

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

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

AND BETWEEN:

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

FACTUM OF THE MOVING PARTY, DARRYL LEVITT

Darryl Levitt

30 Speers Road, Apt. 206
Oakville, ON L6K 2E4

darryl@dlevittassociates.com

Self-Represented

PART I - OVERVIEW

1. The moving party, Darryl Levitt, was the target of a sting operation in which an unknown individual who operated under a pseudonym and who bears a striking similarity to an individual involved in similar sting operations attempted to elicit confidential information from Mr. Levitt. That meeting occurred at a restaurant owned by the Respondent, McEwan Enterprises Inc. That restaurant is located in the hotel owned by the other Respondent, Hazelton Hotels Internationals Inc.
2. The only way Mr. Levitt can identify the individuals who attempted to trap him through this “sting” operation, and prove that these actions occurred, is for the Respondents, who are non-parties to this litigation, to produce documents in their possession that include a recording of the interaction.
3. Without this production order, Mr. Levitt will not have evidence critical to identifying and bringing a case against the individuals who conducted this “sting” operation against him. Further, Mr. Levitt is a defendant in an action brought by Catalyst Capital Corporation which has a track record of engaging in such “sting” operations, and this evidence may be necessary for Mr. Levitt’s defence. Without its production, he may not have the ability to prove Catalyst’s involvement in this episode.
4. The Respondents do not object to producing the requested documents. This Court can and should order production of these documents as they are clearly relevant to this litigation and there is no prejudice that would arise from their production.

PART II - FACTS

A. The Parties

i. Darryl Levitt

5. Darryl Levitt is a Toronto-based corporate lawyer with particular expertise in mining and energy law.¹ Mr. Levitt relies heavily on his reputation in the Toronto community to obtain clients, and his reputation is essential to his continued success in the legal and business community.² As set out below, Mr. Levitt believes that he was the target of a “sting” operation conducted by The Catalyst Capital Group Inc. (“**Catalyst**”) and its agents at the One Restaurant, a boutique restaurant located on Yorkville Avenue in Toronto.³

ii. McEwan Enterprises Inc.

6. The Respondent, McEwan Enterprises Inc., is the owner of One Restaurant, where the relevant events set out below took place.⁴ The website for the One Restaurant states that “Chef Mark McEwan’s ONE is a McEwan Group restaurant” and “McEwan Group” is a business name registered to McEwan Enterprises Inc.⁵

iii. Hazelton Hotels International Inc.

7. The One Restaurant is located in the Hazelton Hotel at 118 Yorkville Avenue in Toronto. The Respondent, Hazelton Hotels International Inc., owns the Hazelton Hotel.⁶

¹ Affidavit of Darryl Levitt sworn February 20, 2019 at para. 2 (Levitt Motion Record, Tab 2, p. 20) (“**Levitt Affidavit**”).

² Levitt Affidavit, para. 2 (Levitt Motion Record, Tab 2, p. 20).

³ Levitt Affidavit, para. 2 (Levitt Motion Record, Tab 2, p. 20).

⁴ Levitt Affidavit, para. 3 (Levitt Motion Record, Tab 2, p. 20).

⁵ Levitt Affidavit, para. 3 (Levitt Motion Record, Tab 2, p. 20).

⁶ Levitt Affidavit, para. 4 (Levitt Motion Record, Tab 2, pp. 20-21).

