CORONERS COURT

IN THE MATTER OF the *Coroners Act*, R.S.O. 1990, C.37

AND IN THE MATTER OF the Inquest into the Death of Douglas Clive Minty

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RULING ON MOTIONS concerning scope of cross-examination of police officers and conflict of interest of their counsel

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BEFORE:

Dr. William Lucas – Presiding Coroner

COUNSEL TO THE CORONER:

Mr. Tom Fitzgerald

REPRESENTATIVES OF PARTIES WITH STANDING:

Ms. Elisabeth Widner / Mr. Marc Gibson – Minty Family

Mr. Norman Feaver / Mr. Kenneth Hogg – Ministry of Community Safety and Correctional Services (MCSCS) and Ontario Provincial Police (OPP)

Ms. Shona Miller – Ontario Provincial Police Association (OPPA)

Mr. Andrew McKay – PC Seguin

Mr. Robert Warren – PC Boyd

Authorities Cited (from CanLII unless otherwise noted):

Schaeffer v. Wood, 2011 ONCA 716
Wood v. Schaeffer, 2013 SCC 71
Canada v. Solosky, 1980 1 SCR 81
R. v. Campbell, 1999 1 SCR 565
Baker v. Canada (Minister of Citizenship and Immigration), 1999 2 SCR 817
Black Action Defence Committee v. Huxter, Coroner 1992 ONSC 7695

Statutes and Regulations referred to:

Coroners Act, R.S.O. 1990, Chapter C.37
Police Services Act, R.S.O. 1990, Chapter P.15
Ontario Regulation 267/10, Police Services Act

(I) OVERVIEW

[1] On June 22, 2009, Douglas Minty, a 59-year-old man with intellectual developmental delay reportedly assaulted a door-to-door salesman, who reported the incident to police. OPP Constable Seguin was the first responding officer on scene.

[2] After a brief discussion with the man who had reported the assault, PC Seguin began to approach Mr. Minty to engage him in conversation. Immediately, Mr. Minty moved toward the officer brandishing what appeared to be an edged weapon. As the officer retreated, he withdrew his firearm and gave repeated commands for Mr. Minty to drop the weapon. Mr. Minty did not comply and progressively closed the gap between himself and the officer.

[3] PC Seguin fired five shots at Mr. Minty, who fell to the ground, eventually releasing the edged weapon. CPR was administered, but due to the severity of his gunshot wounds, Mr. Minty was later pronounced dead in hospital.

[4] PC Boyd arrived within minutes of the shots being fired, and assisted with CPR, later accompanying Mr. Minty to hospital.

[5] Sergeant Burton arrived shortly afterwards and took control of the situation. He advised both PCs Seguin and Boyd that they should not complete their memo books until they had consulted with counsel.

[6] PC Seguin apparently did not complete his memo book, but on separate paper entitled "Notes to lawyer", dated June 22, 2009 typed out an account of his recollection of the events.

[7] PC Boyd's memo book entries indicate that he spoke with legal counsel, Mr. Andrew McKay, on the evening of this incident.

[8] At the time of the events, Mr. McKay acted as counsel for all of the officers involved in this incident. He now appears as counsel for PC Seguin at this inquest. Mr. Robert Warren appears as counsel for PC Boyd.

(II) ***THE MOTION***

[9] During pre-inquest discussions, it became apparent that there was an issue between the parties with standing that would need to be resolved through a Motion and Ruling. Through coroner's counsel the parties were advised that the Motion would be done in writing, prior to convening in court on the scheduled start date for the inquest.

[10] On April 1, 2014, counsel for the Minty Family (Applicant) submitted a motion to the Presiding Coroner to permit cross-examination of PC Seguin and PC Boyd regarding their conversations with counsel prior to preparing their notes in this matter.

[11] On the same date, the Applicant submitted a companion motion that, in the event that the Coroner permits cross-examination of the officers on their conversations with counsel, that counsel for the officers are in an actual and apparent conflict of interest and therefore, they should be disqualified.

[12] The Applicant further requested the opportunity to make oral submissions on these matters.

[13] I note that the Motions for cross-examination and disqualification of counsel were both raised before another coroner in late 2012 and early 2013. That presiding Coroner decided to adjourn the matter pending the decision of the Supreme Court of Canada on related matters. Some of the material filed in 2012 and 2013 was also referenced in submissions in 2014.

[14] For the reasons that follow, the motion for an order to permit cross-examination of the officers on the content of their conversations with counsel prior to preparing their notes is denied.

