

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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 SERRUYA PRIVATE EQUITY INC.**

May 30, 2018

LERNERS LLP

Lawyers
Suite 2400, 130 Adelaide Street West
Toronto, ON M5H 3P5

Lucas E. Lung LS #: 52595C

Tel: 416.601.2673
Fax: 416.601.4192
llung@lerners.ca

Jameel Madhany LS#: 59247Q

Tel: 416.601.2640
Fax: 416.601.2745
jmadhany@lerners.ca

Lawyers for the Defendant,
Serruya Private Equity Inc.

TO: **MOORE BARRISTERS**
Barristers and Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore LS#: 16996
Tel: 416.581.1818 ext. 222
Fax: 416.581.1279
david@moorebarristers.ca

Lawyers for the Plaintiff

AND TO: **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David R. Byers LS#: 22992W
Tel: 416.869.5697
dbyers@stikeman.com

Daniel Murdoch LS#: 53123L
Tel: 416.869.5529
dmurdoch@stikeman.com

Vanessa Voakes LS#: 58486L
Tel: 416.869.5538
vvoakes@stikeman.com

Fax: 416.947.0866

Lawyers for the Defendant,
UBS Securities Canada Inc.

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West
Toronto, ON M5V 3J7

Matthew Milne-Smith LS#: 44266P

Andrew Carlson LS#: 58850N

Tel: 416.863.0900

Fax: 416.863.0871

Lawyers for the Defendant,
West Face Capital Inc.

AND TO: **NORTON ROSE FULBRIGHT CANADA LLP**

Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Orestes Pasparakis

Tel: 416.216.4815

Fax: 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

Rahool P. Agarwal

Tel: 416.216.3943

Fax: 416.216.3930

rahool.agarwal@nortonrosefulbright.com

Lawyers for the Defendant, Vimpelcom Ltd.

AND TO: **BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON M5H 4E3

James D.G. Douglas LS#: 20569H

Tel: 416.367.6029
Fax: 416.367.6749
JDouglas@blg.com

Caitlin Sainsbury LS#: 54122D

Tel: 416.367.6438
Fax: 416.367.6749
CSainsbury@blg.com

Lawyers for the Defendant, Globalive Capital Inc.

AND TO: **BLAKE, CASSELS & GRAYDON LLP**

199 Bay Street, Suite 4000
Commerce Court West
Toronto, ON M5L 1A9

Michael E. Barrack

Tel: 416.863.5280
Fax: 416.863.2653
michael.barrack@blakes.com

Lawyers for the Defendants, Tennenbaum Capital Partners LLC, 64NM Holdings GP LLC, 64NM Holdings LP, LG Capital Investors LLC

AND TO: **McCARTHY TETRAULT LLP**
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Junior Sirivar LS#: 47939H

Tel: 416.601.7750
Fax: 416.868.0673
jsirivar@mccarthy.ca

Jacqueline Cole LS#: 65454L

Tel: 416.601.7704
Fax: 416.868.0673
jcole@mccarthy.ca

Lawyers for the Defendant, Novus Wireless Communications Inc.

AND TO: **DENTONS**
Toronto-Dominion Centre
77 King Street West, Suite 400
Toronto, ON M5K 0AJ

Michael D. Schafler

Tel: 416.863.4457
Fax: 416.863.4592
michael.schafler@dentons.com

Ara Basmadjian

Tel: 416.863.4647
Fax: 416.863.4592
ara.basmadjian@dentons.com

Lawyers for the Defendant, Mid-Bowline Group Corp.

SUBMISSIONS ON COSTS

1. On April 18, 2018, Justice Hainey dismissed this action as against all of the defendants on the basis that, *inter alia*, the action was an abuse of process. The defendant, Serruya Private Equity Inc. (“Serruya”), makes these submissions on costs for the motion and the action. Serruya seeks costs of the motion and the action on a substantial indemnity basis. The substantial indemnity costs claimed by Serruya, as set out in the attached Bill of Costs, total \$54,390.49.

2. Pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, the costs of a proceeding are in the discretion of the Court. In *Boucher v. Public Accountants Council (Ontario)*, the Court of Appeal held that in awarding costs, a court must arrive at an outcome that is fair and reasonable in the circumstances.¹ In fixing costs, the Court will consider, among other factors, the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure*. Serruya submits that a consideration of all relevant factors fully justifies an award of substantial indemnity costs in the amount claimed in the Bill of Costs.