B. The Sting Operation against Mr. Levitt and the One Recording

8. On or around October 2, 2017, Mr. Levitt was approached by an individual identifying herself as “Helena Weiss” of KWE Consulting, seeking to set up a meeting on the pretext of engaging Mr. Levitt as an expert to provide advise in the Canadian energy and mining sector.⁷ Another individual identifying himself as “Victor Petrov” (together with “Helena Weiss”, the “**Unidentified Individuals**”) proposed to meet with Mr. Levitt.⁸ Mr. Levitt discovered that “Victor Petrov” is the name of a fictional character on the television show “House of Cards”,⁹ and that the man identifying himself to Mr. Levitt by that name strongly resembles an unknown individual who targeted researchers investigating spying software used against Washington Post journalist Jamal Khashoggi prior to his untimely death.¹⁰

9. On October 11, 2017 at approximately 9:00am, Mr. Levitt met with the Unidentified Individuals at the One Restaurant, located inside the Hazelton Hotel at 116 Yorkville Ave in Toronto.¹¹ At that meeting, “Victor Petrov” claimed to have enormous experience in North Africa and represented that a European hedge fund with over one billion Euros in investments required some assistance to navigate an investment into one of the portfolio assets of Catalyst Capital that had been identified by researchers as a problematic asset requiring further investigation. Mr. Levitt was questioned on whether he knew details of the operations of the Plaintiffs as well as his knowledge of valuation methodologies of the Plaintiffs which had been subject to criticism.¹²

⁷ Levitt Affidavit, para. 6 ([Levitt Motion Record](#), Tab 2, p. 22).

⁸ Levitt Affidavit, para. 7 ([Levitt Motion Record](#), Tab 2, p. 22).

⁹ Levitt Affidavit, para. 8 ([Levitt Motion Record](#), Tab 2, pp. 22-23).

¹⁰ Levitt Affidavit, para. 14 ([Levitt Motion Record](#), Tab 2, p. 25).

¹¹ Levitt Affidavit, para. 9 ([Levitt Motion Record](#), Tab 2, p. 23).

¹² Levitt Affidavit, para. 9 ([Levitt Motion Record](#), Tab 2, p. 23).

10. Mr. Levitt does not have any recordings or photographs from this meeting. However, he has spoken to security personnel at the One Restaurant and has been informed that the restaurant keeps surveillance footage and has copies of the following:

- a. a video recording of the dining room, taken on October 11, 2017 at the premises of One Restaurant, 116 Yorkville Avenue, Toronto, Ontario, between the hours of 9:00 am to 11:30 am (the “**One Recording**”); and
- b. records of the following (collectively, the “**Additional Documents**”):
 - i. meal payment receipts generated by McEwan Enterprises Inc. and/or its employees for One Restaurant during the times of 9:00 a.m. and 11:30 a.m. on October 11, 2017;
 - ii. reports and/or notes, generated by McEwan Enterprises Inc. and/or its employees in connection with its meetings and consultations with me; and
 - iii. notes and correspondence between hotel security and restaurant management in relation to the identification and preservation of the One Recording and related material.¹³

11. Counsel to McEwan Enterprises Inc. has stated that they do not oppose this motion so long as certain terms are included in the Order.¹⁴ Mr. Levitt has included the terms initially requested in his Draft Order at Tab 3 of his Motion Record¹⁵ and intends to update the Draft Order accordingly if McEwan Enterprises Inc.’s requested terms

¹³ Levitt Affidavit, para. 11 ([Levitt Motion Record](#), Tab 2, p. 24).

¹⁴ Levitt Affidavit, para. 12 ([Levitt Motion Record](#), Tab 2, pp. 24-25).

¹⁵ Levitt Affidavit, para. 12 ([Levitt Motion Record](#), Tab 2, pp. 24-25).

change.¹⁶ Mr. Levitt knows of no expense or inconvenience involved in producing the One Recording, but in any event, is willing to reimburse the Respondents for their reasonable costs in doing so.¹⁷

12. Mr. Levitt believes that the One Recording is necessary to assist him in identifying the Unidentified Individuals and, in turn, bringing a claim against them.¹⁸ Mr. Levitt does not have an alternative method of identifying them as (i) he does not have photographs or recordings of the Unidentified Individuals, and (ii) they appear to have used aliases in their interactions with him.¹⁹ For example, based only on his recollection of the meeting, the individual who identified himself as Victor Petrov appears to resemble an individual who used the alias “Michel Lambert” in a sting operation against researchers who were investigating spying software used against Washington Post journalist Jamal Khashoggi prior to his untimely death.²⁰

