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

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

FACTUM OF THE RESPONDING PARTIES,
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(CATALYST'S MOTION TO STRIKE)

June 14, 2018

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TO: **SERVICE LIST**

FACTUM OF THE RESPONDING PARTIES,
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(CATALYST'S MOTION TO STRIKE)

PART I ~ OVERVIEW

1. This is a motion by the Catalyst Defendants[1] to strike out the Amended Fresh as Amended Statement of Defence and Counterclaim (the "**Counterclaim**") of West Face Capital Inc. ("**West Face**") and its CEO, Gregory Boland ("**Boland**").

2. The Catalyst Defendants' motion is based on an unduly technical and onerous reading of the *Rules of Civil Procedure*. Pleadings are permitted, and indeed required, to plead *all* material facts. Moreover, there are many types of claims that are required to be plead with heightened particularity or that warrant strong language. These include claims of conspiracy, malice, and for punitive damages (all of which are made in the Counterclaim). Moreover, the Counterclaim's request for a declaration that the Catalyst Defendants are vexatious litigants puts in issue their past conduct as a litigant.

3. Pleadings are not held to a standard of perfection. On the contrary, the threshold required of pleadings to survive a motion to strike is very low. In repeatedly overturning lower court decisions striking out all or parts of claims, our Court of Appeal has sent a clear message that pleadings are to be read as generously as possible and with a view to accommodating any inadequacies in the allegations due to drafting difficulties.

4. The Counterclaim is long because it addresses three prior pieces of litigation, a widespread campaign of unlawful "sting" operations, ten separate acts of defamation, multiple causes of action, and prayers for punitive damages and declaratory relief. It uses strong language

[1] As set out in the Counterclaim, the Catalyst Defendants are: The Catalyst Capital Group Inc. ("**Catalyst**"), Callidus Capital Corporation ("**Callidus**"), Newton Glassman, Gabriel De Alba, and James Riley.

because the conduct in question is, frankly, shocking. It adheres to the same standard of pleading used by Catalyst and Callidus themselves. These are sophisticated commercial parties before a sophisticated commercial court, all of whom are more than capable of proceeding based on the existing pleading.

5. When considering the Catalyst Defendants' arguments in support of this motion, this court should assess carefully whether the Catalyst Defendants are genuinely having trouble understanding the case they have to meet. This court should ask itself: Are the Catalyst Defendants truly unable to plead in response? Or do they simply want to delay having to meet that case for as long as possible?

PART II ~ SUMMARY OF FACTS

6. On November 7, 2017, Catalyst and Callidus issued a Statement of Claim against West Face and its CEO, Boland. The Claim concerns an alleged conspiracy surrounding one article in the *Wall Street Journal*. The Claim runs 34 pages.

7. On December 29, 2017, West Face and Boland issued a Statement of Defence and Counterclaim, in which they defended the main action and counterclaimed against a number of parties, including the Moving Parties, the Catalyst Defendants. On May 22, 2018, West Face and Boland filed an Amended Fresh as Amended Statement of Defence and Counterclaim. The Counterclaim concerns: (a) ten different defamatory statements or publications carried out over a period of almost two years; and (b) a series of stings against current West Face employees, former West Face employees, and a retired judge, that spanned three continents and many months. The Counterclaim runs 91 pages.

8. As alleged therein, the Counterclaim arises from a malicious conspiracy orchestrated by the Catalyst Defendants to harm, defame, and interfere with the business interests of West Face and Boland. In particular, the Counterclaim expressly alleges that the Counterclaim Defendants pursued the campaign of defamation against West Face and Boland in retaliation for West Face's business and litigation successes at the expense of Catalyst and Callidus.

9. In short, the Counterclaim arises directly from the ongoing saga and history of total warfare on multiple fronts that Catalyst, Callidus, and their principals have pursued against West Face and Boland. In addition to the relevant and material background to the conspiracy and defamation campaign, the Counterclaim describes the truly extraordinary conduct of the Catalyst Defendants – including their responsibility for a "sting" operation conducted against Justice Newbould by foreign and unlicensed spies – and seeks both a substantial award of punitive damages for that conduct, and a declaration that the Catalyst Defendants are vexatious litigants.

PART III ~ STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Issues

10. The Catalyst Defendants have framed the issues in terms of seven "yes or no" questions. West Face respectfully submits that the answers to these questions are as follows:

1. Does the Counterclaim conform to the basic rules and principles of pleading? Yes
2. Are the claims of defamation and conspiracy properly pleaded? Yes
3. Should the claims and allegations relating to Black Cube – a named Defendant – and Justice Newbould be struck out? No
4. Are the claims alleging personal liability of Glassman, De Alba, and Riley properly pleaded? Yes
5. Are certain collateral claims sought to be advanced properly pleaded and/or recognized causes of action? Yes

6. Should the vexatious litigant claim be permitted to stand? Yes

7. Should the Counterclaim be struck out in its entirety? No

11. There is also an eighth issue raised on this motion:

8. If any portions of the Counterclaim are struck out, should this Court grant West Face and Boland leave to amend? Yes

12. The following section addresses the general principles that this Court should have in mind when considering these issues.

