PUBLIC INQUIRY

THE FATALITIES INQUIRIES ACT

CANADA
PROVINCE OF ALBERTA

A Public Inquiry into the death of [redacted] of Calgary, Alberta was held at Calgary, Alberta before The Honourable Hugh F. Landerkin, a Judge of the Provincial Court of Alberta. A Jury was not summoned.

The Inquiry was held on June 23 & 27, and August 8, 1997 and Judge Landerkin made the following findings:

1. **Date and Time of Death:** January 7, 1997 at 5.30 P.M.
2. **Place:** Station Six, Calgary City Police, Calgary, Alberta.
3. **Medical Cause of Death:** Anoxic Brain Injury due to hanging.
4. **Manner of Death:** Suicide
5. **Circumstances of Death**

Suicide is a leading cause of death in Alberta[1]. It is among the leading causes of death for young people in North America. On average, 450 Albertans take their own life each year.[2] The societal stake in these tragedies is sufficiently serious to demand careful attention as "the societal costs of suicide acts are incalculable; these costs include enormous emotional and financial costs to families, friends and employees..., these costs can be greatly reduced since suicidal behaviours are generally viewed as

being preventable injuries and deaths."[3] As The Council of the College of Physicians and Surgeons of Alberta notes:

> "The 'good news' about suicide is that it is highly preventable. People seldom, if ever, kill themselves without warning. Rather they demonstrate a variety of warning signs, clues and risks indicators. The actual suicide act can, therefore, be viewed as the *last* of a long series of increasingly dangerous cries for help..."[4]

[redacted] is one of these 450 persons. [redacted] took his own life in a police cell at District Six police station on January 7, 1997. He died of asphyxia due to hanging from a ligature made from his own shoelaces. I find that [redacted] death was preventable and therefore make five recommendations arising from the testimony in this Fatality Inquiry.

These recommendations are:

(1) *Follow the Law of Arrest and Detention.*

(2) *Mandatory Suicide Awareness Education.*

(3) *Redefine Hull Home's Advocacy Duty and Planning Responsibility.*

(4) *Reaffirm the principle of duty of parental guardians to provide for and protect their children.*

(5) *Create a more transparent, fair, and neutral investigative process by the authorities when a fatality occurs in police custody.*

INTRODUCTION

The Fatality Inquiries Act requires a public hearing before a judge where a person dies in gaol for self-evident reasons: police owe a duty of care and protection to those persons they detain or arrest.[5] The City of Calgary Police Manual aptly describes such duty: "A police officer who has a person under arrest... is responsible for the welfare, safety and security of that person..."[6]. It follows that if such police officer properly discharges this duty, absent exigent circumstances, no person should die in police custody. I find no exigent circumstances existed here. Delay created by police action played a dominant part in [redacted] death. It follows then that this tragic but preventable suicide requires scrutiny so that no other young person meets such a fate.

At this juncture, I wish to say something about Inquiries. They take place before a judge in an open court setting. The various stakeholders with standing call witnesses who give sworn testimony. They also enter appropriate exhibits into the record. Everything is done before the public. Yet this is not a court. I use the word "testimony" advisedly. I did not hear evidence as the word evidence is legally understood. The common law of evidence is not rigorously followed in Inquiries. In consequence, I do not decide legal liability, either civilly or criminally. My findings of fact and conclusions on fault must remain within the context of this Inquiry.

The Supreme Court of Canada emphasized this in *Krever Commission*[7]:

> "... A Commissioner accordingly should endeavour to avoid setting out conclusions that are couched in the specific language of criminal culpability or civil liability for the public perception maybe that specific findings of criminal or civil liability have been made. A Commissioner has the power to make all relevant findings of fact necessary to explain or

> support the recommendations, even if these findings reflect adversely upon individuals. Further a Commissioner may make findings of misconduct based on the factual findings, provided they are necessary to fulfil the purpose of the Inquiry as it is described in the terms of reference. In addition, a Commissioner may make a finding that there has been a failure to comply with a certain standard of conduct, so long as it is clear that the standard is not legally binding one such that the finding amounts to a conclusion of law pertaining to criminal or civil liability."

While, I may "name names,"[8] nevertheless it is important then to keep these principles in clear view.

FINDINGS OF FACT

At the time of his death, [redacted] resided at William Roper Hull Home, a residential treatment facility for adolescents, aged 12 through 17 years. [redacted] resided at Hull Home from August 26, 1995, as the Calgary Young Offender Centre (CYOC) transferred him there to one of three open custody beds at Hull Home, presumably because of the treatment facilities there. Later, [redacted] continued at Hull Home as his parents contractually agreed with the Child Welfare authorities for him to stay in their care. His future at Hull Home was uncertain as Child Welfare had made no concrete plan for him. [redacted] was eligible for independent living and other options such as group home or foster home placement. For unexplained reasons, neither his divorced mother or father wanted him at their homes, a fact well known to [redacted]

[redacted] participated in the TRAC program at Hull Home. This program, said to be highly structured, offered support, counselling, education, and direction designed to alter or change personal behaviour over time. I received no specific details as to how this program worked and how its success may be gauged or measured. Because [redacted] was

serving an open custody disposition for robbery when he first came to Hull Home, some of his behaviours requiring change were criminal in nature.

Hull Home was aware of some of [redacted] needs and problems as they had to do an assessment before accepting him into the program. Psychological assessments are not generally done at CYOC. Presumably Hull Home had access to predisposition reports filed in Youth Court, family contacts, contact with [redacted] and CYOC staff. As well, Hull Home knew of [redacted] prior suicide attempt at CYOC. Nevertheless, Hull Home discounted this, everyone apparently deciding this was an act of frustration and anger. Billie Orr, the staff psychologist at Hull Home testified: 'There was no real follow up on that (the suicide attempt) because there was no indication that there was a true suicide attempt.'[9] I find any attempt on one's life to be real: this goes beyond any notion I know of about suicide ideation.

Hull Home found [redacted] depressed to a degree upon entry into their program. Indeed, Hull considered [redacted] significantly disordered when he entered the TRAC program. While testing was limited, and no predisposition report was placed before me, Ms. Orr diagnosed his condition as a conduct disorder at this time. [redacted] was a child of divorced parents and felt responsible in some way for their divorce. Apparently he had a difficult family life, and presented as low in self-esteem. He had significant peer group difficulties and felt he was an outcast.

The Diagnostic and Statistical Manual of Mental Disorders, 4th edition, (DSM-IV)[10], is the standard classification system for persons suffering from mental disorders used by those working in the psychological and psychiatric areas. It is reasonably understood

by those in the Child Welfare and Youth Court systems. Conduct Disorder is described as follows[11]:

> (A) A repetitive and persistent pattern of behaviour in which the basic rights of others or major age - appropriate societal norms or rules are violated, as manifested by the presence of three or more of the following criteria in the past 12 months with at least one criteria present in the last six months: aggression to people or animals...; destruction of property...; deceitfulness or theft...; serious violations of the rules...
>
> (B) The disturbance in behaviour causes clinically significant impairment in social, academic or occupational functioning.

