeffer seen camping in undated photograph.

FAMILY OF LEVI SCHAEFFER

**Michele Henry and David Bruser** staff reporters

Levi Schaeffer was frying up his lunch when two police officers in an unmarked boat glided ashore at his private camp and shot the bearded and bedraggled 30-year-old through the heart.

They flipped him face down onto the rocks and handcuffed him as he lay dying.

The two Ontario Provincial Police officers believed Schaeffer, a schizophrenic, stole a boat. In their police notebooks — written two days after the incident and after consultation with the same lawyer — both officers say there was a struggle and Schaeffer lashed out with a knife.

Ian Scott, current director of the provincial Special Investigations Unit, cleared the officers of any wrongdoing, but said in his final report that the way the notes were handled prevented him from determining what “probably happened” during the shooting. Scott wrote that this “flies in the face” of what makes notes reliable — “independence and contemporaneity.”

In an interview, Scott said it “affects my ability to do independent and thorough investigations. There’s a risk the notes are being tainted.”

Scott and the Schaeffer family will go before the Ontario Court of Appeal seeking a ruling on how police notes are to be treated.

The *Star’s* ongoing investigation of police conduct has found officers are treated far differently than civilians when they shoot, beat or run over people.

The Schaeffer shooting occurred June 24, 2009. Here is what may have occurred, according to the officers’ notes and information that forms part of the SIU probe, including audio recordings of witness interviews. The *Star* also reviewed the results of an internal police investigation carried out by the Ontario Provincial Police.

Constable Kris Wood and Acting Sgt. Mike Pullbrook were part of the Pickle Lake OPP detachment, about eight hours drive north of Thunder Bay. The officers left Pickle Lake for Osnaburgh Lake shortly before noon to search for a green motorized canoe reported missing by a local man.

The man told police he had spotted the boat pulled ashore at a makeshift camp with a blue tarpaulin tent and a dishevelled looking man nearby. He gave police a hand-drawn map.

The officers piloted Wood’s personal 5-metre aluminum fishing boat — the water was too low for the larger police boat to launch — to the remote area, a radio dead zone. The officers told OPP dispatch they would be incommunicado for a few hours.

Both officers wore summer police uniforms (short-sleeve shirts) but neither wore his bullet-proof vest. Wood left his pepper spray and baton at home. He tucked his pistol into a plainclothes holster.

After a fruitless 50-minute search, the officers saw a burly Schaeffer on the shore of a rocky, treed peninsula, but no boat.

Schaeffer was a loner, a diagnosed schizophrenic originally from Peterborough who liked to camp in the wild, coming into town only occasionally.

His mother, Ruth Schaeffer, told the *Star* she imagined her son would have tried to stop people from entering his camp.

"I assume he went to the shoreline and postured to stop people from landing," she said. "He probably did go down and make muscles."

Schaeffer told the officers his name and conversation began pleasantly, but turned when the officers suggested Schaeffer could not have reached this remote site on foot.

"What do you want?" Schaeffer said, according to one officer's recounting of the events. "I am on Crown land camping and you can't do anything about it."

The SIU report states Schaeffer's eyes "glared", he became "loud" and "annoyed". The officers told the SIU they questioned Schaeffer about the missing boat and he said he had not seen it.

Wood's notes (he did not speak to SIU investigators) state he and his partner decided to physically take control of Schaeffer due to his "fight or flight" demeanor and for officer safety.

The officers grabbed him, one on each arm. Still, Schaeffer managed to wiggle a hand into his pocket, according to the SIU's account of Wood's notes.

Wood allegedly saw a "flash of something shiny" and felt "something" slide across his forearm.

"Knife!" he yelled, according to the SIU report. The officers scattered and Schaeffer advanced across the rough landscape with slow, "concise" steps, slashing through the air with a 10-centimetre blade. He picked up a can that looked like bear spray. The SIU's report states Wood was forced to the "edge of a cliff," and Pullbrook was stuck "out on a ledge."

Pullbrook could not see his partner for all the foliage but remembers hearing Wood say: "If you take another step you will be shot." In his SIU interview, Pullbrook said Schaeffer had a "death stare" and said nothing.