B. General Principles on Motions to Strike

13. The foundational rules of pleading are set out in Rule 25, and in particular Rules 25.06(1), (2), (8) and (9). These Rules provide:

> **Rules of Pleading – Applicable to All Pleadings**
>
> ***Material Facts***
>
> 25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.
>
> (2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded.
>
> ***Nature of Act or Condition of Mind***
>
> (8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.
>
> ***Claim for Relief***
>
> (9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,
>
> (a) the amount claimed for each claimant in respect of each claim shall be stated; and
>
> (b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further

> amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial.[2]

14. Thus, our rules of pleading not only entitle but in fact require Ontario litigants to plead all material facts on which they rely for their claims and defences. Furthermore, where the nature of an act or a condition of mind is alleged (such as malice, as in this case), or where the pleading claims relief for special damages (such as punitive damages, as in this case), then the pleading is permitted to, and indeed must, contain full particulars. As the Supreme Court of Canada confirmed in the now oft-cited decision of *R. v. Imperial Tobacco Canada Ltd.*:

> It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.[3]

15. The Catalyst Defendants bring this motion to strike under Rules 21.01(1)(b) and 25.11.[4] The remainder of this section address the principles applicable under Rule 21.01(1)(b). With respect to the applicable principles under Rule 25.11, West Face and Boland adopt and rely on the submissions in their Factum delivered in response to Black Cube's concurrent motion to strike.

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2 *Rules of Civil Procedure*, R.R.O. Reg. 194, R. 25.06(1), (2), (8), & (9) [the *Rules*].

3 *R. v. Imperial Tobacco Canada Ltd.*, [2011] S.C.J. No. 42, at para. 22, West Face's Book of Authorities, Tab 18.

4 Factum of the Catalyst Defendants, at paras. 10-13. While the Catalyst Defendants also cite Rules 21.01(3)(c) and (d), they do not seriously argue that the Counterclaim should be struck on the basis that there is another overlapping proceeding pending or that the Counterclaim is an abuse of the process of the court.

C. **The Catalyst Defendants Face a Very High Standard to Strike the Counterclaim**

16. The test under Rule 21.01(1)(b) is a difficult one to meet. As stated by the Ontario Court of Appeal in the 2017 decision of *Catalyst Capital Group Inc. v. Veritas Investment Research Corp.*:

> No one contests that **the bar** for striking a pleading as disclosing no cause of action **is very high -- is it plain and obvious that the plaintiff cannot succeed?** -- or that the facts as alleged in the [pleading] are to be accepted as true for purposes of deciding the motion… **The statement of claim is to be read as generously as possible with a view to accommodating any inadequacies in the allegations due to drafting difficulties**.[5]

17. The Ontario Court of Appeal also recently confirmed that the "purpose of a motion to strike is to eliminate **hopeless claims**", and that it is a "**tool that must be used with care**":[6] The Court must ask whether it is plain and obvious that the claim has no reasonable prospect of success.[7]

18. In both of these very recent decisions of our Court of Appeal, the Court overturned lower court decisions striking part (*Veritas*) or all (*Paton Estate*) of the claim in question.

19. Conversely, from the pleading party's perspective, the requirements of a claim, and therefore the threshold for withstanding a motion to strike under Rule 21.01(1)(b), is "fairly low" if not "very low".[8] Pleadings are not required "to conform to some pre-ordained form of wording", nor are the requirements of pleading to be given "an unduly strict interpretation".[9] Judges hearing

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[5] Emphasis added. *Catalyst Capital Group Inc. v. Veritas Investment Research Corp.*, [2017] O.J. No. 514 (C.A.), at para. 21 [*Veritas*], West Face's Book of Authorities, Tab 7.

[6] Emphasis added. *Paton Estate v. Ontario Lottery and Gaming Commission (c.o.b. Fallsview Casino Resort)*, [2016] O.J. No. 3031 (C.A.), at para. 11 [*Paton Estate*], West Face's Book of Authorities, Tab 17.

[7] *Paton Estate*, at para. 12, West Face's Book of Authorities, Tab 17.

[8] *1589680 Ontario Inc. v. Toronto Standard Condominium Corp. No. 1441*, [2016] O.J. No. 4012 (S.C.J.), at paras. 18 & 54 [*Toronto Standard*], West Face's Book of Authorities, Tab 1.

[9] *Bridgmount Development and Construction Ltd. v. Tarion Warranty Corp.*, [2017] O.J. No. 5441 (S.C.J.), at paras. 5 & 32, West Face's Book of Authorities, Tab 6.

Rule 21.01(1)(b) motions are not to take "an overly technical approach" to the general pleadings requirements of Rule 25.06.[10]

D. Additional Factors Demanding Detailed Particulars

20. In addition to the general principles described above and in West Face and Boland's Factum responding to Black Cube's motion to strike, a number of additional factors specific to this case permit, and indeed require, heightened particulars.

(i) Conspiracy Requires Heightened Particulars

21. Rule 25.06(1) provides that every claim shall plead "material facts", but "not the evidence by which those facts are to be proved".[11] However, it is difficult for a litigant to assess what constitutes a "material fact" and what constitutes "evidence". There is no "bright line" test, and there are "situations in which the level of detail required to provide adequate particulars sets out material facts that might also be regarded as evidence".[12] This is particularly true in conspiracy cases. As Justice Brown of the Commercial List noted in *RuggedCom Inc. v. Hyams*:

> [T]here are different lines of cases regarding the degree of factual granularity required when pleading civil conspiracy… [T]he jurisprudence has created a grey zone around what constitutes material facts, particulars and evidence.[13]

22. This rule arises out of the very nature of civil conspiracy. Unlike criminal conspiracy, which is complete upon the formation of the illegal agreement, a civil conspiracy requires overt acts in furtherance of the conspiracy. West Face and Boland are therefore required to plead all known particulars of the multi-faceted, international conspiracy described in the

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[10] *728654 Ontario Inc. (c.o.b. Locomotive Tavern) v. Ontario*, [2005] O.J. No. 4277 (C.A.), at para. 2, West Face's Book of Authorities, Tab 3.

[11] The *Rules*, R. 25.06(1).

[12] *Toronto (City) v. MFP Financial Services Ltd.*, [2005] O.J. No. 3214 (S.C.J.), at para. 15, West Face's Book of Authorities, Tab 22.

[13] *RuggedCom Inc. v. Hyams*, [2013] O.J. No. 2152 (S.C.J. (Commercial List)), at para. 6, West Face's Book of Authorities, Tab 20.

