

**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 MAST 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, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10

Defendants

**STATEMENT OF DEFENCE OF ROB COPELAND**

1. The Defendant, Rob Copeland (“**Copeland**”), denies all the allegations contained in the Fresh as Amended Statement of Claim dated 18 July 2019 (the “**Claim**”) except as hereinafter expressly admitted.
2. Copeland specifically denies that the Plaintiffs are entitled to the relief claimed in paragraph 1 of the Claim and puts the Plaintiffs to the strict proof thereof.

***The Parties***

3. Copeland is an investigative journalist employed by Dow Jones & Company (“**Dow Jones**”).

4. Dow Jones is a corporation with its head office in New York, New York, and is the publisher of The Wall Street Journal (the “**WSJ**”). The WSJ reports on matters of public importance both online and in print.

5. The Plaintiffs, The Catalyst Capital Groups Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**”) are related corporations controlled by Newton Glassman (“**Glassman**”), that are in the business of making investments in distressed and undervalued Canadian situations in return for control, including the provision capital on a bridge basis to companies that cannot access traditional lending sources.

### ***The WSJ Investigation***

6. In and around January 2017, Copeland began researching alternative investments with a view to writing articles on that subject for the WSJ. Jacquie McNish (“**McNish**”), Copeland’s colleague and an investigative journalist employed by Dow Jones, assisted Copeland with this research. As a result of their newsgathering, Copeland and McNish learned of issues that were being raised relating to the Plaintiffs’ business and accounting practices.

7. Copeland and McNish diligently investigated the issues raised in the course of their newsgathering and took steps to verify the facts that came to their attention. This included, among other things:

- (a) speaking to various confidential sources;
- (b) speaking to the Defendant, Jeffrey McFarlane (“**McFarlane**”);
- (c) speaking to a spokeswoman for the Toronto Police Service (“**TPS**”); and

- (d) reviewing whistleblower complaints made to the Ontario Securities Commission (“OSC”) about Catalyst.

8. In addition, Copeland and McNish offered the subjects of their investigation, including the Plaintiffs, multiple opportunities over several weeks to discuss the issues raised by their newsgathering, including the opportunity to respond to all allegations made against them. Legal counsel for the WSJ engaged in various communications with counsel for the Plaintiffs about these subjects.

9. Ultimately, on or about 8 August 2017 Copeland and McNish met with representatives of the Plaintiffs. Counsel for the WSJ and for the Plaintiffs, respectively, also participated in this meeting. Contrary to the allegations in the Claim, Copeland recorded the meeting and, prior to the publications complained of in the Claim, he and McNish assessed the information provided by the Plaintiffs during this meeting.

10. At this meeting, and at all times prior to the WSJ publications complained of in the Claim, the Plaintiffs declined to provide any comment for publication on the matters raised by Copeland and McNish’s newsgathering that they presented both prior to and during the meeting.

11. At all times, Copeland took steps to ensure that he reported on the issues in a fair manner.

***The Online Article***

12. Copeland admits that he co-authored the publication entitled “Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers” (the “**Online Article**”), which was published on the WSJ’s website at [www.wsj.com](http://www.wsj.com) on 9 August 2017.

13. The Online Article reported on the results of Copeland and McNish's newsgathering and interviews, including the fact that four individuals had filed whistleblower complaints with Canadian securities regulators alleging fraud by Catalyst. It included statements about the Plaintiffs' business practices, and quotes from McFarlane about filing a whistleblower complaint.

14. Copeland admits that the Online Article contained statements similar to or including the words complained of that are set out at paragraph 178 of the Claim, as well as other words not set out in the Claim. Copeland relies upon the entirety of the Online Article, including related pictures and diagrams, as context for the meaning of the words complained of in the Online Article.

15. Prior to the publication of the Online Article, the Plaintiffs declined to provide comment for publication, despite the substantial opportunity to do so. It was only after the Online Article was published that the Plaintiffs publicly issued a statement concerning information contained in the Online Article, components of which were promptly incorporated into the Online Article. The Online Article was edited to add the following words and phrases:

In a statement following digital publication, company officials said they know of no legitimate basis for any whistleblower complaint. The companies said they believe the whistleblowers are filing "deliberately misleading" reports with the OSC.

