



Facilitator's Guide Criminal Law Case Study

The Guilty Plea

Opening Paragraph

On Thursday, November 4th, 2014, Rebecca Gaines was leaving the courthouse in Prince Albert, Saskatchewan, with her client, Jim Kelly, when he loudly accused her of not doing enough to represent him. Jim had just pleaded guilty to assault, in accordance with a plea bargain that Rebecca advised him to take. After a heated conversation, Rebecca told Jim she would no longer represent him. When Jim's new lawyer, who was making an application to strike the plea, sent Rebecca a letter outlining her former client's allegations of ineffective representation, she wasn't sure how to respond.

Objectives

1. This case is intended for a study group discussion session on professional responsibility in Criminal Law.
2. Participants will be expected to put themselves in the position of the lawyer in the case and to identify and analyze the legal, professional and personal challenges she faces.
3. Participants will also be expected to develop alternatives and an action plan for resolving the issues in accordance with the lawyer's professional obligations under the *Code of Professional Conduct*.

References

- Competence, subclause 2.01(1)(a)
- Confidential Information, subrule 2.03(1)
- Permitted Disclosure, subrule 2.03(5)
- Optional Withdrawal, subrule 2.07(2)
- Withdrawal from Criminal Proceedings, subrule 2.07(4)
- Manner of Withdrawal, subrules 2.07(8) and (9)
- Making Legal Services Available, subrule 3.01(1)
- Advocacy, subrule 4.01(1) – Commentary (paragraph 7)
- Advocacy, subclauses 4.01(2)(b) and (e)
- Agreement on Guilty Plea, subrule 4.01 (7) and (8)
- Notice of Claim, subrule 6.08(2)

Suggested Discussion Questions

Assume you are the lawyer in the situation and answer the following questions with reference to the relevant *Code of Professional Conduct*:

1. How would you respond if your client admitted to an offence with which he or she was charged and asked, "What can you do for me?"
2. What would you do if a client who retained you on a criminal matter expressed concern about the effect of a possible conviction on his or her immigration status?

3. What considerations would you take into account if your client wanted to have a family member present during a discussion about a plea bargain?
4. How severe would the breakdown of your relationship with a client need to be before you terminated the relationship?
5. If you became aware that a former client was making an application to strike a plea, what would you do?
6. If a client sought to retain you to make an application to strike a plea, would you feel professionally obliged to take the case? What would you do before accepting the retainer?