

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

**VIMPELCOM LTD., GLOBALIVE CAPITAL INC.,
UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM
HOLDINGS GP LLC, 64NM HOLDINGS LP,
LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC.,
NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC.,
and MID-BOWLINE GROUP CORP.**

Defendants

**COSTS SUBMISSIONS OF THE DEFENDANT/MOVING PARTY,
NOVUS WIRELESS COMMUNICATIONS INC.
(Further to the Reasons of Justice Hainey dated April 18, 2018)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

VIMPELCOM LTD., GLOBALIVE CAPITAL INC.,
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HOLDINGS GP LLC, 64NM HOLDINGS LP,
LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC.,
NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC.,
and MID-BOWLINE GROUP CORP.

Defendants

**COSTS SUBMISSIONS OF THE DEFENDANT/MOVING PARTY,
NOVUS WIRELESS COMMUNICATIONS INC.
(Further to the Reasons of Justice Hainey dated April 18, 2018)**

1. This action was dismissed in its entirety by Justice Hainey who granted the Defendants' respective motions, concluding that the claims of The Catalyst Group Inc. ("Catalyst") were an abuse of process.
 2. The Defendant Novus Wireless Communications Inc. ("**Novus**") seeks its costs of the motion and the action in the amount of \$148,962.07, inclusive of disbursements and applicable taxes, as set out in the attached Bill of Costs.¹
- A. Background**
3. Catalyst began a course of unsuccessful litigation arising from its failed effort to acquire VimpelCom Ltd.'s ("**VimpelCom**") interest in WIND by way of a claim against West

¹ Bill of Costs of the Defendant Novus Wireless Communications Inc., Schedule "A".

Face Capital Inc. (“**West Face**”) and a junior analyst, Brandon Moyse (the “**Moyse Action**”). Justice Newbould dismissed that claim in 2016 and awarded West Face its costs on a substantial indemnity scale.²

4. Undeterred, Catalyst persisted in its abusive action against the Defendants in this case, seeking damages based on allegations of a broad conspiracy to induce VimpelCom to breach an exclusivity agreement it entered into with Catalyst so as to cause Catalyst’s negotiation to fail.

5. Catalyst was, of course, unsuccessful. By Reasons for Decision dated April 18, 2018, Justice Hainey dismissed Catalyst’s action against all Defendants.³ Novus seeks its costs on a substantial indemnity basis in the amount of \$148,962.07, inclusive.

B. Novus is Entitled to its Costs of the Motion and the Action

6. Costs are within the discretion of the court having regard to the relevant factors set out in Rule 57.01(1).⁴ The amount awarded should reflect the reasonable expectations of the unsuccessful party and should be fair and reasonable in all the circumstances.⁵

i. Costs Ought to be Awarded on a Substantial Indemnity Scale

7. Unproven allegations of fraud and dishonest conduct appropriately attract substantial indemnity costs,⁶ as do unproven allegations of breach of trust and conspiracy.⁷ In *Hawley v.*

² The Court of Appeal upheld the dismissal and refused leave to appeal the issue of costs. *The Catalyst Capital Group Inc. v Moyse*, 2018 ONCA 283.

³ Justice Hainey also dismissed the claims against West Face, the US Investors and Globalive on the grounds of issue estoppel and cause of action estoppel, and struck Catalyst’s breach of contract claims against Globalive and UBS without leave to amend.

⁴ *Rules of Civil Procedure*, Rule 57.01 (1).

⁵ *Boucher et al. v. Public Accountants Council for the Province of Ontario*, [2004] O.J. No. 2634 at para 26-29, 38 (ON CA).

⁶ *Hamilton v. Open Window Bakery Ltd.*, [2004] 1 S.C.R. 303 at para. 26.

⁷ *Manning v Epp*, [2006] O.J. No. 4239 at para 7-9 (S.C.J.).

Pennington, the plaintiff made a collateral attack on an earlier action, alleging conspiracy and breach of contract, which was found to be an abuse of process. The court awarded substantial indemnity costs to sanction the plaintiff's behaviour.⁸

8. In this action, Catalyst made several serious allegations of breach of trust and conspiracy in its pleading, including:

66. ~~52.~~ The Consortium's and Globalive's joint intention was to induce VimpelCom to breach the Exclusivity Agreement knowing that, in so doing, they would cause damage to Catalyst.

