

Court Administration

FEB 08 2019

Halifax, N.S.

2019

Supreme Court of Nova Scotia

Hfx No. 48742

IN THE MATTER OF:

Application by Quadriga Fintech Solutions Corp, Whiteside Capital Corporation and 0984750 B.C. Ltd dba Quadriga CX and Quadriga Coin Exchange for relief under the Companies' Creditors Arrangement Act

AFFIDAVIT OF PARHAM PAKJOU
(February 7, 2019)

I, **PARHAM PAKJOU**, of the City of Toronto in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a user/customer of 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange ("**Quadriga**"), with obligations owing to me by Quadriga with respect to cash and cryptocurrency that I am unable to withdraw from the Quadriga platform, and as such, I have knowledge of the matters to which I herein depose. Where the source of my information is other than myself, I have set out that source of the information and in all cases believe such information to be true.

Background and Nature of Motion

2. On February 5, 2019, Quadriga and certain related entities (collectively, the "**Applicants**") obtained an order (the "**Initial Order**") granting, among other things, the Applicants creditor protection under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"). In support of the CCAA application, the Applicants filed the Affidavit of Jennifer K. M. Robertson sworn January 20, 2019 (the "**Robertson Affidavit**"). Details about Quadriga, including the background and circumstances giving rise to these CCAA Proceedings, are included in the Robertson Affidavit and are not repeated here unless necessary.

3. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as Monitor (in such capacity, the "**Monitor**") of the Applicants.

4. I swear this Affidavit in support of a motion for an order (a "**Representation Order**"), among other things:

- (a) appointing Miller Thomson LLP ("**Miller Thomson**") as lead counsel and Cox & Palmer LLP ("**Cox & Palmer**") as local counsel (together, the "**Representative**")

Counsel") to represent Quadriga's users and customers, who are also its creditors given the nature of the business (collectively, the "Customers");

- (b) authorizing the establishment of the Steering Committee (as defined below) to consult with and provide instructions to Representative Counsel; and
- (c) ordering that the payment of Representative Counsel's professional fees and disbursements be secured by the Administration Charge (as defined in and granted under the Initial Order) or, in the alternative, granting a separate charge over the property, assets, and undertakings of the Applicants to secure the professional fees and disbursements of Representative Counsel.

5. Prior to and since the granting of the Initial Order, this case has received considerable media attention worldwide. Through my participation in various internet forums dedicated to Quadriga and these CCAA Proceedings, I have become aware that many Customers have significant privacy concerns regarding the disclosure of their personal information, and most are not prepared to disclose their identities at this time. For the reasons described in this Affidavit, I believe that the appointment of representative counsel is necessary, so I have come forward, disclosed my identity, agreed to serve as the initial member of the Steering Committee, and brought this motion to appoint the Representative Counsel.

Need for Representative Counsel

6. I believe that it is necessary for the Court to appoint representative counsel in these CCAA Proceedings in order to ensure that Customers' interests are properly represented.

7. According to the Robertson Affidavit, Quadriga has approximately 115,000 affected Customers with obligations owing to them by Quadriga in the aggregate amount of approximately \$250 million. In my view, Customers are the largest and most important stakeholder group in these CCAA Proceedings.

8. My understanding is that the amount owing to individual Customers varies significantly from Customer to Customer. For example, I am informed by Mr. Iqbal that claims of Customers supporting Miller Thomson to be appointed as representative counsel range from as low as approximately \$100 to claims in excess of \$2 million. As such, for many Customers, I believe it would be cost-prohibitive and inefficient for them to each retain separate counsel to protect their interests. As such, I believe that Customers are vulnerable in this proceeding.

9. Given the number of Customers, I expect that management of Customer communications will require considerable resources. While I understand that a Monitor often is responsible for communicating with creditors, I believe that the Monitor's resources in these CCAA Proceedings would be better devoted toward identifying, locating and securing Quadriga's assets, rather than diverting their attention from those important tasks to communicate directly with approximately 115,000 Customers.

10. As noted elsewhere herein, Miller Thomson's lawyers have been communicating with Customers, including approximately 200 Customers that have indicated that they support Miller Thomson's appointment as representative counsel. In the course of such communications, a number of Customer concerns have already been identified. Such concerns include:

- (a) privacy concerns regarding the potential disclosure of personal information;
- (b) rumours regarding last-minute redemptions and withdrawals from Quadriga's accounts;
- (c) suspicions regarding the circumstances giving rise to the issues currently faced by Quadriga; and
- (d) the dissemination of conflicting and unverified information from various media sources.

