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Criminal Law

Detailed factum leads to drug charges being withdrawn

By Peter Small, AdvocateDaily.com Contributor



Toronto criminal lawyer [Jordana Goldlist](#) knows first-hand it pays to write a detailed factum for Charter applications — that's how she recently secured the withdrawal of charges against her client.

“You do a disservice to the case when you don't properly and fully set out your argument,” Goldlist, principal of [JHG Criminal Law](#). “It takes time, and it's a great deal of work. But it is worthwhile.”

Goldlist's client, a man in his mid-30s, was charged with possession of trafficking cocaine, codeine, and marijuana and proceeds of crime, and was to be tried in the Ontario Court of Justice in July.

However, while examining the search warrant for his apartment, she noticed “serious misrepresentations made by the police,” she says.

“I sat down with my client and reviewed the Information to Obtain, which is the substance of the search warrant,” Goldlist says, adding the client told her that police misstated several important facts.

For example, the police said there were no security cameras in the building where her client lived, and therefore there was no video to corroborate a confidential informant's allegation that he was selling drugs at a particular location there.

In fact, she says her client said the building has numerous security cameras and provided photographs to prove it.

Goldlist filed a motion, accompanied by a comprehensive factum, to exclude all of the drugs that the police found in her client's apartment as evidence. She argued that misrepresentations in the application for the search warrant breached her client's Charter rights against unreasonable search and seizure.



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“I was basically making the argument that the police should never have been authorized to enter my client’s home in the first place,” Goldlist says.

After the application record was filed, her client gave Goldlist photos of the building, which showed multiple security cameras.

“I went through the photos and thought, ‘Oh wow. It’s not even possible for the officer to claim that they couldn’t do a better job investigating the lack of security cameras,’” she says.

Goldlist briefly considered not disclosing the photos to the Crown out of concern that police would tailor their evidence in response.

“But I realized there was no way the police could talk their way out of that. They say to the justice issuing the search warrant there are no security cameras, and here are photos of those very cameras,” she says.

Goldlist filed the photos in a supplementary affidavit to her factum, which she provided to the Crown.

Shortly afterward, the Crown withdrew the charges.

She credits the factum and accompanying affidavit for the result.

Some lawyers file only boilerplate factums for Charter applications, especially in the Ontario Court of Justice, Goldlist says.

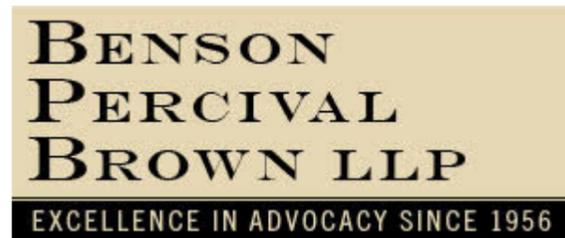
But preparing a comprehensive one helps lawyers present their case by providing the judge with a roadmap, she says. “In the end, I think it really assists everyone involved.”

Young lawyers should get into the habit of preparing good factums, Goldlist says. “There’s a real benefit to being thorough, without necessarily having to show all your cards.”

If you have irrefutable evidence to clear your client, it’s sometimes wise to provide it to the Crown, she says.

“It helps everyone — your client first and foremost if charges get withdrawn — but it also helps the Crown to save time and costs,” Goldlist says.

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