

|Court File No. CV-19-627184-00CL
CV-19-627185-00CL
and CV-19-627186-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH
SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750
B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

WRITTEN SUBMISSIONS OF
THE OFFICIAL COMMITTEE OF AFFECTED USERS

September 16, 2019

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A. OVERVIEW

1. Representative Counsel files these written submissions on behalf of the Official Committee (each as defined below) in response to the motion brought by the Trustee (as defined below) for an Order to address potential demands for production of documents and other information by law enforcement agencies, regulatory agencies and tax authorities.

B. FACTS

2. Except as necessary, the facts are set out in the Reports filed by Ernst & Young Inc. in its capacity as the trustee in bankruptcy (the “**Trustee**”) of 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange, Quadriga Fintech Solutions Corp. and Whiteside Capital Corporation (collectively, “**Quadriga**”) under the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”).

(i) Representative Counsel

3. The approximately 76,000 users who were adversely affected by the shutdown of the Quadriga cryptocurrency exchange (the “**Affected Users**”, which term does not include persons

¹ RSC, 1985, c B-3 at Schedule “A”.

who have opted out of representation by Representative Counsel (as defined below)) represent the overwhelming majority of creditor claims and are effectively the only stakeholders with an economic interest in this proceeding.

4. On February 19, 2019, the Nova Scotia Supreme Court appointed Miller Thomson LLP and Cox & Palmer (together, “**Representative Counsel**”) to represent and advocate for the interests of the Affected Users in these court proceedings (the “**Representative Counsel Decision**”).²

5. As stated by Justice Wood within the Representative Counsel Decision, Affected Users’ funds effectively finance all of the professional fees incurred in the administration of these estates.³

6. Representative Counsel’s mandate does not include conducting an independent investigation of Quadriga or their assets.⁴ The Trustee is instead responsible for tracing assets and investigating Quadriga’s affairs.⁵

(ii) The Official Committee of Affected Users

7. Key to Representative Counsel’s mandate is advocacy for the interests of Affected Users in these proceedings.⁶ In furtherance of that purpose, the Nova Scotia Supreme Court established the Official Committee of Affected Users (the “**Official Committee**”).⁷

² *Quadriga Fintech Solutions Corp. (Re)* (19 February 2019), County of Halifax, N.S., Nova Scotia Supreme Court, HFX484742 (NSSC) [Representative Counsel Decision] at Tab 1 of the Book of Authorities.

³ *Ibid* at para 44.

⁴ *Ibid* at para 10.

⁵ *Ibid* at para 16.

⁶ *Quadriga Fintech Solutions Corp. (Re)* (28 February 2019), County of Halifax, N.S., Nova Scotia Supreme Court, HFX484742 (NSSC) [Representative Counsel Appointment Order] at para. 2(c), Tab 2 of the Book of Authorities.

8. The Official Committee's mandate is to represent Affected Users, act in their overall best interests, and instruct Representative Counsel.⁸

9. The Official Committee is comprised of seven (7) Affected Users representing a diverse cross-section of Affected User interests.

10. The actions of the Official Committee bind Affected Users.⁹

11. In addition, four (4) out of five (5) estate inspectors ("**Inspectors**") are members of the Official Committee, with the fifth being a member of their legal team.

(iii) Quadriga

12. Quadriga's only directing mind, Gerald Cotten, is dead.¹⁰

13. Quadriga has no current officers or directors, no active business, and no realistic prospect of reviving the platform.¹¹

14. An estimated \$70 million of cash and \$180 million of cryptocurrency is either inaccessible, missing, or stolen.¹²

15. The Trustee has reported that it holds assets of approximately \$25.3 million in cash¹³, which in large part is comprised of Affected Users' funds that were frozen by CIBC in January 2018 and the subject of an interpleader motion before Justice Hainey.¹⁴

⁷ *Quadriga Fintech Solutions Corp. (Re)* (19 March 2019), County of Halifax, N.S., Nova Scotia Supreme Court, HFX484742 (NSSC) [Order Appointing the Official Committee of Affected Users], Tab 3 of the Book of Authorities.

⁸ *Ibid.*

⁹ *Supra* note 6, at para. 10.

¹⁰ *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 (Evidence, Affidavit of Jennifer Robertson sworn January 30, 2019 at para 9 and 51), Tab 4 of the Book of Authorities.

¹¹ *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 (Second Report of the Trustee at para 37), Tab 5 of the Book of Authorities.

¹² *Supra* note 10 at para 24(k).

