Court File No. & Estate No. CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

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

FACTUM OF THE RESPONDING PARTY, BLOCKCAT TECHNOLOGIES INC.
(Trustee's Motion re: Claims Process)

December 14, 2020

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Trustee in Bankruptcy of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. and not in its personal capacity

AND TO: **SERVICE LIST**

PART I - OVERVIEW

1. This motion concerns the novel issue of how to value claims for cryptocurrency balances under the *Bankruptcy and Insolvency Act* (“***BIA***”).

2. The Trustee’s motion asks the Court to give directions concerning the claims process in the bankruptcy of 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange (“**QuadrigaCX**”), including a direction that claims for CAD, USD and cryptocurrency balances be valued as at April 15, 2019 - the date of QuadrigaCX’s bankruptcy.

3. BlockCAT Technologies Inc. (“**BlockCAT**”), an Affected User and creditor, has a claim for nearly CAD$4 million. BlockCAT responds to the Trustee’s motion only with respect to the valuation date for cryptocurrency claims.

4. BlockCAT asks the Court to fix February 5, 2019 – the date of QuadrigaCX’s initial order under the *Companies' Creditors Arrangement Act* (“**CCAA**”) - as the date for valuing cryptocurrency claims. BlockCAT submits that cryptocurrency claims are unliquidated claims for the purposes of the BIA. The cryptocurrency claims arise because QuadrigaCX breached its obligation to deliver, on demand, cryptocurrency to its clients who had cryptocurrency account balances with QuadrigaCX. Cryptocurrency claims are therefore claims for damages.

5. As such, cryptocurrency claims should be valued in accordance with the applicable law for assessment of damages, which presumes that damages should be assessed at the date of breach. In light of QuadrigaCX’s shutdown and CCAA application in late January 2019, which received widespread Canadian and global media attention, it is reasonable to assess the damages for cryptocurrency claims as of February 5, 2019, when the initial order was granted under the CCAA.

PART II - SUMMARY OF FACTS

A. BlockCAT

6. BlockCAT has submitted a proof of claim for CAD balances totalling CAD$3,971,365.40. BlockCAT's claim is based on multiple requests for CAD withdrawals from the QuadrigaCX platform between February 2018 and June 2018. Neither QuadrigaCX nor its payment processors paid these withdrawals, and BlockCAT never received the funds.[1]

B. Brief History of the CCAA and BIA Proceedings

7. On or about January 14, 2019, QuadrigaCX announced on its web site that its founder, Gerald Cotten, had died on December 9, 2018.[2]

8. Following the appointment of a new board of directors on January 25, 2019, QuadrigaCX shut down its platform on January 28, 2019.[3]

9. By January 31, 2019, QuadrigaCX had updated its web site to announce that it was making an application for CCAA protection on February 5, 2019. The announcement stated that QuadrigaCX was experiencing "significant financial issues" and that in recent weeks it had been "attempting to locate and secure our very significant cryptocurrency reserves held in cold wallets, and that are required to satisfy customer cryptocurrency balances on deposit" but "these efforts have not been successful."[4]

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[1] Affidavit of Ben Stevens dated December 14, 2020 in Court File No. & Estate No. CV-19-627184-00CL (31-2560674), CV-19-627185-00CL (31-2560984) and CV-19-627186-00CL (31-2560986) at para 4, Motion Record of the Responding Party, BlockCAT Technologies Inc. ("**MR**") at Tab 1, page 2 ["**Stevens Affidavit**"].

[2] Stevens Affidavit at para 5, MR at Tab 1, page 2.

[3] Pre-Filing Report of the Proposed Monitor dated January 31, 2019 in Hfx. No. 484742 at para 34, MR at Tab 1C, page 63 ["**Pre-Filing Report**"].

[4] Stevens Affidavit at para 6, MR at Tab 1, pages 2-3 and Message from QuadrigaCX's Board of Directors dated January 31, 2019, MR at Tab 1A, page 7 [**Exhibit "A"**].

10. The proposed Monitor's pre-filing report dated January 31, 2019 disclosed:

(a) QuadrigaCX owed approximately 92,000 Affected Users in excess of CAD$260 million representing both cash account balances and cryptocurrency notionally held by Quadriga.[5]

(b) Cryptocurrency valued at approximately CAD$190 million was "missing".[6]

(c) QuadrigaCX was "unable to satisfy its obligations to users with the amount of deposits currently recorded in the QCX Platform database."[7]

(d) In light of the "missing" cryptocurrency and shortfalls in QuadrigaCX's cash balances, QuadrigaCX was "insolvent on a balance sheet and going-concern basis."[8]

(e) "Certain Affected Users have also made efforts to organize in order to bring a lawsuit against the Applicants to recover amounts owed to them by Quadriga."[9]

11. QuadrigaCX's CCAA filing attracted significant Canadian and global media attention, including articles published on February 1, 4 and 5, 2019 by the Globe & Mail, ABC News, Fox News, the Washington Post, the Guardian, the BBC, the New York Times, Reuters and CNN.[10]

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[5] Pre-Filing Report at para 36, MR at Tab 1C, page 63.