[15] The companion motion therefore becomes moot and there is no need to rule on the issue of conflict at this time.

[16] Oral submissions will not be permitted.

(III) ***THE REQUEST TO MAKE ORAL SUBMISSIONS***

[17] The Family has sought opportunity to present further oral arguments on these matters. Since I have decided to proceed without them, I shall address that first.

[18] At a pre-inquest meeting, all parties were advised that written submissions would be entertained. As noted in one of the Respondent's submissions, in the case of *Baker v. Canada* (Minister of Citizenship and Immigration) [1999] 2 SCR 817, the Supreme Court of Canada stated (para 33):

> ...it also cannot be stated that an oral hearing is always necessary to ensure a fair hearing and consideration of the issue involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations...

[19] It has been submitted by the various Respondents that, given the numerous parties with standing at this inquest who are represented by counsel, it would undoubtedly take considerable time to proceed with oral submissions. That alone would not be determinative. If I felt that an oral hearing was necessary on this issue, we would find the time.

[20] I am also aware that this matter was argued extensively before Dr. Lauwers in 2012 and 2013, prior to his ruling to adjourn the inquest in order to await the decision of the Supreme Court of Canada. Counsel references some of the material filed at that time in their written submissions now.

[21] The Presiding Coroner has authority under the *Coroners Act* to set rules and to give such directions as the Coroner considers proper, in order to maintain a fair and efficient process.

[22] In light of the history of the matter, the nature of the issues being considered, and the helpful written submissions from all, filed both before Dr. Lauwers (to some of which I have been referred) and in 2014, I feel that the matter can be addressed fairly and adequately through those written submissions alone.

(IV) ***THE FACTUAL and LEGAL CONTEXT***

[23] In their submission, the Applicant Family reviewed the history of judicial proceedings in this matter. The Minty Family, along with the Schaeffer Family commenced an Application in the Superior Court of Ontario which sought a declaration that police officers involved in incidents where the Special Investigations Unit (SIU) had invoked its statutory mandate were not entitled to obtain legal advice prior to completing their notes. The Application was dismissed: *Schaeffer v. Wood, 2010 ONSC 3647*

[24] The Minty and Schaeffer families appealed further to the Court of Appeal of Ontario. Their appeal was successful: *Schaeffer v. Wood, 2011 ONCA 716.*

[25] The issue before both courts involved the proper interpretation of the *Police Services Act, R.S.O.1990,c.P-5,* (hereinafter the *PSA*) s. 113 dealing with SIU mandated investigations, and the Regulation created thereto respecting the conduct and duties of police officers during these investigations.

[26] The *PSA* s. 113 sets out the mandate of the SIU to "cause investigations to be conducted into circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers."

[27] The Ontario *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit,* O. Reg 267/10, as amended by O. Reg. 283/11 provides further guidance in the interpretation of s. 113 of the *PSA*.

[28] The amendments, subsequent to the death of Mr. Minty, provide the following direction to subject and witness police officers:

> (i) A police officer involved in a SIU investigation shall not communicate directly or indirectly with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews. (s. 6(2));
> (ii) Witness officers may not be represented by the same legal counsel as subject officers. (s. 7(3) ; and
> (iii) Police notes prepared by a witness officer (s. 9(1)) and the subject officer (s. 9(3)) shall be completed by the end of the officers' tour of duty, except where excused by the chief of police.

[29] Section 7(1) of the Regulation went unchanged. It provided that:

> "every police officer is entitled to consult with legal counsel or a representative of a police association and to have legal counsel or a representative of a police association present during his or her interview with the SIU."

Whether and to what extent subject and witness officers can seek advice of counsel *prior* to preparing their police notes was the issue before the Court of Appeal in *Schaeffer v. Wood, supra*.

[30] Justice Sharpe, speaking for a unanimous Court (Armstrong and Rouleau, JJ.A concurring), in allowing the appeal, held (at para 81) that there is nothing "explicit or implicit" which would deny a police officer "basic legal advice as to the nature of his or her rights and obligations." The Court continued and said that the officer was entitled to legal advice on matters such as the following:

> (i) He or she is required to complete notes of the incident prior to the end of his or her tour of duty unless excused by the chief of police.

(ii) The lawyer cannot advise the officer what to include in the notes other than that they should provide a full and honest record of the officer's recollection of the incident in the officer's own words.
(iii) The notes are to be submitted to the Chief of Police.
(iv) If the officer is a subject officer, the Chief of Police will not pass the notes on to the SIU.
(v) If the officer is a witness officer, the Chief of Police will pass the notes on to the SIU.
(vi) The officer will be required to answer questions from the SIU investigators; the officer will be entitled to consult counsel prior to the SIU interview and to have counsel present during the interview.

