



January 28, 2008

Dirk Ryneveld, Police Complaint Commissioner  
The Office of the Police Complaint Commissioner British Columbia  
#320 - 1111 Melville Street  
Vancouver, BC  
V6E 3V6

Dear Mr. Ryneveld, Q.C.:

**RE: Victoria Police Department Complaint into the Detention of Ms. Willow Kinloch**

I am writing on behalf of the B.C. Civil Liberties Association (BCCLA) to initiate a complaint under the *Police Act* against the relevant members of the Victoria Police Department who were involved in the detention of Ms. Willow Kinloch, 15 years of age at the time, on May 7, 2005.

This complaint is based on information taken from media and police reports, statement made by Ms. Kinloch in the media and the jail cell video released to the public. We expect that some of this information and the facts relevant to our complaint are subject to dispute between the parties. One of the objects of the complaint of course is to impartially establish these facts.

Based on this information, we understand that Ms. Kinloch was detained in the evening for intoxication and taken into police custody. Ms. Kinloch was described as combative when taken into custody, and was placed unrestrained in a padded cell for approximately four hours. The police then decided that Ms. Kinloch could be released into the custody of her parents notwithstanding the fact that police knew that she did not have a key to her residence. They also discovered at some point that Ms. Kinloch's parents telephone was not functioning and that the building intercom could not reach her parents. When the police officers failed to contact Ms. Kinloch's parents, the officers made the decision to return Ms. Kinloch to the station. The officer's refused Ms. Kinloch's requests to contact alternate people, including her sister.

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Upon return to the jail, Ms. Kinloch was described as being uncooperative. After being placed in the cell, Ms. Kinloch was asked to remove her bra and shoes. Ms. Kinloch complied but the act of kicking off her shoes resulted in the Matron, Merle Edmonds, applying physical control measures on Ms. Kinloch. It appears that Constable Edmonds believed the act of kicking the shoe into the corner of the cell constituted assault, along with Ms. Kinloch's attempt to grab Constable Edmond's arm after the Constable held Ms. Kinloch to the wall by her throat. During the exchange, two additional officers entered the cell and held Ms. Kinloch to the ground and a fourth officer entered with a nylon strap. Ms. Kinloch was handcuffed with her arms behind her back and her feet were bound together. The strap binding Ms. Kinloch's ankles was drawn tightly under the door and secured to the other side once the cell door was shut. Ms. Kinloch was left in this sitting position, arms cuffed behind her back, for over four hours. The only physical check on her condition occurred when an officer opened the cell to explain to Ms. Kinloch she was being charged with assault and to read Ms. Kinloch her rights.

The BCCLA is concerned about the actions taken by the officers present on the night of the incident. While it is our understanding that you have launched your own complaint into this matter, the BCCLA would like to have our specific concerns investigated by your office.

### **The initial detention of Ms. Willow Kinloch**

From media reports, it is my understanding that Ms. Kinloch was detained near her residence sometime after midnight for public intoxication. The police decided to take her into custody and to the police station rather than returning her to parents care. She was brought to the main Victoria Police Station, on 850 Caledonia Avenue, and placed in a padded cell because no other cell was available. Approximately 4 hours passed between the time Ms. Kinloch was detained and when the initial decision was made to return her to her residence and the custody of her parents.

Section 26 (1) of the *Youth Criminal Justice Act* dictates that notice to the parents stating the reasons for the arrest and the place of detention should be given "as soon as possible". Ms. Kinloch's parents have publicly stated they were not aware their daughter was in police custody. It is not clear when the police officers determined that Ms. Kinloch's parents telephone was not functioning. Once at the residence, the police officers refused Ms. Kinloch's requests to try alternative means of contact, such as calling up to her parents' window, and appear to have made no attempts of their own to secure contact through alternate means.

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S. 26 (4) of the *Youth Criminal Justice Act* declares that in a situation where the parents are not known or not available, notice is to be given to an adult relative or an other adult who is known to the young person and is willing to assist that youth. Taking into consideration that notice was not given to Ms. Kinloch's parents, it is unclear as to why Ms Kinloch was not permitted to call another adult. Ms. Kinloch has stated that she made a specific request to call her sister's cell phone, but this request was refused. It is not known if Ms. Kinloch made requests to contact other relatives or adults that could offer suitable assistance. It is also not known if police officers made her aware of the legal option to contact alternative adult relatives.