Counterclaim. It was not enough to simply state that the Counterclaim Defendants have conspired to a particular end. The means must also be pleaded with particularity.[14]

23. The Counterclaim was therefore required to (and does) plead the requisite particulars.

(ii) **Defamation Requires Heightened Particulars**

24. In *Lysko v. Braley*, the Ontario Court of Appeal confirmed that defamation claims must be pleaded with particularity.[15] In that case, the Court of Appeal undertook the painstaking exercise of reviewing the many allegations of defamation made by the plaintiff, and determining which were sufficiently particularized and which were not. By pleading full particulars at the outset, a plaintiff can save the defendant – and the court – the trouble of this exercise.

25. In *Veritas*, the Court of Appeal made it clear, however, that the general rule that defamation pleadings be pled with heightened particularity is relaxed in circumstances where the defamation is alleged to be "an integral part of what is said to be an overall scheme of conspiracy".[16] This is because, as set out above, the nature of conspiracy makes it difficult for the plaintiff to know all of the particulars.

(iii) **Punitive Damages Require Heightened Particulars**

26. As required by Rule 25.06(9), a claim for punitive damages must be stated with heightened particularity. This is essentially a rule of fairness in that it puts the defendant "on notice" of the damages being claimed against it. As stated by the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*:

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14 *Cerqueira v. Ontario*, [2010] O.J. No. 3037 (S.C.J.), at para. 46, West Face's Book of Authorities, Tab 8.
15 *Lysko v. Braley*, [2006] O.J. No. 1137 (C.A.), West Face's Book of Authorities, Tab 15.
16 *Veritas*, at para. 20, West Face's Book of Authorities, Tab 7.

> **One of the purposes of a statement of claim is to alert the defendant to the case it has to meet,** and if at the end of the day the defendant is surprised by an award against it that is a multiple of what it thought was the amount in issue, there is an obvious unfairness. Moreover, **the facts said to justify punitive damages should be pleaded with some particularity**.[17]

27. In light of these rules, plaintiffs are faced with the prospect of having their claims struck out if the requisite particulars are not provided.[18]

(iv) Vexatious Litigant Status Requires a Review of the "Whole History" of Prior Conduct

28. Finally, vexatious litigant cases make it clear that in order to declare a litigant to be vexatious, "the court must look at the whole history of the matter and not just whether there was originally a good cause of action".[19] Thus, it would clearly be insufficient for a claimant to baldly allege that a party is a vexatious litigant. Claimants, and the courts, necessarily have to rely on the entire history of the litigant's conduct in the court system.

E. Issue 1: The Counterclaim Conforms to the Basic Rules of Pleading

29. The Catalyst Defendants' argument that the Counterclaim does not meet the threshold standards of pleading can be broken down into three central complaints focussed on: (i) the length of the Counterclaim; (ii) the tone of the Counterclaim; and (iii) the imperfect drafting of the Counterclaim. For the following reasons, these minor criticisms do not warrant the striking of the Counterclaim or any part of it.

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[17] Emphasis added. *Whiten v. Pilot Insurance Co.*, [2002] S.C.J. No. 19, at para. 87 [*Whiten*], West Face's Book of Authorities, Tab 24.

[18] See, for example, *Gjonaj v. Ontario Lottery and Gaming Corp.*, [2018] O.J. No. 2155 (S.C.J.), West Face's Book of Authorities, Tab 12.

[19] *Golfnorth Properties Inc. v. Vacca*, [2018] O.J. No. 2706 (S.C.J.), at para. 20, West Face's Book of Authorities, Tab 13, citing *Re Lang Michener et. al. and Fabian et. al.*, [1987] O.J. No. 355 (H. Ct.), West Face's Book of Authorities, Tab 19.

(i) **The Length of the Counterclaim**

30. The Counterclaim is 90 pages, but it is not excessively long or prolix in the circumstances. It is long because it is multi-faceted, complex, and pleads a number of torts and remedies that require detailed particulars. The Counterclaim Defendants' conduct was not limited to a discrete or "one-off" act or omission, it consisted of an ongoing campaign on multiple fronts.

31. There is nothing unduly onerous or prejudicial to the Catalyst Defendants resulting from the Counterclaim's inclusion of background narrative that is well-known to all parties, and directly relevant to the Counterclaim for numerous reasons. Among other things, the Counterclaim expressly alleges that: (a) the Counterclaim Defendants pursued the Defamation Campaign against West Face and Boland "in retaliation" for "at least two series of events that the Catalyst Defendants took umbrage with", including the "**WIND Transaction**" and the "**Callidus Short**";[20] and (b) the "events relating to WIND and Callidus … led directly to the formation and implementation of the conspiracy".[21] In light of these allegations, had West Face and Boland not described the background events in question, the Catalyst Defendants could properly have demanded further particulars or alleged that the Counterclaim failed to disclosure material facts.

32. Critically, the background was not mere "colour". It was key to making out the elements of the pleaded torts. As alleged in the opening paragraph of Section C of the Counterclaim, titled "Background to the WIND Defamation: Catalyst's Failure to Acquire WIND", the facts relating to WIND are materially relevant to understanding both: (i) why the statements made by the Counterclaim Defendants relating to WIND were false and defamatory; and (ii) why and how the Counterclaim Defendants acted with malice in making those false and

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[20] Counterclaim, at para. 26.