[31] The Respondents (now the Appellants) appealed to the Supreme Court of Canada. The Supreme Court in *Wood v. Schaeffer,* 2013 SCC 71 dismissed the appeal and, in a majority judgment, made a Declaration that the Regulation should be read to mean that officers may not consult with counsel at all, even for basic advice, until after they have completed their police notes (LeBel, Fish and Cromwell JJ. dissenting).

[32] In writing for the majority of the Court, Moldaver J. noted at para. 4:

> This appeal concerns one aspect of the way in which the SIU conducts its investigations. The question presented is whether, under the scheme that Ontario has crafted, a police officer who witnessed or participated in an incident under investigation by the SIU is entitled to speak with a lawyer before preparing his or her notes concerning the incident. In my view, the answer is "no".

[33] Mr.Justice Moldaver concluded at para 88-89:

> [88] For these reasons, I agree with the Court of Appeal that police officers, under the Act and regulation, are not permitted to have the assistance of counsel in preparation of their notes. However, in my respectful view, the Court of Appeal erred in finding that police officers are entitled to receive basic legal advice as to the nature of their rights and duties prior to completing their notes.
>
> [89] I would therefore dismiss the appeal and allow the cross-appeal and grant a declaration pursuant to Rule 14.05(3) of the *Rules of Civil Procedure* in the following terms:
>
> *The Police Services Act, R.S.O.1990,c.P.15, s. 113(9),* and regulations regarding *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit, O. Reg. 267/10* prohibit subject and witness officers from consulting with counsel until the officers have completed their police notes and filed them with the chief of police.

[34] I note that this Declaration concerned O.Reg 267/10 as it existed after the time of Mr. Minty's death. However, section 7(1) was the same in 2009.

[35] Since the time of the death, there were amendments of the Regulation in 2011, and the Declaration by the Supreme Court in December 2013. At a pre-inquest meeting in 2014, through Coroner's Counsel, the parties were

asked whether any issues remained related to communications between the officers and their counsel (if there were such communications). These Motions are the result. The Coroner requested written submissions on the issues.

Cross-examination on preparation of notes generally

[36] The Family, in its submissions, argues that a key reason for cross-examination is to test the reliability and credibility of the witness: Sopinka, Lederman and Byrant, *The Law of Evidence in Canada,* Markham: Lexix Nexus, 2009, 1133-1134; Ewaschuk, *Criminal Pleadings & Practice in Canada,* Toronto: Canada Law Book, 2012, 16-50.4. The Family argues that they are entitled to cross examine the officers with respect to the timing of the preparation of their notes, who, if anyone, assisted them in their preparation and their completeness. The Family submits that it is routine in criminal matters for such cross examination: *R. v Graham, ONSC 906, R. v. Green,* [1998] O.J. No. 3598 (S.C.) at para 66. The Minty Family submits that permitting cross examination on these matters is not tied to the scope and purpose of this inquest. It relates solely to the truthfulness of witnesses and the functions of these proceedings.

[37] The Family further argues that to deprive them of the right to conduct this cross examination will deprive the jury of the tools to properly assess the police officers' reliability and credibility, and in effect would give "tacit approval" to the "*very practice condemned in decisive terms by the Supreme Court of Canada*." (para 21 of the Family's submissions).

(V) ***POSITION OF THE PARTIES: SOLICITOR-CLIENT PRIVILEGE AND THE CRIME/FRAUD EXCEPTION***

A) Solicitor-Client Privilege

Position of the Minty Family

[38] The Minty Family cites at length from the Supreme Court of Canada's decision in *Wood v. Schaeffer, supra*, and submits at paragraphs 28, 29 and 32 of its submissions that any conversations between the police witnesses, Seguin and Boyd, and their respective counsel are not shielded by solicitor-client privilege and that the Court's decision is "binding authority" for permitting such cross-examination.

[39] The Family argues that the evidentiary onus of establishing that solicitor-client privilege exists rests "with the party seeking to enforce a privilege": *Blank v. Canada (Minister of Justice)* 2006 SCC 39.

The Police Position

[40] Counsel for PC Seguin submits that any conversation he had with PC Seguin were at the time and continue to be protected by solicitor-client privilege.

