

**NOTICE OF APPLICATION TO DIVISIONAL COURT  
FOR JUDICIAL REVIEW**

Court File No. *212/14*

**IN THE MATTER OF an Inquest into the Death of Douglas Minty**

**AND IN THE MATTER OF an Application pursuant to sections 4 and 6(2) of the  
*Judicial Review Procedure Act*, RSO 1990 c J.1**

**AND IN THE MATTER OF an Application for relief in the nature of *certiorari* and  
*mandamus* in respect of the rulings of DR. WILLIAM LUCAS dated April 30, 2014**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

**BETWEEN:**

**EVELYN MINTY, DIANE PINDER,  
BRIAN MINTY and JOHN MINTY**

**Applicants**

**-and-**

**DR. WILLIAM LUCAS, CORONER**

**Respondent**

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**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant(s). The claim made against you is set out in the following pages.

THIS APPLICATION FOR JUDICIAL REVIEW will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at 130 Queen Street West, Osgoode Hall before the Superior Court of Justice (Divisional Court), Toronto, Ontario.

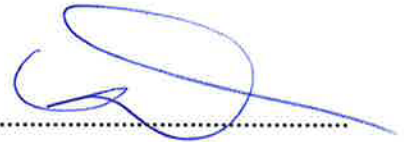
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Ontario Court (General Division) (Divisional Court), and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Ontario Court (General Division) (Divisional Court) within thirty days after service on you of the applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

**Date: May 2, 2014**

Issued by  
Local registrar



Address of  
court office

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**THE APPLICANTS, EVELYN MINTY, DIANE PINDER, BRIAN MINTY and JOHN MINTY,  
MAKE APPLICATION FOR:**

1. An order in the nature of *certiorari* quashing the ruling dated April 30, 2014 of Dr. William Lucas, Coroner, in which the Honourable Coroner denied the Applicants' motion to cross-examine PC Seguin and PC Boyd, parties to the Inquest, on the content of their consultations with counsel prior to making their notes on the events which form the subject matter of the Inquest;
2. An order in the nature of *certiorari* quashing the ruling dated April 30, 2014 of Dr. Lucas, Coroner, in which the Honourable Coroner denied the Applicants' motion to disqualify counsel for PC Seguin and PC Boyd on the basis of actual and apparent conflict of interest;
3. An order in the nature of *certiorari*, with *mandamus* in aid, compelling the Coroner to allow the cross-examination of PC Boyd and PC Seguin on the content of their consultation with counsel prior to making their notes;
4. An order in the nature of *certiorari*, with *mandamus* in aid, directing the Coroner to disqualify counsel for PC Seguin and PC Boyd on the basis of actual and apparent conflict of interest;
5. In the alternative, an order in the nature of *certiorari*, with *mandamus* in aid, directing the Coroner to hold an evidentiary hearing on the nature and existence of the actual and apparent conflict of interest of counsel for PC Boyd and PC Seguin;
6. If necessary an abridgement of the time for service and filing of the herein application;
7. The costs of this proceeding; and,
8. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE APPLICATION ARE:****The Death of Douglas Minty**

