

# **\$4.3M lawsuit questions OPS domestic violence procedures**

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By Chris Halliday

The only people who know the true story behind what happened the night Heidi Ferguson died are no longer alive to tell it.

While a civil lawsuit launched by her brother, Troy Bogner, alleges police failed in their duty to protect her, the Orangeville Police Service's (OPS) statement of defence filed on Feb. 15 claims Heidi refused repeated requests to take safety precautions the night she was killed by her estranged husband, Hugh, in September of 2009.

What is known is that sometime before midnight on Sept. 11, Orangeville constables Peter Curtis and Brian Parkes responded to a domestic dispute at Heidi's Westdale Avenue home. After officers left, Hugh returned and shot her, then turned the gun on himself hours later inside his Camilla home.

As Bogner's case explains, sometime after 9 p.m., Hugh, who was intoxicated, attacked Heidi inside her home. According to OPS, he was enraged over her decision to file for divorce.

Before he left, the Bogner lawsuit reports Hugh warned Heidi not to call police, threatening her to the effect if she did, "Then see what kind of life your kids will have."

Despite Hugh's threat, on the advice of her mother who she called after the attack, Heidi phoned the police. When Curtis and Parkes saw her injuries, the Bogner lawsuit claims officers told Heidi "they had reasonable grounds to obtain a warrant for Hugh's arrest."

According to the OPS defence, however, Heidi "consistently minimized the significance of the assault" and refused to fully co-operate with police. Officers offered Heidi medical treatment, as well as requested she accompany them to the police station for a statement, both of which she declined.

The reason for those denials, according to OPS, was because Heidi said "the assault was out of character for her ex-husband," and she feared the incident would become known in Orangeville, perhaps even negatively affect her home-based business.

Curtis spoke to Hugh over the telephone from Heidi's house, and arranged for him to come to the police station. In differing versions of that night, the Bogner lawsuit asserts Hugh agreed to surrender in the morning since he had been drinking, while the OPS defence states the 42-year-old agreed to meet officers that evening.

At that point, according to the OPS defence, Curtis again asked Heidi to accompany officers to the station, and when she declined, requested she stay at a friend's house until they'd spoken to her estranged husband.

"She once again refused," the OPS defence states. "She insisted she felt safe at her home."

It's not uncommon for victims of domestic violence to refuse to co-operate with police, explained psychologist Dr. Peter Jaffe, a professor for the Faculty of Education at the University of Western Ontario. In fact, as he explained, most only call police not to file a complaint, but because they're afraid and just want the violence brought to an immediate halt.

"The number one motivation is fear and concerns about immediate safety," Jaffe, also the director of the Centre for Research & Education on Violence Against Women and Children, said. "Half of victims who are killed don't recognize the extent to which their life is in danger."

Referencing a report from the Domestic Violence Death Review Committee (DVDRC), released by the province's Office of the Chief Coroner in 2009, 84 per cent of domestic homicides "are predictable and preventable when you look at all the information after the fact," explained Jaffe, a member of the committee.

In 37 per cent of the 93 domestic homicide cases it reviewed from 2003 to 2009, that committee recommended improvements to police intervention protocol, and in his lawsuit, Bogner suggests his sister's murder falls in that category.

Had officers conducted a proper investigation before leaving Heidi's house, the lawsuit alleges they would have discovered Hugh recently lost his job, was depressed, had a number of firearms in his possession and had demonstrated obsessive and controlling behaviour towards Heidi in the past.

According to the DVDRC committee, some of the most common risk factors found in domestic homicides are an actual or pending separation (78 per cent), obsessive behaviour (63 per cent), and depression (59 per cent) — all characteristics Hugh was either going through, or had exhibited in the past, the Bogner lawsuit states.

"They don't happen out of the blue," Jaffe added. "There is usually a pattern — usually controlling behaviour, jealousy, recent separation."

By leaving Heidi alone in her house — to meet Hugh at the station, as the OPS defence claims — the Bogner lawsuit alleges officers neglected to take immediate action to place Hugh in custody "despite knowing" he was at his home in Camilla.

In addition, after leaving the scene, the Bogner lawsuit claims responding officers did not — as Heidi was advised they would — place a police cruiser out front of her house until Hugh was in custody.

According to Const. Peter Leon, media relations for officer for the Central Region OPP, who declined to comment directly on the case, OPP officers are “duty bound” to make every effort to locate and charge the accused when evidence indicates a domestic assault has occurred. Nowhere in the OPS defence, however, does it indicate officers proceeded immediately to Hugh’s Camilla home.

On another note, the OPS defence claims Heidi “failed to inform the investigating officers” she knew Hugh owned and possessed about one dozen firearms.

As Leon explained, OPP officers responding to alleged incidents of domestic violence are responsible for determining if those involved possess registered firearms — whether victims cooperate or not.

“I can’t speak on behalf of others, but I know what our policy certainly is,” Leon said. “Part of the investigation would include a determination if there are firearms registered to individuals.”

Realizing Hugh hadn’t arrived at the police station by about 1:19 a.m., the OPS claims Curtis called Heidi to request “she immediately attend the police station until her estranged husband could be located.” Once again, Heidi refused to leave her home, and according to OPS, it was at this point the platoon sergeant on duty, a trained domestic investigator, ordered officers to arrest Hugh.

About 10 minutes later, OPS states Curtis received a call from Heidi, who indicated “she had informed her ex-husband that she was going to charge him with assault.” According to the OPS, once declining another offer from Curtis to come down to the station, the tragedy turned life and death for Heidi.

As she spoke to her mother on the telephone, the Bogner lawsuit states Hugh returned and forced his way into the house through the back door, while according to OPS, Heidi called Curtis on his cell phone at about 1:36 a.m. to tell him her husband was outside with a gun.

According to the Bogner case, Heidi ran to seek safety at a neighbour’s house, but before she made it, Hugh shot her three times in the chest.

Rushed to Headwaters Health Care Centre, Heidi was airlifted to Sunnybrook Health Sciences Centre in Toronto, where she succumbed to her injuries.

After the shooting, Orangeville police went to Hugh’s Camilla home and called Dufferin OPP for assistance, but as officers surrounded the house, Hugh committed suicide.

The OPS was cleared of any criminal wrongdoing following an investigation by the province’s Special Investigations Unit (SIU), but that probe focused solely on the actions of an Orangeville officer at Hugh’s Camilla home, not what occurred at Heidi’s home on Westdale Avenue.

In his lawsuit, Bogner places the blame for his sister's death on the inadequate response of the OPS, maintaining officers failed to handle the situation appropriately, according to Model Police Response to Domestic Violence procedures.

“They failed to follow their own protocols on domestic assault offences,” his lawsuit claims. “As a result of the defendants’ actions, Heidi suffered extreme pain, emotional upset and an untimely and undignified death.”

On the other hand, the OPS defence argues Heidi “failed to fully co-operate with the investigating officers to secure her own safety,” and asserts officers acted in accordance with police procedures at all times the night she died.

“At all material times, the involved officers acted in a reasonable and prudent manner, and in accordance with established policies and procedures,” the OPS defence claims.

“Damages and injuries occurred solely as a result of the negligent or intentional acts of Heidi Ferguson and the intentional acts of Hugh Ferguson.”