[6] Pre-Filing Report at para 32, MR at Tab 1C, page 62.

[7] Pre-Filing Report at para 32, MR at Tab 1C, page 62.

[8] Pre-Filing Report at para 36, MR at Tab 1C, page 63.

[9] Pre-Filing Report at para 37, MR at Tab 1C, pages 63-64.

[10] Stevens Affidavit at para 8, MR at Tab 1, page 3; News Articles published on February 1, 4 and 5, 2019, MR at Tab 1B, pages 9-50 ["**Exhibit "B"**"].

12. These articles consistently reported that CAD$190 million in cryptocurrency held by QuadrigaCX could not be located or accessed. For example:

> **Globe and Mail, February 1, 2019:**
>
> "The company has been unable to locate and access about $190-million worth of cryptocurrency, which includes bitcoin and Ethereum, since co-founder and sole director Gerald Cotten, 30, died on Dec. 9."
>
> **ABC News, February 4, 2019:**
>
> "About $C180 million ($190 million) in cryptocurrencies have been frozen in the user accounts of Canadian digital platform Quadriga after the founder — the only person with the password to gain access — died in December."
>
> **Fox News, February 4, 2019:**
>
> "Customers of a Canadian cryptocurrency exchange are reportedly unable to access $190 million of funds after the company's founder died with the passwords needed to access the money."
>
> **The Guardian, February 4, 2019:**
>
> "About $190m in cryptocurrency has been locked away in a online black hole after the founder of a currency exchange died, apparently taking his encrypted access to their money with him."[11]

13. In addition to the broad media coverage, in late January 2019 and early February 2019, there were also extensive discussions among QuadrigaCX customers about QuadrigaCX's situation on online forums such as Reddit and Twitter.[12]

14. On February 5, 2019, the Nova Scotia court made an initial order (the "**Initial Order**") concerning QuadrigaCX under the CCAA.[13] In accordance with the Initial Order, the Monitor:

[11] Exhibit "B", MR at Tab 1B, pages 9, 14, 18, and 25.

[12] Stevens Affidavit at para 9, MR at Tab 1, page 3.

[13] Initial Order of the Supreme Court of Nova Scotia dated February 5, 2019 in No. 484742, MR at Tab 1D, pages 79-90.

(a) placed a notice of the CCAA proceedings in the print and electronic editions of the Globe and Mail newspaper on February 9, 2019 and Feburary 16, 2019.[14]

(b) posted the initial order on QuadrigaCX's web site, the Monitor's web site and the QuadrigaCX subreddit.[15]

(c) sent the prescribed notice by e-mail to 1,658 known creditors with claims of more than $10,000.[16]

15. Following the Initial Order, the Monitor also:

(a) made various materials relating to these CCAA proceedings available on the Monitor's website;[17] and

(b) established a toll-free hotline number and dedicated email address to allow creditors and other interested parties to contact the Monitor to obtain additional information.[18]

16. On April 11, 2019, the Nova Scotia court approved a process by which QuadrigaCX's CCAA proceedings would transition to bankruptcy proceedings under the BIA. [19]

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[14] First Report of the Monitor dated February 12, 2019 in Hfx. No. 484742 at para 8, MR at Tab 1E, page 95 ["**First Report of the Monitor**"].

[15] First Report of the Monitor at para 9, MR at Tab 1E, page 95.

[16] First Report of the Monitor at para 9, MR at Tab 1E, page 95-96. Eleven were returned as undeliverable.

[17] First Report of the Monitor at para 11, MR at Tab 1E, page 96.

[18] First Report of the Monitor at para 12, MR at Tab 1E, page 96.

[19] Termination and Bankruptcy Assignment Order dated April 11, 2019 in Hfx No. 484742, MR at Tab 1F, pages 123-131.

17. On April 15, 2019, QuadrigaCX declared bankruptcy.[20]

C. Claims Against QuadrigaCX

18. The Nova Scotia court approved a bankruptcy claims process under which Affected Users could file a modified proof of claim form. Affected Users could either accept the USD, CAD or cryptocurrency balances recorded in QuadrigaCX's systems or provide supporting documentation if they disagreed with the recorded amounts.[21]

19. Affected Users may have: (1) claims for CAD balances ("**CAD Claims**"); (2) claims for USD balances ("**USD Claims**"); and (3) claims for balances of one or more of the six types of cryptocurrencies supported by QuadrigaCX ("**Cryptocurrency Claims**"). Any given Affected User may have a combination of such claims.