1. On June 22, 2009, Constable Graham Seguin responded to a call concerning an alleged assault committed by Douglas Minty, a 59-year-old developmentally disabled man. After PC Seguin arrived at Mr. Minty's residence, Mr. Minty approached PC Seguin with a multi-tool that allegedly had a knife blade opened. Seguin ordered Minty to drop the knife. Minty did not comply and continued to approach Seguin. Seguin fired five shots at Minty and Minty died shortly thereafter. Constable Richard Boyd arrived on the scene shortly after the shooting and was the second responding officer.
2. Sergeant Michael Burton, PC Seguin's senior officer, soon arrived. Burton advised all of the officers that they could be designated as witness officers by the Special Investigations Unit ("SIU") and that they should make no further notes until after they had spoken to legal counsel. Sergeant Burton's notes reflect the fact that he advised PC Seguin not to make notes until he had spoken to counsel.
3. PC Seguin's notes have been disclosed in the inquest brief. Contrary to Ontario Provincial Police ("OPP") policy, the notes are not contained in PC Seguin's police memo book, but are rather on separate sheets of paper with the title: "Notes to lawyer", dated June 22, 2009. PC Seguin's notes indicate that he "spoke with Andy McKay" during the night of June 22, 2009, after the shooting of Douglas Minty.
4. PC Boyd's notes have also been disclosed in the inquest brief. The notes are contained in PC Boyd's memo book. The notes indicate: "spoke with lawyer Andy McKay", at 00:17 hrs on June 22, 2009. The immediately preceding entry indicates that PC Boyd spoke to Sergeant Burton just prior to speaking to counsel.
5. The SIU arrived one hour and 23 minutes after the shooting. PC Seguin was designated as the subject officer and other officers, including PC Boyd and Sergeant Burton, were designated as witness officers. Andrew MacKay, a lawyer frequently consulted by the police in relation to SIU investigations, acted as counsel for all of the officers.
6. SIU Director Ian Scott reported to the Attorney General on the Minty incident on October 14, 2009. Scott's report stated that there were no reasonable grounds to believe that Seguin had committed a

criminal offence in relation to the death of Minty. He indicated, however, that he would address certain apparent breaches of the SIU Regulation with the OPP Commissioner, namely:

- i. The delayed notification of the SIU (contrary to section 3 of Ontario Regulation 267/10, *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit* (“the SIU Regulation”));
- ii. One of the OPP officers took statements from material civilian witnesses (contrary to section 5 of the SIU Regulation); and
- iii. Sergeant Burton instructed all officers not to write their notes until after they spoke to counsel. The same lawyer acted for all the officers and had a professional duty to share information among his clients (contrary to section 6 of the SIU Regulation, which requires witness officers to be segregated.)

### **History of Judicial Proceedings**

7. The Family of Douglas Minty, along with the family of another police shooting victim, commenced a Rule 14.05 Application in the Superior Court of Justice with respect to the interpretation of the SIU Regulation. The Families sought, *inter alia*, a declaration that police officers who are involved in incidents involving the SIU are not entitled to obtain legal assistance in the preparation of their notes regarding the incident. The Application was dismissed.

*Schaeffer v Wood, 2010 ONSC 3647*

8. The Families’ appeal to the Court of Appeal for Ontario was allowed in a judgment dated November 15, 2011. The Court held that police officers are not permitted to receive assistance from counsel in completing their notes, but section 7(1) of the SIU Regulation did entitle officers to “basic legal advice as to the nature of [their] rights and obligations in connection with the incident and the SIU investigation”.

*Schaeffer v Wood, 2011 ONCA 716 at paras 79 and 81*

9. The Chief Coroner of Ontario called a discretionary inquest into the death of Douglas Minty. The Inquest commenced on November 28, 2012. On November 29, 2012, the Minty Family brought a motion requesting permission to cross-examine PC Boyd and PC Seguin on the content of their consultations with counsel prior to completing their notes. On December 7, 2012, Minty Family also

brought a motion to disqualify counsel for PC Boyd and PC Seguin on the basis of an actual and apparent conflict of interest.

10. Leave to appeal the Court of Appeal for Ontario's judgment to the Supreme Court of Canada was granted to PC Seguin and others. The Minty Family cross-appealed with respect to the Court's ruling that officers were entitled to basic legal advice prior to completing their notes. On May 10, 2013, the Presiding Coroner, Dr. Bert Lauwers, adjourned the Inquest into the Death of Douglas Minty pending the ruling from the Supreme Court.

**Ruling of Dr. Bert Lauwers, May 10, 2013**

11. On December 19, 2013, the Supreme Court of Canada released its judgment. It held that police officers involved in an SIU investigation, whether as subject officers or witness officers, are not entitled to engage in consultations of any kind with counsel before completing their notes. The Court allowed the Minty Family's cross appeal, holding that even basic legal advice was prohibited.