[21] Counterclaim, at para. 87.

defamatory statements.[22] That the entire two-year WIND saga is described in only 23 paragraphs could just as well be praised for its brevity as criticized for its length.[23] Similarly, as alleged in the opening paragraph of Section D of the Counterclaim, titled "Background to the Callidus Defamation: Callidus Was Overvalued", the "sequence of events" relating to Callidus, including West Face's shorting of Callidus shares, was "another principal reason why the Catalyst Defendants initiated, orchestrated and implemented their unlawful conspiracy, as described herein, and acted with malice in doing so".[24] It is also relevant to the falsity of the October 2016 Press Release, the First Investor Letter, and the Esco Post. Again, this relevant background was described in only 20 paragraphs.[25]

33. There is good precedent for allowing a lengthy pleading, such as the Counterclaim, to stand as drafted where the context and complexity makes the background narrative material to the alleged claims. In the 2018 decision in *Brauti Thorning Zibarras LLP v. Nguyen*, both parties brought motions seeking to amend their pleadings (a claim and a counterclaim). The dispute related to the entitlement of a former partner of the Brauti Thorning ZIbarrass law firm to a contingency fee to be collected by that firm. The issues "turn[ed] on a determination of what was the division (if any) ultimately agreed upon by the parties", which, because of the oral and evolving nature of the agreement, would require careful consideration of the facts surrounding the making of the agreement.[26] For this reason, Master Short allowed amendments adding more detailed histories of the parties' relationship and dispute. While noting that the case called for "a proportional approach", Master Short also determined that it called for "a contextual approach that

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22 Counterclaim, at para. 44.
23 Counterclaim, at paras. 45-66.
24 Counterclaim, at para. 67.
25 Counterclaim, at paras. 68-86.
26 *Brauti Thorning Zibarras LLP v. Di Paola*, [2018] O.J. No. 426 (S.C.J.), at para. 9 [*BTZ*], West Face's Book of Authorities, Tab 5.

reflect[ed] the nature of the pre-existing relationship amongst the parties".[27] As Master Short explained, "given the relevance of the interaction between the parties over a number of years", the "inclusion of these paragraphs [was not] unduly onerous".[28] Master Short properly recognized the principles that plaintiffs are given "some latitude … to give a degree of context and flavor to their pleadings"[29] and that "it is not for the court to prune the case at [the pleadings] stage".[30]

34. In sum, as Justice Farley once recognized: "mere length is not a problem", and "[if] it is necessary to plead at length, then so be it".[31]

(ii) **The Tone of the Counterclaim**

35. There is nothing improper about the tone of the Counterclaim given the extraordinary conduct of the Counterclaim Defendants, the pleadings of malice, and the substantial claim of punitive damages being made against the Catalyst Defendants.[32]

36. As described above, for an award of punitive damages to be made against a defendant, the defendant's misconduct must be so malicious, oppressive and high-handed that it offends the court's sense of decency. Thus, in order to sustain their claim for punitive damages, West Face necessarily had to use strong language in describing the Catalyst Defendants' conduct.

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27 *BTZ*, at para. 12, West Face's Book of Authorities, Tab 5.

28 *BTZ*, at para. 43, West Face's Book of Authorities, Tab 5.

29 *BTZ*, at para. 38 West Face's Book of Authorities, Tab 5.

30 *BTZ*, at para. 44, West Face's Book of Authorities, Tab 5.

31 *National Trust Co. v. Furbacher*, [1994] O.J. No. 2385 (S.C.J. (Commercial List)), at para. 12, West Face's Book of Authorities, Tab 16.

32 In Appendix B to their Factum, the Catalyst Defendants have highlighted in red the alleged "aggressive" and "inflammatory" language of the Counterclaim. While it is beyond the scope of this Factum to address each of those instances, it is respectfully submitted that many of them are fairly benign in the circumstances. For example, describing the Counterclaim Defendants' conduct as "co-ordinated" and "systematic" is simply not inflammatory. Neither is describing the goal of the conspiracy as being to punish, embarrass, discredit or harm West Face and Boland.

37. By way of example only, the Catalyst Defendants take issue with the allegation that the Counterclaim Defendants acted with "contumelious disregard" for the rights and interests of West Face and Boland.[33] It was both proper and necessary to use those very words, given that they are the very words that courts of Canada have repeatedly used to describe the test that must be met to justify an award of punitive damages.[34] Given that our courts have granted leave to amend pleadings to add those very words, it would hardly be appropriate to have them struck.[35]

38. More generally, our Courts have held that claims seeking punitive damages are given greater leeway to use strong language than claims not seeking punitive damages. In *Latimer v. Canadian National Railway Co.*, Justice Hackland stated:

> In my opinion, strong language in a pleading in which punitive damages are properly claimed, when addressed to the elements of such a claim, may be permissible in circumstances where similar language is scandalous and vexatious within Rule 25.11 when there is no claim for punitive or aggravated damages. In other words, certain allegations may properly be pleaded in support of a claim for punitive damages, but may be struck under Rule 25.11 as scandalous and vexatious when punitive or aggravated damages are not an issue in the proceeding.[36]

39. In light of the relief sought and conduct alleged in the Counterclaim, there is nothing improper about the tenor of its allegations. The Catalyst Defendants are accused of truly outrageous conduct, including:

(a) hiring ex-Mossad agents to harass, intimidate, and solicit confidential and privileged information from current and former West Face employees, including

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[33] Counterclaim, at paras. 27 & 196; Factum of the Catalyst Defendants, at para. 35.

[34] *Whiten*, at paras. 53 & 55, West Face's Book of Authorities, Tab 24. See also *Elmardy v. Toronto (City) Police Services Board*, [2015] O.J. No. 2314 (S.C.J.), at para. 116, West Face's Book of Authorities, Tab 10.

[35] *Furmanov v. Juriansz*, [2015] O.J. No. 5733 (S.C.J.), at paras. 66 & 72, West Face's Book of Authorities, Tab 11.