3. **First**, there can be no dispute that the issues raised in the action were both complex and important. In this action, the plaintiff sought damages in the amount of \$1.3 billion for conspiracy, breach of confidence and other intentional wrongdoing in connection with a complex commercial transaction in 2014.

¹ *Boucher v. Public Accountants Council (Ontario)*, 2004 CanLII 14579 at paras. 24 and 36 (Ont. C.A.).

4. **Second**, the allegations of conspiracy, misuse of confidential information and other serious intentional wrongdoing justifies an award of costs on a substantial indemnity basis. In *Catalyst v. Moyse*, Justice Newbould noted that unfounded allegations of improper conduct seriously prejudicial to the character or reputation of a party can give rise to costs on a substantial indemnity basis.² The allegations that gave rise to an order of substantial indemnity costs in *Catalyst v. Moyse* are similar in substance to the allegations that were made against the Consortium members in this action.

5. **Third**, the action was dismissed as against all defendants on the basis that it was an abuse of process. The courts have held that a proceeding that is an abuse of process may justify costs on a substantial indemnity scale.³

6. **Fourth**, the supplemental submissions filed by the plaintiff in April 2018, and further oral submissions on April 16, 2018 were an unnecessary step that served no purpose but to delay the determination of this proceeding and increase the costs incurred by the defendants.

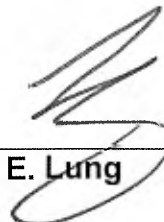
7. **Fifth**, the rates claimed are reasonable given the experience of counsel, and the hours spent were not excessive. The total amount of fees and disbursements is well within the range of what the plaintiff could reasonably expected to pay in these circumstances.

² *Catalyst v. Moyse*, 2016 ONSC 6285 at para. 3 (“*Moyse*”).

³ *Close Up International Ltd. v. 1444943 Ontario Ltd.*, 2006 CanLII 35615 at paras. 12-14 (ON SC); *Davies v. Clarington (Municipality)*, 2009 ONCA 722 at paras. 29-31.

8. For the foregoing reasons, Serruya submits that an award of substantial indemnity costs in the total amount of \$54,390.49 is appropriate in the circumstances.

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



Lucas E. Lung

Lawyers for the Defendant,
Serruya Private Equity Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

BILL OF COSTS OF THE DEFENDANT, SERRUYA PRIVATE EQUITY INC.

SUMMARY OF FEES AND DISBURSEMENTS:

	<i>Partial Indemnity</i>	<i>Substantial Indemnity</i>
Total Fees (inclusive of H.S.T.)	\$35,269.56	\$52,904.34
Taxable and Non-Taxable Disbursements (inclusive of H.S.T.)	\$1,486.15	\$1,486.15
TOTAL FEES AND DISBURSEMENTS	\$36,755.71	\$54,390.49

SUMMARY OF HOURS WORKED FOR THE ACTION:

<i>NAME</i>	<i>YEAR OF CALL</i>	<i>NUMBER OF HOURS</i>	<i>PARTIAL INDEMNITY RATE</i>	<i>SUBSTANTIAL INDEMNITY RATE</i>
Lucas E. Lung (LEL)	2006	84.00 hours	\$240.00	\$360.00
Jameel H. Madhany (JHM)	2010	48.00 hours	\$216.00	\$324.00
Eric R. Dumschat (Student-at-Law) (ERD)		7.50 hours	\$60.00	\$90.00
Alice E. Colquhoun (Student-at-Law) (AEC)		.30 hours	\$60.00	\$90.00
Jo Grande Law Clerk (JOG)		2.70 hours	\$80.00	\$120.00
Total number of hours		142.50		

PLEADINGS:

including: telephone conferences and emails to and from with client; review of clients' documents; review Notice of Intent to Defend; telephone calls with opposing counsel and co-defendants' counsel; review decision in Catalyst Capital Group Inc. and Moyse; review motion record of the Defendant, UBS Securities Canada Inc. re: motion to strike; review motion record of Globalive Capital Inc. re: motion to dismiss or permanently stay the action; drafting and revisions to the Statement of Defence; review Statements of Defence of Globalive Capital Inc. and Novus Wireless Communications Inc.; review client documents; review and respond to emails and correspondence from opposing counsel; attendance on Chambers appointment; reporting to client; review written submissions; review decision of Hailey, J.; preparation of costs submissions.