Members of the Victoria Police Department noted that Ms. Kinloch experienced considerable distress when initially detained because she was not able to contact her parents, a fact later used to justify Ms. Kinloch being cuffed and bound in her cell. In our view, such distress only furthers the need to contact Ms. Kinloch's parents or any alternate adult as set out by Sections 26 (1) and (4) of the *Youth Criminal Justice Act*. It appears that the relevant members of the Victoria Police Department did not follow S. 26 of the *Youth Criminal Justice Act*; accordingly, we request that this conduct and associated policy and regulations be investigated by your office. Specifically, why were Ms. Kinloch's parents, or another appropriate adult(s), not immediately contacted; why were alternative means of contact not undertaken; why were Ms. Kinloch's requests to contact her parents through alternate means refused; why were Ms. Kinloch's requests to contact her sister refused; under what circumstances can police officers refuse a minor's requests to contact an adult under such circumstances; did the Victoria Police Department and relevant members thereof act reasonably according to law and policy in securing parental/adult assistance; and, and is Victoria Police policy sufficient to direct officers appropriately under similar circumstances?

### **The second detention of Ms. Willow Kinloch**

Constables Asmussen and O'Neill, tasked to return Ms. Kinloch to the custody of her parents, decided they were unable to do so and returned to the police station. In our view, these officers committed disciplinary defaults by not taking appropriate action to return Ms. Kinloch to her parents once at her apartment.

In any event, Ms. Kinloch initially refused to leave the police vehicle upon return to the police station, objecting to her continued detention and wanting instead to contact her parents. The officers used force to pull her out of the car, and Ms. Kinloch was returned to the padded cell she previously occupied although she appears to enter the jail cell of her volition. The cell was under video surveillance without audio capabilities, and from this point Ms. Kinloch's detention has been captured and preserved on video.

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### **The altercation with Constable Merle Edmonds**

After being in the cell for several moments (though not appearing physically distressed), Special Municipal Constable, Merle Edmonds, entered Ms. Kinloch's cell and asked for the removal of Ms. Kinloch's bra and shoes. Ms. Kinloch complied with the request and does not appear to show aggression in her actions. Ms. Kinloch, in a standing position, removes her bra and then kicks off her shoes, one dropping at her feet and the other apparently kicked off into the corner of the cell. It appears that Constable Edmonds reacted to Ms. Kinloch's method of removing her shoes by lunging forward with her left arm pressing Ms. Kinloch against the back wall of the cell. Ms. Kinloch responds by grabbing at Constable Edmonds' left bicep, which we understand to be the justification for the subsequent charge of assault against Ms. Kinloch. As there is no audio, it is unclear how Constable Edmonds verbally directed Ms. Kinloch to remove her shoes while in a standing position and in a state of intoxication.

According to the police report, Constable Edmonds reported that Ms. Kinloch "lashed out and grabbed [her] by the arm causing injury" Ms. Kinloch clearly grabs Constable Edmond's arm after the constable advances on Ms. Kinloch and presses her against the cell wall. Constable Edmonds also reported that Ms. Kinloch punched her, which clearly did not occur, and threw a shoe, which inaccurately represents how Ms. Kinloch removed her shoe.

We request that your office investigate the actions of Constable Edmonds, specifically with regard to the Victoria Police Department policies on search procedure and, as noted in the following section, the use of force. We also request that you investigate whether Constable Edmonds wilfully misrepresented the facts. Given our understanding that Constable Edmonds advised Crown Counsel that she would testify under oath that Ms. Kinloch punched her (and thus justifying a criminal charge of assault), we believe that this misrepresentation is a potentially very serious default.

### **The ensuing altercation with Constables Asmussen and O'Neill**

Moments after the physical altercation between Constable Edmonds and Ms. Kinloch, Constables Asmussen and O'Neill enter the cell and proceed to bring Ms. Kinloch to the ground, at which point she is handcuffed with her arms behind her back. In subduing Ms. Kinloch, all three officers use considerable force.

