

Christie Blatchford: How a legal battle between two ferociously competitive Toronto firms took a dark turn

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A former Ontario Superior Court judge was targeted in a sting designed to discredit him days before his decision in a controversial case with hundreds of millions of dollars at stake was scheduled to be heard at the Ontario Court of Appeal. The sting saw the 74-year-old former judge, Frank Newbould, audiotaped and photographed surreptitiously at a posh Toronto restaurant as an agent posing as a potential client apparently tried to induce him, in vain, to make anti-Semitic remarks.

Newbould, who just left the bench in June, was the trial judge in a 2016 lawsuit between Catalyst Capital Group and West Face Capital, two ferociously competitive Toronto private-equity firms whose feud hasn't yet ended in the courtroom.

A source authorized to speak for Catalyst acknowledges that a subcontractor working for a security company it hired carried out the sting on the judge. But the source said Catalyst did not order the sting or know about it until after it happened.

The subcontractor was the Israeli intelligence firm Black Cube, recently in the news as the same private agency Hollywood film producer Harvey Weinstein hired to undermine the women accusing him of sexual assault. Black Cube later apologized for taking the job and said it would donate the fee to women's groups.

Last week in response to another lawsuit filed against it by Catalyst — the fourth since 2014 — West Face alleged in court documents that operatives from Black

Cube pretended to be recruiters in an attempt to get information from some of its current and former employees.



A sting arranged by Israeli intelligence firm Black Cube saw former judge Frank Newbould audiotaped and photographed surreptitiously at a posh Toronto restaurant in September 2017.

The sting on Newbould began Sept. 18 with an appointment arranged via email with a man who said his name was Hugo Gabriel Saavedra Rodriguez. He said he was the executive director at Victorious Group, a consultancy firm purportedly based in London, England, but with international interests.

But Companies House, the United Kingdom's government registrar of companies, has no record of a company by that name at the given address.

The two met at Newbould's downtown office. Rodriguez claimed to represent a Canadian company involved in the oil sands business that was unhappy with a competitor who "had gone behind my client's back" and allegedly used its technology to get licences to drill in Africa and Israel.

He said his client might be in the market for an arbitrator and appeared to be interested in hiring Newbould.

Three months earlier, in June, Newbould had stepped down from the bench amid a controversy over his involvement in an aboriginal land claim dispute near his family cottage at Sauble Beach on Lake Huron.

A judicial inquiry into a complaint that he had shown a “lack of sensitivity to the experiences of Aboriginal peoples” and derailed a proposed settlement of the claim by speaking out against it was stopped because Newbould resigned. However, he said at the time that he wasn’t forced to quit and had decided two or three years before to retire from the bench early.

Almost immediately he joined Arbitration Place, a downtown Toronto agency for arbitrators, and also joined the law firm of Thornton Grout Finnigan as counsel.

In the first meeting at Newbould’s office, Rodriguez said he thought his case might have to be heard in New York, but he expressed doubts about getting a fair hearing there because of “the Jewish lobby or influence in New York.”



Four times in this conversation, Rodriguez mentioned as a potential problem for his client “the Jewish lobby or influence,” “the Jewish issue,” “the Jewish way of doing things.... All the time trying to take more than they should, and more than agreed.”

Newbould failed to rise to the bait, repeatedly responding only with such benign disclaimers as “there’s good Jewish people and there’s some bad Jewish people ... some good Spaniards and bad Spaniards” and “My experience is arbitrators aren’t influenced by that (ethnicity).”

He also tried to explain the rules of arbitration to Rodriguez and the two agreed to discuss the job over dinner that night at Scaramouche, an expensive midtown Toronto restaurant known equally for its fine food and sweeping views.

Rodriguez paid.

The judge did not see a tape recorder being switched on. Nor did he notice a photographer taking his photo, careful it would seem to only capture the back of Rodriguez.

They quickly returned to that morning's discussion. With little preamble, Rodriguez said the man heading the company that was allegedly stealing his client's technology was "this Jewish guy."

Newbould ignored this, told him he needed to retain both a lawyer and an arbitrator, and said it wasn't clear to him which role Rodriguez saw for him. "If you have in mind that I would be the arbitrator," he said, "I couldn't give you advice on all that you're asking me."

To do so, he said, would be inappropriate. "I couldn't do that," Newbould said. "Nobody, no good arbitrator, would ever do that."

In the course of the night, Newbould at one point made what could be described as an intemperate remark, though, seemingly to the regret of the agent's employers, it wasn't about Jews but about Chinese witnesses.

At one point, Rodriguez asked if a judge could make a decision on the basis of what he heard verbally, and Newbould said no, courts are document-heavy.

"The documents tell the story, for the most part," he said, then mentioned, "I had a case a year and a half ago now I guess, a lawsuit between two hedge funds and one hedge fund was trying to acquire a telecommunications company..."



Newbould said the plaintiff in the suit was named “Glassman and he is a terrible witness.”

