



### **Fact Problem #1**

A Canadian corporation, Monroe Limited ("Monroe"), is a large, publicly traded electronics company with head office in London, Ontario. Its shares trade on the Toronto Stock Exchange.

Monroe's senior management consists of the Chief Executive Officer Rupert Kong, the Chief Administrative Officer, Emily Donohue and the Vice President and General Counsel, Gilles Fontaine. These three individuals also sit on the Board of Directors of Monroe. They each work hard, on behalf of Monroe, to reach earnings targets. In each year where Monroe makes the target, personal executive bonuses accrue.

The company enjoyed significant success in the early 1990s, including multi-million dollar acquisitions and a period of strong economic growth for the company. By the mid-1990s, the industry faced a downturn and there was less demand for Monroe's products. Equity in the shares of Monroe plummeted and the value of its assets severely diminished.

Throughout, Monroe had a conservative accounting policy. It permitted the company to create excess accrued liabilities, which essentially delayed payment of expenses or liabilities. In other words, it was possible that accrued liability balances could be released to assist in meeting financial targets.

In 2009, Monroe chose to re-state previously published financial statements for the three prior years, releasing more than \$175 million in excess accrued liabilities. Rupert Kong called Gilles Fontaine to make sure that he would not raise any questions or concerns about this. Relying on the work of its senior accounting employees, and the work of its outside auditors XYZ Limited, Monroe management, including Gilles Fontaine, signed off on the re-stated financial statements. Some of the included accruals could not be supported by documentation or institutional memory of the liabilities. The three executives knew that there were unsupported and excessive liabilities on Monroe's balance sheet.

What are the obligations, legal, ethical and otherwise, of Gilles Fontaine as General Counsel as well as the other executives, Rupert Kong and Emily Donohue?

## **Fact Problem #2**

Jocelyn Boudreau is a young securities partner at a large Toronto law firm. She has been retained by Widget International Inc. ("Widget") to prepare and file a prospectus with the securities commission.

Widget is a Canadian company, with a head office in the United States. It is a manufacturer and distributor of widgets, although it also buys and sells natural gas. All of its manufacturing operations are located in Pakistan and India and the bulk of its widget sales are in those regions. Widget wholly owns a number of subsidiaries in India, although Jocelyn is not very familiar with those businesses.

Over the last three years, Jocelyn and her firm have been retained by Widget for various legal matters and they are one of Jocelyn's top five revenue generating clients. Her client contact is Chief Operating Officer, Brian Chowman. The client is anxious to proceed with the prospectus as soon as possible and, in fact, Mr. Chowman has promised Jocelyn's firm a \$250,000 success bonus if she gets the prospectus approved by September 2013.

Jocelyn prepared and filed a preliminary prospectus on Widget's behalf. The preliminary prospectus addressed the business risks facing the issuer by acknowledging that, similar to other companies operating in India, there are certain risks of doing business in that part of the world, particularly given local legal and political issues that can make the region potentially unstable. To address those risks, Widget had appointed an independent Special Committee and, based on their recommendations, Widget had adopted new standards for business practices. Further, the prospectus stated that although Widget is aware of concerns expressed in the media that many companies doing business in this part of the world have possible links to organized crime, its business is legitimate.

In response to their review of that preliminary prospectus, staff of the securities commission issued a comment letter asking for further particulars relating to the risks threatening Widget. After speaking with Brian Chowman, Jocelyn prepared a response. On behalf of her client, Jocelyn assured the commission that "several independent parties have done due diligence about Widget's operations and all of the results have been very favourable". She also indicated that the underwriters had signed off on the prospectus.

Wanting to avoid negative publicity for Widget, and information overload for prospective investors, she did not include the following information:

- Widget's Board of Directors had appointed the Special Committee in response to a US federal criminal investigation into Widget, on issues of national security and organized crime. The report of the Special Committee is not yet complete and Jocelyn does not know if there are interim findings.
- Widget's long time auditors recently advised Widget that they would not perform further services, including the rendering of an audit opinion about last year's financial statement.

Jocelyn is now preparing the final prospectus for her client. What are Jocelyn's obligations to her client, the securities regulator and the Law Society of Upper Canada?