Ms. Orr described [redacted] as highly impulsive, one who acted out, was often truant, did not perform up to his ability at school, and one who escaped the reality of his life through drugs and alcohol. Even with these skeletal facts, I find this diagnosis tenable. This said, there are degrees of conduct disorder as the classification is broadly cast.

What surprised me here is the lack of specificity about the cause of [redacted] problems, what kind of program that would have been effective in alleviating or remedying this disorder, and what necessary plan would bring [redacted] to normalcy, thus protecting the societal interest at stake here. The importance of this is obvious, from a systemic and individual point of view. The DSM-IV best explains this as it describes some behavioral aspects of individuals with Conduct Disorder. These individuals usually have low self-esteem, poor frustration tolerance, irritability, temper outbursts and recklessness. Further:

> "Conduct Disorder is often associated with an early onset of sexual behaviour, drinking, smoking, use of illegal substances, recklessness and risk-taking acts. Illegal drug use may increase the risk that Conduct Disorder will persist.

... Suicidal ideation, suicide attempts, and completed suicide occur at a higher than expected rate . . .". [12](my emphasis)

The course of Conduct Disorder is variable. Most individuals pass through the dangerous passage called adolescence and enter remission by adulthood and adjust adequately. Others, especially those with early-onset, may be found with an increased risk as adults for Antisocial Personality Disorder. With this diagnosis in view, I was surprised no one could say with precision how [redacted] had fared with his involvement in the TRAC program for the length of time there, and what assistance and counselling [redacted] required after his expected departure from Hull Home in early 1997. I was also very much surprised, in light of this disorder and his previous known suicide attempt, that this was not dealt with in greater detail, especially in light of [redacted] understanding that, apart from his own desire to return home, he knew he was not wanted there. Can there be a more devastating thing for a child to learn than this? I think not.

[redacted] was very much alone at this stage in his life. Yet, the Child Welfare authorities and those at Hull Home decided, given this young person's background, that [redacted] should be an advocate for his future. I find this terribly misplaced. In the end, there were no fixed plans for the future. Apparently Hull staff gave [redacted] a pass to leave the Hull Home campus during the Christmas/New Year season. Details were lacking about who would monitor [redacted] where [redacted] could go, who was responsible for him. About this time, several persons committed what the police termed a "home invasion" robbery and what may be best described, on the testimony I heard, as a settling of accounts, at a house in the Douglasdale area of Calgary. Detective William Boehler attempted to explain what happened here, in what was one of the most confusing

scenarios heard in sometime in my courtroom. From his disjointed testimony, I gather the police theory is that one group of people ripped off another group in an illegal drug transaction. Later, these victims, and I use the word victims advisedly, sought to obtain retributive justice through this so-called home invasion robbery, where goods of an original value of $800.00 were allegedly stolen. Somehow, after police involvement, this increased to $8,000.00 in value. No clarity exists on the sources of information about this event or the existence of any degree of reliability. I find it interesting that no one testified about any convictions arising from the police investigation of either event, let alone any charges laid against other persons.

I did not find Detective Boehler's testimony helpful because of its self-serving nature. He did not prove any reasonable and probable grounds for the arrest of [redacted] Detective Boehler's attempt to describe what happened at Douglasdale, after previously suggesting his view about the drug deal, buttresses this point:

> "And now, speaking to these females (informants) and to the other male -- or, I haven't located him yet --- and obtaining the descriptions, basically, the same story, the victim tells me that, although he did not go to the vehicle, he believes the driver of the car that night to be the male that came through his door first when the home invasion robbery occurred. He could supply no reason for that, but he believed that to be the case."[13]

All I can say about the information is that someone knows something about somebody but that no one knows anything personally. This is how Detective Boehler obtained the name of an alleged participant, [redacted] at "Enviros." He passed this on to Constable Leek, the police liaison officer at Hull Home. Constable Leek knew all about

[redacted] at TRAC and that there was no one named [redacted] at Enviros. Even so, Constable Leek never asserted he had reasonable and probable grounds to arrest [redacted]

Stated at its highest therefore, Detective Boehler, acting on uncertain information from persons allegedly involved in illegal drug and criminal activity, who cannot positively identify any person involved in the so-called robbery or drug deal, and acting on further speculative information from unnamed third parties who never said how they obtained their knowledge about either event, believed he had reasonable and probable grounds to arrest [redacted] Detective Boehler never conducted a photo lineup or any lineup for that matter. As he later noted, he had "three or four" physical descriptions of the [redacted] involved in the alleged break and enter.

Whatever may be Detective Boehler's subjective view about this confusing tale, on examination of the record, I am unable to find, on an objective basis, any reasonable and probable ground to arrest [redacted] Detective Boehler instructed Constable Leek to arrest [redacted] for robbery without warrant. This occurred at 11:50 a.m. on January 7, 1997. From this time on, the City of Calgary Police had control of [redacted] first by detention, and then by arrest, at Hull Home and at District Six Police station. The police Chartered and cautioned [redacted] wanted counsel. Nevertheless, before he received any reasonable opportunity to exercise this Charter right, Detective Boehler carried on with his interrogation of [redacted]

Section 56 of the Young Offenders Act (YOA) provides that no statement of a young person made while under suspicion, detention or arrest can be used against him unless certain conditions are met or are waived in writing. It follows, as a matter of law,

which is well known to all police officers, that anything said by [redacted] here was inadmissible in court. [redacted] denied the charge of robbery, asserting it was "bogus."

I find that the police interrogation was for the express purpose of obtaining more information about other participants in the alleged drug deal and robbery. That this was the point of the police interrogation is clear from the testimony of Constable Leek:[14]

> "Then Detective Dooks asked if I would go in and talk to him a little bit more about the investigation, about some property, and at the same time, check on him and see how he was doing, and check the room."

Constable Leek's understanding of why [redacted] was at District Six for so long confirms the interrogation purpose. When I asked Constable Leek why the police kept [redacted] for so long at District Six, he said: [15]

> "Essentially, it's just in the course of investigations, with being interviewed and talked to, and completion of paperwork. That would be my -- my guess, my understanding."

I suggested that the police purpose was obtaining more information and had little to do with trying to prove a case against [redacted] I asked Constable Leek this question and received this answer:[16]

> "Q Well, the inference is potentially there that, because of your close relationship with him, that they (the two detectives) might not have, you may be able to get him to help you with things they need to know, and that's the reason he is being kept at District '6' for five hours, not bookwork. I put that before you as an inference that may be open to someone. What do you say sir?
> A I don't have anything to say to that, Sir."

