

Reasons for Decision

1 THE ADJUDICATOR: Thank you. I have thought
2 about this matter, and I've thought about it all
3 summer actually because it is a most interesting
4 set of facts.

5 I don't intend to delay my decision in this
6 particular matter for several reasons, the first
7 of which is that I agree with counsel's
8 submissions that the section referred to by
9 Mr. Hickford a moment ago in fact -- and that is
10 under the old Code of Professional Conduct
11 Regulation, which I think delineates the delict
12 in this particular matter and says that there is
13 a disciplinary default of abuse of authority by
14 incarcerating Willow Kinloch in a jail cell in
15 circumstances in which her incarceration could
16 no longer be justified according to law. I
17 agree that that is a disciplinary default, which
18 counsel suggests to me reflects accurately what
19 is the delict in this particular matter.

20 Counsel have also recommended that a
21 written reprimand is an appropriate method or a
22 measure by which the seriousness of this
23 particular matter can be reflected, and I agree
24 with them in that regard. I thought about that
25 at great length because quite frankly, I read

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1 other words, none of the things which should
2 have been done statutorily were done.

3 That brings me to an issue that
4 Mr. Hickford raised, and that is his concern
5 that this tribunal make a comment with regard to
6 a procedure that was present at the time and
7 which I trust has to some degree been
8 alleviated. This matter is in my view a very
9 serious matter. There appears to me to be a
10 disconnect between the police function and the
11 function of those responsible by statute for the
12 protection of children.

13 There is a person whose responsibility in
14 the community is to comment on that kind of
15 thing. She may very well wish to draw the
16 attention of the government to this particular
17 issue. It's obvious to me that to avoid this
18 problem occurring for the police officer
19 involved, there should be a duty social worker
20 available. If there isn't a duty social worker
21 available, it should not be a convoluted system
22 that government seems to try to use to save some
23 money, which is you phone Vancouver.

24 That's fine maybe if we're dealing with a
25 search warrant or something that doesn't have a

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1 the personnel files of both of the officers
2 involved, and I appreciate the term "reprimand"
3 is a use of term which says to someone, "Look,
4 something was done which is inappropriate," and
5 this is a way to reflect that on a personnel
6 record. I think that's adequate.

7 When I read the personnel files, quite
8 frankly, I wasn't surprised at all that these
9 two gentlemen were hired by the City of
10 Victoria. I would have probably been in the
11 same position and thought that was something
12 that should be done. They found themselves in
13 an extremely difficult situation. The letter of
14 reprimand in my view is an adequate measure that
15 reflects the problem that was created that
16 night.

17 It's very interesting to note when one
18 looks at what occurred that evening that this
19 young woman was arrested at 12 o'clock roughly.
20 She was arrested for state of intoxication in a
21 public place. That seems appropriate. But of
22 course, all of the things that we're discussing
23 with regard to the two officers before this
24 particular tribunal were present when the
25 officer arrested her at 12:00 midnight. In

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1 significant exigency attached to it, but this
2 isn't that kind of situation. This is a child
3 in custody who needs the assistance of a social
4 worker, and it's my view the statute is very,
5 very clear. So some consideration should made
6 to provide a social worker to deal with children
7 in custody. The current system in my view is
8 flawed, and it will remain that way until
9 somebody deals with it.

10 The second issue in this particular matter
11 is the use of restraints. Restraints in my view
12 are something which historically have been used
13 to curtail dangerous conduct by persons who
14 might hurt themselves or others, and the
15 restraints have been accepted in the system for
16 a very long time.

17 It's one thing to restrain an adult. It's
18 one thing to restrain a person who is six foot
19 two and weighs 225 pounds, and it's another
20 thing to restrain a child. This child, and I
21 saw her on a monitor, is a very small, petite,
22 15-year-old who quite frankly was acting out --
23 there's no doubt about that -- and in my view,
24 if she was restrained and if it was felt
25 necessary by the officers involved to restrain

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1 her, there should have been a policy present,
 2 and that policy should read something like this:
 3 Restraints should only be used with regard
 4 to children in custody as a last resort. If
 5 used, the most senior officer present should be
 6 notified forthwith, and the child should be
 7 monitored constantly. The restraint should be
 8 removed as soon as possible.
 9 In my view, all of those things put
 10 pressure on a police force -- which is also
 11 trying to function under a budget, and I
 12 understand all of that -- but these restraints
 13 if they're used on a child of this nature have
 14 to be controlled. This is a situation where a
 15 young person could -- she said she "freaked out"
 16 earlier. People have been known to freak out
 17 when they're very young, and they just stop
 18 breathing. I mean, this is something which is
 19 extremely, in my view, serious.
 20 The policies which I heard at length today
 21 from Mr. Butcher with regard to the use of hard
 22 and soft and restraints, et cetera, I don't
 23 believe are quite frankly designed to deal with
 24 children. They perhaps have to be -- I noted a
 25 police policy that children should be dealt with

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1 respect. I think the officers made a decision
 2 that she's got to go to the padded cell. They
 3 transmitted that somehow to her, and the
 4 foreseeability of it all would be that she would
 5 begin to act out, and she did, and in my view,
 6 that acting out could not be used as an excuse
 7 to later justify putting her in the padded cell.
 8 I therefore agree with counsel that in fact
 9 the disciplinary default is one that I accept,
 10 and secondly, that the form of discipline that
 11 has been suggested is adequate.
 12 Anything further, gentlemen?
 13 MR. HICKFORD: No. Thank you, Mr. Adjudicator.
 14 MR. BUTCHER: Thank you.
 15 THE ADJUDICATOR: Thank you very much, gentlemen, for
 16 your efforts in regard to your clients.
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1 like adults. With the greatest of respect, I
 2 disagree with that.
 3 With regard to the force -- I'll deal with
 4 an issue. The officers faced a very difficult
 5 situation, but there is a civil principle of
 6 foreseeability. In this particular case, the
 7 officers said that when they couldn't get her
 8 into her residence, when they couldn't find a
 9 buzzer that operated, and when she didn't have a
 10 response that satisfied them, that they decided
 11 to "take her back to the cells."
 12 I think somebody made that apparent to her.
 13 It wasn't, "We'll take you back to the police
 14 office and ask the watch commander to keep you
 15 under his or her control until 8 o'clock in the
 16 morning when we can get a social worker in
 17 here." It was, "I think you've got to go back
 18 to the padded cell," and I think the issue of
 19 foreseeability comes into effect. It must have
 20 been very apparent to this young woman that
 21 that's where she was going.
 22 There was no other consideration made as to
 23 other things that might have occurred. Every
 24 one of the other considerations that I've heard
 25 today are made after the fact, with great

REPORTER'S CERTIFICATE

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 3 I, Sherene Hunt, Official Reporter
 4 in the Province of British Columbia, Canada, do
 5 hereby certify:
 6
 7 That the proceedings were taken down
 8 by me in shorthand at the time and place therein
 9 set forth and thereafter transcribed, and the
 10 same is a true and correct and complete
 11 transcript of said proceedings to the best of my
 12 skill and ability.
 13
 14 IN WITNESS WHEREOF, I have hereunto
 15 subscribed my name this 30th day of September, 2010.
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 19 _____
 20 Sherene Hunt, Official Reporter
 21 Province of British Columbia
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