

Worth The Risk**Worth the risk: Cost-benefit analysis of opioid crisis | Jordana Goldlist**By **Jordana Goldlist**

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(September 30, 2019, 11:44 AM EDT) -- In a 2017 decision, the Ontario Court of Appeal held that "offenders, even first offenders, who traffic significant amounts of fentanyl should expect to receive significant penitentiary sentences" (*R. v. Loo* 2017 ONCA 696). Fast forward two years and I now tell my clients charged with trafficking fentanyl that they, if found guilty, can expect to serve more time in jail than someone convicted of manslaughter.

The Court of Appeal has yet to set a definitive range but has commented on the fact that fentanyl is infinitively more dangerous than heroin, a drug which previously set the ceiling on jail sentences. A review of the case law, conversations with colleagues and my frequent representation of individuals charged with this offence leads me to borrow language from the Ontario Court of Appeal in cocaine importation sentencing and suggest that the current range for the fentanyl trade is five to eight years for an ounce "more or less" and a double-digit sentence for a kilogram "more or less." These numbers are significantly higher than those imposed for cocaine importation, an offence which the Ontario Court of Appeal has classified as violent.

We treat fentanyl users like victims and I am not entirely sure why. The greatest demand on the streets today is for pure fentanyl or purple heroin, a mix of heroin and fentanyl in ratios decided by a dealer who hopes to create a baggie strong enough to bring the customer back for more but not so strong as to kill them.

While most of my practice involves those in the commercial trade, some of my clients are addicts and some are addicted to fentanyl. As an ex-junkie, I am fascinated by the attraction to what is arguably the deadliest drug ever circulated for mass consumption. And so I ask them all, as a matter of curiosity: "is it worth the risk?" The addicts I ask are very much aware of the potential for overdose and many have endured at least one round of Naloxone to bring them back from the dead. Whenever I pose the question, no matter the situation or circumstance, the answer has always been a resounding "yes."

Yes, the high is so amazing, so incredible, so intense, that it is worth possibly dying for.

I ask the dealers I know the same question: are the profits worth the potential jail sentence? Knowing that they face five to eight years for a few ounces and 10-plus years for a kilo, is it worth it? Their answer is the same as the addicts.

So we, as a society, are faced with an epidemic. We have addicts that don't care about the deadly consequences and dealers whose profit margins outweigh any jail sentence a judge could impose. Both sides know the risk and neither care. It would seem that those of us entrenched in the justice system need to accept this reality and just brace ourselves for whatever drug will replace fentanyl. I expect it will be more potent, more addictive and more profitable.

And we as a society cannot be surprised since those who are truly to blame for this epidemic are not and never will be held accountable. The creators of this epidemic are shielded by corporations that have been allowed to buy their way out of liability with fines that pale in comparison to the profits

they have enjoyed.

On Aug. 26, 2019, pharmaceutical giant Johnson & Johnson was fined \$572 million for its role in creating the opioid crisis in Oklahoma with its aggressive sales and marketing of Duragesic, a highly addictive yet perfectly legal version of fentanyl. From 2015 to 2018, 18 million prescriptions were distributed across Oklahoma's population of four million people.

Johnson & Johnson distributed its drugs far more methodically than my clients do. According to an article in *The Guardian*, Johnson & Johnson hired the consulting firm McKinsey to help it reach the masses by targeting doctors who were already prescribing large quantities of OxyContin.

As an aside, no one seems to be holding the doctors liable for their contribution to this crisis. In Oklahoma alone, there were over 6,000 reported deaths from 2000 to 2018. That means that Johnson & Johnson was ordered to pay approximately \$95,333 for each opioid death it contributed to in that state. Imagine the uproar if an ordinary citizen convicted of manslaughter were sentenced to a fine.

Purdue Pharma, the makers of OxyContin, is facing lawsuits similar to Johnson & Johnson. Thousands of them, actually. The only Canadian lawsuit was launched by the government of British Columbia in 2018. One U.S. case settled out of court for \$270 million and in an effort to settle others, the company offered to pay \$3 billion in a national settlement plan.

A dozen state attorneys general agreed to the proposal while a dozen more affirmed their intentions to pursue damages separately. In response, the Sackler family, the billionaire owners of Purdue Pharma, filed for bankruptcy. The entire settlement proposal is now in jeopardy; unlike the bonuses for employees who hit their targets.

According to the *Washington Post*, Purdue requested a judge in the bankruptcy proceedings to authorize certain employees to receive \$34 million worth of bonuses for "meeting and exceeding goals over the last three years." That is about the time it has taken for street level dealers to infiltrate the market and overtake the trade.

On Sept. 20, 2019, the bankruptcy judge allowed the request and the employee bonuses will be distributed accordingly.

Just as I have questioned the fentanyl dealers and the addicts I have come to know, I suspect that if the manufacturers of this epidemic were asked, they too would say that their role in the opioid crisis was worth it in the end.

Jordana Goldlist is the principal of JHG Criminal Law, a boutique firm located in downtown Toronto focused on defending people charged with murder, firearms offences and crimes related to the commercial drug trade. From teenage street kid to TEDx speaker, Jordana aims to disrupt the status quo and help marginalized youth and young adults realize their own potential. You can reach her at jgoldlist@jhgcriminallaw.com.

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