67. ~~53. In or About~~ On August 1, 2014, the members of the Consortium, Globalive, ~~and Lacavera and UBS (together, the "Conspirators")~~, entered in a conspiracy. The predominant purpose of which was to induce VimpelCom to breach the Exclusivity Agreement, to cause VimpelCom to cease negotiating with Catalyst in good faith and to thereby cause harm to Catalyst (the "Conspiracy").

...

76. ~~56.~~ Together, the Conspirators prepared terms of an offer to VimpelCom that were designed to induce VimpelCom to breach the Exclusivity Agreement and to cause VimpelCom to negotiate with Catalyst in bad faith during the terms of the Exclusivity Agreement. The Conspirators used their extensive knowledge of the Exclusivity Agreement to design their offer.

...

91. ~~71.~~ At all material times, Hui was acting as a principal of Novus and agreed that Novus would participate in the Conspiracy. Hui ~~instructed~~ agreed that Letiner should send an offer to VimpelCom in furtherance of the Conspiracy.

9. Catalyst's claims in this action were a serious attack on the reputation and integrity of the Defendants, and were entirely without merit. That alone is an appropriate basis on which to award substantial indemnity costs; however, in this case, Catalyst persisted in abusive

⁸ *Hawley v. Pennington*, 2012 ONSC 3671 at para 12.

litigation despite a signal from this Court by way of a substantial indemnity costs award in the Moyses Action.

10. These are, accordingly, not circumstances in which a substantial indemnity costs award will discourage the tenacious pursuit and advancement of serious, proper claims; this is a case which requires the court to “punish and deter unwarranted allegations and egregious conduct.”⁹

ii. The Rule 57.01 Factors Militate in Favour of Novus

11. The Rule 57.01(1) factors militate in favour of awarding Novus its substantial indemnity costs in the amount of \$148,962.07 for the following reasons:

12. **First**, costs should follow the event. This rule is not to be departed from without good reason.¹⁰ Novus was entirely successful on its motion (and indeed in defending the action) and there is no reason to depart from the rule in these circumstances.

13. **Second**, the Plaintiff claimed significant damages in the amount of \$1.3 billion.¹¹

14. **Third**, as reflected in Novus’s Bill of Costs, the amounts claimed are reasonable, particularly in the context of a dispositive motion in a large, complex action. The amount claimed by Novus is undoubtedly proportionate to the amount at stake in this action.¹²

15. **Fourth**, the issues raised by Catalyst are of great importance to Novus. Catalyst sought to publicly impugn its conduct in a high-profile transaction.¹³

⁹ *Manning v Epp*, [2006] O.J. No. 4239 at para 7-9 (S.C.J.).

¹⁰ *McCracken v. Canadian National Railway Co.*, [2010] O.J. No. 4650 (S.C.), at para. 4, rev’d in part on other grounds, 2012 ONCA 445; *Ogoki Frontier v All A.I.R Ltd.* [2005] O.J. No. 99 at para 8 (S.C.J.).

¹¹ *Rules*, *supra* at Rule 57.01(1)(a).

¹² *Rules*, *supra* at Rule 57.01(1)(0.a).

16. **Fifth**, Novus did not engage in any unnecessary steps in this action and, indeed, despite Catalyst's efforts to persist, ended the abusive action as efficiently. In contrast, Justice Hainey found that Catalyst ought to have asserted its claims during the Moyse Action; Catalyst's conduct, therefore, resulted in unnecessary litigation.¹⁴

17. **Sixth**, Catalyst was represented by senior, experienced counsel throughout the Moyse Action and the present action. Catalyst faced a costs award on a substantial indemnity basis in the Moyse Action which arose from the same factual circumstances as in this case. Catalyst clearly understood the risk of a significant costs award in this action.¹⁵

C. Order Requested

18. For these reasons, Novus requests an Order awarding its substantial indemnity costs of the motion and of the action in the amount of \$148,962.07, inclusive of disbursements and applicable taxes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of May, 2018.



Junior Sirivar
Jacqueline L. Cole
McCarthy Tétrault LLP

Lawyers for the Defendant/Moving Party,
Novus Wireless Communications Inc.