[36] *Latimer v. Canadian National Railway Co.*, [2007] O.J. No. 762 (S.C.J.), at para. 24, West Face's Book of Authorities, Tab 14.

flying targets to London on false premises and then plying them with alcohol and pressuring them to disclose information;

(b) engaging in a multi-layered web of international operatives to create a massive campaign of internet defamation;

(c) approaching Justice Newbould under false pretences in the hopes of entrapping him into making anti-Semitic comments for the purposes of collaterally attacking his judgment against Catalyst; and

(d) using all of the foregoing to intentionally disseminate false information about West Face and Boland in the media.

40. It is hard to imagine how to plead conduct of this nature without using strong language.

(iii) **The Imperfect Drafting of the Counterclaim**

41. The Catalyst Defendants' final global complaint about the Counterclaim is that it contains imperfect drafting. This argument is of no moment whatsoever. Anyone reading the Counterclaim can clearly understand the causes of action set out therein and the case the Catalyst Defendants are required to meet. The minor inconsistencies do not render the Counterclaim "incomprehensible",[37] and can easily be sorted out on discovery. As set out above, our highest courts have repeatedly stated that claims are to be read "as generously as possible with a view to accommodating any inadequacies in the allegations due to drafting difficulties".[38]

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[37] Factum of the Catalyst Defendants, at para. 45.

[38] *Veritas*, at para. 21, West Face's Book of Authorities, Tab 7.

F. Issue 2: The Claims of Defamation and Conspiracy Are Properly Pleaded and Should Not Be Struck Out

42. The second issue raised by the Catalyst Defendants is whether the claims of defamation and conspiracy are properly pleaded. Their complaints about these particular causes of action are part of their global complaint about the imperfect drafting of the pleading. However, the only defect with these claims that the Catalyst Defendants have clearly identified are the allegations that certain of the false and defamatory statements made by the Counterclaim Defendants were made prior to August 2017, when the Counterclaim Defendants entered into the conspiracy.

43. While this is an inconsistency, it is an extremely minor one, and once one allows for a generous reading of imperfect drafting (which the Court must), there is no question that the Catalyst Defendants know the case they have to meet:

(a) West Face and Boland allege that the Post-Judgment Comments and the October 2016 Press Release (made prior to August 2017) were false and defamatory; and

(b) West Face and Boland allege that the conspiracy hatched in August 2017 included an agreement to continue making false and defamatory statements about West Face and Boland.

44. As for the Catalyst Defendants' complaint that the Counterclaim does not explicitly identify the false and defamatory statements relating to Callidus, this criticism is entirely meritless. West Face and Boland have, in almost all cases, quoted the precise words used by the Counterclaim Defendants. Clearly, some of the alleged false and defamatory statements, including the October 2016 Press Release, the First Investor Letter, and the Esco Post, relate to Callidus and

alleged market manipulation by West Face in that regard.[39] Again, there is no question about the case the Catalyst Defendants are required to meet.

45. Put differently, it is not "plain and obvious" that West Face and Boland cannot possibly succeed in their claims for defamation and conspiracy as drafted. A minor error in the nature of a "typo" is not grounds to strike the Counterclaim.

G. Issue 3: The Claims Relating to Black Cube and Justice Newbould Should Not Be Struck Out

46. The Catalyst Defendants argue that the claims and allegations related to Black Cube's sting operation against Justice Newbould should be struck out pursuant to Rule 25.11, on the basis that these allegations are scandalous, frivolous or vexatious.

47. In response to this issue, West Face and Boland adopt and rely on the submissions in their Factum delivered in response to Black Cube's concurrent motion to strike out references to Harvey Weinstein and the sting against Justice Newbould on the same basis. To summarize the thesis of those submissions, the allegations in question are highly relevant and probative to numerous causes of action pleaded, and relief sought, and therefore cannot possibly be struck out as "scandalous".

48. This Court should not allow the Catalyst Defendants to escape responsibility – at the pleadings stage no less – for the sting operation against Justice Newbould by acceding to their shocking threat to further "expose former Justice Newbould … to potential reputational harm".[40] Given Catalyst's conduct to date, it perhaps should come as no surprise that it would mount an *in terrorem* argument threatening Justice Newbould with further unwanted attention. That it is

[39] Counterclaim, at paras. 115-118, 122-128, & 145-151.

[40] Factum of the Catalyst Defendants, at para. 69. Nor should this Court accept the Catalyst Defendants' attempt to pin that threat on West Face and Boland.

predictable makes it no less unpersuasive and indeed inappropriate. It is highly unfortunate that the Catalyst Defendants directed a sting against a judge in the futile hopes of findings grounds to undermine a judgment against them. However, the fact remains that it happened. West Face and Boland have pleaded that it was directed by the Catalyst Defendants, that it was motivated by malice, that the Catalyst Defendants used it to disseminate false stories about West Face and Boland in the media, that it caused them harm, and that it amounted to a highly improper attack on the administration of justice in respect of a matter in which West Face was a defendant, warranting a declaration that the Catalyst Defendants are vexatious litigants. These are all proper pleadings. Given their materiality and relevance to the pleaded torts, the allegations relating to the sting against Justice Newbould cannot be struck out under Rule 25.11.

H. Issue 4: The Claims Alleging Personal Liability Against Glassman, De Alba, and Riley Should Not Be Struck Out

49. Having named Boland, West Face's CEO, as an individual Defendant to the main action on nothing but a bare pleading of vicarious liability, the Catalyst Defendants now argue that it was inappropriate for West Face and Boland to name the Plaintiffs' executives, Glassman, De Alba, and Riley, as Defendants to the Counterclaim.[41]

50. It is well established in the law of Ontario that officers and directors can be held personally liable for tortious conduct of a corporate defendant, even when their actions are pursuant to their duties to the corporation.[42] The issue turns on whether there is some conduct on the part of the so-called "directing minds" of the corporation that is either tortious in itself or

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[41] Factum of the Catalyst Defendants, at paras. 73-77.