"Callidus believes that it is the actions of those individuals that warrants investigation," the statement said. Callidus Capital Corp. is the lending arm of Catalyst.

16. Copeland relies upon these added words and phrases as context for the meaning of the words complained of in the Online Article.

***The Print Publication***

17. Copeland admits that he co-authored the publication entitled “Top Buyout Firm Scrutinized on Loans” (the “**Print Article**”), which was published in the print edition of the WSJ on 10 August 2017.

18. The Print Article was very similar to the Online Article and, once again, reported on the results of Copeland and McNish’s newsgathering, including the fact that four individuals had filed whistleblower complaints with Canadian securities regulators alleging fraud by Catalyst. The Print Article included statements about the Plaintiffs’ business practices, and quotes from McFarlane about filing a whistleblower complaint.

19. Copeland admits that the Print Article contained statements similar to or including those set out at paragraph 178 of the Claim, as well as other words not set out in the Claim. Copeland relies upon the entirety of the Print Article, including related pictures and diagrams, as context for the meaning of the words complained of in the Print Article.

20. The Print Article contained the following words and phrases:

In a statement following digital publication, company officials said they know of no legitimate basis for any whistleblower complaint. The companies said they believe the whistleblowers are filing “deliberately misleading” reports with the OSC.

“Callidus believes that it is the actions of those individuals that warrants investigation,” the statement said. Callidus Capital Corp. is the lending arm of Catalyst.

21. Copeland relies upon these words and phrases as context for the meaning of the words complained of in the Print Article.

*No Defamation*

22. Copeland denies that the words complained of in the Online Article and the Print Article (the “**Words Complained Of**”) were or are capable as a matter of law of giving rise to any of the defamatory meanings alleged in the Claim or otherwise. Further, and in the alternative, those meanings would not in fact have arisen in the minds of reasonable readers.

23. Copeland denies that any of the Words Complained Of were defamatory of and concerning the Plaintiffs as alleged, or that any of the content of the Online Article or the Print Article provides a context capable of supporting or contributing to any alleged defamation.

*Defences to any Defamation*

24. In the alternative, Copeland states that if any of the Words Complained Of refer to the Plaintiffs and/or bear or give rise to any one or more of the meanings alleged in the Claim, then any such Words Complained Of, in their plain and ordinary meaning and in their full and proper context, to the extent they are statements of fact, are true or substantially true. In particular, the Words Complained Of refer to the following statements of fact that are true or substantially true:

- (a) four individuals filed whistleblower complaints with Canadian securities regulators;
- (b) the complaints accuse Catalyst of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made;
- (c) the complaints prompted officials at the OSC to make inquiries;
- (d) a unit of the TPS separately began its own inquiries;

- (e) Ontario regulators accept whistleblower submissions from any individual with original information about an alleged violation of securities law;
- (f) some but not all of the filers of the whistleblower complaints have worked at companies that borrowed money from firms controlled by Glassman;
- (g) each complainant may receive up to \$5 million under the OSC whistleblower program if their allegations prove true;
- (h) neither Glassman nor his firms have been accused by authorities of any wrongdoing;
- (i) Glassman is the chief executive of Callidus;
- (j) Callidus' lending practices are a subject of the whistleblower complaints;
- (k) Glassman's firms sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans;
- (l) one of those borrowers is McFarlane, who is the former chief executive of computer distributor Xchange Technology Group ("**Xchange**");
- (m) Xchange began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank;
- (n) within a year, Xchange was in insolvency proceedings;
- (o) according to court documents, Callidus purchased Xchange for about \$34 million;

