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Criminal Law

Consider plea negotiations after all other options exhausted: Goldlist

By Peter Small, AdvocateDaily.com Contributor



Lawyers should enter into plea negotiations only as a last resort, Toronto criminal lawyer [Jordana Goldlist](#) says, pointing to a high-profile murder case in which her client had the charge against him reduced, netting him an immediate release from custody.

“I personally don’t like doing guilty pleas unless I am as close to 100 per cent satisfied that this is the best possible outcome for my client,” says Goldlist, the principal of [JHG Criminal Law](#).

“But when I do, it’s because I think it’s in the best interest of my client, and I still feel like I’m fighting to get them the best possible result within the parameters of the resolution,” tells [AdvocateDaily.com](#).

Goldlist followed this principle in a recent case in which her client, originally charged with being an accessory after the fact of murder in relation to the “Good Samaritan” killing in Hamilton, was freed from jail after pleading guilty to the much less serious charge of obstructing justice.

Her client was sentenced to 13 months in prison but credited at a rate of 1.5 days for every day spent in pre-trial custody over about nine months. He had faced a lengthy penitentiary sentence if convicted after trial.

According to an agreed statement of facts, he saw a friend shoot another man during an altercation on a Hamilton street in December 2017. The Crown accused him of texting the shooter to warn him that police were coming after him, according to the [CBC](#).

As in every case she takes on, Goldlist carefully reviewed the disclosure for substantive defences — including breaches of her client's constitutional rights — and formulated a strategy.



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She discovered that following his arrest and after obtaining advice from another lawyer, her client provided police with substantial information about the shooting, as has had been disclosed in open court.

Long before that court disclosure, the Crown informed Goldlist that it wanted another, more detailed statement.

“My advice to my client was to not provide any further information,” she says. “And my response to the Crown was, 'Absolutely not, save and except for something exceptional that you can offer my client.'”

Police are sometimes too quick to charge witnesses with a crime, she says. For instance, she has a client in York Region charged in relation to a shooting and now police want to interview him about the incident.

Her response was: “Really? You arrested him and put him in jail for a week, and he had to pay me to get him out on bail. And now you want to ask him questions? Well now he doesn't want to talk to you.”

Once Goldlist and her client decide to try to resolve a case, the next step is to identify the most damaging charges and try to have them withdrawn in return for a guilty plea on lesser counts.

“I will sit down with the Crown and say, ‘OK, what makes sense here? What satisfies your end and also, from my perspective, what can I do to minimize the criminal record that this person is now going to receive?’” Goldlist says.

In the Hamilton murder case, in return for his co-operation, Goldlist persuaded the Crown to drop the accessory to murder charge, substituting the less serious obstructing justice charge.

“I didn't want him spending the rest of his life with a homicide-related entry on his record,” she says.

In some cases, Goldlist says, the evidence against the accused is so overwhelming that going to trial might not be worth the risk.

But more often, Goldlist tries to persuade her clients to fight the charges despite their desire to plead guilty and get on with their lives. In the kinds of serious gun and drug trafficking cases she typically takes on, the Crown rarely offers plea deals with sentence reductions large enough to be worthwhile, she says.

In cases involving fentanyl, for instance, sentences are double and sometimes triple, those in heroin cases, Goldlist says.

“And so, I say to my clients that are charged with fentanyl, 'There is absolutely no point in pleading guilty. It's not going to be worse after trial. We need to try to win this,'” she says.

Some lawyers are too quick to recommend a guilty plea without first considering whether they have a substantial defence, Goldlist says.

“They seem to forget that the client is going to endure the criminal record for the rest of their life. And I think that before you are prepared to take that step and have a client commit to that conviction you really need to do your due diligence and make sure it's the best possible outcome.”

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