13. Moreover, Catalyst has engaged in a series of “sting” operations designed to unlawfully obtain confidential or embarrassing material in order to intimidate and discredit its perceived enemies, including in this very action.²¹ Recently, Catalyst has hired Black Cube, a private investigative firm staffed with former Mossad agents and Israeli Defense Force Operatives, to unlawfully obtain information from:

- a. Justice Newbould, now retired from the Commercial List and the presiding judge in litigation where Catalyst was unsuccessful; and

¹⁶ Levitt Affidavit, para. 12 ([Levitt Motion Record](#), Tab 2, pp. 24-25).

¹⁷ Levitt Affidavit, para. 16 ([Levitt Motion Record](#), Tab 2, p. 26).

¹⁸ Levitt Affidavit, paras. 14-15 ([Levitt Motion Record](#), Tab 2, pp. 25-26).

¹⁹ Levitt Affidavit, para. 15 ([Levitt Motion Record](#), Tab 2, p. 26).

²⁰ Levitt Affidavit, para. 15 ([Levitt Motion Record](#), Tab 2, p. 26); Globe and Mail Article dated January 25, 2019, Exhibit G to Levitt Affidavit ([Levitt Motion Record](#), Tab 2G, pp. 71-76)

²¹ Levitt Affidavit, para. 5 ([Levitt Motion Record](#), Tab 2, pp. 21-22).

- b. Employees of West Face Capital Inc., a Defendant and Plaintiff by Counterclaim in this action.²²

14. Mr. Levitt believes that he is the latest victim of Catalyst's campaign.²³ Mr. Levitt's experience bears a striking similarity to the sting operations against Justice Newbould and West Face employees.²⁴ Mr. Levitt believes that he may have a cause of action against the Unidentified Individuals.²⁵ Based on the similarity between his experience and the sting operations launched by Catalyst against Justice Newbould and West Face, Mr. Levitt also believes that these events are relevant to a Counterclaim that he intends to bring against Catalyst.²⁶

PART III - ISSUES AND ARGUMENT

15. There are two issues before this Court:
- a. Should this court order production of the One Recording and the Additional Documents under Rule 30.10 of the *Rules of Civil Procedure*?
 - b. Alternatively, is this an appropriate case to order production of the One Recording and the Additional Documents as a *Norwich* order?
16. The answer to both of these questions is yes.

²² Levitt Affidavit, para. 5 (Levitt Motion Record, Tab 2, pp. 21-22).

²³ Levitt Affidavit, para. 6 (Levitt Motion Record, Tab 2, p. 22).

²⁴ Levitt Affidavit, para. 10 (Levitt Motion Record, Tab 2, p. 23).

²⁵ Levitt Affidavit, para. 14 (Levitt Motion Record, Tab 2, p. 25).

²⁶ Mr. Levitt has not yet served and filed his Statement of Defence and Counterclaim, as he is awaiting the filing of an Amended Statement of Claim by Catalyst and Callidus following the decision of Justice Wilton-Siegel to strike significant portions of their claim; see Levitt Affidavit, para. 14 (Levitt Motion Record, Tab 2, p. 25).

A. An Order under Rule 30.10 is appropriate here

17. Under Rule 30.10, this Court may order disclosure of documents where:
- a. The documents are relevant to a material issue in the action; and
 - b. It would be unfair to require the moving party to proceed to trial without having discovery of the document.²⁷

18. Both of these factors are met here.

i. The Documents are relevant to a central issue in the action

19. For the purpose of s. 30.10, relevant documents are ones where there is a reasonable possibility that the information in the document is logically probative of a material issue.²⁸ That standard is met here.

20. The One Recording and the Additional Documents provide evidence of the Unidentified Individuals meeting with Mr. Levitt, as well as documenting the appearance of the Unidentified Individuals. Such evidence is necessary to show who met with Mr. Levitt and will be needed as part of Mr. Levitt's allegation that the Unidentified Individuals are connected to the Plaintiffs and were acting at their direction.