- (p) when Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans, including the loan to Xchange;
- (q) in a September 2015 quarterly earnings report, Callidus recorded the Xchange investment as an asset for sale at \$66.9 million;
- (r) filings show that in March 2016 Catalyst transferred an amount “equal to the total outstanding principal plus accrued and unpaid interest” on the Xchange loan, being \$101 million, to Callidus for its Xchange investment;
- (s) according to one of the whistleblower complaints and documents reviewed by the WSJ, in December 2016 Catalyst told its investors that the Xchange investment was only worth a fraction of what it had paid that March, triggering losses;
- (t) McFarlane confirmed that he filed one of the whistleblower complaints;
- (u) McFarlane’s complaint, and one other, allege that Catalyst overpaid Callidus to acquire the Xchange investment, and delayed and underreported potential losses;
- (v) the month before the Online Article and Print Articles were published, the Ontario Court of Appeal found McFarlane responsible on a personal guarantee of Xchange’s debts that was far less than Callidus was seeking in a civil suit;
- (w) Glassman’s firms have also sued or counter sued government agencies and former employees for damages in relation to alleged business breaches and misconduct;



- (x) in February 2017, Callidus sued a former employee alleging he was responsible for “artificially inflating” the financial performance of some Callidus investments, including Xchange;
- (y) the employee responded in a court filing denying that allegation, and stating that Callidus made the claim to deflect attention from “multiple complaints and regulatory investigations”;
- (z) litigation is ongoing;
- (aa) in May 2017, in its quarterly earnings report, Callidus disclosed that its accounting practices were under review by the OSC; and
- (bb) Glassman told analysts at that time that the OSC review was “nothing extraordinary,” adding that “If there was a significant issue with the Commission, I’m fairly certain the Commission would force us to disclose it.”

25. To the extent any of the Words Complained Of are or include expressions of opinion or comments, Copeland states that in their plain and ordinary meaning and in their full and proper context, they are fair comment, made in good faith and without malice on matters of public interest. They constitute opinions that a person could honestly hold based on facts presented in the Online Article and Print Article, or that are generally known by the public, that are substantially true.

26. Those matters of public interest on which the Words Complained Of comment include, among others, the facts that:

- (a) Callidus is a public company, whose shares are listed and traded publicly on the Toronto Stock Exchange;
- (b) prior to the initial public offering (“**IPO**”) in April 2014, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 70% of the issued and outstanding shares of Callidus;
- (c) the OSC had recently instituted its “whistleblower” program in order to encourage reporting of original information about an alleged violation of securities law; and
- (d) the OSC had received the whistleblower complaints about the Plaintiffs.

27. The Words Complained Of were published in good faith, without malice, on an occasion of qualified privilege. They relate to matters of public interest referred to above. Copeland had a duty and interest in having the results of his newsgathering published, including the Words Complained Of, in the context of the Print Article and the Online Article, and the public had a corresponding interest in receiving that information from Copeland and McNish, both investigative journalists with the WSJ.

28. The Words Complained Of constitute responsible communication on matters of public interest. Copeland diligently conducted a fair and thorough investigation, including but not limited to taking the steps outlined in paragraphs 5-10 above. Prior to publication by the WSJ of the Print Article and the Online Article, Copeland and McNish provided the Plaintiffs and their representatives with multiple opportunities to provide comments and responses to the subjects

reported in the Words Complained Of. The Plaintiffs declined to provide comment for publication before publication of the Online Article. Following the publication of the Online Article, the Plaintiffs publicly issued a statement, concerning the Online Article, components of which were promptly incorporated into both the Online Article and the Print Article.

29. Further, the Words Complained Of consist, in part, of fairly reported statements whose public interest lies in the fact they were made by a spokeswoman at the TPS. The statements on behalf of the TPS that were reported include some of the Words Complained Of, and also include statements on matters of public interest referred to above. Those statements were fairly and accurately reported. Copeland pleads that his reportage on such statements does not constitute actionable defamation.

30. To the extent that the Words Complained of refer to proceedings of public authorities, including the investigation conducted by the TPS and the receipt of the whistleblower complaints by the OSC, they are a fair and accurate report on such proceedings, and are entitled to the privileges provided in that regard at common law and under s. 3(1) of the *Libel and Slander Act*.

