

**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 -

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and JEFFREY
MCFARLANE

Defendants

NOTICE OF MOTION

The Defendants, Dow Jones & Company, Rob Copeland, and Jacque McNish (collectively, the “**Dow Jones Defendants**”), will make a Motion to a Judge presiding over the Commercial List on a date and time to be set by the Court at the court house, 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

in writing under subrule 37.12.1(1) because it is

in writing as an opposed motion under subrule 37.12.1(4);

orally.

THE MOTION IS FOR

- (a) An order dismissing the proceeding brought by the Plaintiffs as against the Dow Jones Defendant in accordance with section 137.1(3) of the *Courts of Justice Act*;
- (b) The cost of this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*; and
- (c) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

- (a) Dow Jones & Company (“**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;
- (b) Rob Copeland (“**Copeland**”) is an investigative journalist employed by Dow Jones;
- (c) Jacquie McNish (“**McNish**”) is an investigative journalist employed by Dow Jones;
- (d) Jeffrey McFarlane (“**McFarlane**”) is an individual and the former chief executive officer of Xchange Technology Group (“**Xchange**”). McFarlane was interviewed by Copeland and McNish for the investigation, as outlined below;
- (e) 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

- (f) In and around January 2017, Copeland was researching alternative investments with a view to writing articles on that subject for the WSJ. McNish 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;
- (g) 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;
 - (i) speaking to various confidential sources;
 - (ii) speaking to the Defendant, McFarlane;
 - (iii) speaking to a spokeswoman for the Toronto Police Service ("**TPS**"); and
 - (iv) reviewing whistleblower complaints made to the Ontario Securities Commission ("**OSC**") about Catalyst.
- (h) 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.

The Online Article

- (i) Copeland and McNish admit that they 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 on 9 August 2017.
- (j) The Online Article reported on matters of public interest arising from 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;

The Tweets

- (k) In the days following the Online Article, Copeland authored and published Twitter statements (collectively, the “**Copeland Tweets**”) hyperlinking the Online Article;

The Print Article

- (l) Copeland and McNish admit that they 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;

- (m) The Print Article was very similar to the Online Article and, once again, reported on matters of public interest arising from 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;

The Plaintiffs Commence the Proceeding against the Dow Jones Defendants

- (n) On 7 November 2017, the Plaintiffs commenced this action against the Dow Jones Defendants and McFarlane (the "**Action**"). As against the Dow Jones Defendants, the Plaintiffs seek damages arising from or related to the publication of the Online Article, the Print Article and the Copeland Tweets for:
 - (i) defamation;
 - (ii) civil conspiracy; and
 - (iii) false light publication in the public eye;
- (o) The Plaintiffs have commenced this Action at the same time as they have commenced a parallel action for defamation and conspiracy against Copeland and others arising from the same set of facts in Court File No. CV-17-587463-00CL (the "**Parallel Action**").

- (p) The same allegations of defamation and conspiracy arising from the Online Article and the Print Article are duplicated and made against Copeland in the Parallel Action;
- (q) There is no genuine issue for trial with respect to any of the factual allegations made by the Plaintiffs against Copeland, McNish or Dow Jones in this Action or in the Parallel Action;

The Proceeding is a SLAPP

- (r) This Action constitutes and is being pursued as a strategic lawsuit against public participation (a “**SLAPP**”). The Action arises from an expression made by the Dow Jones Defendants, namely, the Online Article, the Print Article and the Copeland Tweets, and is designed primarily to discourage public discourse on matters of public interest, and in particular
 - (i) to discourage individuals who make whistleblower complaints to the OSC and other Canadian securities regulators from speaking with journalists about their concerns; and
 - (ii) 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;
- (s) The baseless allegation that the Dow Jones Defendants, or any one of them, acted in furtherance of a “conspiracy” with and among themselves and/or McFarlane, against the Plaintiffs, simply by acting as journalists, 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 and McNish's confidential sources, and of exposing the WSJ's internationally acclaimed journalistic and investigative practices to frivolous, vexatious, abusive and completely unfounded allegations;

- (t) The Action is also designed to reinforce the Plaintiffs' reputation for engaging in 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;
- (u) Despite providing a Response to Demand for Particulars, the Plaintiffs have failed to particularize any viable claims against the Dow Jones Defendants. This further demonstrates the nature and purpose of this action as a SLAPP;
- (v) The Action does not have substantial merit;
- (w) The Dow Jones Defendants have valid defences to the Action;
- (x) The harm likely to be or have been suffered by the Plaintiffs as a result of the Dow Jones Defendants' expression is not sufficiently serious that the public interest in permitting the Action to continue outweighs the public interest in protecting the Dow Jones Defendants' expression;
- (y) Section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

- (z) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Affidavit of Rob Copeland, to be sworn; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 10, 2019

ST. LAWRENCE BARRISTERS LLP
144 King Street East
Toronto ON M5C 1G8

M. Philip Tunley (LSO# 26402J)
Tel: 647.245.8282
phil.tunley@stlbarristers.ca

Alexi N. Wood (LSO# 54683F)
Tel: 647.245.8283
alexi.wood@stlbarristers.ca

Jennifer P. Saville (LSO# 68564F)
Tel: 647.245.2222
jennifer.saville@stlbarristers.ca

Tel: 647.245.2121
Fax: 647.245.8285

Lawyers for the Defendants,
Dow Jones and Company, Rob Copeland, and
Jacquie McNish

TO: **MOORE BARRISTERS**
Professional Corporation
1600-393 University Avenue
Toronto ON M5G 1E6

David C. Moore (LSO# 16696U)
Tel: 416.581.1818 ext. 222
david@moorebarristers.ca

Kenneth Jones (LSO# 29918I)
Tel: 416.581.1818 ext. 224
kenjones@moorebarristers.ca

Tel: 416.581.1818
Fax: 416.581.1279

Lawyers for the Plaintiffs

AND TO: **JEFFREY MCFARLANE**
jmcfarlane@triathloncc.com

220 Dominion Drive
Suite B
Morrisville, NC, 27560, US

Defendant

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and- DOW JONES AND COMPANY et al.
Defendants

Court File No. CV-18-593156-00CL

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ST. LAWRENCE BARRISTERS LLP

144 King Street East
Toronto ON M5C 1G8

M. Philip Tunley (LSO# 26402J)
phil.tunley@stlbarristers.ca
Tel: 647.245.8282

Alexi N. Wood (LSO# 54683F)
alexi.wood@stlbarristers.ca
Tel: 647.245.8283

Jennifer P. Saville (LSO# 68564F)
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Tel: 647.245.2222

Tel: 647.245.2121
Fax: 647.245.8285

Lawyers for the Defendants,
Dow Jones & Company, Rob Copeland, and Jacquie McNish