

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**RUTH SCHAEFFER, EVELYN MINTY
and DIANE PINDER**

Applicants

AND

**POLICE CONSTABLE CHRIS WOODS, ACTING SERGEANT MARK PULLBROOK,
POLICE CONSTABLE GRAHAM SEGUIN, JULIAN FANTINO, COMMISSIONER OF
THE ONTARIO PROVINCIAL POLICE, IAN SCOTT, DIRECTOR OF THE SPECIAL
INVESTIGATIONS UNIT and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
(MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES)**

Respondents

AFFIDAVIT OF RUTH SCHAEFFER

**I, Ruth Schaeffer, of the City of Peterborough, in the Province of Ontario,
MAKE OATH AND SAY:**

1. I am a named applicant in the herein Application and as such I have knowledge of the matters to which I herein depose, except for information that arises from sources other than my own personal knowledge, the sources of which are stated and which I verily believe to be true.
2. My family has designated me as its representative. As such, I speak on behalf of my daughters Beth Schaeffer (32 years old) and Sara Schaeffer (33 years old) as well as my ex-husband John Schaeffer (56 years old).
3. On June 26, 2009, I was contacted by Gary Taylor of the Special Investigation Unit ("S.I.U") who advised me of the death of my son, Levi Schaeffer. At that time, I was advised that my son was shot and killed in an altercation with members of the Ontario Provincial Police ("O.P.P.") on June 24, 2009, at a peninsula located in the Osnaburgh Lake area. Levi was 30

years old and was suffering from schizoaffective disorder. I was very close to my son and taught him how to camp and use physical exercise to help him manage the burdens he suffered under from his mental illness. I, along with his father John and his sisters, Beth and Sara are devastated by Levi's death.

4. Following my son's death, I was told by members of the O.P.P. that the Special Investigations Unit ("S.I.U."), an independent civilian law enforcement agency, was investigating the case. I trusted that the SIU would be able to provide us with the facts surrounding Levi's death because it was a civilian agency independent from the police.

5. On September 28, 2009, the Director of the S.I.U., Ian Scott, released a public statement, which concluded that there were no reasonable grounds to criminally charge the two O.P.P. officers involved in my son's death. The press release states that the post-shooting conduct of the officers affected the investigation to the extent that it was impossible to determine what actually happened on June 24, 2009. An excerpt from this release states:

Shortly after the incident, the subject officer was instructed not to write up his notes in his memo book until he spoke with Ontario Provincial Police Association (OPPA) legal counsel. The association lawyer advised the officer to prepare notes which only he would review. Once the lawyer approved the notes, the officer wrote up his memo book two days later based on a combination of his confidential notes to counsel and discussions with him.

"The only witness to the shooting, the second officer, was also advised not to contemporaneously write up his notes in his memo book. He too wrote up a set of notes which he shared with the same legal counsel before entering them into his memo book two days later. Neither officer provided the SIU investigators with their first set of notes.

"This note writing process flies in the face of the two main indicators of reliability of notes: independence and contemporaneity. The notes do not represent an independent recitation of the material events. The first drafts have been 'approved' by an OPPA lawyer who represented all of the involved officers in this matter, a lawyer who has a professional obligation to share information among his clients when jointly retained by them. Nor are the notes the most contemporaneous ones – they were not written as soon as practicable and the first drafts remain in the custody of their lawyer. I am denied the opportunity to compare the first draft with the final entries. Accordingly, the only version of the material events are OPPA lawyer approved notes."

Director Scott concluded, "I have a statutory responsibility to conduct independent investigations and to decide whether a police officer probably committed a criminal offence. In this most serious case, I have no informational base I can rely upon. Because I cannot conclude what probably happened, I cannot form reasonable grounds that the subject officer in this matter committed a criminal offence in the firearms death of Mr. Schaeffer."

6. Attached as "Exhibit A" to this affidavit is a copy of the S.I.U. Press Release which I verily believe to be true. I read this release at the time it was issued and experienced shock and dismay that officers of the law could be allowed to create two sets of notes. From this point on, I felt that I could not trust any police account of what happened to my son.

7. On October 19, 2009, my family and I (along with our counsel) met with S.I.U. Investigators Denis B. O'Neill and Nelson Andrews. During the meeting, Mr. O'Neill advised me of the following, which information I verily believe to be true:

- a. On June 24, 2009, at approximately 12:30 p.m., the Subject Officer and Witness Officer approached my son's camp site in the Osnaburgh Lake area to investigate a report of a stolen boat. There was an interaction between my son and the two officers which ended with the Subject Officer discharging his firearm twice and killing Levi.
- b. Shortly after the shooting, a supervising Sergeant at the scene instructed both the Subject Officer and Witness Officer not to write up their notes in their memobooks until they consulted with Ontario Provincial Police Association ("O.P.P.A.") legal counsel.
- c. The Subject Officer and Witness Officer shared the same O.P.P.A. lawyer, Mr. Andrew McKay.

- d. The Subject Officer and Witness Officer prepared notes outside of their memobooks which only Mr. McKay would review.
- e. Two days following the shooting, and after providing his counsel with a first set of notes for his review, the Subject Officer prepared a second set of notes in his memobook. The Witness Officer (the only person, other than the subject officer and the deceased, present at the shooting) also wrote up a set of notes on June 24, 2009 which he shared with his lawyer Mr. McKay. Upon receiving legal advice, two days later this witness officer then prepared a second set of notes in his memobook
- f. Despite requests to do so, neither the Subject Officer nor the Witness Officer provided the S.I.U. investigators with their first set of notes.

8. My son's death has been devastating for my family. Our grief has been made worse by the actions of the officers in their interaction with S.I.U. after the shooting. We feel that because of the actions of the Subject and Witness officers and their superiors we will never know why my son died. It is impossible for me to trust any claims made by the police officers who last saw Levi alive. In addition to the reasons set out in our Notice of Application, my family and I are seeking this Court's assistance in the hope that other families do not suffer the stress and anxiety we are experiencing from being unable to learn the circumstances surrounding the death of our loved one.

9. I have been advised by Mr. Falconer and do verily believe that there are various reports addressing some of the issues raised in the herein Application including:

- (1) Report of the Honourable George W. Adams, Q.C. dated May 14, 1998;
 - (2) Follow-up Report of the Honourable George W. Adams, Q.C. dated February 2003;
- and,

- (3) Ombudsman’s Report by André Marin (Ombudsman of Ontario), “Oversight Unseen: Investigation into the S.I.U.’s operational effectiveness and credibility” dated September 2008.

These Reports are filed separately for this Honourable Court’s assistance as I verily believe their contents will assist in the fair disposition of our application.

10. I am also attaching a copy of a column written and published for the Hamilton Police Association Newsletter by counsel, Gary Clewley which was also provided to me by my counsel Mr. Falconer. I am advised by Mr. Falconer and do verily believe that Mr. Clewley is prominent counsel who has, over the last 15-20 years, represented many police officers in the Province of Ontario in respect of police shootings and interactions with the S.I.U. Attached as Exhibit “B” to this affidavit is a copy of the column entitled “Officers and the S.I.U.” authored by Mr. Clewley and appearing in the Hamilton Police Association Newsletter (Volume 4, Issue 2, Summer 2009).

11. I make this affidavit in support of the herein Application and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Peterborough, in the Province of)
Ontario, this 26th day of November, 2009)

Ruth Schaeffer

A Commissioner etc.