¹³ *Rules, supra* at Rule 57.01(1)(d).

¹⁴ *Rules of Civil Procedure*, Rule 57.01 (1)(e).

¹⁵ *Rules, supra* at Rule 57.01(1)(0.b).

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LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC.,
NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC.,
and MID-BOWLINE GROUP CORP.

Defendants

**BILL OF COSTS
OF THE DEFENDANT, NOVUS WIRELESS COMMUNICATIONS INC.**

Fee Items	HRS	Partial Rate	TOTAL	Subst'l Rate	TOTAL	Actual Rate	TOTAL
Preliminary Fact Gathering and Pleadings; Drafting and filing of Notice of Intent and Statement of Defence; conducting preliminary fact gathering and research; related communication and correspondence.							
2016							
Junior Sirivar	19.3	\$447.00	\$8,627.10	\$670.50	\$12,940.65	\$745.00	\$14,378.50
Ryann Atkins	13.0	\$306.00	\$3,978.00	\$459.00	\$5,967.00	\$510.00	\$6,630.00
Jacqueline Cole	16.2	\$306.00	\$4,957.20	\$459.00	\$7,435.80	\$510.00	\$8,262.00
			\$17,562.30		\$26,343.45		\$29,270.50
Preparations for and attendance at Chambers Appointment for October 21, 2016.							
Junior Sirivar	3.1	\$447.00	\$1,385.70	\$670.50	\$2,078.55	\$745.00	\$2,309.50
			\$1,385.70		\$2,078.55		\$2,309.50

Motion to Dismiss; Drafting of Notice of Motion, serving and filing Notice of Motion and Amended Notice of Motion; Preparation of Motion Materials, including preparation of factum and compendium; preparation of joint document brief and joint book of authorities; related communication and correspondence.							
2016							
Junior Sirivar	2.6	\$447.00	\$1,162.20	\$670.50	\$1,743.30	\$745.00	\$1,937.00
Jacqueline Cole	9.4	\$306.00	\$2,876.40	\$459.00	\$4,314.60	\$510.00	\$4,794.00
			\$4,038.60		\$6,057.90		\$6,731.00
2017							
Geoff Hall	0.7	\$585.00	\$409.50	\$877.50	\$614.25	\$975.00	\$682.50
Junior Sirivar	20.8	\$459.00	\$9,547.20	\$688.50	\$14,320.80	\$765.00	\$15,912.00
Jacqueline Cole	33.4	\$348.00	\$11,623.20	\$522.00	\$17,434.80	\$580.00	\$19,372.00
Gabrielle Schachter (Student)	23.4	\$189.00	\$4,422.60	\$283.50	\$6,633.90	\$315.00	\$7,371.00
			\$26,002.50		\$39,003.75		\$43,337.50
Preparations for and attendance at Chambers Appointments for January 27, 2017 and April 19, 2017.							
Geoff Hall	2.6	\$585.00	\$1,521.00	\$877.50	\$2,281.50	\$975.00	\$2,535.00
Junior Sirivar	2.7	\$459.00	\$1,239.30	\$688.50	\$1,858.95	\$765.00	\$2,065.50
Jacqueline Cole	1.5	\$348.00	\$522.00	\$522.00	\$783.00	\$580.00	\$870.00
			\$3,282.30		\$4,923.45		\$5,470.50
Disclosure Request Demand; Receive and review correspondence from Opposing Counsel re demand for disclosure of investors; related communication and correspondence.							
Junior Sirivar	1.7	\$459.00	\$780.30	\$688.50	\$1,170.45	\$765.00	\$1,300.50
Jacqueline Cole	2.4	\$348.00	\$835.20	\$522.00	\$1,252.80	\$580.00	\$1,392.00
			\$1,615.50		\$2,423.25		\$2,692.50
Cross Examinations June 28, 2017							
Junior Sirivar	2.5	\$459.00	\$1,147.50	\$688.50	\$1,721.25	\$765.00	\$1,912.50
Jacqueline Cole	0.5	\$348.00	\$174.00	\$522.00	\$261.00	\$580.00	\$290.00
			\$1,321.50		\$1,982.25		\$2,202.50
Preparation for Court Appearance on August 16-18, 2017 (3 days)							
Junior Sirivar	4.5	\$459.00	\$2,065.50	\$688.50	\$3,098.25	\$765.00	\$3,442.50
Jacqueline Cole	1.0	\$348.00	\$348.00	\$522.00	\$522.00	\$580.00	\$580.00
			\$2,413.50		\$3,620.25		\$4,022.50

