

But for the Plan

Highway Traffic Act Offence - Mistaken Identity

Our client, (Mrs. Mary, we'll call her), at 81 years young, was the only licensed driver in her rural home, and a very capable one.

Early one morning she was awakened by a call from a blocked phone number. The male caller sternly asked her name, without first identifying himself, and then asked if she was the owner of a red automobile with a licence plate number which he quickly stated. When Mrs. Mary asked for the caller's identity, he said he was with the local police, and was investigating a complaint made by a school bus driver who had notified them that a red car driven by a 30 to 50-year-old female wearing glasses "looked right at me and proceeded to beat the lights ahead of the kids off-loading." He said that they had a partial license plate and believed that she was the driver.

Section 175 (11) of the Ontario Highway Act makes this a serious offence: a minimum fine of \$490, six demerit points, and a 30-day license suspension. A conviction would lead to greatly increased insurance rates for three years.

Mrs. Mary was shocked by the allegation, and told the police officer that she had no recollection of any such incident, and that she would never proceed when a school bus facing her had its red lights flashing. The phone conversation then ended, abruptly.

Two months later, again in the early morning, Mrs. Mary was again awakened by a telephone call from a police officer. He identified himself and stated that he would be by later that day to discuss this incident with her. But there was no further contact from the police until about a month after the second phone call, when an officer attended at her home with a summons to attend Provincial Offences Court.

At this point Mrs. Mary and her husband felt overwhelmed. They both knew Mrs. Mary was being wrongly accused, but they were completely unfamiliar with the process to defend her in a court proceeding.

Fortunately, they knew they were covered under the Unifor Legal Services Plan. They quickly retained Archie Palinka, a Staff Lawyer at our Oshawa office. He entered a Not Guilty plea on behalf of his client, and a Trial Date was set for about nine months in the future (the earliest date available). Mr. Palinka's capable assistant, Nicole, then immediately requested complete disclosure from the Office of the Prosecutor, and arranged a pre-trial phone conference.

After finally receiving and reviewing the three disclosure documents - the written statement of the bus driver, the officer's notes and his report - it was clear we had a very strong defence. However, the pre-trial prosecutor only offered a "plea agreement" for a \$400 fine, an 18% Victim Fine Surcharge and no demerit points.

The plea deal was immediately rejected!

Despite our client's increasing nervousness as the trial date approached, she was confident that this was a clear case of mistaken identity, and refused to compromise the truth.

Only upon a second phone conference about 10 days before the scheduled trial date, with a more experienced prosecutor, was the charge fully withdrawn.

But for the Plan, would Mrs. Mary have tried to defend herself?

Needless to say, she was delighted with the result, and a few days later delivered to our office a delicious fruit cake in thanks for the service provided in averting a grievous injustice, and saving her from a huge expense.