21. This is relevant to both Mr. Levitt's defence of this action and a Counterclaim that he intends to bring (once the Plaintiffs have provided their Amended Statement of Defence). Among other things, the claim against Levitt includes that he allegedly engaged in a conspiracy to harm the Plaintiffs which was executed by, among other

²⁷ Rule 31.10(1).

²⁸ *Braley v. Johnston*, 2017 ONSC 2146 at para. 20 (Book of Authorities, Tab 1); see also *Del Pino v. Kolomeitz*, 2018 ONSC 5337 at paras. 11-12 (Book of Authorities, Tab 2).

things, false complaints that the Plaintiffs engage in unethical business practices. The One Recording and the Additional Documents are highly relevant to Levitt's defence against this claim as they would assist in showing the types of practices that the Plaintiffs do in fact engage in, and that any alleged complaints of unethical business practices are true.

22. Similarly, the One Recording and the Additional Documents are relevant to a Counterclaim that Mr. Levitt intend to bring against Catalyst for, among other things, defamation, intrusion upon seclusion and unlawful interference with economic relations.

ii. It would be unfair for Mr. Levitt to proceed to trial without the Documents

23. The Ontario Court of Appeal has set out several guiding principles when considering the unfairness of the moving party proceeding to trial without discovery of the documents.²⁹ Among other things, the Court should consider:

- a. *The importance of the documents in the litigation.* While it is not required that the documents sought be vital or critical to the litigation, such documents are highly likely to meet the test.³⁰
- b. *Whether production at the discovery stage of the process as opposed to production at trial is necessary to avoid unfairness to the appellant.*

²⁹ *Attorney General (Ontario) v. Ballard Estate* (1995), 26 O.R. (3d) 39 (C.A.), p. 7 (Book of Authorities, Tab 3).

³⁰ *Attorney General (Ontario) v. Ballard Estate* (1995), 26 O.R. (3d) 39 (C.A.), p. 5 (Book of Authorities, Tab 3).

- c. *Whether the discovery of the defendants with respect to the issues to which the documents are relevant is adequate and if not, whether responsibility for that inadequacy rests with the defendants.*
- d. *The position of the non-parties with respect to production.*
- e. *The availability of the documents or their informational equivalent from some other source which is accessible to the moving parties.*³¹

24. These factors all favour ordering production here. These documents are of crucial importance to the litigation, as the meeting at the One Restaurant is central to the allegations that Mr. Levitt intends to raise against Catalyst and the Unidentified Individuals. Mr. Levitt alleges that this meeting was a sting operation designed to elicit embarrassing and/or confidential material to undermine his defence in this action. Mr. Levitt also intends to bring a counterclaim against the Plaintiffs for, among other things, defamation, intrusion upon seclusion and unlawful interference with economic relations should a connection between the Unidentified Individuals and the Plaintiffs be established. Mr. Levitt requires access to the One Recording and the Additional Documents in order to determine that such a connection exists.

25. Production at trial would not be sufficient as Mr. Levitt needs to conduct additional investigations to determine the identity of the Unidentified Individuals and their connections to Catalyst. Discovery of Catalyst would not be sufficient, as Mr. Levitt does not know whether Catalyst is in possession of recordings from this meeting. The Respondents have taken no position on this motion, and do not object to producing the

³¹ *Attorney General (Ontario) v. Ballard Estate* (1995), 26 O.R. (3d) 39 (C.A.), p. 7 (Book of Authorities, Tab 3).

One Recording and the Additional Documents.³² Finally, Mr. Levitt knows of no other source of the One Recording and the Additional Documents other than the Respondents.³³

26. Furthermore, without this order, the documents may not be available at trial. The Respondents are not parties to this litigation and do not have an obligation to preserve the One Recording, unless the requested order is granted.