Attendance at Court on August 16-18, 2017 (3 days); including preparation for each respective days' attendance.							
Junior Sirivar	31.2	\$459.00	\$14,320.80	\$688.50	\$21,481.20	\$765.00	\$23,868.00
Jacqueline Cole	21.0	\$348.00	\$7,308.00	\$522.00	\$10,962.00	\$580.00	\$12,180.00
			\$21,628.80		\$32,443.20		\$36,048.00
Preparation of Bill of Costs; preparation of Bill of Costs and revisions to Bill of Costs; related communication and correspondence.							
Lesley-Ann Teape (Law Clerk)	2.8	\$186.00	\$520.80	\$279.00	\$781.20	\$310.00	\$868.00
			\$520.80		\$781.20		\$868.00
Preparations for and attendance at Chambers Appointments for October 13, 2017.							
Junior Sirivar	1.7	\$459.00	\$780.30	\$688.50	\$1,170.45	\$765.00	\$1,300.50
Jacqueline Cole	1.5	\$348.00	\$522.00	\$522.00	\$783.00	\$580.00	\$870.00
			\$1,302.30		\$1,953.45		\$2,170.50
Post Motion Submissions, Stay Motion and Court of Appeal Decision. 2017							
Junior Sirivar	1.4	\$459.00	\$642.60	\$688.50	\$963.90	\$765.00	\$1,071.00
Jacqueline Cole	1.4	\$348.00	\$487.20	\$522.00	\$730.80	\$580.00	\$812.00
			\$1,129.80		\$1,694.70		\$1,883.00
2018							
Post Motion Submissions, Stay Motion and Court of Appeal Decision.							
Junior Sirivar	1.8	\$474.00	\$853.20	\$711.00	\$1,279.80	\$790.00	\$1,422.00
Jacqueline Cole	1.0	\$393.00	\$393.00	\$589.50	\$589.50	\$655.00	\$655.00
			\$1,246.20		\$1,869.30		\$2,077.00
Preparations for and attendance at Chambers Appointments for April 3, 2018.							
Junior Sirivar	2.7	\$474.00	\$1,279.80	\$711.00	\$1,919.70	\$790.00	\$2,133.00
			\$1,279.80		\$1,919.70		\$2,133.00
TOTAL			\$84,729.60		\$127,094.40		\$141,216.00

PART 2 - DISBURSEMENTS:

ITEM	TOTAL
Copying Expenses	\$3,939.83
Facsimile	\$27.00
Process Services	\$650.50
Corporate Search Fees (Court and PPSA)	\$28.50
On-Line Research	\$84.61
TOTAL DISBURSEMENTS:	\$4,730.44

PART 3 - SUMMARY:

	Partial Rate	Substantial Rate	Actual Rate
Fees	\$84,729.60	\$127,094.40	\$141,216.00
HST (13%) on Fees:	\$11,014.85	\$16,522.27	\$18,358.08
Disbursements	\$4,730.44	\$4,730.44	\$4,730.44
HST (13%) on Disbursements	\$614.96	\$614.96	\$614.96
Total	\$101,089.85	\$148,962.07	\$164,919.48

PART 4 - STATEMENT OF EXPERIENCE:

NAME	TKPR #	YEAR OF CALL	Rates by Year		
			2016	2017	2018
Geoff Hall	3536	1993	\$0.00	\$975.00	\$0.00
Junior Sirivar	3461	2003	\$745.00	\$765.00	\$790.00
Ryann Atkins	3821	2014	\$510.00	\$0.00	\$0.00
Jacqueline Cole	3822	2014	\$510.00	\$580.00	\$655.00
Lesley-Ann Teape (Law Clerk)	3606	n/a	\$0.00	\$310.00	\$0.00
Gabrielle Schachter (Student)	8099	n/a	\$0.00	\$315.00	\$0.00

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Plaintiff and Defendants

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Proceeding commenced at TORONTO

COSTS SUBMISSIONS OF
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