

Citation: *R. v. Holmes*, 2023 YKTC 54

Date: 20230208  
Docket: 21-05524A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Phelps

REX

v.

SHANNON MARIE SHAYLENE HOLMES

Appearances:  
Stuart J. Leary  
Shannon Holmes

Articled Student for the Territorial Crown  
Appearing on her own behalf

**REASONS FOR SENTENCE**

[1] PHELPS T.C.J. (Oral): Ms. Holmes was convicted on January 6, 2023, of one count contrary to s. 94(1)(b) of the *Motor Vehicles Act*, RSY 2002, c. 153, for failing to render all reasonable assistance, having been involved in a motor vehicle accident; and one count contrary to s. 94(1)(c) of the *Motor Vehicles Act* for failing to provide particulars to anyone sustaining loss or injury, having been involved in a motor vehicle accident.

[2] The circumstances, briefly, are that on the date of the incident, the complainant was walking from her home to work after the lunch hour, she was at the intersection of 6th Avenue and Black Street in downtown Whitehorse, crossing the intersection when

Ms. Holmes drove up in a vehicle and stopped at the intersection initially, then proceeded to accelerate and struck the complainant in the intersection.

[3] After the accident, Ms. Holmes got out of her vehicle and purported to be a nurse to those in the vicinity and started to physically check the complainant for injuries. Shortly thereafter, stating that she would take her immediately to the hospital, she assisted the complainant into her car and drove away from the scene of the accident.

[4] Instead of driving to the hospital, she drove to her place of work, being Budget Rental in downtown Whitehorse, where the complainant was taken into the premises and spoke with the manager of Budget Rental, as well as Ms. Holmes, and was advised that she did not require medical attention. Ultimately, she left the premises on foot and had to walk to her place of employment on Main Street, several blocks from the Budget Rental office, to get assistance.

[5] Ms. Kang suffered significant injuries as a result of the incident, causing her to miss substantial employment over a period of at least a couple of months. She required physiotherapy for the injuries. Ms. Kang was, in fact, bedridden for the better part of the first month after the accident itself, and then gradually returned to work with the assistance of medication and physiotherapy.

[6] There has been a significant emotional impact on Ms. Kang, as she came to Canada from Japan and felt vulnerable due to her status in Canada prior to the accident, which was exacerbated by the treatment she received by Ms. Holmes and ultimately Ms. Holmes' manager after the accident. She suffers ongoing fear with

respect to crossing streets as a pedestrian. She did provide, in her Victim Impact Statement, a message to Ms. Holmes, which I will read onto the record.

[7] It states:

Ms. Holmes, I was greatly discouraged and disheartened with your behaviour at the time of the incident. Even if your behaviour was caused in panic, I was disappointed that it seemed you were taking advantage of my situation as a victim and a member of a minority group. Although you are younger than me, you are obviously an adult. I would like you to deeply reflect on your conduct.

At the same time, I feel sorry for you that you did not have a family member, a superior or a colleague who could guide you properly. I wish you met someone honest and considerate who could set a good example for you in the future.

[8] In addition to filing a Victim Impact Statement, Ms. Kang submitted receipts for the purpose of restitution that totalled \$2,497.42. Those receipts are for prescription medications, physiotherapy, and lost wages.

[9] The Crown fairly went through mitigating and aggravating circumstances in this matter, noting as mitigating that Ms. Holmes has expressed remorse for her actions despite taking the matter to trial; that it appears that Ms. Holmes' actions are due to ignorance of her obligations as the driver of the motor vehicle rather than an attempt to circumvent responsibility; and it does not appear that the victim has suffered lifelong physical impairment.

[10] The aggravating circumstances being that the actions of Ms. Holmes prevented Ms. Kang from receiving immediate medical attention, which is significant given the

ongoing medical concerns that she had following the incident. The actions of Ms. Holms interfered with the RCMP's ability to immediately investigate the matter. Perhaps as egregious as the lack of medical attention was, the resulting requirement for Ms. Kang to walk from Budget Rental to her employment on Main Street in order to seek assistance, which was several city blocks away.

[11] Crown is, in the circumstances, seeking the maximum fine of \$500 on the s. 94(1)(b) offence and a fine in the amount of \$350 for the s. 94(1)(c) offence, as well as a one-month driving prohibition on each count — and that is in addition to the proposed restitution order of almost \$2,500.

[12] Ms. Holmes, representing herself, indicated that she is 28 years old. She is a resident of Whitehorse, where she rents her home. She provides childcare as employment and earns approximately \$2,500 per month, which is about enough to pay for rent and groceries. She has herself experienced panic attacks and anxiety since the incident and has not received professional assistance with respect to those issues as of today's date. Her ability to pay is significantly limited.

[13] I am concerned that the imposition of a restitution order as well as the fine suggested by the Crown would be unduly harsh for Ms. Holmes, given her current circumstances. While I agree with the Crown's submission that denunciation and deterrence is important in this matter, a monetary penalty in the range of \$3,500 for an individual who has limited ability to pay is excessive. At the same time, the victim being out of pocket for her expenses is certainly unfair to her.

[14] Ms. Holmes, your penalty with respect to the s. 94(1)(b) offence will be a one-month driving prohibition. There will be no fine attached to the 94(1)(b).

[15] THE ACCUSED: When does that start, sir?

[16] THE COURT: It starts immediately.

[17] With respect to the s. 94(1)(c) offence, there will not be a fine attached but there will be a one-month driving prohibition consecutive, for a total of two months' driving prohibition.

[18] I am relying on s. 740(b) of the *Criminal Code* for giving priority to restitution over a fine in the circumstances. Given the financial situation of Ms. Holmes, I am not certain that a restitution order in the range of \$2,500 is realistic. However, in the circumstances, I am satisfied that these are expenses that were incurred by the victim, and I make the restitution order in the amount of \$2,497.42. I am going to provide one year time to pay that restitution order.

[DISCUSSIONS]

[19] I understand the circumstances that you find yourself in, Ms. Holmes, but I have, as a result of this proceeding, sentenced you to that driving prohibition and by statute it applies today.

[20] I indicated one year on the restitution order for time to pay.

[21] The victim surcharges with respect to these two offences will be waived, giving priority to the restitution order.

[DISCUSSIONS]

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PHELPS T.C.J.