

# Stikeman Elliott

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**Hand Delivered**

The Honourable Justice Darlene Jamieson  
Supreme Court of Nova Scotia  
The Law Court 1815 Upper Water Street  
Halifax, Nova Scotia

Dear Justice Jamieson:

**Re: In the matter of the bankruptcy of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange – Hfx No. 43211, 43212, 43213**

**Submissions for Motion returnable September 10, 2019 at 9:30 a.m.**

We are counsel for Ernst & Young Inc. (“EY”) in its capacity as the trustee-in-bankruptcy (the “Trustee”) of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. (“Quadriga” or the “Company”) d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the “Applicants”). On February 5, 2019 (the “Filing Date”), the Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (the “CCAA”) pursuant to the Initial Order (the “Initial Order”) of the Nova Scotia Supreme Court (the “Court”). On April 15, 2019, each of the Applicants were assigned into bankruptcy under the *Bankruptcy and Insolvency Act* (the “BIA”). EY consented to act as the Trustee of each of the estates and the role was affirmed at the first meeting of creditors held on May 2, 2019.

These submissions should be read in conjunction with the Second Report of the Trustee dated August 26, 2019 (the “Second Report”)

## **A. Issue**

These submissions address the proposed transfer of the BIA proceedings in respect of the Applicants (the “Bankruptcy Proceedings”) from Nova Scotia to Ontario.

## **B. Facts**

### **1. Background**

Prior to filing for creditor protection under the CCAA, Quadriga operated an online cryptocurrency exchange platform (the "**QCX Platform**") whereby parties interested in buying, selling or exchanging various cryptocurrencies were able to complete such transactions. On December 9, 2018, Gerald Cotten, Quadriga's founder, Chief Executive Officer and sole director passed away unexpectedly. Following the death of Mr. Cotten representatives of Quadriga were unable to access or locate cryptocurrency and funds sufficient to satisfy liabilities owed to users of the QCX Platform (the "**Affected Users**"). As result, the QCX Platform was shut down and the Applicants sought CCAA protection.

During the CCAA proceedings, the Monitor conducted an investigation into the business and affairs of the Applicants which was reported on in the the Fifth Report of the Monitor dated June 19, 2019. The Monitor's investigation revealed that Quadriga funds and cryptocurrency reserves were significantly less than the amounts expected to be held on behalf of Affected Users as recorded in the QCX Platform.

### **2. Bankruptcy of the Applicants**

On April 11, 2019, on a motion brought by the Monitor, the Court granted an order authorizing the Applicants to commence proceedings under the BIA. A primary consideration for transition from CCAA proceedings to Bankruptcy Proceedings was to make the proceedings more cost effective. At the time, it was anticipated that few court attendances and/or formal reports to the Court would be required given the nature of the BIA process and the appointment of inspectors of the Quadriga estate.

At the initiation of the CCAA proceedings and transition to Bankruptcy Proceedings, the analysis of jurisdiction or locality of the debtor was based on various factors and focused on the fact that Mr. Cotten resided in and oversaw Quadriga operations from Nova Scotia immediately prior to his death. The fact that there was no physical office location, Quadriga had no employees and had independent contractors located in a variety of locations also factored into the preliminary conclusions that it was appropriate to commence the CCAA proceedings in Nova Scotia. At the initiation of the CCAA proceedings, the Court acknowledged that there may be a future review of the jurisdiction or forum of the proceedings.

While there were touchpoints to Nova Scotia, and the Monitor and the Trustee supported the initiation of the CCAA proceedings and Bankruptcy Proceedings in Nova Scotia, the Trustee believes that circumstances have changed such that it is appropriate and cost effective for the balance of the Bankruptcy Proceedings to transfer to Ontario.

The Trustee's efforts within the Bankruptcy Proceedings are primarily focused on three areas of activity at the current time as follows: the claims process, recovery of assets addressed by the Asset Preservation Order dated April 11, 2019 and responding to and cooperating with law enforcement and regulatory authorities.

Addressing requests from law enforcement and regulators has become a significant portion of the Trustee's activities in the Bankruptcy Proceedings. Specifically, the Trustee has received a formal request for documents and data from the RCMP Financial Crime Division in Milton, Ontario and the Trustee is aware of at least four (4) independent active law enforcement or regulatory reviews certain of which have resulted in formal production requests of the Trustee. The Trustee has attempted to discuss protocols to address the various requests being made of the Trustee in a coordinated and efficient manner to minimize costs to the Quadriga estate. However, the Trustee has determined that it will be necessary to seek a court's assistance with respect to a number of issues arising from the requests.

## **C. Submissions**

### **1. The Bankruptcy Proceedings can be more economically administered from Ontario**

Section 187(7) of the BIA provides that the proceedings under the BIA may be transferred to another jurisdiction by order of the court if it determined that the proceedings could be more economically administered in another jurisdiction or if there other sufficient cause for transferring the proceedings:

The court, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may by order transfer any proceedings under this Act that are pending before it to another bankruptcy district or division.

The primary consideration under s. 187(7) is whether the estate of the bankrupt can be more economically administered in another jurisdiction which should involve consideration of both the cost of administration and the time involved in administration.