*Wood v Schaeffer, 2013 SCC 71*

**Motion before Dr. Lucas**

12. On April 1, 2014 the Family of Douglas Minty motion renewed its motion to permit cross-examination on the content of communications with counsel prior to the officers completing their notes. It is the position of the Family that such cross-examination is permissible, given the decision rendered by the Supreme Court of Canada in *Wood, supra*.
13. On April 1, 2014, the Family of Douglas Minty also renewed its motion concerning conflict of interest. The Family requested that the Coroner disqualify counsel for PC Boyd and PC Seguin. Mr. McKay, who is counsel for PC Seguin, is the lawyer who advised the officers prior their note-making. Mr. Warren, who is counsel for PC Boyd, is an associate of Mr. McKay at Warren, McKay, Geurts & Bellehumeur.
14. The motions of April 1, 2014 were made in writing. The Presiding Coroner, Dr. William Lucas, denied the Family's request for an oral hearing.



15. Dr. Lucas released his ruling on the Family's motions on April 30, 2014. Coroner's counsel advised that the Coroner's decision was not to be made public and could only be shared with counsel.

**Ruling of Dr. William Lucas, April 30, 2014**

16. Dr. Lucas held that PC Seguin and PC Boyd could be cross-examined on the fact of their conversations with counsel prior to making notes, but he ruled that the content of those communications was covered by solicitor-client privilege and could therefore not be the subject of cross-examination. Dr. Lucas ruled that the motion to discharge counsel due to a conflict of interest was moot as a result of his decision with respect to cross-examination.

**Ruling of Dr. William Lucas, April 30, 2014**

17. Dr. Lucas held that the ruling of the Supreme Court of Canada was "effective as of December 19, 2013 and moving forward from that date." He concluded that "it would be inappropriate for the Declaration by the Supreme Court of Canada to be applied retrospectively [sic] 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."

**Ruling of Dr. William Lucas, April 30, 2014 at paras 62, 76**

**Grounds for the Present Application**

18. The Presiding Coroner erred in law and exceeded his jurisdiction by failing to apply the ruling of the Supreme Court of Canada in *Wood, supra*, except on a "moving forward" basis.
19. The Presiding Coroner erred in law and exceeded his jurisdiction by finding that solicitor-client privilege applies in circumstances where the communication itself is prohibited by law.
20. The Presiding Coroner breached principles of natural justice by issuing a ruling that has the effect of denying a party to the proceedings the right to pursue relevant and probative lines of cross-examination.
21. The Presiding Coroner erred in law and exceeded his jurisdiction by excluding relevant and probative evidence.

22. The Presiding Coroner erred in law and exceeded his jurisdiction by improperly limiting the evidence to be presented to the jury on the circumstances of the death of Douglas Minty.
23. The Presiding Coroner erred in law and exceeded his jurisdiction when he predetermined an issue in the proceedings without providing the parties an opportunity to present evidence or to be heard.
24. The Presiding Coroner erred in law and exceeded his jurisdiction by allowing counsel to continue to act despite an actual and apparent conflict of interest.
25. The Presiding Coroner erred in law and exceeded his jurisdiction by denying the Applicant the right to an oral hearing, contrary to the principles of natural justice.
26. *Wood v Schaeffer*, 2013 SCC 71.
27. Sections 31, 32, 41, 44, and 50 of the *Coroners Act*, RSO 1990, c C.37.
28. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

1. The materials filed upon the motions before the Honourable Coroner;
2. The Application Record herein;
3. Such further and other materials as counsel may advise and this Honourable Court permit.

Date: May 2, 2014

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**-and- Dr. WILLIAM LUCAS**  
**Respondent**

**Court File No:** *212/14*

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Divisional Court)**

**Proceedings Commenced in Toronto**

**NOTICE OF APPLICATION FOR JUDICIAL**  
**REVIEW**

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