***No Malice***

31. Copeland specifically denies the allegations of malice in the Claim. He denies that the facts alleged against him in the Claim constitute or are capable of constituting malice on his part.

***No Civil Conspiracy***

32. Copeland denies that he acted in furtherance of any conspiracy as alleged in the Claim, or at all, and puts the Plaintiffs to the strict proof of all such allegations. As an investigative journalist employed by Dow Jones and the WSJ, Copeland is subject to the Dow Jones Code of Conduct that

strictly prohibits any such personal interest or involvement in the matters on which he reports. These allegations in the Claim are frivolous, vexatious, abusive, and completely without factual foundation.

33. In particular, Copeland

- (a) denies that he was recruited, or otherwise entered into, or was even aware of any agreement among any of the Defendants to injure the Plaintiffs;
- (b) denies that he acted in furtherance of any such alleged agreement;
- (c) denies that he provided drafts of the Online Article or Print Article to any of the Defendants;
- (d) denies that he allowed the Defendants to approve the content of the Online Article or the Print Article, as alleged;
- (e) denies that he owned or otherwise benefitted from any shares of, or other financial interests in, either of the Plaintiffs;
- (f) denies that he had any motivation or intent to “drive down the price of Callidus Shares,” as alleged;
- (g) denies that he intended to, or did, profit personally from the publication of the Online Article or the Print Article, from any source other than Dow Jones, or in any manner otherwise than in the ordinary course of his employment as a journalist with the WSJ;

- (h) denies that he harboured or harbours any “vendetta” or any desire for “vengeance” against the Plaintiffs, or that he had any basis for such;
- (i) denies that he engaged in short selling of stocks of Callidus, or otherwise sought to profit or did profit from any short selling of such stocks as alleged;
- (j) denies that he had control over the timing of publication of the Online Article, after he submitted it to the WSJ editorial process on 8 August 2017;
- (k) denies that the timing of such publication was selected by the WSJ editorial team for any of the reasons alleged in the Claim; and
- (l) denies that the timing of such publication was ever disclosed to any of the other Defendants.

34. Copeland states, and the fact is, that the editing of both the Online Article and the Print Article after their submission by Copeland and McNish was performed by a number of people independent of Copeland and McNish, including several editors and a member or members of the WSJ Standards and Ethics team, working together or one after the other in a multi-layered, in-depth and rigorous editing process. Copeland’s principal involvement in that process was to answer questions from the persons involved about his newsgathering and the factual and evidentiary basis for the statements made in the Online Article and the Print Article. As an investigative journalist, Copeland had neither the authority nor capability to publish the Online Article or the Print Article.

35. The Online Article and the Print Article were only published after the editorial process was completed in accordance with the WSJ’s high journalistic standards and practices.

***No Intentional Interference with Economic Relations***

36. The Plaintiffs have not pleaded the necessary elements of the tort of intentional interference with economic relations, or unlawful means. The Claim that the Words Complained Of deceived third-party market participants is not independent of, but rather is subsumed in, the claims of defamation in this action and in the action bearing Court File No. CV-18-593156-00CL, and is untenable as a matter of law.

37. Further, and in the alternative, the Claim provides no particulars of how Copeland or the Words Complained Of specifically interfered with any particular economic relations that the Plaintiffs previously enjoyed.

38. This claim against Copeland ought to be dismissed.

***No Injurious Falsehood***

39. The Plaintiffs have not pleaded the necessary elements of the tort of injurious falsehood and have provided bald allegations only with respect to Copeland's involvement in any such claim. This claim is similarly not independent of, but rather is subsumed in, the claims of defamation in this action and in the action bearing Court File No. CV-18-593156-00CL, and is untenable as a matter of law.

40. Copeland denies that he published any false statements, or any statements reflecting adversely on the Plaintiffs' business, and denies that any of the Words Complained Of were made maliciously without just cause or excuse. This claim against Copeland ought to be dismissed.

