



September 3, 2019

Via Courier

The Honourable Justice Presiding in General Chambers
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water St.
Halifax, NS B3J 1S7

My Lord/My Lady:

**Re: Quadriga Fintech Solutions Inc. et al.
Hfx No. 484742**

On February 28, 2019, this Honourable Court appointed Miller Thomson LLP and Cox & Palmer (collectively, "**Representative Counsel**") as representative counsel to the approximately 76,000 users who have been adversely impacted by the shutdown of the Quadriga CX cryptocurrency exchange platform ("**Affected Users**", which term does not include users that have elected to opt out) pursuant to an Order issued February 28, 2019 (the "**Representative Counsel Appointment Order**").

In the reasons appointing Representative Counsel, the Court noted that Affected Users are "...the only creditors of any significance [in this proceeding]"¹. The Court also noted that Affected Users' funds are effectively funding all of the professional fees being incurred.²

¹ *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 ("*Quadriga*"), at para. 43.

² *Quadriga*, at para. 44.

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Affected Users represent the overwhelming majority of claims against the Quadriga estate and are a critical voice in these proceedings.

Key to the Representative Counsel's mandate is advocacy for the interests of Affected Users in these proceedings.³ In furtherance of that purpose, this Court approved the establishment of the Official Committee of Affected Users (the "Official Committee") pursuant to an Order issued March 19, 2019 (the "Official Committee Appointment Order"). The Official Committee is comprised of seven (7) Affected Users representing a diverse cross-section of Affected User interests. The Representative Counsel Appointment Order mandates that Official Committee represent Affected Users and to act in their overall best interests.⁴ The actions of the Official Committee bind Affected Users.⁵

Subsequent to the assignment in bankruptcy of the Quadriga companies, Inspectors were appointed to oversee the administration of the bankrupt estate. Five (5) individuals were named as Estate Inspectors (the "Inspectors") at the First Meeting of Creditors including four (4) members of the Official Committee and one (1) individual from their legal team.

The Official Committee accepts and adopts the written submissions of the Trustee. In addition, Representative Counsel files these written submissions on behalf of the Official Committee in respect of the Trustee's motion to transfer these *Bankruptcy and Insolvency Act* ("BIA") proceedings to Ontario (the "Transfer Motion"). On behalf of Affected Users, the Official Committee supports the relief sought in the Transfer Motion.

Representative Counsel submits that the focus of section 187(7) of the BIA is the "economical administration" of a bankruptcy estate. In considering Section 187(7) in *Eagle River*, the Supreme Court of Canada stated that there is a public interest in the "expeditious, efficient and economical clean-up" of the bankruptcy estate.⁶ The SCC went

³ Representative Counsel Appointment Order (February 28, 2019), Doc. 43212 (NSSC), at para. 2(c).

⁴ *Ibid.*

⁵ Order, *supra* note 3, at para. 10.

⁶ *Eagle River International Ltd, Re*, 2001 SCC 92, at para. 27.

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on to state that the trustee is bestowed with the power to manage the affairs of the bankrupt "...in the most practical and economical manner possible".⁷ The BIA is a commercial statute, the administration of which is in the hands of business people.⁸

Representative Counsel respectfully submits that the test under Section 187(7) of the BIA implicitly recognizes the exercise of business judgment by the Trustee and creditors in the decision to transfer a proceeding. The Nova Scotia Court of Appeal stated in *Hoque, Re* that courts should show deference to the business decisions made by those entrusted and authorized by the BIA to make such decisions.⁹ In this case, Representative Counsel submits that those parties are the Trustee, the Official Committee and the Inspectors.

The Official Committee and Inspectors have decided that, in their collective business judgment, it is in the overall best interests of Affected Users that, if more frequent court attendances are expected to be required, any step that can be taken to reduce professional fees should be taken to maximize value for Affected Users. The transferring of these proceedings to Ontario to reduce time and travel costs to and from Nova Scotia for the Trustee and its counsel is such a step and is supported by the Official Committee and Inspectors.

Representative Counsel respectfully submits that following factors satisfy the test under 187(7) that these proceedings can either be more economically administered in Ontario or that sufficient cause exists justifying the transfer of these proceedings:

- the facts reported in the Second Report;
- the Trustee's, Inspectors' and Official Committee's exercise of their business judgment to bring and support the Transfer Motion should, respectfully, be given deference; and

⁷ *Eagle River*, at para. 13.

⁸ *McCoubrey, Re*, 1924 CarswellAlta 69 at para. 13; See also *Port Alice Speciality Cellulose Inc.*, 2005 BCCA 299

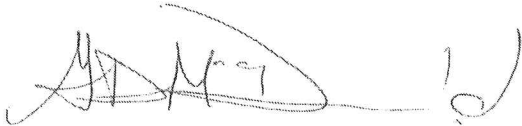
⁹ *Hoque, Re*, 1996 NSCA 30, at para. 35.

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- the Official Committee's support for the transfer represents the support of the overwhelming majority of creditor claims.

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "Gavin D.F. MacDonald". The signature is written in a cursive style with a long horizontal line extending to the right.

Gavin D.F. MacDonald

GDFM/lb

Enclosure