The detectives well knew the basic principles of law requiring the separation of young people from adults in our criminal justice system. Yet they were all of the view

that they could continue to hold [redacted] at District Six until they had completed all their investigation and other tasks. This included completion of paperwork, interrogation for other purposes as noted, and preparing a search warrant application. Only then were they going to transport [redacted] downtown so the Arrest Processing Unit could deal with him. No reasonable or rational explanation came from these officers for this procedure. To paraphrase their testimony - it was just the way things were. This is not acceptable. It is wrong in law.

While the police had frequent contact with [redacted] over the course of the afternoon, at 4:00 p.m. an important event occurred. [redacted] phoned Tammy Wilson, a child-care worker at the TRAC program. She recognized immediately from his conversation that [redacted] was expressing suicide ideation. After a 10 or 15 minute conversation with [redacted] she decided to call Constable Leek and tell him this new information. At 4:20 or 4:25 p.m., Ms. Wilson advised Constable Leek of the suicide risk. In her witness statement she wrote the words "high risk". She particularly noted the agitated "out of the norm" state of [redacted] and that he was constantly asking Ms. Wilson to say goodbye to both his mother and girlfriend.

Constable Leek advised that "he would look into it, or I'll take care of it." Consequently, Ms. Wilson carried on with other work at Hull Home. Constable Leek took this warning seriously. To his credit, he was pivotal in setting up the police liaison program with Hull Home. He had created a good working relationship with those at Hull Home. He had Tammy Wilson's full confidence. Unfortunately, he lacked, through no fault of his own, any training from either the police service or Hull Home about suicide.

He was also bound by the hierarchical nature of the police service. Constable Leek reported to Detective Boehler who had conduct of the case. In consequence, Constable Leek informed Detective Boehler and Detective Dooks of the telephone conversation he had with Ms. Wilson. With this formation, the police discussed among themselves how [redacted] could harm himself, even to the point of discussing the clothes he was wearing. Thus, without first checking the room, without checking with Ms. Wilson, without discussing further the risk of suicide, they discounted the possibility of suicide only because they concluded there was nothing [redacted] could hang himself from in the cell. They never considered moving [redacted] from the cell to a place in the station where he could sit, perhaps handcuffed or shackled, despite their observation that [redacted] was more polite than most. They did not assign anyone to monitor [redacted] in the cell through a closed circuit television system. They did not keep a proper or any lookout. Nor did they consider removing his clothes as they had concluded the cell was suicide proof. Tragically, they never removed his shoe laces.

Detective Dooks subsequently asked Constable Leek to check on [redacted] which he did. Constable Leek also checked the room. Obviously, he did not check the ceiling where this wire cage protected a heat register. This occurred at 4:45 p.m.. When Constable Leek talked to [redacted] he was upset but he was not crying as was the case when [redacted] was talking to Ms. Wilson.

Constable Leek never confronted [redacted] directly about the self-harm issue. Constable Leek did know that there was a police policy to take a suicidal person to the Arrest Processing Unit downtown where the police could monitor that person more

carefully. He acknowledged that this policy was not followed here. This decision not to move [redacted] downtown was the responsibility of Detective Boehler.

Constable Leek, as instructed by the detectives, continued to talk about the investigation and received further information about some stolen property. At 5:00 p.m. Constable Leek brought [redacted] his "supper", that being a sandwich. At 5:10 p.m. Constable Leek heard [redacted] knock on the door as [redacted] wanted to call Hull Home. [redacted] called but the line was busy. [redacted] was now quiet. Constable Leek reported to the detectives. The detectives asked Constable Leek to see [redacted] again to see how much he weighed as they had varying physical descriptions of the [redacted] allegedly involved in the criminal acts under their investigation. Constable Leek did this at 5:20 or 5:22 p.m. Armed with this information, Constable Leek returned to the detectives and helped them with the remaining paper work. Constable Leek went to the report room. From this vantage point, a person can see the television monitor for [redacted] cell. Constable Leek happened to glance at the monitor at 5:30 p.m. [redacted] was on the floor of the cell. This, of itself, was not unusual because many people lie down on the floor to sleep. Constable Leek, on his own initiative, decided to check on [redacted] He went to the cell and touched [redacted] with his foot. [redacted] did not move. Constable Leek then saw [redacted] purple face and the shoelace ligature tied around his neck. [redacted] was dead.

Detectives Boehler and Dooks had informed Constable Leek that they would keep a watch on [redacted] Neither did. Detective Boehler never delegated this responsibility to Constable Leek or anyone else.

I find Detective Boehler never seriously considered the real potential for suicide. His concern was, at best, minimal, at worst, indifferent. Detective Boehler testified, without any leading by counsel, about his views:[17]

> "I would just like to reiterate that this was simply not a case of hearing some information and --- and completely passing it off. A complete evaluation was conducted in relation to my knowledge of what was in that room. The conclusion that there was nothing within that room that was capable of being used -- as I say, I had no knowledge of that device on the ceiling, I had never seen one before.
>
> I considered [redacted] state of mind throughout the time I had been dealing with him, and I determined that there was absolutely nothing in his demeanour that -- that should cause me any sort of alarm in relation to that.
>
> I considered the information that I had been given and determined that a comment by someone that they "think he might be" was really not a very strong comment at the time without any -- any basis to back that up, any facts, any previous history, or anything of that nature.
>
> So, combined with the fact that I believed at the time that there was absolutely no item in that room that -- that could further him to harm himself, the decision was made on my part that it was not necessary to be concerned, that we should be removing items of clothing from him."

The self-contradictory nature of his words is evident. I note all this was from a man with no training at all in suicide who felt:[18]

> "It was not very practical in relation to dropping everything and taking him down [back downtown [to the Arrest Processing Unit] immediately based upon the information that was available. And at that time, as I say, all things considered, it was deemed that -- that there was no immediate cause for alarm."

It is clear to me that Detective Boehler did not consider all available information, in that he did not investigate nor consider the strength of Tammy Wilson's suicide warning, he did not consider the facts viewed from her perspective, he did not consider any previous history nor even ask about it, and he made no independent inquiries of his own of anybody. I find he discounted the information from Ms. Wilson relayed to him through Constable Leek in its entirety. Therefore, I find Detective Boehler responsible here.