In *Pollack Itée v. Giroux*<sup>1</sup>, the trustee-in-bankruptcy brought a motion to transfer proceedings from Quebec City to Montreal. The Court granted the request under s. 187(7) finding that the administration of the bankruptcy would be more efficient and economical in Montreal. In making that finding the court considered that most of the creditors resided in the Montreal area, the trustee, the inspectors and the lawyer representing the trustee all resided in Montréal, the principal director of the bankrupt resided in Montreal and legal proceedings affecting the property of the bankrupt had been commenced in Montreal.

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<sup>1</sup> (1979), 30 C.B.R. (N.S.) 256.

The Trustee respectfully submits that given the current circumstances faced by the Trustee and primary focus of the future anticipate work streams within the Bankruptcy Proceedings, the Quadriga estate can more economically administered in Ontario rather than Nova Scotia. As outlined in the Second Report, the following considerations lead to that conclusion:

- (a) The Trustee expects the level of ongoing involvement and cooperation required of the Trustee to satisfy law enforcement and regulator demands may be significant. The Trustee also expects that certain of these requests will necessitate involvement of the court. The majority of the law enforcement agencies and regulators that the Trustee expects to address are based in Toronto;
- (b) Counsel for the Trustee and lead counsel of the Representative Counsel team are based in Toronto. Since the majority of professionals expected to be involved with the court attendances addressing law enforcement and regulatory issues are based in Toronto, the Trustee expects that it would be more cost-effective for future motions to be heard by a court in Toronto; and
- (c) The attendances necessary before the court will likely be short notice as the demands are typically time sensitive and the Trustee is under increasing pressure to comply with the requests made by law enforcement officials. The Trustee understands that the Court has a busy docket which may not be able to easily accommodate the requested attendances.

## **2. Other considerations support transferring the Bankruptcy Proceedings**

In addition to being able to more economically administer the Quadriga estate in Ontario, the Bankruptcy Proceedings now have minimal connections to Nova Scotia following the shut down of the QCX Platform and assignment of Quadriga into bankruptcy. The lack of ongoing connections to Nova Scotia, along with touch points to Ontario should be considered as “other sufficient causes” for transferring the proceedings under s. 187(7).

In *D’Addario v. Ernst & Young Inc.*<sup>2</sup>, the Court considered the following factors in determining the appropriate jurisdiction to administer proceedings under the BIA and the potential transfer of proceedings:

- (a) Where the business of the bankrupt was conducted;
- (b) Where the primary creditors were located;

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<sup>2</sup> 2014 ABQB 474.

- (c) Residence of employees of the debtor;
- (d) Location of the office of the debtor;
- (e) Location of the records of the debtor; and
- (f) Location of assets of the debtor.

The above factors are examined in the Second Report to assist the Court with considering the Trustee's motion. The Trustee also submits that examination of these factors suggests that the administration of the Quadriga estate should be transferred to Toronto:

- (a) As set out at the initial hearing, Mr. Cotten primarily operated Quadriga from his laptop with the assistance of various independent contractors all of whom operated remotely. Mr. Cotten resided in Nova Scotia and primarily worked from home. However, the business has effectively been shut down and there remains no ongoing operations in Nova Scotia. In addition, the directors of Quadriga based in Nova Scotia have resigned and no longer have any role in the governance of Quadriga;
- (b) The majority of remaining creditors of the Quadriga estate reside in Ontario. Based on the data available in the QCX Platform, 39.4% of all Affected Users (or 42.4% of Canadian Affected Users) list Ontario as their primary residence. That is followed by British Columbia (19.4% of all Affected Users or 21% of Canadian Affected Users) and Quebec (14.1% of all Affected Users or 15.2% of Canadian Affected Users). The number of Affected Users listing Nova Scotia as their home address is 1.4% of all Affected Users or 1.5% of Canadian Affected Users;
- (c) As set out in previous reports to this Court, the Trustee has been unable to locate any traditional corporate or accounting records maintained by Quadriga. However, the Trustee currently has in its possession 12 electronic devices previously utilized by Mr. Cotten including mobile phones, laptops, a desktop computer and USB devices, which are primarily held in Toronto; and
- (d) The bulk of the realizations to date by the Trustee have originated from a Ontario based third party payment processor.

The Trustee also notes that any transfer of the Bankruptcy Proceedings to Ontario will not result in a disruption to administration of the case. From the outset of the CCAA proceedings and throughout the Bankruptcy Proceedings, the proceedings managed by a joint team from EY comprised of individuals

based in Halifax and Toronto. This team is not expected to change if the Bankruptcy Proceedings are transferred to Ontario. It is also expected that resources in Toronto and Halifax will continue working on the same activities which they are currently focused on.

Finally, the Trustee notes that the major stakeholders that continue to be involved with these Bankruptcy Proceedings either support or do not oppose the transfer of the Bankruptcy Proceedings to Ontario. Notably, the Official Committee of Affected Users and Representative Counsel support the request to transition to Ontario and certain law enforcement authorities have indicated they support the transfer if it assists the Trustee's ability to respond to requests. The Trustee respectfully submits that the broad stakeholder support for the transfer should be a significant factor for the Court to consider when deciding whether to approve the Trustee's request.

For the above reasons and the other reasons set out in the Second Report, the Trustee respectfully requests the Court transfer the Bankruptcy Proceedings to Ontario.

Yours truly,

*per [Signature]*

Elizabeth Pillon

EP/kl

cc. Service List