[42] See, for example, the seminal 1999 decision of the Ontario Court of Appeal in *ADGA Systems International Ltd. v. Valcom Ltd.*, [1999] O.J. No. 27 (C.A.) [*ADGA*], West Face's Book of Authorities, Tab 4; and *United Canadian Malt Ltd. v. Outboard Marine Corp. of Canada*, [2000] O.J. No. 1554 (S.C.J.), West Face's Book of Authorities, Tab 23.

exhibits a separate identity or interest from that of the corporation such as to make the acts or conduct complained of those of the directing minds.[43]

51. For example, in *Schembri v. Way*, the Ontario Court of Appeal allowed an appeal arising from a motion judge's decision refusing to allow the plaintiffs to amend their statement of claim by, among other things, adding as a defendant Ms. Patterson, an officer and/or director of the (pre-)named corporate defendants. The motion judge had found that while the proposed amendments to the claim properly pleaded the elements of conspiracy, including as against Ms. Patterson, the proposed amendments did not disclose a reasonable cause of action against Ms. Patterson in her personal capacity.

52. In reversing this decision, the Ontario Court of Appeal held that there was a "clear pleading of fraudulent conduct by Ms. Patterson, which is detailed to the same extent as the claims against other defendants. This brings the case squarely within the type of conduct where a claim against the directing mind is not barred".[44]

53. In this case, the Catalyst Defendants argue that the Counterclaim pleads no material facts to support the conclusion that any of Glassman, De Alba, or Riley acted other than in their capacities as corporate officers or directors of Catalyst and Callidus. Contrary to this argument, the Counterclaim pleads, among other things, that:

(a) it was Glassman, De Alba, and Riley who "decided to retaliate maliciously, including by orchestrating and participating in a systematic and vicious campaign of defamation and West Face and Boland over the Internet, and by shrouding West

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[43] *Schembri v. Way*, [2012] O.J. No. 4356 (C.A.), at para. 29 [*Schembri*], West Face's Book of Authorities, Tab 21.

[44] *Schembri*, at para. 32, West Face's Book of Authorities, Tab 21.

Face and Boland in contention and controversy through the repeated commencement or pursuit of abusive, bad faith litigation";[45]

(b) it was Glassman, "in particular", who "refused to accept responsibility for" the business and litigation failures suffered by Catalyst and Callidus;[46]

(c) Glassman, De Alba, and Riley "participated personally in the acts of misconduct pleaded and relied upon by West Face and Boland. Their conduct was itself tortious, and went well beyond the scope of any duties that may properly have been owed by them to Catalyst or Callidus";[47]

(d) Glassman, De Alba, and Riley "acted throughout in a spiteful, vindictive, and abusive fashion that no responsible public company, or any company or any company charged with the important responsibility of managing and investing the funds of others, could properly have authorized, sanctioned, or tolerated";[48]

(e) even though operatives of Black Cube failed in their efforts to entrap Justice Newbould into making anti-Semitic comments, Glassman and Riley, among others, "persisted in efforts to plant highly negative media coverage concerning Justice Newbould";[49]

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45 Counterclaim, at para. 6.
46 Counterclaim, at para. 27.
47 Counterclaim, at para. 37.
48 Counterclaim, at para. 37.
49 Counterclaim, at para. 103.

(f) it was Glassman, and not Catalyst or Callidus, who made the false and defamatory allegations defined in the Counterclaim as the "Glassman Defamation";[50] and

(g) Glassman and Riley provided reporters and news agencies with "edited, distorted or otherwise falsified records and/or transcripts of meetings between operatives of Black Cube and their targets, including current and former employees of West Face as well as Justice Newbould".[51]

54. In short, the Counterclaim makes abundantly clear that while Glassman, De Alba, and Riley exploited their positions and resources as the officers and directors of Catalyst and Callidus, they individually participated in the conspiracy, including both the Black Cube Campaign and the Defamation Campaign, in a manner that was either itself tortious or exhibited a separate identity of interest from that of Catalyst and/or Callidus.

55. In light of the foregoing, it is not "plain and obvious" that the causes of action asserted against Glassman, De Alba and Riley cannot succeed.

I. Issue 5: The Alleged "Collateral Claims" Should Not Be Struck Out

56. The Catalyst Defendants argue that certain other allegations in the Counterclaim, relating to the claims for breach of confidence, inducing breach of confidence, inducing breach of fiduciary duty, and unlawful means, should be struck out (but with leave to amend).[52]

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50 Counterclaim, at paras. 119-121.
51 Counterclaim, at para. 75.
52 Factum of the Catalyst Defendants, at paras. 78-91 & 95-97.

(i) The Claims of Breach of Confidence and Inducing Breach of Confidence Should Not Be Struck

57. Having spent the majority of their Factum complaining about prolixity, pleading of unnecessary facts, and repetition, the Catalyst Defendants simultaneously complain that the claims for breach of confidence and inducing breach of confidence lack the requisite material facts.

58. This argument, too, has no merit. West Face and Boland pled the material facts giving rise to these causes of action over the preceding 80 pages. In particular, West Face and Boland have alleged that in a series of sting operations, operatives of Black Cube induced current and former employees of West Face to breach duties of confidence owed to West Face pursuant to employment contracts and at law, and then directly participated in that breach by using the fruits of the sting operations in a misleading manner to disseminate false stories about West Face to the media.[53]

59. Any further details constitute particulars which are known to the Catalyst Defendants. For example, the Catalyst Defendants know full well which employees of West Face were targeted in sting operations, the manner in which the stings occurred, the confidential information that each employee revealed, and the media outlet to which false stories were peddled. In fact, it is only the Counterclaim Defendants, and not West Face or Boland, who have knowledge of the particular confidential information each employee revealed, given that it is the Counterclaim Defendants, and not West Face or Boland, who have possession of the transcripts and other surveillance materials of the stings.