B. Alternatively, a *Norwich* Order ordering disclosure of the One Recording and the Additional Documents is appropriate here

27. *Norwich* orders, requiring production of documents from non-parties to litigation, have been granted in circumstances where (i) where the information sought is necessary to identify wrongdoers; or (ii) to find and preserve evidence that may substantiate or support an action against either known or unknown wrongdoers, or even determine whether an action exists.³⁴ This case is an example of both of these scenarios, as Mr. Levitt seeks the One Recording and the Additional Documents to assist in identifying the Unidentified Individuals and also to determine whether he has a cause of action against the Unidentified Individuals, Catalyst and Callidus.³⁵

28. This Court has identified the following factors as relevant when considering a motion for a *Norwich* order:

³² Levitt Affidavit, para. 12 (Levitt Motion Record, Tab 2, pp. 24-25).

³³ Levitt Affidavit, para. 12 (Levitt Motion Record, Tab 2, pp. 24-25).

³⁴ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at para. 40 (Book of Authorities, Tab 4).

³⁵ Levitt Affidavit, para. 14 (Levitt Motion Record, Tab 2, p. 25).

- a. Whether the applicant has provided evidence sufficient to raise a valid, *bona fide* or reasonable claim;
- b. Whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;
- c. Whether the third party is the only practicable source of the information available;
- d. Whether the third party can be indemnified for costs of complying with the order; and
- e. Whether the interests of justice favour the obtaining of disclosure.³⁶

29. These factors are all met in this case.

i. Levitt has provided evidence of a bona fide claim

30. The standard on a *Norwich* motion is that the claim is not frivolous or vexatious, which is a lower standard than on other forms of interim relief such as injunctions.³⁷ That standard is met here. Levitt's claim is that the Unidentified Individuals made false representations in order to record him, with the aim of procuring confidential and/or embarrassing material for use against him. The similarity between the conduct at issue here and other operations conducted against Justice Newbould, West Face employees and researchers investigating surveillance operations on Jamal Khashoggi shows that

³⁶ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at para. 40 (Book of Authorities, Tab 4); see also *GEA Group AG v. Ventra Group Co.*, 2009 ONCA 619 at para. 51

³⁷ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at para. 46 (Book of Authorities, Tab 4)

there is a *bona fide* basis to Levitt's claims. This is further shown by the resemblance between the "Victor Petrov" and the individual using the alias "Michel Lambert" in another sting operation.³⁸ Identification of those individuals and further investigation may reveal what actions they took in respect of Levitt, whether they secretly recorded their meeting with him, and whether they conspired with others to injure Levitt. Among other things, this could constitute intrusion upon seclusion,³⁹ conspiracy⁴⁰ or unlawful interference.⁴¹

**ii. The Respondents were sufficiently involved in the acts
complained of**

31. Under established case law, the Respondents must have had some involvement in the actions complained of that is more than a "mere witness". For example, innocent third parties involved in a transaction as a conduit of money or information are appropriate subjects of a *Norwich* order.⁴² Similarly, as the owners of the location used for the Unidentified Individuals' sting operation, the Respondents were in effect a conduit for the conduct that Levitt maintains was unlawful.

32. Levitt is in no way suggesting that the Respondents have committed any wrongdoing, only that they are an innocently involved third party who is an appropriate subject of a *Norwich* order. For example, the Respondents are similarly positioned to the bank in *Isofoton S.A. v. Toronto Dominion Bank*.⁴³ In that case, an alleged fraudster had

³⁸ Levitt Affidavit, para. 15 (Levitt Motion Record, Tab 2, p. 26).

