

●●● Careless driving cases show limits of POA

Lawyers say changes needed, victims' families being left behind

Monday, 18 July 2016 09:00 | Written By Alex Robinson

Edouard Le Blanc was cycling near his home in Scarborough when he was struck by a driver and died from his wounds in 2014.

What was the legal penalty for the death? The driver was charged with careless driving, issued six demerit points, and fined \$700.

Lawyers say cases like Le Blanc's highlight the limitations of the Provincial Offences Act, which governs the process for prosecuting regulatory offences.

"Just simply imposing fines doesn't send any kind of message to the public," says Patrick Brown, a lawyer with McLeish Orlando LLP, who is representing Le Blanc's family in civil lawsuits.

Unlike the Criminal Code, lawyers say the act lacks a guiding rationale or principles for judges and justices of the peace when imposing sentences.

Lawyers say this has made the legal process following incidents of careless driving unpredictable and inconsistent.

Toronto Lawyer Sean Robichaud, who is representing the family of a victim in a careless driving case, says judges do not even know what their own role is when sentencing offences under the POA.

"Without proper sentencing guidelines on acts such as these, the court is left with nebulous notions of what their role is when imposing sanctions," Robichaud says.

"Is it punishment? Deterrence? Reparation? Rehabilitation? All of this is very unclear in cases where the consequences to victims can be significant."

Drivers convicted of careless driving under the Highway Traffic Act can face up to six months in jail and \$400 to \$2,000 in fines.

In a Law Commission of Ontario research paper, Ontario Court Justice Rick Libman said the lack of a statement guiding sentencing principles in the act "makes imposing punishment a lottery where inconsistency and unpredictability abound."

Libman said the statutory provisions that are meant to govern the sentencing of regulatory offences resemble a patchwork quilt.

"It has been left to the courts, to fill in the gaps, when faced with the bewildering array of regulatory offences, enforcement mechanisms, and penalty provisions," Libman said. "What is lacking, however, is a consistent rational approach."

Libman notes that while the POA needs a set of principals like that of the Criminal Code, it must be different as the act covers a broad range of offences, some of which are minor, such as parking offences.

The Law Commission of Ontario released a report in 2011 called *Modernizing the Provincial Offences Act*, recommending the provincial government amend the act so it has specific statutory sentencing principals.

"What our research showed in the absence of statutory principals, courts were adopting a wide range of factors to govern sentencing," says Aneurin Thomas, the executive director of the Law Commission of Ontario.

The commission's report identified 23 separate factors courts have been taking into account in POA sentencing.

Thomas says the consequence of this is inconsistency. The report also recommended a statutory principal of proportionality for the guidelines.

Kenneth Jull, a lawyer with expertise in regulatory law, says the act was originally designed to be more informal than the Criminal Code as it was dealing with minor offences, but has since grown to deal with more serious infractions.

"The problem is that over the years, that act is stretched beyond its limits. You have prosecutions being brought on very serious matters," says Jull, co-author of *Regulatory and Corporate Liability: From Due Diligence to Risk Management*, a textbook that touches on the topic.



Patrick Brown says imposing fines for careless driving isn't adequate, given the severity of some cases.

The act governs the prosecution of offences under hundreds of statutes and a wide range of areas of law, including the Occupational Health and Safety Act, as well as the Environmental Protection Act.

"It really needs to be updated because it's being used now for some very serious issues that I don't think historically it had been contemplated to be used for," he says. In the case Robichaud is involved in, a 76-year-old grandmother, Maria-Assunta Zentena, was crossing the road at a crosswalk in Toronto when she was struck and killed by a vehicle making a left turn in 2015.

The driver was charged with careless driving.

Robichaud says the driver is expected to plead guilty to a more minor offence with small penalties.

Robichaud says Zentena's case highlights the lack of rights for victims and their families under the POA.

Zentena's family is waiting to read their victim impact statement to the driver in the case, but will likely not get the chance as drivers charged with the offence can be represented in court by an agent.

In recent proceedings, Robichaud asked the court to order the driver to attend, but the justice of the peace refused the request.

"At present, victims and their families have virtually no rights to be informed, have input, or even ensure that their message of suffering is passed on to the offenders through victim impact statements," Robichaud says.

"The legislation needs to reflect that infractions under the Provincial Offences Act and their subsidiaries can cause devastating harm to Ontarians who should have the right to have that recognized."

Robichaud says the act needs to be amended to recognize victims' rights in the same way the Criminal Code does.

"Having such changes help bring closure and a sense of justice being served to the victims who were caused suffering by others prosecuted under these acts," he says.

Burlington MPP Eleanor McMahon is looking to tackle the issue by introducing a bill that would amend the Highway Traffic Act to increase jail time and fines for careless driving causing death or bodily harm.

Lawyers say that while McMahon's bill is a good step forward, there are still changes that need to be made to the Provincial Offences Act to ensure judges have the tools they need to sentence these charges properly.

"MPP McMahon's private member's bill is an excellent start to a change in attitude towards the way we perceive prosecuting these sorts of offences," Robichaud says. "No legislation is complete, but filling the obvious gap between careless driving where no harm results, and those instances where it does, is a welcome and laudable goal."

Brown says penalties should be expanded to include a much broader spectrum of sentencing options.

Alternative measures could include requiring drivers to participate in community service or to take road safety courses, Brown says.

"Instead of simply having these fines and jail sentences as an available scope for careless (driving), it's got to be much more expanded," says Brown, who added that these kinds of charges rarely result in jail sentences.