



Facilitator's Guide Civil Litigation Case Study

The Allegation

On September 9, 2014, Harold Knox, Managing Partner at Knox & Harrison, Barristers & Solicitors, in Estevan, Saskatchewan 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.

Objectives

1. This case is intended for a study group discussion session professional responsibility in Civil Litigation.
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 he 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

- Definitions, (Page 10 of the *Code of Professional Conduct*)
- Acting Against Former Client, subrules 2.04(10) and (11)
- Division of Fees and Referral Fees, subrule 2.06(6)
- Withdrawal from Representation, rule 2.07

Suggested Discussion Questions

Assume you are the lawyer in this case, and answer the following questions with reference to the *Code of Professional Conduct*:

1. Describe the nature of the conflict of interest that Poloski is alleging.
2. How could this situation have been avoided?
3. Does it matter that Claremont is Dan's client, while ABC Co. was previously represented by your firm?
4. How do you determine if confidential information is relevant?
5. Must Knox & Harrison withdraw from acting?
6. What if the parties consent to Knox & Harrison's continued representation? How would you create an ethical screen to prevent Dan from accessing information about the Pooling Application?

7. If you were to refer the matter to another firm, could you accept a referral fee? Why or why not?
8. What steps should you take in response to Poloski's letter?