60. It should also be noted that in the course of various interlocutory motions, West Face and Boland have already filed numerous sworn Affidavits from many current and former

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[53] Counterclaim, at paras. 33(a),

employees of West Face, detailing each of the stings conducted against them. West Face and Boland could certainly inject the details of each of those Affidavits into this pleading, but if West Face and Boland had done so, the Catalyst Defendants would have complained even more loudly about the Counterclaim's length and the pleading of evidence. Instead, West Face has properly pleaded only the material facts of the Black Cube activities, and pleaded the causes of action arising from them.

(ii) **The Claim of Inducing Breach of Fiduciary Duty Should Not Be Struck**

61. The Catalyst Defendants argue that West Face's claim of inducing breach of fiduciary duty should be struck. They assert that there is "no Ontario jurisprudence" recognizing this cause of action, and that "no court has conducted an analysis of its viability".[54]

62. These assertions are astonishing, given that the very case upon which the Catalyst Defendants rely in making these assertions reaches the opposite conclusion. In the 2017 decision of *2027707 Ontario Ltd. v. Richard Burnside & Associates Ltd.* cited by the Catalyst Defendants, Master Sugunasiri allowed a proposed amendment to add a claim for inducing breach of fiduciary duty. In doing so, she held, based on the Ontario Court of Appeal's 1999 decision in *ADGA Systems International Ltd. v. Valcom Ltd.* and other more recent jurisprudence, that there was "sufficient acceptance … of [the] possible existence [of the tort of inducing breach of fiduciary duty] that I am not prepared to strike it from the proposed Claim at this point". [55] The learned Master then held that the plaintiffs had pled the material facts supporting the claim, and she explicitly permitted them to proceed.[56]

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[54] Factum of the Catalyst Defendants, at para. 89.

[55] *2027707 Ontario Ltd. v. Richard Burnside & Associates Ltd.*, [2017] O.J. No. 3614 (S.C.J.), at para. 21 (S.C.J.) [*Burnside*], West Face's Book of Authorities, Tab 2, citing *ADGA*, West Face's Book of Authorities, Tab 4

[56] *Burnside*, at paras. 5 & 22, West Face's Book of Authorities, Tab 2.

63. As in *Burnside*, the Counterclaim alleges all of the material facts to support a claim for inducing breach of fiduciary duty:[57]

(a) West Face's former General Counsel Alex Singh owed West Face fiduciary duties (by virtue of his position as West Face's General Counsel);

(b) the Counterclaim Defendants were aware that as the former General Counsel of West Face, Mr. Singh owed West Face fiduciary duties; and

(c) the Counterclaim Defendants intentionally induced Mr. Singh to breach those fiduciary duties, by enticing him into disclosing privileged and confidential communications concerning the hiring and employment of Brandon Moyse.

64. For these reasons, the allegations concerning the tort of inducing breach of fiduciary duty should not be struck.

J. Issue 6: The Vexatious Litigant Claim Should Not Be Struck Out

65. The Catalyst Defendants argue that the request to have them declared vexatious litigants "is not properly part of this case" and "should not be advanced as part of this action".[58] The Catalyst Defendants offer little argument, and no law, in support of this proposition.

66. It is perfectly proper for West Face to seek to have the Catalyst Defendants declared vexatious litigants in this proceeding, and striking out the vexatious litigant allegations would do nothing but force West Face to commence a separate application against the Catalyst Defendants under section 140 of the *Courts of Justice Act*.[59] This course of action would be

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57 Counterclaim, at paras. 189(a) & (c) & 191-193.
58 Factum of the Catalyst Defendants, at paras. 92-94.
59 *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 140.

entirely inconsistent with the *Courts of Justice Act* and the *Rules*. Section 138 of the *Courts of Justice Act* decrees that: "As far as possible, multiplicity of legal proceedings shall be avoided".[60] Consistent with section 138, Rule 6.01 encourages the consolidation or hearing together of overlapping proceedings.[61] Indeed, Rule 6.01(1)(e) expressly envisions the scenario where, having commenced a separate application against the Catalyst Defendants to have them declared vexatious litigants, West Face and Boland would be ordered to assert that relief by way of counterclaim in this action.

67. Finally, there is jurisprudential support for the notion that vexatious litigant allegations, and concomitant relief under section 140 of the *Courts of Justice Act*, are appropriately made and sought by a defendant within an ongoing action, and need not be pursued in a separate proceeding. In *Diler v. Heath*,[62] Ms. Diler brought an action against Dr. Heath for medical malpractice. Dr. Heath defended the action, and brought a motion seeking summary judgment and relief under section 140 of the *Courts of Justice Act*. Justice Broad granted both aspects of the motion, and did not imply in any way that the vexatious litigant claims should have been brought in a separate proceeding.

68. For all of the above reasons, the vexatious litigant claims and allegations should not be struck out.

K. **Issue 7: The Counterclaim Should Not Be Struck Out In Its Entirety**

69. In light of all of the above, West Face and Boland respectfully submit that no aspects of the Counterclaim should be struck out. If there are particular allegations that ought to be

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60 *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 138.

61 Without question, the separate application would: (i) involve questions of law or fact in common with this action; (ii) claim relief arising from the same conduct at issue in this action; and (iii) involve many of the same parties to this action, and therefore meet the requirements for consolidation. See *Rules*, R. 6.01.

62 *Diler v. Heath*, [2012] O.J. No. 2447 (S.C.J.), at paras. 5, 6, & 35, West Face's Book of Authorities, Tab 8.

struck out or amended, the Court has the discretion to, and should in this case, make a narrow order rather than striking out the Counterclaim in its entirety.