According to S. 3.20 of the Operations Section of the Victoria Police policy and regulations manual (attached), before any soft physical control techniques can be applied, officers must first use dialogue and communication to gain compliance. Although the video does not contain sound, there is no indication that these communicative, "lower

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force” techniques were first employed. As is stated in S.3.9 of the Operations Section, factors that affect the “reasonableness” of applying force include size, age, gender and mental state. Ms. Kinloch was fifteen at the time of the incident, less than five feet tall, and reportedly weighing less than one-hundred pounds. We request that your office investigate the reasonableness of the degree of force used on Ms. Kinloch by three well-built and presumably well-trained officers. As well, we request that you review the adequacy of Victoria Police policy on the use of force.

### **The binding of Ms. Kinloch's legs with a restraint strap**

A decision was made to bind Ms. Kinloch's legs. A fourth officer enters the cell with a strap, reportedly nylon, and Ms. Kinloch's feet are bound. While in a sitting position with hands cuffed behind her back, Ms. Kinloch is dragged by the strap across the floor. The cell door is shut and the strap is secured on the other side. At this point, Ms. Kinloch's feet are flush against the door with little 'wiggle room', although over time she manages to lessen the tension in the strap.

It is difficult to understand the police's justification for the use of the restraint strap, although it appears, based on the statements of the officers, that Constable Edmonds apparently was concerned Ms. Kinloch would continue to kick based on Ms. Kinloch's actions while removing her shoes, and Ms. Kinloch previous banging on the cell door when previously incarcerated. Regarding the latter point, it is our understanding that Ms. Kinloch admits to banging on her cell door during her initial detention to effect the contact of her parents, although we understand Ms. Kinloch denies kicking the door as alleged.

In our view, there is no justification for the use of the restraining strap based on the facts and on police policy. Any allegation of previous kicking the cell door does not warrant the use of the strap at the time, and appears instead to be a punishment imposed for prior conduct. Any allegation of risk of harm (to herself or others) she posed, if there is any objective evidence of such a risk, and we do not believe there is such evidence, could have been addressed by simply leaving her the *padded* cell room as during the previous detention.

Section 3.26 of the Operations Section on Use of Force notes that modified restraint straps “*may*” be used if “appropriate and reasonable to do so” when subjects “are extremely violent and begin to kick violently attempting to injure themselves or others and/or are attempting to destroy police property”. The video gives no indication that Ms. Kinloch was behaving violently or kicking violently during her second visit to the cells. In the event that restraints are used, S. 3.27 dictates that, when appropriate and

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reasonable, the restrained individual be placed on the back or side. Ms. Kinloch was placed neither on her back nor side, and was instead left sitting up with her legs stretched and tethered to the door, an extremely uncomfortable position.

We request that the use of the restraint strap on Ms. Kinloch be investigated by your office, both in its appropriateness given the facts and existing policy. We also request that you review the existing policy. Specifically, did Ms. Kinloch's actions justify the use of the restraint strap; is the appropriateness of the strap affected by age, height and weight, which in the present case was 15, 4'11", and less than 100 lbs respectively; does and should intoxication affect the use of the restraint strap; was the strap fastened appropriately and with proper padding to avoid injury; would the strap, composed reportedly of nylon and with an unknown level of padding, be approved as safe and appropriate according to current professional standards; does Victoria Police policy regarding the restraint strap accord with similar policy in a medical setting; was it appropriate to drag Ms. Kinloch by the strap, and if not, how is this to be avoided when positioning a restrained individual; is it reasonable and humane to bind and restrain an individual in the way Ms. Kinloch was bound and restrained; does S. 3.27 of the Operations Section on Use of Force provide enough direction to compel proper placement; at what duration is it unreasonable and/or inhumane to bind an individual in the way Ms. Kinloch was bound and restrained; was Ms. Kinloch properly informed of her right to retain and instruct counsel without delay and done so in a manner consistent with her age and circumstances; did the use of the restraint strap interfere with Ms. Kinloch's right to retain and instruct counsel without delay; was Ms. Kinloch provided access to a toilet, appropriately private given her age, at any point in the night and was or should there be policy in this regard specific to the use of the restraint strap; and, was Ms. Kinloch provided access to water at any point in the night and was or should there be policy in this regard specific to the use of the restraint strap?