Wood's notes quote Schaeffer saying: "There is going to be death, there is going to be a killing." Wood's notes say Schaeffer "charged" from three metres. Wood fired two shots. The medical examiner's report shows one bullet passed through Schaeffer's left forearm and entered his chest, ending up in his back on the right side. The other entered his chest, passing through his heart and out his back.

Pullbrook rolled Schaeffer onto his back after cuffing his hands and unsuccessfully administered CPR while Wood boated to nearby Cedar Rapids to call for help.

Schaeffer was tagged a John Doe.

According to Ontario's Police Services Act, Wood was now a "subject officer" — the person who pulled the trigger. He has the right to remain silent and while he must hand over his notes to his police force he does not have to submit them to the SIU or talk to SIU investigators.

Pullbrook became a "witness officer," who must answer the SIU questions and must hand notes to his police force, which must turn them over to the SIU.

After the shooting, an OPP detective sergeant sent a message to Wood and Pullbrook to contact legal counsel and to do their notes at "the direction of counsel," according to the OPP's investigation of the case. The OPP gave both officers the contact information for police union lawyer Andrew McKay, a former officer.

The police officers said their lawyer advised them not to write their notes at that time, according to the OPP internal investigation.

Wood later wrote in his notes: "as a result of my state of mind from being involved in the shooting and knowing I would be investigated by the Special Investigations Unit it was decided I should report off duty and collect all of my thoughts." That night, an OPP Pickle Lake detachment inspector told both officers they were "required" to finish their notes by end of shift.

Wood and Pullbrook stuck to McKay's advice.

The Police Services Act says officers must write their notes according to the rules of their force. The OPP's rules say notes must be written independently and completed before officers report off duty, unless a supervisor allows otherwise.

Two days later, Wood and Pullbrook filled their OPP notebooks. Even then, they transcribed their versions of events from drafts approved by McKay.

“Advised notes are excellent . . . complete notebook,” is the feedback McKay gave Wood, according to Wood’s notes.

Neither officer gave their draft notes to superiors, which the Police Services Act and police rules require, saying they were protected by solicitor-client privilege.

In the months following the shooting, both officers were relocated to different detachments, Wood to Dryden and Pullbrook to Parry Sound. Both declined comment for this article, through their lawyer.

Neither was disciplined by the OPP. The SIU’s lead investigator concluded Wood had no choice but to shoot. SIU director Scott said he could not determine what “probably happened” because of the note issue.

The Schaeffer family and the relatives of another shooting victim initially took the SIU and the OPP to court asking for an interpretation of the note-taking rules and whether subject and witness officers can share a lawyer. Scott has submitted a factum that backs the family.

By having the same lawyer act for both Wood and Pullbrook, critics, including Scott, believe there is a perception that police are getting their stories straight.

McKay is not concerned with perceptions, he told the *Star*. He denies sharing information between the officers involved in this and other SIU-related cases.

“Sometimes it doesn’t look great but in fact it’s fine,” he said. “I’m not about to lie or collude or do anything unprofessional . . . and jeopardize my reputation and my career.”

Police unions from across the province view Scott’s concerns as threats to an officer’s right to consult a lawyer. Karl Walsh, head of the powerful OPP union, lashed out at the SIU director in May, a day before the issues were to be heard in court, stating in a province-wide letter to its members that Scott was overstepping his bounds and attacking police.

That night, the attorney general withdrew four lawyers from the case, leaving Scott scrambling to find legal representation.

Justice Wailan Low, who heard the case, ruled the issue is a matter for the Legislature, not the courts and struck down the application.

“In my view it is not proper function of this court to act as a policy-maker of last resort,” she wrote in her judgment.

By the time Ruth Schaeffer saw her son, his corpse had begun to decay.

Petite and gaunt, she is on edge and snaps when interrupted. Her anger is palpable when she says Schaeffer never operated a motor vehicle in his life and had never piloted a boat.

The motorized green canoe was located on the other side of the lake days later.

A coroner's inquest into Schaeffer's death is scheduled for February.

"He was making his lunch," Ruth Schaeffer said. "His fish was still in the frying pan when they killed him. In my mind if the police are allowed to kill people and not get segregated and not make notes that's the first step to a fascist police state."

*Tomorrow: The shooting death of Douglas Minty and the police-friendly investigation that followed.*

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