[41] Mr. McKay further submits that the Supreme Court of Canada determined in *Canada v. Solosky,* 1980 1 SCR 821, the threefold criteria for recognizing solicitor-client privilege (p.10):

a. A communication between solicitor and client;
b. Entails the seeking or giving of legal advice; and
c. Is intended to be confidential by the parties.

Mr. McKay submits that any and all communications with counsel are *prima facie* subject to solicitor client privilege, and the communications between him and the Respondent satisfy the criteria enunciated in *Solosky.*

[42] Mr. McKay further notes that it was a well-established practice at the time of the 2009 incident that legal counsel could and would speak with police officers prior to preparation of their memo book notes.

[43] Ms. Miller, Counsel for the Ontario Provincial Police Association also agrees that communications between the officers and counsel are confidential and protected by solicitor-client privilege because they satisfy the criteria enunciated in *Solosky.*

[44] She argues that Counsel for the Applicant is not entitled to cross-examine on the content of conversations unless they show that those communications fall under an exception to privilege.

[45] Ms. Miller further argues that the Supreme Court of Canada's decision in *Wood v. Schaeffer, supra* clarifies that police officers are not permitted to consult with counsel prior to completing their notes, but that this 2013 decision does not apply retroactively to communications which PC Seguin and PC Boyd had with counsel in 2009. (para 6)

B) Crime/Fraud Exception

The Police Submissions

[46] Ms. Miller notes that the Applicant argues that privilege is lost where "communications themselves are contrary to the law." She notes, however, that even if the *Wood v. Schaeffer* decision were applied

retroactively, the communications are still protected because, while prohibited by the SIU Regulations, they would not be criminal.

[47] Ms. Miller relies on *R. v. Campbell,* [1999] 1 SCR 565, where the court outlined the crime/fraud exception (also referred to as the "future crimes and fraud exception") to solicitor-client privilege (at para 55):

> ...an exception to the principle of confidentiality of solicitor-client communications [exists] where those communications are criminal or else made with a view to obtaining legal advice to facilitate the commission of a crime.

[48] Mr. Hogg and Mr. Feaver, for the Respondent Ontario Provincial Police also take the position that communications between a solicitor and client are *prima facie* subject to solicitor-client privilege and protected from disclosure in almost every instance.

[49] They argue that on a plain reading of O/Reg 276/10. S. 7 that there is no limitation on an officer's access to counsel, and that because of this it was common practice for officers to consult with counsel prior to preparing their notes. Section 7 had not been subject to judicial interpretation in 2009, but with subsequent court decisions, that legal landscape has now changed.

[50] Messrs. Hogg and Feaver argue that the onus falls on the Applicant to demonstrate that the crime/fraud exception to solicitor-client privilege applies to the Minty circumstances, and that they have not done so.

[51] They argue that the officers' notes serve the purpose of refreshing their memories, not replacing them. The witness is expected to have an independent recollection of events, and this can be tested in cross-examination under oath at the inquest. Further, there is a long-established procedure for testing the reliability of an officer's notes, and the tribunal must be satisfied that the notes meet that test before the officer will be allowed to refer to them.

[52] All Respondents argue that the scope of cross-examination proposed by the Applicants is not relevant to the purposes of the inquest, in that it will not assist the jury with addressing the statutory purpose of an inquest in answering the five questions and making recommendations directed to avoidance of death in similar circumstances.

Position of the Minty Family in Reply

[53] In Reply, the Applicant submits that the ability to assess the credibility of witnesses affects the fairness of any court proceeding. The scope of an inquest, including answering the five questions as set out in S. 31 of the *Coroners Act*, is irrelevant to the credibility of a witness. They argue that

the scope of cross-examination requested is relevant to the function of an inquest as a fact-finding tribunal.

[54] The Applicant further submits that the concerns set out by the Supreme Court of Canada provide sufficient grounds to make any consultations with counsel a viable area for cross-examination, the purpose of which would be to establish whether or not the notes and the officers' credibility may be compromised.

(V) ***ANALYSIS***

[55] The issues that arise from these two motions are:

1) The proper characterization of the communication.
2) Does the "crime/ fraud exception" apply?

1) The proper characterization of the communication

The Minty Family

[56] The Applicant challenges whether solicitor-client privilege should attach to conversations between counsel and their police clients, arguing that such communications were unlawful. They argue that the Supreme Court of Canada has stated that the practice of counsel providing advice prior to the note-making stage was not legal at the time. As Justice Moldaver noted in *Wood v. Schaeffer, supra,* at para. 47:

> Second, the legislative history demonstrates that s. 7(1) was never intended to create a freestanding entitlement to consult with counsel that extended to the note-making stage.