RECOMMENDATIONS

1. FOLLOW THE LAW

A. Arrest without warrant: Reasonable and Probable Grounds

I find there was a rush to judgment here. Several weeks before the so-called home invasion robbery in Douglasdale, there had been a fraudulent drug deal perpetrated on this alleged victim. Those supposedly involved were not known to the police. As informants therefore, they must be suspect. Their reliability is very much in question for the most obvious of reasons, their involvement in illegal activities for personal gain, dishonesty, and their underlying motive - a settling of accounts outside the justice system. Generally, I find such people unreliable. While a **Vetrovec**[19] warning is no longer obligatory in the courtroom, prudence is advised. From Detective Boehler's testimony in this area, I have considerable difficulty understanding his subjective belief in reasonable and probable grounds to arrest. His testimony was hard to follow, let alone accept, especially considering he had three or four different physical descriptions

of [redacted] from the persons involved. It was on this fragile basis that he believed the [redacted] mentioned was [redacted] Detective Boehler could have found out [redacted] past through Constable Leek. He could have easily arranged, at the very least, a photo lineup. He made no further inquires. Therefore, I cannot accept his assertion that reasonable and probable grounds to arrest existed. Reasonable and probable grounds must consider all information available to the person who arrests without warrant. While an officer may use hearsay, he still must receive sufficient information to have, personally and independently, the subjective belief and objective grounds to constitute reasonable grounds to arrest. Constable Leek, by his own frank admission, never had these grounds. I cannot find that Detective Boehler had reasonable and probable grounds to arrest without warrant on any objective basis. Subsequent acts and events and facts do not come to the aid of the arresting officer. Facts on which a police officer's belief is founded must exist before the arrest.

When assessing the conduct of the person responsible for the arrest, the law imports a requirement for reasonable grounds on an objective standard as well as a subjective belief in the validity of the grounds. In reaching the conclusion to arrest, on an objective basis, the court applies the reasonable person test, namely, the average citizen, in the Calgary community, fully informed and acting dispassionately, must conclude that reasonable and probable grounds exist. If a police officer lacks reasonable and probable grounds to connect a suspect to a crime, the police officer must not and cannot make an arrest to "solely to assist in the investigation of a crime."[20] If, however, reasonable and probable grounds exist, nothing prevents a police officer

from legally carrying on with his investigation after that, provided other legal protections have been afforded such an accused person.

The Supreme Court has reaffirmed this law in **R. v. Feeney**[21]. The absence of either objective or subjective grounds to believe that the accused committed the offence renders the arrest unlawful. **Feeney** confirms the obvious: an arrest may not be used solely for investigation and preservation of evidence. There must be an accumulation of "objectively discernible facts"[22] amounting to reasonable and probable grounds that justify this subjective belief of the officer in the validity of those grounds. While tips from informers may help the officer in coming to this subjective conclusion, some confirmation of these alleged facts must be made before the arresting officer proceeds.

There was no investigative necessity to arrest [redacted] at 11:30 a.m. on January 7, 1997. There were no emergent circumstances shown in the testimony before me. I find time would have provided the City of Calgary Police with a clear opportunity to pursue a stronger case and to obtain better evidence. I appreciate that while Detective Boehler does not have to obtain a *prima facie* case before arrest, he needed something more than hunch or suspicion. A detective knows the difference between street information and admissible evidence. He operates in the legal realm where only legal proof is accepted. While there were some coincidences suggested here, they were all voiced by people allegedly involved in criminal acts. Such persons inevitably are motivated by self-interest, especially here where the so-called victim of the Douglasdale robbery had an opportunity to discuss the matter with a companion, also an informant, before talking to

the police. Had time been taken and the law followed, perhaps we would not be here today.

B. Charter of Rights and Freedoms and S.56, The Young Offenders Act

Every person has the protection of the *Canadian Charter of Right and Freedoms*. This includes young persons. One such right is the requirement that police inform a person of his s.10(b) Charter Rights, namely his right to counsel, upon detention or arrest. Detention here occurred at 11:30 a.m. on January 7, 1997, when Constable Leek assumed control over [redacted] The police Chartered and cautioned [redacted] at this time. It was clear the investigating officers knew [redacted] wanted a lawyer but they never gave him a reasonable opportunity to exercise this right.

The right to counsel under s.10(b) of the Charter requires police officers to do two things, besides their duty to inform accused of their rights. First, police officers must give accused or detained persons who wish the right to counsel a reasonable opportunity to exercise this right and instruct counsel without delay. Second, the police must refrain from attempting to elicit evidence from the detainee until he has had such reasonable opportunity to retain and instruct counsel,[23] otherwise the right is meaningless. All accused must diligently act in trying to obtain counsel. They cannot delay the normal investigative process by dilatory conduct. No such actions existed here. [redacted] attempted to contact legal counsel, Mr. Victor Russell, who no longer attended to young offender matters and therefore [redacted] had to get counsel. As Professor Nicholas Bala noted, the rights that are guaranteed to all under the Charter, may be of special

significance to young persons as "they are particularly prone to police supervision and even harassment in certain situations."[24] I find that the detectives violated [redacted] Charter rights. Furthermore, Detectives Boehler and Dooks knew this and went on with their investigation. I find this a flagrant violation.

Similarly, both Detectives and Constable Leek, and all police officers, know that no statement from a young person can be used in evidence against him unless specified statutory conditions are met. This statutory protection is found in s.56 of YOA. Here, the police did not honour this protection. They knew [redacted] had a right to have counsel, or a parent, or both present when they interviewed [redacted] Failing that, they could only use [redacted] statements if he had signed an informed written waiver of this right. No such waiver existed here. This is an absolute protection given to all young persons by Parliament and affords a trial judge no discretion.

There is but one conclusion for me to reach because of these facts. The Detectives were more interested in furthering their investigation than in obtaining admissible evidence against [redacted] Once Detectives Boehler and Dooks found out that [redacted] wished to exercise his right to counsel and that he did not wish to sign a waiver under s.56 of YOA, questioning should have stopped, the arrest process should have been completed and [redacted] moved to CYOC immediately. Had this occurred, perhaps we would not be here today.

C. *Separation of Young Persons from the Ordinary (Adult) Criminal Justice System*

From the earliest times in legal history there have been special rules for dealing with young people who violate the criminal law. In 1908, the Canadian Parliament passed the *Juvenile Delinquents Act* which provided that children were to be dealt with by a court and corrective system separate from the adult system. Since then, this has been the law of Canada. YOA does not change this law.