20. As of September 11, 2020, the Trustee has received 17,053 claims, which may include CAD Claims, USD Claims and/or multiple types of Cryptocurrency Claims, as shown in the following chart excerpted from the Seventh Trustee's Report:[22]

[20] Seventh Report of the Trustee dated November 5, 2020 in Court File No. & Estate No. CV-19-627184-00CL (31-2560674), CV-19-627185-00CL (31-2560984) and CV-19-627186-00CL (31-2560986) at para 5, Motion Record of the Trustee-in-Bankruptcy ("**MR-Trustee**") at Tab 2, page 2 ["**Seventh Trustee's Report**"].

[21] Seventh Trustee's Report at para 16 and Appendices "B", "C" and "D", MR-Trustee, at Tab 2, page 6; Tab 2B; Tab 2C; and Tab 2D.

[22] Seventh Trustee's Report at para 18, MR-Trustee at Tab 2, page 7.

	Claims Filed	Crytocurrency Units
Bitcoin	9,991	24,427.0442
Bitcoin Cash SV	2,925	7,098.0094
Bitcoin Cash	3,016	7,723.0267
Bitcoin Gold	2,573	17,934.0347
Litecoin	6,031	87,031.2937
Etherium	8,743	65,457.5983
Cdn Dollars	9,003	$ 90,184,260.91
U.S. Dollars	675	$ 6,016,960.35
Total	42,957	

21. The following chart (excerpted from the Seventh Trustee's Report) shows the CAD equivalent composition of all claims received by the Trustee through September 11, 2020.[23] The chart also shows that the date on which claims are valued in CAD materially affects the value of fiat (i.e., CAD and USD) claims as a proportion of the total value of all claims:

		Exchange Rate (FX/Cdn)		Cdn Dollar Equivalent	
	Units	5-Feb-19	15-Apr-19	5-Feb-19	15-Apr-19
Bitcoin	24,427.04	$ 4,550.25	$ 6,739.08	$ 111,149,157.70	$ 164,615,804.77
Bitcoin Cash SV	7,098.01	$ 80.55	$ 78.84	$ 571,744.66	$ 559,607.06
Bitcoin Cash	7,723.03	$ 153.88	$ 419.37	$ 1,188,419.35	$ 3,238,805.72
Bitcoin Gold	17,934.03	$ 12.58	$ 22.14	$ 225,610.16	$ 397,059.53
Litecoin	87,031.29	$ 44.95	$ 104.84	$ 3,912,056.65	$ 9,124,360.83
Etherium	65,457.60	$ 140.62	$ 223.45	$ 9,204,647.48	$ 14,626,500.35
Cdn Dollars	$ 90,184,260.91	$ 1.00	$ 1.00	$ 90,184,260.91	$ 90,184,260.91
US Dollars	$ 6,016,960.35	$ 1.31	$ 1.34	$ 7,882,218.05	$ 8,062,726.86
Total				$ 224,318,114.96	$ 290,809,126.04

Allocation of Fiat Claims to Total	44%	34%
Allocation of Crypto Claims to Total	56%	66%

22. The Trustee takes the position that "all Affected User claims are unsecured claims against Quadriga without any priority pursuant to Section 136 and should rank *pari passu* under any

[23] Seventh Trustee's Report at para 34, MR-Trustee at Tab 2, pages 14-15.

distribution of available assets."[24] BlockCAT agrees that all Affected User claims are unsecured and should rank *pari passu*.

23. The Trustee also takes the position that April 15, 2019 – the date of QuadrigaCX's bankruptcy – is the appropriate date for valuing Cryptocurrency Claims in CAD:

> As set out above, the BIA requires claims to be quantified as at the Date of Bankruptcy and that foreign currencies (in this case U.S. dollars) are required to be converted to Canadian dollars. The Trustee believes that while the BIA is silent in respect of the timing and/or conversion of cryptocurrency claims, the guidance provided by the BIA would similarly support an exchange rate in respect of cryptocurrencies, consistent with the manner in which claims in foreign currencies (and securities) are valued.[25]

PART III - ISSUE, LAW & AUTHORITIES

24. BlockCAT disagrees with the Trustee only with respect to the appropriate date for valuing Cryptocurrency Claims.

25. BlockCAT submits that February 5, 2019 – the date of the Initial Order - is the correct date for valuing Cryptocurrency Claims. Unlike the CAD Claims and USD Claims, Cryptocurrency Claims are not debt claims because they do not involve money. Rather, Cryptocurrency Claims arise from QuadrigaCX's shutdown and admission that it lacked sufficient assets to satisfy its obligations to deliver cryptocurrency to Affected Users holding cryptocurrency balances. Cryptocurrency Claims are therefore unliquidated claims for damages, which must be valued. Under the law of damages, damages for a failure to deliver property are presumptively assessed at the time of the breach. In the circumstances of this case, BlockCAT submits that Cryptocurrency

[24] Seventh Trustee's Report at para 22, MR-Trustee at Tab 2, page 10.