[57] Since Ontario Regulation 267/10, as it pertains to officers' duties to complete memo book notes was in effect at the time of Douglas Minty's death, the Family submits that the guidance provided by the Supreme Court of Canada in *Wood v. Shaeffer* in 2013, should be applied retroactively to 2009.

[58] The Applicant submits that, in the alternative, if solicitor-client privilege is found to attach, the Family believes that the fact of consultations is still relevant to credibility. Even if the content of the advice given is privileged, questions that do not inquire into that content are permissible on cross-examination.

Retrospectivity

[59] As I consider this argument, it is apparent that s. 7(1) of Regulation 267/10 was controversial and has been interpreted differently by both counsel and various judges over the years:

> ... every police officer is entitled to consult with legal counsel or a representative of a police association and to have legal counsel or a representative of a police association present during his or her interview with the SIU. (emphasis added.)

[60] One view was the first part of this section does not restrict consultation with counsel prior to note completion. This interpretation had not been subject to a legal challenge or ruling in 2009. Coupled with the other Supreme Court decision, *Sokolosky, supra,* which was the prevailing judgment at the time of the Minty incident, one could reasonably conclude that the officers and counsel acted in good faith if they did indeed consult prior to any memo book note making, with the expectation that solicitor-client privilege would apply to their consultations.

[61] We now have a judgment from the Supreme Court that provides clarity. The Court has stated that the *Police Services Act, s. 113 and Regulation 267/10,* when read as a whole and not just section 7 standing alone, prohibit subject and witness officers from consulting with counsel until the officer have completed their police notes and filed them with the chief of police.

[62] It is clear that the Declaration of the Supreme Court is effective as of December 19, 2013, and moving forward from that date. The Court has not explicitly stated if or how this Declaration should be applied retroactively to situations where, acting on their understanding of the Regulation, officers and their counsel may have proceeded on the good faith assumption that their communications were subject to solicitor-client privilege.

[63] It therefore falls to me to determine how to reconcile the effect of separate decisions from the Supreme Court of Canada. As the first step, on the evidence before me on this Motion, I find that the officers and their counsel satisfied the criteria set out in *Canada v.Solosky*. Their communications would therefore be the subject of solicitor-client privilege, unless the "crime/fraud" exception applies, or if the effect of the Declaration in *Wood v. Schaeffer* is that the privilege never actually existed due to the timing of the consultation with counsel (if any), namely, prior to the officers completing their police notes.

2) Does the "crime/fraud exception" apply?

[64] As noted above (para 37), in *R. v. Campbell, supra,* the crime/fraud exception is outlined:

> ...there is an exception to the principle of confidentiality of solicitor-client communications where those communications are criminal or else made with a view to obtaining legal advice to facilitate the commission of a crime. (emphasis added.)

Justice Binnie, in *Campbell* at para 62 has noted:

> In my view, destruction of the privilege takes more than the evidence of the existence of a crime and proof of an anterior consultation with a lawyer. There must be something to suggest that the advice facilitated the crime or that the lawyer became a "dupe or conspirator".

[65] More than a mere allegation of a criminal purpose is required. There should, in my opinion, be some air of reality or initial proof by the Applicant to support its claim. I note that neither PC Seguin nor PC Boyd was ever charged with a criminal offence.

[66] I note further that there is nothing in the materials filed by the Family that suggests the nature of the illegality alleged other than such a conversation occurred in apparent violation of the Regulation as subsequently interpretated by both the Ontario Court of Appeal and the Supreme Court of Canada. That illegality concerned the timing of the consultation.

[67] The majority decision in *Wood v. Schaeffer* has clarified the law moving forward. I note that the Supreme Court was divided on the issue of timing of the consultation with counsel, and that the three dissenting Justices as well as the Ontario Court of Appeal would have allowed consultation for purposes of "basic legal advice." So, the issue of whether there should be retrospective application to cases such as this inquest is challenging.

[68] As noted in Mr. McKay's submission, quoting from *Solosky, supra*, on the issue of solicitor-client privilege:

> The concept of privileged communications between a solicitor and his clients has long been recognized as fundamental to the due administration of justice.

[69] Mr. Justice Dickson further notes that there are exceptions to privilege, including situations where legal advice is neither sought nor offered; where communication is not intended to be confidential; or where advice is sought to facilitate a crime or fraud. I see no evidence that any of these exist in the case before me.

