

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL  
CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.  
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,  
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL  
LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON  
CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM  
SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON,  
BRUCE LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY  
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX and JOHN  
DOES #1-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

**A N D B E T W E E N:**

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL  
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES  
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY  
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK CUBE  
and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION  
Defendants to the Counterclaim

**NOTICE OF MOTION**

The Defendants (Plaintiffs by Counterclaim), West Face Capital Inc. ("**West Face**") and Gregory Boland, will make a motion to a Judge of the Commercial List on November 29, 2018 at 10:00 a.m. or as soon after that time as it can be heard, at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

in writing under subrule 37.12.1(1);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

**THE MOTION IS FOR:**

- (a) a Declaration that no litigation or other privilege applies to any terms of, communications about, evidence concerning, or materials arising from the engagement or operations of B.C. Strategy Ltd. and B.C. Strategy U.K. Ltd. (collectively, "**Black Cube**") for the purpose of supporting The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation

(“**Callidus**”) in their litigation against West Face and Boland, and related proceedings;

- (b) an Order that the Defendants by Counterclaim Black Cube, Catalyst, Callidus, Newton Glassman, Gabriel de Alba, James Riley, Virginia Jamieson, Emmanuel Rosen, and Invop Ltd. d/b/a Psy Group are required to produce all materials in their possession, power or control relating to the retainer of Black Cube for the purposes stated above, including without limitation all files, work product, proposals, outlines, planning documents, transcripts, recordings, communications, notes, or other materials that would ordinarily be required under the *Rules of Civil Procedure*; and
- (c) such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

**A. The Black Cube Investigations**

- (d) West Face and Boland have commenced this Counterclaim seeking damages arising from a conspiracy to defame and otherwise harm West Face and Boland carried out by, among others, the Defendants by Counterclaim.
- (e) Among other things, West Face and Boland have pleaded that Catalyst, Callidus, Glassman, De Alba, and Riley retained Black Cube to conduct a series of unlawful “stings” against current and former West Face employees, including its former general counsel, as well as against retired Justice Frank Newbould.

- (f) Black Cube has admitted at paragraph 8 of its Statement of Defence to Counterclaim that it carried out the stings in question.
- (g) West Face and Boland have pleaded that in order to carry out these stings, Black Cube created an array of fraudulent identities, including websites, business cards, email accounts, LinkedIn accounts, and other similar personal details.
- (h) Black Cube used these fraudulent identities to contact and arrange meetings with its targets under false pretences. At these meetings, Black Cube attempted to use a combination of alcohol, fatigue, intimidation, and incentives to encourage the targets to make statements prejudicial to West Face.
- (i) In the case of Justice Newbould, Black Cube attempted to elicit anti-Semitic remarks that would have been used to impugn his judgment in *The Catalyst Capital Group Inc. v. Moyses*, 2016 ONSC 5271 (the “**Moyses Decision**”) as being a product of actual bias against Glassman.
- (j) West Face denies that Catalyst ever had a *bona fide* intention to use the fruits of the Black Cube stings for the dominant purpose of litigation, and in fact Catalyst never attempted to do so.
- (k) Rather, the dominant purpose of these stings was to obtain harmful information about West Face, Boland, and Justice Newbould. This information could then be used to defame West Face and Boland in the

media and otherwise in the court of public opinion, as part of the ongoing conspiracy to defame and otherwise harm West Face and Boland as pleaded in the Counterclaim.

- (l) In furtherance of this conspiracy, Catalyst, Callidus, Glassman, De Alba and Riley have in fact used misleading and partial transcripts of Black Cube's sting operations as follows:
  - (i) By leaking them to news media outlet in an attempt to solicit unfavourable coverage of West Face and Boland; and
  - (ii) By using them in communications to Catalyst investors.
- (m) While the stings failed to produce any information that genuinely demonstrated any misconduct by West Face or Boland, they did succeed in associating West Face with unsavoury events and allegations in the eyes of current and potential investors, deterring current and potential investors from investing with West Face, alienating West Face's employees, and otherwise causing harm.
- (n) Moreover, Catalyst has used selective excerpts of transcripts from the stings in order to promote misleading interpretations of what the sting targets believed and said, thereby causing harm to West Face.