Further, this is the law of nations. The United Nations, in its 96th plenary meeting on November 29, 1985, passed what is commonly known as the "*Beijing Rules.*"[25] The *Beijing Rules* recognized that the young, owing to their unique stage of development, required particular care and assistance concerning their physical, mental and social development and required legal protection. In consequence, it was agreed that upon initial contact by state authorities, the young person's parents or guardian(s) should be immediately notified of such apprehension. Judges should consider, without delay, the issue of release. Contacts between law enforcement personnel and a young person are to be conducted in such a way to respect the legal status of such young person, promote his well being and avoid harm to him or her[26]. The *Beijing Rules* also direct that detention pending trial of a young person shall be used only as a measure of last resort and for the shortest period possible[27], and that such juvenile detention pending trial "shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also containing adults."[28]

The United Nations reaffirmed these fundamentals in the *Convention on the Rights of the Child*, adopted by the General Assembly on November 20, 1989.[29] Article 37[30] replicates and further particularizes these rights of children. No child shall be deprived of his liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall only be used as a measure of last resort for the shortest appropriate period of time. Every child deprived of his liberty shall be separated from adults unless it is considered in the child's best interests not to do so. Every such child shall have the right to prompt access to legal and other appropriate systems as well as the right to challenge the legality of the deprivation of his liberty before a court and to a prompt decision on any such action.[31]

In Canada, YOA recognizes the spirit of these international laws and specifically covers circumstances such as existed here for [redacted] Section 7(1) and (2) of the YOA demands that each young person be held separate and apart from any adult who is detained or held in custody unless otherwise ordered by a Youth Court Judge or Justice.

Section 7 of YOA could, in certain circumstances, cause a hardship. Following the initial passage of YOA, Parliament amended s.7 by providing the exception found in s.7(4). Section 7(1) and (2) of YOA do not apply with respect "temporary restraint of a young person under the supervision and control of a peace officer after arrest." Nevertheless, such young person shall be transferred to a place of temporary detention only for young people "as soon as is reasonably practicable" and not later that 24 hours after the person has been arrested.

It is clear why Parliament has amended s.7 of YOA. In a country as large as Canada with a sparse population in many areas, it may not be feasible, on economic or logistical grounds, to operate a separate facility for young people. S.7(4) allows for some "play in the joints," that is to say, allows some discretion for the authorities. In a large metropolitan area such as Calgary, these considerations do not exist, absent exigent circumstances. Further, I find here that there was no suggestion that the holding of [redacted] in Station Six, an adult facility, was for reasons of temporary restraint. I find the sole reason for his detention was to allow the police to continue with their investigation. Granted there is some paperwork that must be completed on arrest. Yet no clear testimony of what was required was placed before me. The detectives suggested that at best, it would take two hours of police work by two officers to complete the necessary paperwork. I find this difficult to comprehend. Police officers should be on the street preventing crime, not in the office doing paperwork. It would have been helpful to hear what the basic requirements (for paperwork) were here. It is not sufficient to do search warrant applications while a young person waits in custody. This can be done later as shown here when the detectives applied for a search warrant the next day, even though the police did not make it clear why they could apply for such a warrant after [redacted] death. Neither was it necessary for the young person to be present for the completion of the paperwork as these are dictated. I received no clear understanding why [redacted] was legally required to be at Station Six for some five and one-half hours.

The key words in s.7(4) are "*as soon as practicable*." These words have a long jurisprudence. The Alberta Court of Appeal has held that "as soon as practicable" means

"within a reasonably prompt time under the circumstances."[32] The Alberta Court of Appeal, (in a breathalyser case where a similar phrase is found), noted in **R. v. Purdon**[33]:

> "... given that we are dealing with a situation involving a statutory authorized infringement of one's liberty, the requirement that the breath samples be taken "as soon as practicable" should be strictly interpreted on a broad scale so as to prevent intrusion of a detained person's liberty for longer than is necessary."

In **R. v. Van der Veen**[34], Madam Justice Hetherington, speaking for the Court, said: [35]

> "In my view, an examination of the circumstances involves a determination as to whether the police officer involved acted reasonably. This is one, but only one, of the circumstances to be considered. Whether breath samples have or have not been taken as soon as practicable is to be decided having regard to both subjective and objective factors."

On an objective basis the question one must ask is: What is the focus of s. 7(4) of YOA? Is it the police interest, the public interest, or the young person's interest? I find elements of all three present, and this is why part of the test is objective. However, the fundamental right here is the young person's right to be kept separate and apart from adults. I conclude that the overriding consideration in s.7(4) surely must be his interest, not the interest of the police or the public; these must be secondary and tertiary interests.

It is abundantly clear here that the detectives were not competent gaolers. This was not their function. The young person should not be in a cell, he should be in remand centre for young persons. This is the law of Canada. Station Six is only a place of temporary restraint, it is not a detention centre for young persons. The additional

requirement that police take all young persons downtown to police headquarters for the Arrest Processing Unit to deal with him afresh, makes no rational sense at all. Something more needs to be done to make the arrest process more efficient. Too much person power and time is being consumed unnecessarily, not to mention infringing the clear statutory language of s.7 of YOA, the young person's Charter right to liberty, and the spirit of both the *Beijing Rules* and *The United Nations Convention on the Rights of the Child*. The arrest process must conform to the law and the Police Service must correct this process immediately.

It is the anecdotal experience of Calgary Youth Court Judges that [redacted] case is not an isolated one: the detention of young persons in police custody is becoming a too common police practice. I appreciate the inconvenience and difficulty in moving a young person from the far southeast to the northwest where CYOC is located. CYOC operates as a remand centre and both open and secure custody facility for young offenders in the Calgary region. However, logistical difficulties were not a valid reason to detain [redacted] in police facilities. Had the law been followed, perhaps we would not be here today.

Perhaps the problem is one of facilities. At government year-end, March 31, 1997, I note that there were over 6,200 Criminal Code cases commenced at Calgary Youth Court compared to 30,800 such cases commenced in Criminal Division. While this is not the same thing as saying 6,200 young persons went through the system, it does suggest that approximately 20% of all cases in the criminal justice system at Calgary involve young persons. It follows that many young persons will be in custody at sometime.

This means that temporary restraint issues frequently arise.[38] As indicated in the record here, for many years there was a separate detention facility for juveniles in Calgary. No one could tell me why this facility was closed. Further, no one could tell me why this could not be easily remedied, nor could anyone tell me who was to fund such a facility. A new structure is not necessary. Surely there exists an existing inventory of provincial government buildings in Calgary that could easily be adapted for this purpose. The former Motor Vehicle Branch building at Memorial Drive and Shaganappi Trail N.W. came to mind as a possible site.

A separate facility for young persons involved in the law would have two fundamental uses: (1) For those young persons involved in temporary restraint under YOA, and (2) for those children involved in the child welfare system who need secure confinement on a short term basis under the Child Welfare Act. There is a great need for such facility in this city as the beds currently available are full most days. If there had been such a facility, the authorities might have prevented the death of [redacted]

One great advantage of a distinct, centrally located facility for young persons is that it allows child care experts from all disciplines to be readily available to children in need. It is not feasible, in my view, to have justices of the peace, social workers, child protection workers, psychologists, medical doctors and other helping professionals in each quadrant of the city where there is a police station house. We simply cannot afford such facilities in today's economic climate. What we can afford, must have, and must be able to afford, because it is the law, is such a facility. Why is this not so? Why is

CYOC designated as a remand centre when it was not designed for such a purpose. Its fundamental design is as a secure custody facility, namely a gaol. While I appreciate, that it is the right of the Province to designate where such facilities should be, it is a Federal law that demands that young people be kept separate and apart. This becomes a joint Federal/Provincial responsibility. Perhaps the municipality has a role to play. This is an idea who time came a long while ago.