[70] It is a matter of record that PC Seguin made no entries into his memo book, but did compile "Notes to lawyer" on separate type-written pages. It is also a matter of record that PC Boyd's memo book record that he spoke with counsel. PC Boyd's attendance at the incident however, was well after Mr. Minty had been shot, meaning he had no direct knowledge of what had transpired.

[71] On the facts of this case, in a "worst case scenario", even if their lawyer had shared information between the two officers, PC Boyd's late arrival indicates that he had no direct knowledge of the events that would be likely to influence PC Seguin in preparing his own notes of the event. This would be a suspect foundation to justify breaching a principle as important as solicitor-client privilege on the facts of this particular case.

(VI) CONCLUSIONS

[72] I find that at the time of the events in 2009, the communications, if any, between PC Seguin and PC Boyd and their counsel met the three conditions set out in *Canada v. Solosky* and were therefore subject to solicitor client privilege.

[73] Solicitor-client privilege is appropriately recognized as one of the foundations of the justice system. Exceptions should be made only in the clearest of cases and only if it is in the greater public interest to pierce that privilege.

[74] It turns out that, in light of subsequent interpretation of Ontario Regulation 267/10 by the Supreme Court of Canada in *Wood v. Schaeffer*, the timing of the consultation between the officers and counsel was in breach of the Regulation. That is clear moving forward.

[75] I do not find that this breach amounts to something that would fit the "crime/fraud" exception such that the privilege should be set aside. On the evidence before me, the only breach of the Regulation concerns timing. I do not find that this is the clearest of cases, or that it would be in the public interest, or is it necessary to achieve the purposes of the inquest, to set aside a principle as important as solicitor-client privilege in this case.

[76] Therefore, I find that it would be inappropriate for the Declaration by the Supreme Court of Canada to be applied retrospectively on these facts so as to permit counsel for the family to cross-examine the officers (and potentially their counsel) at this inquest about the contents of communications between the officers and their counsel. That Application is denied.

[77] In the event that solicitor-client privilege was found to apply and that cross-examination was denied, the Minty family requested the right to ask about whether the officers consulted with counsel, and if so, when that was in relation to the preparation of their notes. In the interest of attempting to reconcile *Solosky* with the Declaration in *Wood v. Schaeffer*, questions about the timing of the consultation, if any, will be permitted. There will be no questions about the content of those communications.

[78] I do not see this ruling precluding competent counsel from testing the credibility and reliability of the officers' evidence through the normal mechanism of cross-examination of their *viva voce* evidence given on the witness stand, allowing comparison of their evidence to that of other witnesses.

[79] For example, Counsel may quite properly question officers as to the following, and I will in fact instruct my counsel to make such inquiries:

- Where were your notes recorded?
- When were your notes completed?
- Did you discuss the details of this incident with anyone else before you made your notes?
- Have there been any additions, deletions or alterations to your notes since the time that you first made them?
- Do you have an independent recollection of this incident?
- Do you require the use of your notes for purposes of refreshing your memory on details?

Motion to disqualify counsel for conflict of interest

[80] Given the ruling that disallows cross-examination on the contents of communications between the officers and their counsel, I deem the companion motion to disqualify counsel for an apparent conflict of interest to be moot.

Addendum

[81] Having come to the above conclusions for the reasons noted, I must also add that a coroner comes to an inquest having a great deal of knowledge about the circumstances of the death under review. In *Black Action Defence Committee v. Huxter, Coroner*, 1992 ONSC 7695, the court noted the following:

> ...Thus, a coroner arrives at an inquest with a great deal of prior knowledge about the subject matter to be inquired into as a result of his or her earlier investigation ....

> The Coroners Act therefore evidences a legislative expectation that a coroner will not arrive at an inquest with a "clear mind" as is expected of a judge conducting a jury trial.
>
> The Statute clearly confers on an inquest an inquisitorial form and assumes that the coroner will come to that inquest armed with the facts as then known.

[82] As Presiding Coroner, I am familiar with the contents of the inquest brief, and I am aware that there are several civilian witnesses who will give evidence with respect to the sequence of events. Based on my understanding of their statements in the Inquest brief, it is currently anticipated that much of that evidence will be consistent with the anticipated evidence of the officers. It will be for the jury to determine whether or not that is, in fact, the case. Of course, it remains for that evidence to be tested in cross-examination. In any event, I was not asked to consider this evidence, and did not in arriving at my decision.

William J. Lucas
Presiding Coroner

April 30, 2014