L. Issue 8: West Face and Boland Should Be Granted Leave to Amend Any Portions of the Counterclaim That Are Struck Out

70. The Catalyst Defendants acknowledge that "Presumptively, the law is that West Face and Boland should be granted leave to deliver a fresh pleading".[63] Nevertheless, the Catalyst Defendants argue that the law's presumptive leave to amend the allegations in the Counterclaim should not extend to the allegations relating to Black Cube and Justice Newbould, or to the vexatious litigant claims.[64] The Catalyst Defendants offer no argument in support of this request. As set out above, however, these allegations are not scandalous at law; they are materially relevant and probative to any number of issues, and should not be struck out whatsoever.

PART IV ~ ORDER REQUESTED

71. West Face and Boland respectfully request that this motion be dismissed, with costs. In the alternative, West Face and Boland respectfully request leave to amend the Counterclaim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of June, 2018.

Davies Ward Phillips & Vineberg LLP

63 Factum of the Catalyst Defendants, at para. 96.
64 Factum of the Catalyst Defendants, at para. 96.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *1589680 Ontario Inc. v. Toronto Standard Condominium Corp. No. 1441,* [2016] O.J. No. 4012 (S.C.J.)

2. *2027707 Ontario Ltd. v. Richard Burnside & Associates Ltd.,* [2017] O.J. No. 3614 (S.C.J.)

3. *728654 Ontario Inc. (c.o.b. Locomotive Tavern) v. Ontario,* [2005] O.J. No. 4277 (C.A.)

4. *ADGA Systems International Ltd. v. Valcom Ltd.,* [1999] O.J. No. 27 (C.A.)

5. *Brauti Thorning Zibarras LLP v. Di Paola,* [2018] O.J. No. 426 (S.C.J.)

6. *Bridgmount Development and Construction Ltd. v. Tarion Warranty Corp.*, [2017] O.J. No. 5441 (S.C.J.)

7. *Catalyst Capital Group Inc. v. Veritas Investment Research Corp.*, [2017] O.J. No. 514 (C.A.)

8. *Cerqueira v. Ontario*, [2010] O.J. No. 3037 (S.C.J.)

9. *Diler v. Heath*, [2012] O.J. No. 2447 (S.C.J.)

10. *Elmardy v. Toronto (City) Police Services Board,* [2015] O.J. No. 2314 (S.C.J.)

11. *Furmanov v. Juriansz,* [2015] O.J. No. 5733 (S.C.J.)

12. *Gjonaj v. Ontario Lottery and Gaming Corp.*, [2018] O.J. No. 2155 (S.C.J.)

13. *Golfnorth Properties Inc. v. Vacca,* [2018] O.J. No. 2706 (S.C.J.)

14. *Latimer v. Canadian National Railway Co.*, [2007] O.J. No. 762 (S.C.J.)

15. *Lysko v. Braley*, [2006] O.J. No. 1137 (C.A.)

16. *National Trust Co. v. Furbacher*, [1994] O.J. No. 2385 (S.C.J. (Commercial List))

17. *Paton Estate v. Ontario Lottery and Gaming Commission (c.o.b. Fallsview Casino Resort)*, [2016] O.J. No. 3031 (C.A.)

18. *R. v. Imperial Tobacco Canada Ltd.*, [2011] S.C.J. No. 42

19. *Re Lang Michener et. al. and Fabian et. al.*, [1987] O.J. No. 355 (H. Ct.)

20. *RuggedCom Inc. v. Hyams*, [2013] O.J. No. 2152 (S.C.J. (Commercial List))

21. *Schembri v. Way*, [2012] O.J. No. 4356 (C.A.)

22. *Toronto (City) v. MFP Financial Services Ltd.*, [2005] O.J. No. 3214 (S.C.J.)

23. *United Canadian Malt Ltd. v. Outboard Marine Corp. of Canada*, [2000] O.J. No. 1554 (S.C.J.)

24. *Whiten v. Pilot Insurance Co.*, [2002] S.C.J. No. 19

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Courts of Justice Act, R.S.O. 1990, c. C.43

Multiplicity of proceedings

138 As far as possible, multiplicity of legal proceedings shall be avoided. R.S.O. 1990, c. C.43, s. 138.

Vexatious proceedings

140 (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,

(a) instituted vexatious proceedings in any court; or

(b) conducted a proceeding in any court in a vexatious manner,

the judge may order that,

(c) no further proceeding be instituted by the person in any court; or

(d) a proceeding previously instituted by the person in any court not be continued,

except by leave of a judge of the Superior Court of Justice.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

WHERE ORDER MAY BE MADE

6.01 (1) Where two or more proceedings are pending in the court and it appears to the court that,

(a) they have a question of law or fact in common;

(b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or

(c) for any other reason an order ought to be made under this rule,

the court may order that,

(d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or

(e) any of the proceedings be,

(i) stayed until after the determination of any other of them, or

(ii) asserted by way of counterclaim in any other of them. R.R.O. 1990, Reg. 194, r. 6.01 (1).

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list. R.R.O. 1990, Reg. 194, r. 6.01 (2).

DISCRETION OF PRESIDING JUDGE

6.02 Where the court has made an order that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise. R.R.O. 1990, Reg. 194, r. 6.02

RULES OF PLEADING — APPLICABLE TO ALL PLEADINGS

Material Facts

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. R.R.O. 1990, Reg. 194, r. 25.06 (1).

Pleading Law

(2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded. R.R.O. 1990, Reg. 194, r. 25.06 (2).

…

Nature of Act or Condition of Mind

(8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred. O. Reg. 61/96, s. 1.

Claim for Relief

(9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

(a) the amount claimed for each claimant in respect of each claim shall be stated; and

(b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial. R.R.O. 1990, Reg. 194, r. 25.06 (9).

STRIKING OUT A PLEADING OR OTHER DOCUMENT

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

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

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

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SUPERIOR COURT OF JUSTICE
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