Had [redacted] been kept in a separate youth facility, with people trained to deal with young persons and be alert to their needs, a suicide warning would not have been ignored, and perhaps we would not be here today.

2. MANDATORY SUICIDE EDUCATION

Few people know enough about suicide as it is a difficult topic to discuss unless it confronts someone. Suicide is a leading cause of death of our young people.[38] I think the time has come for all involved with troubled youths, including judges, to have basic training in suicide so suicides may be prevented and thousands of dollars saved.

Testimony before this Inquiry shows that we now have the knowledge, and the skilled professionals with that knowledge, in Calgary, to teach us how to better prepare ourselves against such potential tragedies. Why this has not been done to date escapes me. No good reason exists.

I reprise Detective Boehler's testimony to demonstrate how necessary such a program is: [39]

> "... I determined that there was absolutely nothing in his demeanour that -- that should cause me any sort of alarm in relation to that *[suicide]*.
>
> I considered the information that I had been given and determined that a comment by someone that they "think he might be" was really not a very strong comment at the time without any -- any basis to back that up, any facts, any previous history, or anything of that nature.
>
> So, combined with the fact that I believed at the time that there was absolutely no item in that room that -- that could further him to harm himself, the decision was made on my part that it would not be necessary to be concerned, that we should be removing items of clothing from him. ...there was no immediate cause for alarm."

Here there was a prior suicide attempt. Here there was a history of conduct disorder and social dysfunction coupled with family breakdown. Tracking [redacted] behaviour and considering the criteria noted in the DSM-IV, I come to the objective conclusion that [redacted] was on a suicide pathway. Lengthy police detention put him into a suicide zone. A warning existed. Simple preventive measures could have been taken. Further investigations should have been undertaken immediately. With knowledge about suicide, the police officers here would have been more sensitive to what was going on and acted in a more positive way. If this was the case, perhaps we would not be here today.

3. REDEFINE HULL HOME'S ADVOCACY DUTY AND PLANNING RESPONSIBILITY

Hull Home acts as a fee for service provider for both Alberta Family and Social Services and Alberta Justice. As such, it takes on a role similar to that of a parent.[40]

[redacted] If they do not do this, who does? For some 16 months they were the primary caregivers to [redacted] they had custody of him. They should know him exceptionally well. Yet on arrest, it was Hull Home's policy to ally themselves with the police authorities. This is fundamentally wrong. They had a positive duty to advocate for [redacted] and to exercise his rights for him, if he couldn't understand these rights. Here the parents were not actively involved in his life on a day to day basis and this was well known to staff at Hull Home.

Hull Home must revisit its policy on this. Hull Home cannot become an agent for the authorities. Hull Home must act as a parent, be there for their ward, engage counsel in appropriate cases, and ensure that his legal rights are being adequately protected. Had Hull Home taken a more active liaison role with the authorities, the authorities would know his dysfunctional past and that he was a disordered young person. No one should assume that someone will ask these questions about a given young person. Sometimes active participation is the only way to get information across. Hull Home must therefore reexamine its duty to those in its program. While I appreciate the difficulty in defining custody and guardianship in law, as its meaning may shift and vary depending on the particular context it is used in, Hull Home must have a clear policy for its staff on this point. In consequence, the Child Welfare system deferred to the criminal justice system and [redacted] was left alone.

Second, Hull Home is acting as an agent for Child Welfare. By definition, Child Welfare can only be involved in the life of the family when a child is in need of protective services. [redacted] difficulties, while not detailed at length, were well known. He was a

child at risk. This said, Hull Home has a positive duty to act in a meaningful way to remedy or alleviate the presenting conditions existing when [redacted] came to them. [redacted] was with Hull Home for 16 months and in custodial care for several months before that. They had the cooperation of the parents because there was a "Custody by Agreement" here. In this period, with this expenditure of public funds, one expects a complete understanding of the nature of the problem, the appropriate programs necessary to alleviate or remedy the problem, and a prognosis. I did not hear this testimony. Was [redacted] adrift in the system?

It is frequently the case that Child Welfare deals with children at risk through custody agreements. While the statute permits this, I recognize this practice avoids the scrutiny of the court. It does not, however, avoid the principles found in the Child Welfare Act, one such principle being the requirement for planning. There must be a clear, concrete plan for the child while in care for this is in a child's best interest. By design, the Child Welfare Act makes everyone accountable and keeps children from drifting in the system.

In particular, questions arise about the initial assessment by Hull Home of just who they were dealing with. Hull Home would know that there were few psychological assessments being completed at CYOC. There are only two psychologists at CYOC, and invariably they are involved in crisis work and group therapy. There are simply too many young offenders and too few psychologists to do much more than this. It is also a fair inference that most young people in the young offender system could be diagnosed as conduct disordered. Therefore, when young people come to a specialized treatment

home such as Hull Home, and enter specialized programs, such as the TRAC program, there must be a clear understanding of the nature of the problem and how this resource can aid the alleviation of such a problem in a timely way. While details were lacking, [redacted] did apparently reoffend while at Hull Home. While he did improve to a degree over time and learned some coping mechanisms, I conclude, in the end, that he gave up all hope of living when he decided to take his own life. Simply put, the efforts of Hull Home were not successful.

[redacted] was a troubled young person, was very much alone, wanted to go home to his mother, had no expectation that this would occur, and allegedly gravitated towards a criminal peer group. Was Hull Home alert to these realities? Or were they simply service providers and believed they had no decision-making role to play? If they had no such role, what was the service they were to provide? Where was Child Welfare? Here I find a road map of a young person on a pathway headed towards suicide again. Tammy Wilson recognized this before it was too late, why didn't someone else recognize it? Where was the planning required under the Child Welfare Act for this young person when it is known that he would not be returning to his parental guardians? Had these hard questions been asked and discussed in detail, perhaps we would not be here this day.

4. REAFFIRM THE PRINCIPLE OF DUTY OF PARENTAL GUARDIANS TO PROVIDE FOR AND PROTECT THEIR CHILDREN

It is a fundamental premise operating in our community that we believe in the private ordering of family life. Consequently, parental guardians have the right and duty to raise their child as they will, free from state intervention or intervention by third parties, absent compelling reason. We say parental guardians are our preferred social arrangement for the rearing and protection of our children. In this, parental guardians have a liberty interest under the *Charter*. Through this right, we honour the principle of family autonomy. We do this because the Alberta Legislature recognized[41] that the best way to raise children is through parental guardians. Through them, we meld the kinship rituals, customs, and mores of two families and thus transmit social values from generation to generation. The family is seen as the principal conservator and transmitter of cherished values and traditions. While it is convenient to think in terms of rights in our society, it clear that when it comes to our children, a reciprocal parental duty is as important as parental rights.