### **The monitoring of Ms. Kinloch**

The video indicates that, with one exception, there was no physical check on Ms. Kinloch while she was restrained. The single exception occurred within minutes of being put in restrained isolation, but the purpose of this was to place Ms. Kinloch under arrest. Given the duration of the detention, over four hours, and the circumstances, including Ms. Kinloch's age, mental state, and intoxication, this appears grossly inadequate.

The video shows a period of time during which Ms. Kinloch made little to no movement, and it is troubling that no one directly checked on her by opening the cell door and speaking to her. Any signs of the physical abnormalities mentioned in S. 3.28 of the Operations Section on Use of Force such as laboured breathing, abnormal skin and loss

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of consciousness that could be an indication of the need for further medical attention would require the physical checks that did not occur that night. Additionally, it seems that without checking on Ms. Kinloch's condition, the officers did not assess whether she continued, in their mind, to pose a threat justifying the continued use of the restraint strap. This runs contrary to policy, as S 3.29 of the Operations Section on Use of Force dictates that restraining devices are to be removed once it is deemed the subject is no longer a threat to themselves or others. There is no indication from the video that Ms. Kinloch posed a threat at any time after she was bound by the restraint strap, and this complaint questions whether Ms. Kinloch posed a threat at *any* time during the night to justify the use of the restraint strap.

We request that the apparent failure of the Victoria Police to adequately monitor Ms. Kinloch and her condition be investigated by your office. Specifically, whose responsibility was it to monitor the condition of Ms. Kinloch; was Ms. Kinloch actively monitored via video surveillance and is there log books documenting how often this occurred; was Ms. Kinloch's health assessed at any time during the night, how often, and what was the results of the assesment(s); does Victoria Police policy on monitoring accord with similar policy in a medical setting or other police departments; and, does the lack of monitoring and the consequent denial of water and toilet facilities constitute inhumane treatment?

The BCCLA requests that the conduct of all relevant officers, including for example, the officer in charge of jails, be subject to this investigation. The BCCLA is concerned that the conduct of all relevant officers at the Victoria Police Department failed to meet the appropriate professional standards in their handling of Ms. Willow Kinloch and constitute disciplinary defaults under the *Code of Professional Conduct* regulation.

Therefore, we request that your office undertake an investigation under the *Police Act* to determine if the officers present at the time of Ms. Kinloch's detention and any other officers directly responsible for her welfare conducted themselves appropriately according to the *Code of Professional Conduct* regulation under the *Police Act*. We specifically request that your office investigate whether any officers acted discredibly (**S. 5(b)**), neglected their duties (**S. 6(a)(ii)**), abused their authority (**S. 10(a) and 10(b)**) or acted in any other manner contrary to accepted professional standards.

Before closing, we also note that the Victoria Police Department indicated in the media that they would undertake an internal investigation *after* having reported to the media that they believed the officers' actions to be justified. We believe that this demonstrates a lack of understanding of the need to maintain impartiality in internal investigations. As you know, the BCCLA believes that your office should have independent authority under the

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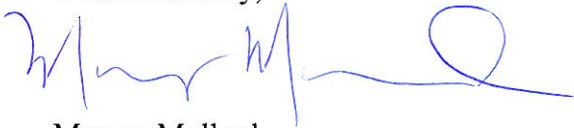
legislation to investigate such serious matters directly. However, given the lack of such of authority, we understand that you have appointed the Vancouver Police Department to investigate this matter and applaud your initiative.

We also note that either Acting Chief Naughton or other representatives of the Victoria Police Department suggested that the BCCLA had “approved” of the modified restraining strap. While the BCCLA had discussions with the Victoria Police Department members, including with Acting Chief Naughton, during their Taser review for the Office of the Police Complaint Commissioner that may have included discussion about this device, the BCCLA has never “approved” of this device nor are we in a position to do so. It is not our role to approve use of force devices by police. Nor would we ever “approve” of the application of this device in circumstances such as in this complaint. We object to such comments by the Victoria Police Department.

In closing, we request that your office investigate and review the actions and decisions taken by the Victoria Police Department.

We look forward to your response.

Yours sincerely,



Murray Mollard,  
Executive Director