16. To date, there has been no material recovery of any cryptocurrency assets.

C. SUBMISSIONS

(i) Costs and Confidentiality

17. The BIA is a commercial statute,¹⁵ the core purpose of which, relevant to this case, is the recovery of assets for distribution to creditors. In particular, the BIA provides a mechanism for the orderly liquidation of a bankrupt's estate and an ability for creditors to realize on the value of the assets of the bankrupt.¹⁶

18. The only creditors of significance in this case are the Affected Users.

19. The primary purpose of the BIA is to provide for an expeditious and inexpensive method of compelling an insolvent debtor to turn over property to a trustee for rateable distribution.¹⁷ Cooperation with law enforcement, while important, is secondary to the core purpose of this BIA proceeding.

20. The Official Committee is concerned with the drain on Affected Users' recoveries should the Trustee have to act in this role as an administrative intermediary coordinating among law enforcement and regulatory agencies for an extended period of time.

¹³ *Supra* note 11 at para 44; the Trustee also holds the following cryptocurrency inventory units: 61.33029548 Bitcoin, 33.31773499 Bitcoin Cash, 2,661.91654095 Bitcoin Gold, 851.72720131 Litecoin and 960.36200048 Ethereum as per *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 (Preliminary Report of the Trustee at page 6), Tab 6 of the Book of Authorities.

¹⁴ *Canadian Imperial Bank of Commerce v. Costodian Inc. et al.*, 2018 ONSC 6680, Tab 7 of the Book of Authorities.

¹⁵ *McCoubrey, Re*, 1924 CarswellAlta 69, [1924] 3 W.W.R. 587 at para. 13, Tab 8 of the Book of Authorities; *Port Alice Speciality Cellulose Inc.*, 2005 BCCA 299 at para. 27, Tab 9 of the Book of Authorities.

¹⁶ L.W. Houlden and Geoffrey B. Morawetz, *Bankruptcy and Insolvency Law of Canada* 4th ed (Toronto: Thomson Reuters Canada Limited, 2019) at A§1, "Introduction to the Bankruptcy and Insolvency Act", Tab 10 of the Book of Authorities.

¹⁷ *Ibid* at A§2, "Purposes of Bankruptcy and Insolvency Legislation", Tab 10 of the Book of Authorities.

21. No guidance has been provided with respect to the timeline and forecasted costs of this administrative exercise.

22. Unlike a court's broad jurisdiction to make discretionary orders under the *Companies' Creditors Arrangement Act*,¹⁸ the BIA is a rules-based system.¹⁹ The Trustee exercises its powers under the BIA with the permission of the Inspectors.²⁰ The BIA requires the Inspectors satisfy themselves that the fees and remuneration of the Trustee are just and reasonable in the circumstances.²¹

23. Here, the Trustee seeks blanket authorizations from this Court, based on the "anticipated" receipt of Production Demands. The Trustee seeks authorization to charge its and its counsel's fees and expenses to the estate. The Trustee seeks authorization to only provide the Inspectors with a summary invoice showing the total number of hours spent and fees incurred related to law enforcement and regulatory activities. Furthermore, the Trustee seeks authorization to only be required to provide this Court, in a confidential appendix, its detailed dockets at some later time for approval.

24. No other party, including the Affected Users or their counsel, would have an opportunity to review the Trustee's and its counsel's detailed dockets to assess whether these fees are reasonable.

25. In essence, the Trustee proposes to potentially provide this Court with thousands of detailed docket entries for approval, completely insulated from any manner of scrutiny by the Inspectors or the stakeholders financing their efforts.

¹⁸ R.S.C. 1985, c. C-36 at s. 11, at Schedule "A".

¹⁹ *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 at para 13, Tab 11 of the Book of Authorities.

²⁰ *Supra* note 1 at s. 30.

²¹ *Ibid* at s. 120(4).

26. The Trustee seeks all of this relief prior to even receiving a formal Production Demand.

27. There are aspects of this case that must understandably be kept confidential by the Trustee because of a legal obligation to maintain confidentiality (the “**Confidential Activities**”).

28. However, significant aspects of the Trustee’s law enforcement and regulatory activities are not subject to any confidentiality restrictions.²² This includes the Royal Canadian Mounted Police (the “**RCMP**”), who are the only disclosed law enforcement agency that appear to have made any formal request of the Trustee.²³

29. For the foregoing reasons, except with respect to Confidential Activities, the Official Committee respectfully submits that there is no reason to depart from the traditional BIA process for the approval of the Trustee’s fees and expenses or to withhold such information from the Inspectors.