<i>PERSON</i>	<i>HOURS</i>	<i>PARTIAL INDEMNITY RATE</i>	<i>SUBSTANTIAL INDEMNITY RATE</i>
LEL	50.50	\$240.00	\$360.00
		50.50 x 240. = \$12,120.00	50.50 x 360. = \$18,180.00
JHM	28.80	\$216.00	\$324.00
		28.80 x 216. = \$6,220.80	28.80 x 324. = \$9,331.20
JOG	2.70	\$80.00	\$120.00
		2.70 x 80. = \$216.00	2.70 x 120. = \$324.00
Sub-total Fees		\$18,556.80	\$27,835.20
H.S.T.		\$2,412.38	\$3,618.58
Total Fees	82.00	\$20,969.18	\$31,453.78

Disbursements:

Copying/Colour/Scanning	\$323.38
Facsimile	\$72.00
Process Server	\$187.50
Courier	\$82.56
Postage	\$12.57
Telephone Conference	\$4.15
Westlaw Canada	\$238.50
Sub-Total	\$920.66
H.S.T.	\$119.68
Total Taxable Disbursements	\$1,040.34
Non-Taxable Disbursements:	
Notice of Intent to Defend	\$144.00
Total Taxable and Non-Taxable Disbursements	\$1,184.34

MOTION TO DISMISS OR STAY OF PROCEEDINGS (Returnable August 16-18, 2017):

including: inter-office meetings re: stay motion material; conducting legal research; review Plaintiff's' responding motion material; review client documents for preparation of affidavit; prepare and review memoranda re: legal issues; preparation of and review and revisions to notice of motion and motion material; preparation, review and revisions to affidavit and factum on motion; preparation, review and revisions to book of authorities on motion; review and respond to correspondence from counsel; review facta from other counsel; attendance on motion.

<i>PERSON</i>	<i>HOURS</i>	<i>PARTIAL INDEMNITY RATE</i>	<i>SUBSTANTIAL INDEMNITY RATE</i>
LEL	33.50	\$240.00 33.50 x 240. = \$8,040.00	\$360.00 33.50 x 360. = \$12,060.00
JHM	19.20	\$216.00 19.20 x 216. = \$4,147.20	\$324.00 19.20 x 324. = \$6,220.80
ERD	7.50	\$60.00 7.50 x 60. = \$450.00	\$90.00 7.50 x 90. = \$675.00
AEC	.30	\$60.00 .30 x 60. = \$18.00	\$90.00 .30 x 90. = \$27.00
Sub-total Fees		\$12,655.20	\$18,982.80
H.S.T.		\$1,645.18	\$2,467.76
Total Fees		\$14,300.38	\$21,450.56
Total number of hours	60.50		

Disbursements:

Copying/Colour/Scanning	\$71.47
Courier	\$20.64
Facsimile	\$18.00
Process Server	\$12.50
Postage	\$2.88
Sub-Total	\$125.49
H.S.T.	\$16.31
Total Taxable Disbursements	\$141.80
Non-Taxable Disbursements:	
Filing Motion Record	\$160.00
Total Taxable and Non-Taxable Disbursements	\$301.80

THE CATALYST CAPITAL GROUP INC.
Plaintiff

and

VIMPELCOM LTD., ET AL.
Defendants

Court File No.: CV-16-1159500CL

**ONTARIO
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COMMERCIAL LIST**

Proceeding commenced at TORONTO

**BILL OF COSTS OF THE DEFENDANT,
SERRUYA PRIVATE EQUITY INC.**

LERNERS LLP

Lawyers

130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lucas E. Lung LS#: 52595C

Tel: 416.601.2673, Fax: 416.601.4192
llung@lerner.ca

Jameel Madhany LS#: 59247Q

Tel: 416.601.2640, Fax: 416.601.2745
jmadhany@lerner.ca

Lawyers for the Defendant, Serruya Private Equity Inc.