11. I believe it is imperative that "official" channels be implemented as soon as possible through the appointment of representative counsel and a Steering Committee on behalf of Customers, to enable Customers to have a vehicle to effectively voice their concerns, to participate in these CCAA Proceedings and to provide Customers with a reliable source of information.

Appropriateness of Miller Thomson as Representative Counsel

12. I am advised by Asim Iqbal ("Mr. Iqbal"), a lawyer at Miller Thomson, and do verily believe, that, as at the time of swearing this Affidavit, Miller Thomson has received by email the support of over 200 Customers representing claims in the aggregate amount of approximately \$13.2 million for its appointment as Representative Counsel.

13. Miller Thomson is one of Canada's largest business law firms, with more than 550 lawyers spread out across 12 offices, located in Vancouver, Calgary, Edmonton, Saskatoon, Regina, London, Kitchener-Waterloo, Guelph, Toronto, Vaughan, Markham and Montréal.

14. In considering which firm to support and propose for the role of representative counsel, I considered a number of factors. The first factor I considered was what firm has experience with cryptocurrency and block chain technology in relation to insolvency. In that regard, Miller Thomson is currently acting as Canadian counsel to the insolvency administrator appointed by the Japanese court in the Mt. Gox proceeding. Prior to its collapse in 2014, Mt. Gox was the world's largest cryptocurrency exchanges. In addition, Miller Thomson has a specialty group dealing with Blockchain, Cryptocurrency and Smart Contracts.

15. Another factor I considered is the Firm's experience with insolvency and representative counsel mandates. I am informed by Mr. Iqbal that Miller Thomson's lawyers have substantial expertise and experience in large insolvency proceedings, including acting as representative counsel. In particular, I am advised by Mr. Iqbal that Miller Thomson's lawyers have experience acting in the following proceedings that are relevant to the Quadriga proceeding:

- (a) Court-appointed representative counsel in the Asset-Backed Commercial Paper CCAA proceeding;
- (b) representative counsel to a group of investors in a \$40 million syndicated mortgage structure;
- (c) representative counsel for the investors of Redstone Capital Corporation in the receivership proceeding of Redstone Investment Corporation and Redstone Capital Corporation;
- (d) Court-appointed representative counsel in the CCAA proceedings of MuscleTech Research & Development Inc.; and
- (e) Court-appointed representative counsel to the unitholders in the receivership proceedings of The Rosseau Resort Developments Inc.

16. A third factor I considered is my personal interactions and experiences dealing with lawyers at the firm with respect to Quadriga. Since the announcement of these CCAA Proceedings, I have been actively involved in the internet forums related to Quadriga and these

CCAA Proceedings and have participated in several conference calls with lawyers from Miller Thomson. I have found them to be knowledgeable, diligent and responsive. I believe they will be able to effectively fulfill the role of Representative Counsel.

17. In addition, I am informed by Gavin MacDonald of Cox & Palmer and do verily believe that, in its role as local counsel, Cox & Palmer brings substantial insolvency experience, including acting on behalf of the plan sponsor in the New Page Port Hawkesbury Corp CCAA restructuring and, in a current CCAA proceeding before the Court, acting on behalf of OpenHydro Technology Canada Ltd. as the CCAA applicant.

The Envisioned Role of Representative Counsel

18. At this time, Miller Thomson proposes that, if appointed, it would work with the Steering Committee to fulfill the following key functions:

- (a) managing ongoing communications with Customers, including providing reports as the status and progress of these CCAA Proceedings, as well creating an effective manner to provide responses to Customer queries;
- (b) acting as Customer liaison to the Monitor, in order to communicate Customer concerns and provide strategic and tactical advice to the Steering Committee;
- (c) advocating for Customer interests in Court as well as in any negotiations and other discussions;
- (d) Identifying and addressing potential divergences in the interests of members of Customer subgroups; and
- (e) Advocating for the protection of Customers' privacy in connection with these CCAA Proceedings.

19. I understand from Mr. Iqbal that, if this motion is granted, Miller Thomson, the Steering Committee and the Monitor will work together on the form of Representation Order after taking direction from this Court.

