

## Case Brief – O’Shea v. City of Vancouver, 2015 BCPC 398

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**Reviewer: Cynthia Westaway**

In this case, the claimant’s background as an intergenerational residential school survivor influenced a BC Provincial Court (the “Court”) decision to allow an action against Vancouver Police Department constables and the City of Vancouver (the “City”) to proceed in spite of the claimant’s delayed notice to the defendant. The claimant’s background also guided the Court’s determination that the claimant was not contributorily negligent in the action.

The lawsuit concerned the treatment of Bobbi O’Shea during her time in custody at the Vancouver Police Department. The Court dismissed her action of assault against the four constables, but found the City vicariously liable for breach of standard of care owed to Ms. O’Shea.

### Background

Ms. O’Shea was taken into custody on March 27, 2008 after experiencing an anxiety attack following her consumption of crack cocaine.<sup>1</sup> At the Vancouver City Jail, Ms. O’Shea’s alleged attempt to obscure video recording in her cell prompted a guard to restrain Ms. O’Shea with a device called the “Hobble” – a strap that is tightened around the ankles, pulled under a closed door and fastened outside the cell. The guards restrained Ms. O’Shea in the Hobble for one hour. Ms. O’Shea claimed she experienced the worst pain of her life restrained in the Hobble.<sup>2</sup>

Ms. O’Shea claimed that the harm resulting from her time in the restraint amounted to assault. She also claimed that, in the alternative, she was negligently restrained.<sup>3</sup> In making her claim, Ms. O’Shea failed to provide the City with the required two month notice, contrary to s. 194(2) of the *Vancouver Charter*.

### Decision

In determining whether Ms. O’Shea had reasonable justification for delayed notice, the Court took into consideration Ms. O’Shea’s connection with Canada’s residential schools. The Court noted that Ms. O’Shea’s mother and other relatives had attended residential schools. Making reference to the report of the Executive Summary of the Truth and Reconciliation Committee

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<sup>1</sup> *O’Shea v City of Vancouver*, (2015) BCPC 0398 at para 22 [*O’Shea*].

<sup>2</sup> *Ibid* at paras 47-49.

<sup>3</sup> *Ibid* at paras 2-3.

(2015),<sup>4</sup> the court noted that Ms. O’Shea’s experiences reflected those of other children of IRS survivors.<sup>5</sup> The Court concluded that the delay in filing Ms. O’Shea’s claim was justified, stating that:

I find Ms. O’Shea’s difficult life circumstances in this matter, when viewed in the context of ‘the broad systemic and background factors affecting aboriginal people’ are analogous and relevant in the analysis of whether Ms. O’Shea’s delay in providing notice was reasonable in a tort action.<sup>6</sup>

The Court also held that Ms. O’Shea was not liable for contributory negligence, owed in part to her life circumstances as an intergenerational residential school survivor.<sup>7</sup>

The Court ultimately determined that the defendants did not commit an assault on Ms. O’Shea, determining that the guards did not intend to harm or punish Ms. O’Shea. However, the Court found that the jail guards had failed to properly address Ms. O’Shea’s medical concerns and follow relevant jail policy while she was in their custody, and held the City vicariously liable for negligence.<sup>8</sup> The Court awarded Ms. O’Shea \$9,000 in general damages.<sup>9</sup>

## Why This Case Matters

This case affirms that the legacy of Canada’s residential schools can influence a court’s treatment of issues beyond the realm of sentencing, such as late notice and contributory negligence. It also demonstrates that the recent work of the Truth and Reconciliation Committee can serve as a useful evidentiary tool in demonstrating the impact of residential schools on Aboriginal claimants.

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<sup>4</sup> Truth and Reconciliation Commission of Canada, “Honouring the truth, reconciling for the future: summary of the final report of the Truth and Reconciliation Commission of Canada,” (2015) available online: <[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf)>.

<sup>5</sup> *O’Shea*, *supra* note 1 at para 94.

<sup>6</sup> *Ibid* at para 100.

<sup>7</sup> *Ibid* at para 83.

<sup>8</sup> *Ibid* at para 57.

<sup>9</sup> *Ibid* at para 136.