***No Breach of the Securities Act***

41. Copeland denies that he acted in violation of subsections 126.1 and 126.2 of the *Securities Act*, or any other sections, and puts the Plaintiffs to the strict proof thereof.

42. There is no basis pleaded for holding Copeland liable for breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations allegedly committed by the other Defendants, as is alleged in paragraph 1 of the Claim. In any event, neither sections 126.1 nor 126.2 of the *Securities Act* create civil liability.

***No Cause of Action***

43. Copeland pleads that this action discloses no reasonable cause of action, and that there is no genuine issue to be tried in this case.

44. Copeland further pleads that this action is an abuse of this Court's process. The Plaintiffs have commenced this action at the same time as they have commenced a parallel action for defamation and conspiracy against Copeland, McNish and Dow Jones arising from the same set of facts in Court File No. CV-18-593156-00CL. The same allegations of defamation and conspiracy arising from the Online Article and the Print Article are made against Copeland, McNish and Dow Jones in that action.

45. This action constitutes and is being pursued as a strategic lawsuit against public participation (a "SLAPP") designed primarily to discourage public discourse on matters of public interest, and in particular

- (a) to discourage individuals who make whistleblower complaints to the OSC and other Canadian securities regulators from speaking with journalists about their concerns; and

- (b) to discourage journalists and news media from contributing their expertise in investigative journalism to preparing and publishing in-depth news articles on matters of interest to the public.

46. The baseless allegation that Copeland acted in furtherance of a “conspiracy” with and among the Defendants, against the Plaintiffs, simply by acting as a journalist, and by investigating and reporting on a news story, demonstrates the nature and purpose of this action as a SLAPP. This action, and the parallel defamation and conspiracy action, are both being pursued for the collateral purposes of uncovering Copeland’s confidential sources, and of exposing the WSJ’s internationally acclaimed journalistic and investigative practices to frivolous, vexatious, abusive and completely unfounded allegations.

47. The action is also designed to reinforce the Plaintiffs’ reputation for aggressive litigation, as a means to discourage both the WSJ and other media in Canada and the US from reporting responsibly on the Plaintiffs’ business and accounting practices.

48. Despite providing a Response to Demand for Particulars, amending the allegations in the Claim to add particulars, and providing a Response to Request to Inspect, the Plaintiffs have failed to particularize their claims against Copeland and have failed to provide any documentation that could implicate Copeland in the claims advanced against him. This further demonstrates the nature and purpose of this action as a SLAPP.



***Damages***

49. Copeland denies that the Plaintiffs suffered any damage as alleged in the Claim, or at all, including any damage to the actual reputation enjoyed by the Plaintiffs or their businesses, and puts the Plaintiffs to strict proof thereof.

50. With respect to the Plaintiffs' alternative claim to measure damages by means of an accounting of benefits received by the Defendants, Copeland received none, and the Plaintiffs are entitled to no damages.

51. In the alternative, if the Plaintiffs have suffered damage to their reputation or otherwise, which is denied, Copeland pleads that the amounts of damages claimed are excessive, exaggerated, remote, unavailable at law, unmitigated and unconnected with any alleged act or omission on his part.

52. If and to the extent that any or all such damages were caused by short selling of the shares of Callidus, as alleged in the Claim, then Copeland did not cause or contribute to such damages, and any such damages were not foreseeable by him.

53. Copeland specifically denies that the Plaintiffs are entitled to aggravated, punitive or special damages.

54. Copeland pleads and relies on the *Libel and Slander Act*, R.S.O. 1990, c. L. 12 and in particular upon ss. 3(1), 22, 23 and 24, as applicable; on section 2(b) of the *Canadian Charter of Rights and Freedoms*; and on section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

55. Copeland asks that this action be dismissed with costs.

56. Copeland agrees that any trial of this action take place in Toronto. He asks that any trial of this action be heard together with, or immediately before, the action bearing Court File No. CV-18-593156-00CL.

September 30, 2019

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THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF DEFENCE OF ROB COPELAND**

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