**B. Catalyst Disclaims Responsibility for Black Cube's Conduct**

- (o) On September 25, 2017, Catalyst had obtained an adjournment of the appeal of the Moyse Decision while representing to the Court of Appeal that

it needed time to pursue potential fresh evidence. The fresh evidence in question was not and has never been disclosed.

- (p) Upon learning of Black Cube's activities, West Face brought a motion in the Court of Appeal, returnable on December 1, 2017, for preservation and production of all evidence of Black Cube's activities.
- (q) On the eve of the return of that motion, on November 30, 2017, Catalyst disclosed that it would not be bringing a motion to introduce fresh evidence at the Court of Appeal, and West Face therefore withdrew its motion.
- (r) Also on November 30, 2017, counsel to Catalyst Brian Greenspan delivered to counsel to West Face a letter (dated November 29, 2017) which explicitly disclaimed any foreknowledge of Black Cube's actions by either Catalyst or its counsel:

Neither Mr. Moore nor I had any pre-knowledge nor involvement in the events which led to the interviews of Frank Newbould or the resulting tape recordings nor with respect to any other similar investigative activities in relation to any West Face personnel and we have been assured by Catalyst that the same applies to them.

- (s) Mr. Greenspan and Mr. Moore, as counsel to Catalyst, insisted that this letter "be provided to the court on the public record."
- (t) Catalyst, directly or indirectly, has also repeatedly made statements to the media indicating that Black Cube was acting as a sub-contractor to another firm the company had retained because of various security concerns, and

that neither Catalyst nor its lawyers knew about or approved the sting operations.

**C. No Litigation or Other Privilege Applies to Black Cube's Activities**

- (u) Black Cube's activities were an abuse of process and actionable misconduct, which cannot be subject to litigation privilege. Moreover, as pleaded above, the Black Cube stings were not carried out for the sole, or even dominant, purpose of litigation.
- (v) In the alternative, any litigation privilege that may have existed was waived by Catalyst based on its repeated public statements denying that it directed or otherwise had any foreknowledge of Black Cube's activities, but rather representing that Black Cube was retained by a third party in relation to alleged "security concerns".
- (w) such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (x) The Affidavit of Philip Panet, to be sworn;
- (y) Rules 30, 31, 37, and to the extent necessary, Rule 22 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (z) Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 27, 2018

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto ON M5V 3J7

**Kent E. Thomson (LSUC# 24264J)**  
Tel: 416.863.5566  
Email: kentthomson@dwpv.com

**Matthew Milne-Smith (LSUC# 44266P)**  
Tel: 416.863.5595  
Email: mmilne-smith@dwpv.com

**Andrew Carlson (LSUC# 58850N)**  
Tel: 416.367.7437  
Email: acarlson@dwpv.com

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by  
Counterclaim),  
West Face Capital Inc. and Gregory  
Boland



THE CATALYST CAPITAL GROUP -and- WEST FACE CAPITAL INC. et al. -and- CANACCORD GENUITY CORP.  
INC. et al.  
Plaintiffs Defendants Third Party  
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP  
INC. et al.  
Plaintiffs by Counterclaim Defendants to the Counterclaim

Court File No. CV-17-587463-00CL

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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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155 Wellington Street West  
Toronto ON M5V 3J7

**Kent E. Thomson (LSUC# 24264J)**  
Email: kentthomson@dwpv.com  
Tel: 416.863.5566

**Matthew Milne-Smith (LSUC# 44266P)**  
Email: mmilne-smith@dwpv.com  
Tel: 416.863.5595

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