

LAWYERS ARE RESPONSIBLE

COUNSEL'S OPINION ON THE RIGHT OF CONSCIENTIOUS OBJECTION AT WORK

WORKED SCENARIOS

SCENARIO A – THE CASPIAN SEA PROJECT

PREPARATION: Please read pg 2 – 12 (paras 2 – 50) of the Counsel's Opinion in preparation for this Scenario.

PART 1

You are an associate at XY&Z International LLP, a prominent law firm. You are assigned to draft documents for a project involving ABC Global, a major oil company. The project pertains to the acquisition of an oil field in the world's largest inland lake, the Caspian Sea (**'The Caspian Sea Project'**).

ABC Global is a longstanding client of XY&Z International LLP and generates significant revenue for the firm. However, the company has a poor track record concerning environmental issues, including contributing significantly to greenhouse gas (GHG) emissions. The company was fined in 2023 for environmental violations in the USA for allowing a pipeline crude oil spill which significantly polluted a river and its floodplain in Montana. This allegedly contaminated farmland and caused crop failures and the deaths of cattle; health issues in the local community which is predominantly poor and rural; and the deaths of thousands of migratory birds. Reading about a similar oil spill in Nigeria involving a different fossil fuel company not too long ago inspired you to join a 'River Guardians' group outside of work. Since then you have become much better informed about way that companies like ABC Global are contributing to the climate and ecological crisis.

Having thought carefully about it, you inform the client relationship partner for ABC Global that you cannot work on the Caspian Sea Project because you believe it will pollute the delicate ecosystem of the Caspian Sea and contribute materially to fossil fuel pollution at a

time when society should be moving rapidly to decarbonise and transition to cleaner energy sources.

The partner is furious and threatens to report you to your line manager, HR and your regulator. He tells you that your refusal undermines the firm's policy that its employees should represent all its clients without fear or favour. Also, he says that given your abilities and specialist skillset, XY&Z International LLP will not be able to deliver on the project without you unless it hires a contractor and your unavailability may compromise its contractual responsibilities under its retainer.

Q1. What, if any, right do you have to refuse to work on ABC Global's matter? What sort of legal and ethical issues arise?

PART 2

You stand your ground. You are immediately reassigned to working on a merger of two pharmaceutical companies and so you continue to meet your chargeable hours and billing targets. However, your colleagues who had to pick up your work on the Caspian Sea Project make snide comments to the effect that you're a 'work shirker' and start to address you in emails as 'Eco Zealot'. You raise the fact this is making you feel stressed and unwelcome at work with your line manager but they discourage you from raising a formal grievance and tell you it's 'only a bit of banter'.

After the Caspian Sea Project finishes, you are notified that a complaint was made about you to the Solicitors Regulation Authority. Without waiting to find out the outcome of this complaint, you are informed by HR and your line manager that you will be moved to a 'professional support lawyer' role which does not involve any advisory or transactional work because you might 'find this a bit more comfortable, given your views'.

Q2. What legal issues does this scenario raise? What, if any, recourse do you have against XY&Z International LLP?

Q3. How do you think the SRA will deal with the complaint?

FURTHER READING: For discussion of these issues, please read pg 13 – 26 (Paras 52 – 115) of the Counsel's Opinion.

SCENARIO B – THE PANTANAL PIPELINE

PREPARATION: Please read pg 26 – 32 (paras 116 – 138) of the Counsel’s Opinion in preparation for this Scenario.

BigLaw LLP is acting for NaturalEnergy Corporation, an energy company engaged in the development of a new natural gas pipeline project in South America (**‘Pantanal Pipeline Project’**). NaturalEnergy Corporation, with its distinctive ‘falling leaves’ logo, styles itself as an ethical and modern company with many employee engagement awards, providing a ‘cleaner energy transition fuel’ than the alternatives of oil and coal.

You are a junior solicitor at BigLaw LLP, a member of the team on the Pantanal Pipeline Project coordinating and providing legal advice on the various regulatory approvals and contracts required for the gas pipeline’s construction and operation. During your work, you identify significant concerns set out in underlying documents on the matter file regarding the project’s potential impacts. You discover that:

1. According to environmental impact assessments which have been prepared, the construction and operation of one section of the pipeline will result in the destruction of local water sources, and estimated significant incidental methane leakage, posing serious health risks to nearby indigenous communities in the Pantanal wetlands and Chiquitano forest. NaturalEnergy disclose these risks on the face of the documents and not appear to be taking any steps to mitigate these risks.
2. Health and safety documentation concerning workers has been omitted or has not been prepared at all, save for the first phase of the pipeline construction. This strikes you as odd. You raise this (with the approval of the supervising partner) with the client, but they do not respond to any of your or her chasers on this.
3. You also notice that the planning approvals for one section of the pipeline in Brazil appear to have been procured with no applications, environmental impact assessments or other paperwork filed. On investigating public domain records available for these planning approvals, several ‘facilitation payments’ appear to have been made to officials of the local municipality, after which approvals were granted.
4. Looking at both the confidential documentation you have from NaturalEnergy and reports published on the potential impacts of the Pantanal Pipeline by researchers and civil society groups who oppose the pipeline’s construction, the pipeline’s operation is expected to substantially contribute to global carbon emissions, both through the correct operation of the pipeline and through incidental methane leakage. However, it appears that external researchers have vastly underestimated the incidental methane leakage of the pipeline in tonnes, according to NaturalEnergy’s documents, which suggest that it will in fact be around 5.5 – 6x the researchers’ estimates. NaturalEnergy do not appear to be taking any steps to mitigate the leakage risks.

BigLaw LLP are told that NaturalEnergy Corporation wants to complete the legal side of things quickly so that they can start construction in Q2 next year. You are chivvied along by the client with various deadlines and told not to 'hold matters up' and 'incur costs by looking into things too closely because our internal lawyers have already checked everything'.

Q1. What sort of legal and ethical issues arise here?

Q2. Would you be able to make a protected disclosure to an appropriate authority (and, if so, on which grounds/categories of wrongdoing)?

Q3. In what circumstances (if any) could you breach your client's confidentiality/legal professional privilege in order to make a disclosure of information to an appropriate authority?

FURTHER READING: For discussion of these issues, please see the worked examples at pg 32 – 40 (Paras 139 – 186) of the Counsel's Opinion, particularly Scenario C.