If it was perhaps indiscreet, it was nothing Newbould hadn’t also said in his public decision.

Newton Glassman is the founder and managing partner of Catalyst, which sued West Face, accusing it of obtaining confidential information about its bid for WIND Mobile Inc. through former Catalyst analyst Brandon Moyse.

Moyse left Catalyst for West Face in 2014, four months before a consortium of investors led by West Face successfully acquired WIND in a deal valued at approximately \$300 million. In 2015, the group sold the wireless carrier to Shaw Communications for \$1.6 billion.

Catalyst has claimed it lost out on \$750 million in potential profit.

In his lengthy Aug. 18, 2016 decision, Newbould ruled against Catalyst. He was harshly critical of Catalyst witnesses, particularly Glassman, whom he described as “aggressive, argumentative” and more of a “salesman than an objective witness.”

He simply could not accept being “outsmarted” on the WIND deal, the judge said later, when awarding costs.

It would have been a humiliating rebuke for the proud and combative head of the successful company founded in 2002.

The judge ordered Catalyst to pay Moyse \$340,000. He also awarded costs of \$1.2 million to West Face on what’s called “a substantial indemnity basis” because, the judge said, Glassman had played such “hardball attacking the reputation and honesty of West Face.”

In fact, the judge had no idea then of what hardball really was.

A day before Newbould and Rodriguez met, I received an email from a woman I didn’t know. The subject line said: “Exclusive story offer — Judge Frank Newbould’s record might unravel September 20th.”

She gave me a one-sided, six-paragraph interpretation of the Catalyst/West Face/WIND Mobile case, and offered to connect me with a spokesperson “that can prove evidence was destructed in the case and that Newbould’s ultimate ruling completely ignored it.”

She also wrote, “In addition, information is brewing about a wolf pack of companies that West Face is involved with as well — we can connect you with the investigators” and offered a meeting with her source.

(Catalyst filed a \$450-million lawsuit on Nov. 8 accusing West Face and others of being “Wolfpack conspirators” in a short-selling campaign targeting a publicly traded lender in which it holds the majority stake. West Face denies the allegations, and called the lawsuit meritless.)

In emails over the next few days, the woman described herself as a communications/public relations professional, a Canadian from Toronto living in New York City who said she chose me because her parents were big readers of mine.

When I pressed her, she insisted that was the reason, and added she’d been asked to do a favour for a friend by finding a suitable Canadian reporter.

For several days, she peppered me with emails — there was clearly some urgency to the matter — and on Sept. 19, wrote, “I have arranged for an exclusive background meeting btw yourself and the leading figure from Catalyst.

“He is in Montreal today but will fly to Toronto — ideally tomorrow — to meet with you. I’ll come back to you on times.”

He knows of only one remotely comparable case in Canada, which happened almost 30 years ago, where a mining company that lost in court and, convinced the judge must have had a personal financial stake, hired a private eye.

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The meeting with the unidentified figure from Catalyst never happened, and instead on Sept. 21, I met the woman alone at a midtown café.

There, she handed me a USB flash drive containing the photos of Newbould, audio and what appear to be edited transcripts of the two surreptitiously recorded conversations he had with Rodriguez at his office and Scaramouche.

She gave my number to the purported friend connected to the case, who texted a few days later to set up a meeting.

He is a former Israeli TV journalist and documentary filmmaker. We met on Oct. 20 at a diner in the east end of Toronto.

He said he was passing on the story because it would be of little interest to his audience in Israel. Plus, like the PR woman, he said he was doing a favour for someone close to the case. Also like the PR woman before him, he mentioned my unquestioned brilliance and experience as a reporter; flattery, however transparently and thickly ladled on, appears part of undercover tradecraft.

But where the PR woman was unequivocal that the people behind the sting were from Catalyst, the journalist seemed to be backing away from that. The movers behind this, he said, were Aboriginals. When I pushed him on it, he said they were the same people who had complained about Newbould in the land claim controversy.

I knew that was ridiculous. That complaint had been brought by the Indigenous Bar Association, a professional group of lawyers unlikely to have done something like this. And their complaint was no longer a live issue as Newbould had resigned.

I told the journalist I couldn't continue unless I met one of the principals.

"You will meet the guy who is behind this project," he texted me on Oct. 26, but that soon changed to "Jessie from the operational team."

Jessie and I met on Oct. 31 in a restaurant at the Eaton Centre. An attractive woman with dark hair, who looked to be in her early 40s, Jessie said she was now doing this work after a career in an unnamed government's national security agency. She wouldn't give me her last name, was vague about where she lived, and gave me an email address that she didn't answer.

I paid the bill and left after about 30 minutes. My patience with wannabe spooks, mules and ghostly figures — and mostly, being lied to — was exhausted.

The lawyers for Catalyst and West Face met at the Court of Appeal on Sept. 25, a week after the sting on the judge.

