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## Civil Litigation Case Study

### The Allegation

On September 9, 2009, Harold Knox, Managing Partner at Knox & Harrison, Barristers & Solicitors, in London, Ontario reviewed a letter from Percy Poloski, the opposing counsel in a lawsuit. He alleged that Knox & Harrison had a conflict of interest and demanded that the firm withdraw from the case. Harold wondered how he should respond.

#### Background

Established in 1985, Knox & Harrison, Barristers & Solicitors, was comprised of two senior partners, Harold Knox and Dan Harrison, and two junior lawyers. The firm's practice focus was business law, and corporate and commercial. The firm's client base consisted of business owner-operators, professionals, and private law corporations that carried on business in Southwestern Ontario. Harold's clients were primarily from the natural gas industry. As managing partner, Harold was involved in client development and retention. Client satisfaction and retention were the law firm's key objectives.

#### ABC Co. et. al. v. Claremont et. al.

On the morning of September 9, 2009, Harold's partner Dan walked into his office to discuss a litigation matter. Dan acted for George Claremont, a public accountant and one of five defendants in a Superior Court of Justice matter, *ABC Co. et. al. v. Claremont et.al.* ("ABC Co. litigation"). ABC Co., one of two plaintiffs in the law suit, was a publically traded company with natural gas operations in Ontario. The action was commenced on July 28th 2009 and the Statement of Defence on behalf of Claremont was filed on August 28th, 2009. Claremont had been ABC Co.'s Chief Financial Officer ("CFO") from January 2005 until September 2008.

#### ABC Co. Alleges Conflict of Interest

ABC Co. called for Knox & Harrison to withdraw from the case. Percy Poloski, counsel for ABC Co., had written to Dan, alleging that because his firm had acted for ABC Co. in a previous matter, it was in a conflict of interest. Dan gave Harold Poloski's letter dated September 9, 2009 and the pleadings. Dan knew that Harold had been counsel on that previous matter. He asked Harold to prepare a response on his behalf.

Poloski's letter outlined his concern as follows:

Last year your firm acted for ABC Co. on a pooling application to the Mining and Lands Commissioner that required collection and analysis of geological reserves and gas well permanence. The Statement of Claim

puts the reliability of the reserves evaluation and the collection of production data squarely in issue. Accordingly, your firm is in a conflict and must withdraw from the case.

Harold knew that this issue had to be resolved quickly. If Poloski was correct and Knox & Harrison had to withdraw from the ABC Co. litigation, the consequences could be serious: the firm would lose the client and the firm might have to write-off unbilled time; Claremont would have to retain new counsel causing him delay and further expense. Harold needed to resolve the issue now.

### **The Pleadings**

Harold reviewed the pleadings in the lawsuit to make a preliminary determination of the key facts relating to the issues between ABC Co. and Claremont:

- In order to meet the minimum amount required by the Canadian Imperial Bank of Commerce (“CIBC”) to maintain ABC Co.’s borrowing base, ABC Co. was required to submit engineering reports to confirm that it had sufficient gas reserves to meet the minimum required for bank financing.
- ABC Co. claimed that its former president had submitted an engineering report that purposely inflated and over-estimated the company’s actual energy reserves.
- On February 6, 2008 the CIBC provided its own engineering report to the company. CIBC’s reserves analysis disclosed much lower energy reserves amounts, leading the CIBC to drastically cut ABC Co.’s borrowing base.
- As a result, ABC Co. suffered substantial losses due to the lack of financing and was forced to obtain financing elsewhere at a much higher cost.
- Claremont resigned as CFO of the company in September 2008, allegedly without explanation.
- ABC Co. alleged that Claremont conspired with other defendants to inflate the gas reserves amounts. Alternatively, as the company’s CFO, Claremont was negligent in that he ought to have known that the reserves amounts were inflated.
- Claremont denied participation in any conspiracy and stated that he properly relied on the engineering reports when he prepared the financial documents for ABC Co.

### **ABC Co.’s Pooling Application**

As Harold had brought an Application for an Order for pooling (“Pooling Application”) on behalf of ABC Co. in 2008, he knew that information regarding gas well capacity was relevant in these applications. Harold retrieved the closed file information in the firm data system and found that the Pooling Application to the Mining and Lands Commissioner had been filed on July 9th 2008 and the Commissioner’s Order with reasons had been released on January 29th 2009. Harold reviewed the Statement of Claim in the ABC Co. litigation and noticed that the company’s then President, who was also Chief Executive Officer, Treasurer and a company director, was a defendant in the ABC Co. litigation as well as the instructing individual for the Pooling Application.

**Next Steps**

Harold knew he had to get more information. Dan required a response to Poloski's letter within the next few days.