

BLG client Globalive Capital Inc. has significant win at the Court of Appeal

Court of Appeal upheld motions judge's decision, dismissing Catalyst's claim for \$1.3 billion against Globalive and other defendants

Toronto (May 9, 2019) — BLG client Globalive Capital Inc. recently had a significant win at the Court of Appeal, which dismissed The Catalyst Capital Group's appeal in *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*

The Court of Appeal upheld the motions judge, Justice Hainey's, decision, dismissing Catalyst's claim for \$1.3 billion against Globalive and other defendants as barred by *res judicata* and as an abuse of process. The Court of Appeal also upheld Justice Hainey's decision to strike Catalyst's breach of contract claim against Globalive without leave to amend.

Catalyst's claim concerned its failed bid to purchase WIND Mobile in 2014. After another consortium successfully purchased WIND, Catalyst claimed against West Face Capital — a member of the consortium — arguing that the consortium's bid was based on Catalyst's confidential information that West Face had allegedly obtained from Brandon Moyse, a former Catalyst employee who was also named as a defendant in that action.

Justice Newbould dismissed Catalyst's claim in the Moyse action. He held that the consortium did not receive any of Catalyst's confidential information, and in any case Catalyst wouldn't have closed its bid for WIND and therefore suffered no damages.

Five days before the trial of the Moyse action began, Catalyst issued a claim against West Face and all the other members of the successful consortium — including Globalive — VimpelCom, the vendor, and UBS, its financial consultant, claiming that the consortium's bid was based on confidential information allegedly obtained from sources other than Moyse.

In light of Justice Newbould's decision in the Moyse action, the defendants in the second action brought a motion to stay or dismiss the second action as *res judicata* and an abuse of process. Justice Hainey allowed the motion, holding that Catalyst was seeking to re-litigate the reasons it lost its bid for WIND that Justice Newbould had already addressed in the Moyse action. He held that the new action was therefore barred by issue estoppel and cause of action estoppel, and was also an abuse of process. Justice Hainey awarded the successful defendants substantial indemnity costs.

The Court of Appeal unanimously upheld Justice Hainey's decision.

[Jim Douglas](#), [Cait Sainsbury](#), [Graham Splawski](#), [Sandra Smith](#) and a number of articling students collaborated to advocate for Globalive in respect of this significant matter.

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For more information, please contact:

Tamara Costa

National Director, Marketing and Communications

Borden Ladner Gervais LLP

TCosta@blg.com

416.350.2642