30. The Official Committee (and by extension, the Inspectors), as the representative of the only creditor with an economic interest in the estate, seeks to maintain some accountability and oversight over the process, as is required under the BIA, while recognizing that certain law enforcement agencies have restricted the Trustee’s ability to communicate with the Inspectors.

31. The BIA provides that an estate is deemed fully administered only once the Trustee’s accounts have been approved by the Inspectors and taxed by the Court.²⁴ In addition, the Trustee shall have regard to any directions of the Inspectors and creditors in the administration of the

²² *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 (Third Report of the Trustee) at para 14, Tab 12 of the Book of Authorities.

²³ *Ibid* at para 16.

²⁴ *Supra* note 1 at s. 40(4).

estate, as the participation of Inspectors is to protect and advance the interests of unsecured creditors through the Trustee.²⁵

32. While the Official Committee's proposed changes may create some additional administration for the Trustee to keep track of docket entries for activities that are confidential and for activities that are not, it is respectfully submitted that the Official Committee's proposed changes strike a reasonable balance between the Trustee's confidentiality restrictions, the creditors' desire for accountability and oversight, and the process statutorily mandated by the BIA.

(ii) Service

33. This motion was served on the Service List on Wednesday, September 11, 2019, returnable on Tuesday, September 17, 2019 (*i.e.*, 3 business days' notice).

34. The Official Committee is comprised of seven (7) individuals residing across, and outside of, Canada. The Nova Scotia Supreme Court appointed the Official Committee to represent the overall best interests of Affected Users.

35. Members of the Official Committee are not compensated; they volunteer their time to assist Representative Counsel, the Trustee and this Court in these proceedings as the Court-appointed voice of the Affected Users. This case has benefited from the Official Committee's input.

36. There are significant logistical issues around coordinating and advising members of the Official Committee, which takes considerable time.

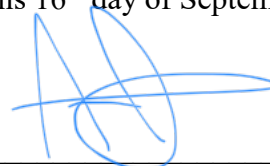
²⁵ *Supra* note 1 at s. 116(1); *Re St. Anne-Nackawic Pulp Co.*, 2005 NBQB 303 at para 5, Tab 13 of the Book of Authorities.

37. The Trustee has not received a Production Demand at this point. There does not appear to be any actual urgency to this motion.

38. Unless there is actual urgency to a motion, Representative Counsel respectfully requests that parties be mindful that the Official Committee should be provided as much time as is reasonably possible to consider motions in this case.

39. While no specific relief is being sought in respect of this concern, the Official Committee sought that these concerns be included in the record before the Court should specific relief be required in the future.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of September, 2019.



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Schedule “A”

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3:

s. 30:

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

- (a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) lease any real property or immovable;
- (c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;
- (d) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
- (e) employ a barrister or solicitor or, in the Province of Quebec, an advocate, or employ any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors;
- (f) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the inspectors think fit;
- (g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, hypothec, charge, lien, assignment, pledge or otherwise, such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;
- (h) compromise and settle any debts owing to the bankrupt;
- (i) compromise any claim made by or against the estate;
- (j) divide in its existing form among the creditors, according to its estimated value, any property that from its peculiar nature or other special circumstances cannot be readily or advantageously sold;
- (k) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim or resiliate any lease of, or other temporary interest or right in, any property of the bankrupt; and
- (l) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

s. 120(4):

120 (4) Before approving the final statement of receipts and disbursements of the trustee, the inspectors shall satisfy themselves that all the property has been accounted for and that the administration of the estate has been completed as far as can reasonably be done and shall determine whether or not the disbursements and expenses incurred are proper and have been duly authorized, and the fees and remuneration just and reasonable in the circumstances.

s. 41(4):

40 (4) When a trustee's accounts have been approved by the inspectors and taxed by the court and all objections, applications, oppositions, motions and appeals have been settled or disposed of and all dividends have been paid, the estate is deemed to have been fully administered.

s. 116(1):

116 (1) At the first or a subsequent meeting of creditors, the creditors shall, by resolution, appoint up to five inspectors of the estate of the bankrupt or agree not to appoint any inspectors.

s. 34:

34 (1) A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

(2) Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall, if requested to do so by the Superintendent, report that fact to the court as soon as practicable thereafter, and the court shall make such order as it considers fit to expedite the administration.

(3) The trustee must send notice to the Superintendent's division office of the day and time when any application for directions made under subsection (1) is to be heard and of the day and time when the trustee intends to report to the court as required by the Superintendent under subsection (2).

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36:

s. 11:

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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