Where were the parents in this case, in this Inquiry, in [redacted] life? If we agree with this notation of parental rights and duties, it follows then, absent compelling reason, that parents cannot abdicate their responsibility to anyone, including the state. It is not the primary responsibility of Alberta Justice, Alberta Family and Social Service, the City of Calgary Police, Hull Home, or any one else for that matter, to parent when a responsible, fit parent is available. Why couldn't the parents have their child home? What were their difficulties?

While no one theory of youth crime can be advanced that would cover all cases, youth crime is largely created environmentally, not biologically. I appreciate the debate over nature and nurture as causative factors for youth crime. Nevertheless, the family and the community where the family resides have much to say about the why of criminal behaviour of our children. Here there was a family breakdown and divorce. This does not excuse the lack of parental duty of either parent to care for their child. Custody orders in the private ordering of family life are now recognized as granting to one parental guardian day to day, primary care over a child. A custody order does not take away the absent parent's rights except to the extent required for day to day decision-making. Thus the law imposes a burden on both the mother and the father, the parental guardians here, to stay involved with their child, for their child. Sometimes, the condition of the child makes it impossible for either parent to have custody. In these cases the state has a duty to be involved and rightly so. We cannot, however, hand over our responsibilities to the state when it is inconvenient or difficult. Even when parents must give up some of their parental rights, they should still stay involved. I do not know why [redacted] got in trouble with the criminal law. I do not know why he was so dysfunctional. What were the parental solutions? Why did they not want him back in their homes? Were they supporting their child financially? Were they seeing him regularly? I assume both had all requisite knowledge about [redacted] that everyone else had because parental guardians are entitled to this. They remained as [redacted] guardians. They had a continuing duty to protect. They had an ongoing duty to advocate for him. In fairness,

they were entitled to notice of the charge [redacted] faced but were not notified promptly here.

Parents have the right and duty to gather all available information about their child and to ensure that appropriate services are in place for their child. What was appropriate here? No one informed me. I can think of nothing more devastating to children like [redacted] to find out, at [redacted] that they have no family, they have no home, they have no parent that wants them - that they are alone. Perhaps the difficulty is that I was not given the information. I can only conclude on the testimony before me that had the parents been there for their son, perhaps we would not be here today.

5. CREATE A MORE TRANSPARENT, FAIR, AND NEUTRAL INVESTIGATIVE PROCESS BY THE AUTHORITIES WHEN A FATALITY OCCURS IN POLICE CUSTODY

The Calgary Police Service launch two investigations when a person dies in police custody. First, an internal investigation is completed to maintain the good order and discipline of the police service itself. This is of no concern to an inquiry such as this. The second is a criminal investigation of the events forming the subject of this inquiry. This is sound policy and I have nothing to say about it. My concerns are over the process of this investigation. Thomas Jefferson said: "The execution of the laws is more important than making them."[42] The ever present danger in inquiries has already been noted. As counsel generally do not follow the orthodox rules of evidence, no findings of civil nor criminal liability can be made. Yet relevant findings of fact and fault can be

made. In this process, individuals and institutions may be brought into the public eye and perceptions about their conduct formed by those following the process. A fair, complete, transparent and unbiased investigation can have the effect of ameliorating or dispelling negative perceptions about individual and systemic conduct in appropriate cases.

Such investigations will enhance the already existing confidence Calgarians have in their police force. For police forces and self-regulating professions alike, there will always be issues in prominent cases of who assesses the assessor, of who guards the guardians, of who polices the police? It is mandatory then that any such investigation be fair, unbiased, transparent and complete.

Here, the Calgary Police Service assigned this criminal investigation to Detective Michael Kyska who formed the opinion that no criminal liability existed here. I do not agree with this opinion. Perhaps he did not have all the facts that I had before me. Detective Kyska is a twenty-two year veteran of the force, with his last seven years spent in the Homicide Division. He knows the necessity of dealing with evidence and legal proofs. While not a lawyer, nevertheless he is legally trained through experience. His finding of no criminal liability appears inconsistent with the facts found here.

Detective Kyska does not try the case. He is an investigator, not a prosecutor, defence counsel, judge, nor jury. The facts here argue persuasively towards two potential charges. It is an offence under s.7.2 of YOA when a person wilfully fails to comply with s.7, which is to say, when someone breaches the obligation to keep a young person separate and apart from adults, as earlier noted. I find that Detective

Kyska never even considered, let alone knew about this section. Further, Detective Kyska only "reviewed" the section on criminal negligence causing death, namely s.220 of the Criminal Code. He did not seek out any legal assistance of the Crown or other counsel. His investigation centred, in his words, on seeking out the necessary criminal intent and found none. Again the facts argue in the other direction. I sense Detective Kyska did not comprehend the charge of criminal negligence and did not analyze how the facts of a case can create the requisite intent. It is a common legal axiom that a person is presumed to intend the natural consequences of his or her acts. This is not a legal presumption, rather it is an inference flowing from the facts.

I recommend that a senior Crown prosecutor take on this difficult task with any necessary investigative work be done by a senior police officer from outside the Calgary Police Service. This would permit the degree of independence and transparency the process demands and would dispel any perception that there has been a closing of the ranks within the force. I do not say this was the case here. I seek only to dispel the potential for this perception arising so that public confidence in the Calgary Police Service is not doubted, and an individual police officer does not get treated unfairly.

I say this principally because of the arguments the facts present here for a potential finding of criminal negligence. This charge should be easily understood by a senior police officer. Such officer can receive a ready refresher through a quick reading of any of the Annotated Criminal Codes. Martin's Criminal Code, 1998 sets out its essence:[43]

> "Criminal negligence can arise from either acts or omission, if the accused was under a *legal duty* to do the omitted act.

> If the act or omission shows a *wanton or reckless disregard for the lives or safety of other persons*, this makes out criminal negligence" . .
>
> "Criminal negligence does not require proof of intention or deliberation, indifference being sufficient. Thus, the accused may be convicted on proof of driving amounting to a marked and substantial departure from the standard of a reasonable driver in circumstances where the accused either recognized and ran an obvious and serious risk to the lives or safety of others, or, alternatively gave no thought to that risk", R. v. Sharp (1984), 12 C.C.C. (3d) 428 (Ont. C.A.).

I appreciate there is a legal debate on whether both subjective and objective elements of an accused's state of mind must be proven. This is not the place for such a debate. My only point here is my differing view of what the facts tell the objective observer. I find the investigation flawed in this sense and therefore incomplete. Hence my recommendation that a senior Crown conduct the investigation. Such Crown understands the ethical duty to consider all relevant evidence and to analyze it within a legal matrix, i.e., the Criminal Code and the existing case law, which such Crown will be fully familiar. An investigator from another force will further the public confidence in the investigation and relieve a member, here of equal rank, from a thankless, difficult task.