³⁹ See e.g. *Jones v. Tsige*, 2012 ONCA 32 (Book of Authorities, Tab 5)

⁴⁰ See e.g. *Cement LaFarge v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452 (Book of Authorities, Tab 6)

⁴¹ See e.g. *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 (Book of Authorities, Tab 7)

⁴² *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at paras. 49-51 (Book of Authorities, Tab 4)

⁴³ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) (Book of Authorities, Tab 4)

accounts at Toronto Dominion Bank. This Court determined that a *Norwich* order was appropriate as Toronto Dominion Bank, while innocent of any misconduct, was involved in the conduct complained of as it acted as a conduit for the alleged fraudster's actions.⁴⁴

iii. The Respondents are the only practicable source of the One Recording and the Additional Documents

33. Levitt knows of no other source of the One Recording and the Additional Documents other than the Respondents.⁴⁵ As the One Recording recorded events that occurred in the One Restaurant, it is unlikely that any other party would have a recording of those same events.

iv. Whether the third party can be indemnified for costs of complying with the order

34. While Levitt knows of no costs involved in complying with the order requested, he has indicated his willingness to compensate the Respondents for any reasonable costs that they incur in complying with it.⁴⁶

v. The interests of justice favour disclosure of the One Recording and the Additional Documents

35. This factor considers whether there is confidentiality, privilege at stake or other potential prejudice that could arise from disclosure of the requested documents.⁴⁷ Levitt

⁴⁴ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at para. 50 (Book of Authorities, Tab 4)

⁴⁵ Levitt Affidavit, para. 15 (Levitt Motion Record, Tab 2, p. 26).

⁴⁶ Levitt Affidavit, para. 16 (Levitt Motion Record, Tab 2, p. 26).

⁴⁷ *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.) at paras. 57-61 (Book of Authorities, Tab 4)

knows of no such interest that would be threatened by disclosure to him of the One Recording and the Additional Documents.

PART IV - ORDER REQUESTED

36. Levitt respectfully requests that this Court order the production of the One Recording and the Additional Documents on the terms set out in the Draft Order included in his Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of February, 2019



DARRYL LEVITT

Self-Represented

**SCHEDULE “A”
LIST OF AUTHORITIES**

Cases

1. *Braley v. Johnston*, 2017 ONSC 2146
2. *Del Pino v. Kolomeitz*, 2018 ONSC 5337
3. *Attorney General (Ontario) v. Ballard Estate* (1995), 26 O.R. (3d) 39 (C.A.)
4. *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780 (S.C.J.)
5. *Jones v. Tsige*, 2012 ONCA 32
6. *Cement LaFarge v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452
7. *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12

SCHEDULE “B”
TEXT OF STATUTES AND REGULATIONS

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Consolidation Period: From January 1, 2018 to the e-Laws currency date.

Rules of law and equity

96 (1) Courts shall administer concurrently all rules of equity and the common law.

Rules of equity to prevail

(2) Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails.

Jurisdiction for equitable relief

(3) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided.

Courts of Justice Act

R.R.O. 1990, REGULATION 194

RULES OF CIVIL PROCEDURE

Consolidation Period: From January 1, 2018 to the e-Laws currency date.

Order for Inspection

30.10 (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

Notice of Motion

(2) A motion for an order under subrule (1) shall be made on notice,

(a) to every other party; and

(b) to the person not a party, served personally or by an alternative to personal service under rule 16.03.

Court may Inspect Document

(3) Where privilege is claimed for a document referred to in subrule (1), or where the court is uncertain of the relevance of or necessity for discovery of the document, the court may inspect the document to determine the issue.

Preparation of Certified Copy

(4) The court may give directions respecting the preparation of a certified copy of a document referred to in subrule (1) and the certified copy may be used for all purposes in place of the original. R.R.O. 1990, Reg. 194, r. 30.10 (4).

Cost of Producing Document

(5) The moving party is responsible for the reasonable cost incurred or to be incurred by the person not a party to produce a document referred to in subrule (1), unless the court orders otherwise.

THE CATALYST CAPITAL GROUP
INC. et al.
Plaintiffs

v.

WEST FACE CAPITAL INC. et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**FACTUM OF MOVING PARTY, DARRYL
LEVITT**

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