Among them were two new faces: prominent Toronto lawyer Brian Greenspan and veteran litigator David Moore, both there for Catalyst.

They were seeking an adjournment to the appeal, which was slated to be heard the next day.

A two-page document filed with the court says Greenspan told Judge Paul Rouleau that on Sept. 21, “he was provided with information that requires immediate investigation and may well lead to the tendering of a fresh evidence application with impact on the appeal.”

What the evidence is, he did not say. But on the 21st, Catalyst received its own USB flash drive with a transcript of Newbould and Rodriguez’s conversations as well as the audio and photos.

According to the source authorized to speak for Catalyst, the company was weighing whether they had enough to dislodge the presumption of neutrality that cloaks judges as a matter of law to now argue at the appeal that Newbould was biased.

Rouleau was also told that an “irreconcilable difference” between Catalyst and its lawyers, the Lax O’Sullivan Lisus Gottlieb firm, had arisen and that Lax O’Sullivan had “concluded it has no option but to seek to be removed as counsel of record.”

The “irreconcilable difference” was that once Lax O’Sullivan was told about what Black Cube had done, its lawyers made the decision it was “unethical conduct” and they wouldn’t be a part of it.

The lawyers demanded Catalyst sign an undertaking that it would never attempt to use in any way the information covertly obtained about Newbould.

But Catalyst wouldn’t make the decision then and there, and wanted time to weigh what it had learned.

In other words, according to the source's account, Catalyst may not have ordered the attempted setup of the judge or even wanted it to happen, but now that it was done, the company had to evaluate the fruits of the sting to see if there was enough to bring an allegation of bias against Newbould.

Such is the ruthless pragmatism attached to big money and big power.

Rouleau reluctantly granted the adjournment and set new dates for February, ordering the lawyers to tell him if there was going to be a fresh evidence application as soon as possible. He later set a deadline of Dec. 1 for any such application.

According to the source authorized to speak for Catalyst, the company hired a security firm on Aug. 31 because of a variety of "security concerns."

Among them, he said, was a belief that Catalyst had been cyber-hacked, evidence of trespassing and at least one break-in at the homes and cottages of its senior people and that their garbage was being picked through. And, said the source, some executives had received threats.

The company, he said, didn't have sufficient evidence to go to Toronto Police, so took their concerns to the private firm instead.

The man was adamant that Catalyst never asked the main security company to set up a sting on Newbould, though he acknowledged that probably in the first briefing with the security firm, it would have been clear that Newbould and West Face were the subjects of much of the collective Catalyst ire.

Such contracts, the source said, are invariably arranged through lawyers, so as to cloak the arrangement — and protect to a limited degree any information gleaned by security operatives — with solicitor-client privilege.

He said it's common in complex criminal matters and commercial crime cases with their enormous amounts of money at stake for parties to use private investigative firms with their covert methods.

The arrangement with Catalyst allowed the security firm to use other consultants and sub-contractors.

And it was the sub-contracted agency, Black Cube, that ran the sting on the former judge.

According to the source's account, when the firm found out on Sept. 21 what the sub-contractor had done, "damn right there was freaking out," he said.

At least one further sting run on a former West Face employee, he said, was the result of a miscommunication, following an attempt to call off such operations.

In an email Saturday, a Black Cube spokesman said: "It is Black Cube's policy to never discuss its clients with any third party and to never confirm or deny any speculation made with regards."

The company denied approaching any "journalist, lawyer, PR company or any other professional consultant with a view to publishing intelligence gathered."

In fact, the company had refused to make any on the record comment unless and until I submitted the story in advance of publication.

On Oct. 12, I met Newbould in a boardroom at the office of his lawyer, Brian Gover, and gave them the USB to copy.

I had briefed Gover on the phone, so they knew some of what was coming, but still appeared shaken.

Though the Catalyst source maintains no laws were broken in the sting, the operation raises larger ethical questions about how common it is for companies to hire private investigators, how often they use these sorts of dirty tricks, the role of lawyers and law firms in their hiring, and if there are any boundaries beyond which the players won't go.

"Think of the collateral damage caused by well-heeled litigants who will do anything, but will stop at nothing," said Gover.

He knows of only one remotely comparable case in Canada, which happened almost 30 years ago, where a mining company that lost in court and, convinced the judge must have had a personal financial stake, hired a private eye to check him out.

Gavin MacKenzie, a Toronto litigator and leading authority on legal ethics, said the Newbould sting is shocking, and said he too was aware only of the one other case.

That case went all the way to the Supreme Court, but the investigation and surveillance of the judge never made it onto the record, though it was widely discussed in legal circles.

MacKenzie said lawyers will always “talk about a judge’s background and pre-dispositions and that sort of thing.”

In countries where judicial corruption is common, judges themselves often become targets. But Canada, he said, has “never had a judge on the take from a party.”

With a reputable and independent judiciary, MacKenzie said, talk is about as far as things get.

“It’s very rare and almost unnecessary to go beyond that.”

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