CONCLUSION

It is the task of the judge conducting a public inquiry to look backwards at the events spawning the inquiry, find fact, assess fault in the manner noted, and find ways to avoid future cases of youth suicides while in police custody. This I have done with my recommendations inevitably following the facts. Yet, there remains an unsettled, unsatisfactory feeling here why this suicide occurred, beyond the obvious findings here.

There is one common factor in all of my findings of fact and recommendations. They all involve adults dealing with a particular young person. At the end of the day, none of the adults involved could divert [redacted] from this suicide pathway and prevent its occurrence. I wonder if adults are part of the problem.

In this, I am reminded of what Max Wyman, then President of the University of Alberta and a member of the Kirby Commission,[44] said about society's views of children's behaviour, using this quotation to underscore his point:

> "Our youths now love luxury, they have bad manners, they have disrespect for authority, disrespect for older people. Children generally are tyrants. They no longer rise when adults enter the room...They gobble food and tyrannize their teachers."

The speaker here was Socrates, writing over two thousand years ago. Dr. Wyman noted[45]: "Since the time of Socrates, criticism of youthful behaviour has grown sharper and harsher, and one must conclude that few societies have been satisfied with the behaviour of their children, and fewer have been able to cope with it." The problem is one of attitude. Adults forget that the [redacted] of this world are not mini-adults; they are still children. As such they have a right to and deserve special attention and consideration, as children. "

The vast majority of our children develop appropriately into socially responsible, law-abiding citizens. The majority of the relatively few young persons who find themselves in Youth Court never make a second appearance for the process is the punishment. The modest number of young persons who reoffend are well known to all

who travail in the system. For these few in particular, somehow, someway, adults have to remember that children are our collective responsibility and are not a problem to be passed on from one person or institution to another.

All of which is respectfully submitted,

The Honourable Hugh F. Landerkin,

J.P.C.A.

January 7, 1997.

1. Suicidal Behaviours: Council of the College of Physicians and Surgeons of Alberta, October 1997, at p. 4.

2. Pfeffer, C. F., 'The Suicidal Child", New York Gilford Press, 1986. Quoted from "Suicidal Awareness: Foster Care", Alberta Family and Social Services, prepared by Tyler-Neher and Associates, September, 1993.

3. "Suicidal behaviours", ibid at p.5

4. "Suicidal Behaviours", ibid at p.27

5. See section 11(a), section 34(3), section 36(a) of the Fatal Inquiries Act.

6. City of Calgary Police Manual. Exhibit no. 5 - [section 7.60, no. 5.]

7. 1997 S.C.J. #83: Canada [A.G.] v. Canada [Commission of Inquiry on the Blood System in Canada - Krever Commission]

8. Re: Associated Industries of Canada, Ltd., Final Report (Alberta Q.B.), July 18, 1989 :William E. Code, Q.C., Inspector [The Code Inquiry] ; as per Alberta Court of Appeal, 1989, Foisy, J.A., A. J. #41

9. Transcript at p. 60.

10. Published by the American Psychiatric Association, Washington, DC, 1994

11. Diagnostic and Statistical Manual of Mental Disorders, 4th edition, pp.90 - 91, Diagnostic criteria for Conduct Disorder.

12. DSM -IV at p. 87

13. Transcript at p. 193.

14. Transcript at p. 127

15. Transcript at p. 152-3.

16. Transcript at p. 170.

17. Transcript at p. 218.

18. Transcript at p. 219.

19. **Vetrovec v. The Queen** (1982) [1 S.C.R.] 811

20. **R. v. Duguay** (1985) 18 C.C.C. (3d) 289, 45 C.R. (3d) 140, (affirmed on other grounds [1989 1 F.C.R. 93])

21. **R. v. Feeney** (1997) 115 C.C.C (3d) 129

22. 1 Criminal Pleadings & Practice in Canada (CLB), 5:0200

23. **R. v. Manninen**, 1987 [1 S.R.C.] 1233; **R. v. Ross** 1989 [1 S.R.C.] 3

24. Nicholas Bala, "The Young Offenders Act: A Legal Framework" at p.16 in Justice and the Young Offender in Canada. Hudson Hornack Burrows, Editors. Wall and Thompson, Toronto, 1988.

25. The United Nations standard for minimum rules for the administration of juvenile justice.

26. See s.10 of the Beijing Rules.

27. See s. 13 of the Beijing Rules

28. S.13.4 of the Beijing Rules

29. GA 44/25, 1989.

30. Canada is not yet a signatory to this section.

31. While Canada is not a signatory to s.37, the point here is that this is the law of nations and the law of Canada already conforms to the spirit of it: see generally s.7 YOA.

32. **R. v. Mudry** [1979] 19 A.R. 379.

33. **R. v. Purdon** (1989) 52 C.C.C. (3d) 274, 100 A.R. 313.

34. (1989) 44 C.C.C. (3d) 38 (Alta. C.A.)

35. at p. 47

36. Statistics April 1, 1996 to March 31, 1997, prepared by Ms. Lorette Olsen, Clerk of the Calgary Family & Youth Court, Calgary, June 27, 1997.

37. See Fatality Inquiry Report of the Honourable Judge S. A. Hamilton re: [redacted] dated the 30th day of July, 1997.

38. One of the indices for the proposed Well Street Index, a list of 11 measures of how children are fairing physically, emotionally and socially is "The rate of psychiatric illnesses and suicides among children and teen-agers. Canada's youth-suicide rate has quadrupled in the past 30 years and is the third-highest in the industrialized world."

Quoted from "Child-welfare groups take measured steps", The Globe and Mail, Saturday, December 27, 1997 at p. A3.

39. Transcript at p. 218

40. S.214 of the Criminal Code, for the purposes of Part VIII of the Code, defines guardian as including "a person who has in law or in fact the custody or control of a child."

41. By granting guardianship to the natural guardians, married mother and father, or mother and father when they have lived together for one year before the birth of their child, or mother in all other cases, the Legislature has defined family in Alberta today. See, generally, The Domestic Relations Act and particulary s. 47. See also s. 2 of The Child Welfare Act.

42. Thomas Jefferson in a letter to Abbe Arnoud (19 July 1789) quoted from G. Carruth & E. Erlich, eds., *The Harper Book of American Quotations* (New York: Harper & Row, 1988).

43. *Martin's Annual Criminal Code*, Canada Law Book Inc., 1988 at page CC/381.

44. Max Wyman, "Comments On Juvenile Delinquency", Report No. 3, August, 1977, Alberta Board of Review, Provincial Courts at page 1, (The Kirby Commission).

45. ibid at p. 1.