(i) Communication Strategy

20. Miller Thomson has spent time devising and reviewing with me what I believe will be a cost-efficient and effective communications strategy for this matter, which would employ the following:

- (a) establishment of a website for Customers dedicated to these CCAA Proceedings. The website would provide Customers access to status updates and relevant documents, including information and communications from Representative Counsel that would not otherwise be located on the Monitor's Website;
- (b) mass e-mailings to Customers, alerting them to new information and developments in these CCAA Proceedings;
- (c) establishment of a "Q&A" portal through which Customers can submit questions to the Steering Committee and Representative Counsel. Representative Counsel would periodically consolidate the questions and provide responses (on an anonymized basis) through the case website described above; and
- (d) as and when necessary or appropriate, hosting "town hall" meetings for Customers, who will be able to attend in person, over the telephone or online.

(ii) Steering Committee

21. I am informed by Mr. Iqbal that the Representation Order will contemplate the appointment of a steering committee (the "**Steering Committee**") for the purpose of instructing Representative Counsel. I am informed by Mr. Iqbal that Miller Thomson has received numerous expressions of interest to serve on the Steering Committee, but such parties are not prepared to disclose their identities at this time primarily due to privacy concerns regarding their personal information. I was prepared to disclose my identity for the purpose of this motion and am prepared to serve as the first member of the Steering Committee.

22. I understand that the Steering Committee will include between 5 and 7 individuals who are Customers. The Steering Committee's primary function will be to work with and instruct Representative Counsel in order for it to fulfill its mandate.

23. Given the number of Customers, I believe the appointment of a Steering Committee is an efficient and appropriate way of instructing Representative Counsel.

24. I am of the view that membership of the Steering Committee should be comprised of a representative cross-section of the different investor profiles (e.g., claim size, individuals, corporations, experience, expertise, investors/speculators) in order to provide diverse views and better instruct Miller Thomson as Representative Counsel. If a Representation Order is granted, as the first member of the Steering Committee, I would work with Miller Thomson to populate the Steering Committee in on an expedited basis.

(iii) Avoiding Duplication of Efforts

25. I believe that it is important to Customer recoveries that the Monitor's efforts not be duplicated, and that the distinctions between the respective roles of the Monitor and representative counsel be carefully delineated.

26. First, duplicative spending would be a waste of Quadriga's assets and a drain on Customers' recovery. Second, any "parallel" investigation into Quadriga's assets and affairs could inadvertently prejudice the Monitor's efforts in that regard, by interfering with its investigations into the business and affairs. For these reasons, I believe it is important that the Representation Order carefully prescribe the duties, responsibilities and scope of the representative counsel's mandate.

27. I believe that the appointment of Miller Thomson as Representative Counsel will enable the Monitor to focus on maximizing Customer recoveries and assist in avoiding a multiplicity of proceedings.

28. As noted above, in addition to Miller Thomson having being retained by me in connection with this matter, Miller Thomson has considerable Customer and stakeholder support for its appointment as Representative Counsel.

Costs – Administration Charge

29. The Representation Order contemplates the Representative Counsel's professional fees and disbursements being secured by the benefit of the Administration Charge that was granted pursuant to the Initial Order.

30. I believe that the Representative Counsel will play an integral role in these CCAA Proceedings in the manner described above. Accordingly, I believe it is necessary that the Representative Counsel receive the benefit of the Administration Charge as security for its

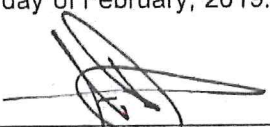
professional fees and disbursements in order to ensure its effective and continued participation in these CCAA Proceedings. Moreover, I understand from Mr. Iqbal that a charge of this nature is common when representative counsel is appointed in a CCAA proceeding.

Support for Miller Thomson's Appointment as Representative Counsel

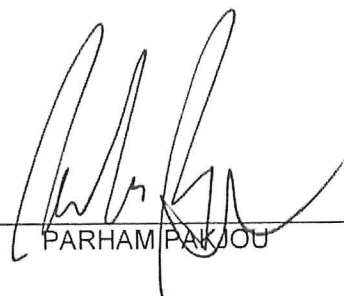
31. As noted above, as at the date of swearing this Affidavit, Miller Thomson's (together with Cox & Palmer as local counsel) appointment as representative counsel is supported by over 200 Customers representing approximately \$13.2 million in claims. Claims of these supporters range from as low as approximately \$100 to claims in excess of \$2 million.

32. I make this Affidavit in support of an Order, among other things, authorizing the Steering Committee, appointing Representative Counsel and granting a charge as security for Representative Counsel's professional fees and disbursements and for no improper purpose or delay.

SWORN BEFORE ME at the City of Toronto this
7th day of February, 2019.


A Commissioner for taking Affidavits (or as may
be)

Asim Iqbal


PARHAM PAKJOO