[25] Seventh Trustee's Report at para 35, MR-Trustee at Tab 2, page 15.

Claims should be assessed as at the date of the Initial Order, by which time it was readily apparent to Affected Users that QuadrigaCX could not satisfy its obligations.

A. Valuation of Claims Under the *BIA*

26. Subsection 121(2) of the *BIA* provides that whether unliquidated claims are provable claims is to be determined by section 135 of the *BIA*:

> **Claims provable**
>
> 121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.
>
> **Contingent and unliquidated claims**
>
> (2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

27. Subsection 135(1.1) of the *BIA* requires the trustee to determine whether an unliquidated claim is a provable claim, and if so, value it:

> **Determination of provable claims**
>
> 135(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

28. As the Trustee notes, the BIA contains specific provision for valuing foreign currency debts and, in the specific context of securities firm bankruptcies, securities (other than customer name securities).[26]

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[26] *BIA*, s. 215.1 and s. 253 "net equity".

B. Cryptocurrency Claims Are Unliquidated Claims

29. Cryptocurrency Claims are unliquidated, not liquidated, claims for two reasons. First, they are not in the nature of a debt – i.e., they are not for money due and payable – because cryptocurrency is not money. Second, valuing these claims requires investigation beyond "mere arithmetical calculation" because of the need to refer to market prices to determine the value in CAD.

30. The leading text *Bankruptcy and Insolvency Law of Canada* defines a liquidated claim as "in the nature of a debt, *i.e.*, a specific sum of money due and payable under or by virtue of a contract" and contrasts it with an "unliquidated claim", which "requires investigation beyond mere arithmetical calculation":

> A liquidated claim is in the nature of a debt, i.e., a specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation beyond mere arithmetical calculation, then the claim is an unliquidated claim: *Re A Debtor (No. 64 of 1992)*, [1994] 1 W.L.R. 264 (H.C.).[27]

31. These definitions of "liquidated claim" and "unliquidated claim" have been adopted by *BIA* and *CCAA* courts.[28]

32. Further, this view of "unliquidated claim" is consistent with how Ontario courts view "unliquidated" claims in non-insolvency contexts:

> The $20 million award of Charter damages is unliquidated because a claim is liquidated whenever the amount payable is fixed by the agreement between the parties or can be ascertained by calculation from a fixed scale of charges or other positive data, but <u>the claim is unliquidated if extraneous</u>

[27] Lloyd W Houlden, Geoffrey B Morawetz & Dr Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters Canada, 2009, e-loose-leaf) at G§37.

[28] *Nalcor Energy v Grant Thornton*, 2015 NBQB 20 at para 49 [Link]; *Stelco Inc., Re*, 2004 CanLII 24933 (ONSC) at para 53, [Link].

> evidence or an estimation of what is reasonable is required to fix the amount owing.[29]

33. Cryptocurrency Claims are not in the nature of debt because cryptocurrencies are not money. The most authoritative definition of "money" in Canadian law is the following passage from the Supreme Court's decision in *Reference Re Alberta Statutes*, which establishes that the fundamental characteristic of "money" is any medium that is broadly accepted in payment of a debt:

> True, in ordinary speech, bank credit implies a credit which is convertible into money. But money as commonly understood is not necessarily legal tender. Any medium which by practice fulfils the function of money and which everybody will accept in payment of a debt is money in the ordinary sense of the words even although it may not be legal tender; and this statutes envisages a form of credit which will ultimately, in Alberta, acquire such a degree of confidence as to be generally acceptable, in the sense that bank credit is now acceptable; and will serve as a substitute therefor.[30] (emphasis added.)

34. None of the cryptocurrencies supported by QuadrigaCX has achieved the necessary wide acceptance to be considered money.[31]

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[29] *Brazeau v Attorney General (Canada)*, 2019 ONSC 3426 at para 21 [Link].

[30] *Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100 at page 116 [Link].

[31] Stevens Affidavit at para 14, MR at Tab 1, page 4. See also Bradley Crawford, *Law of Banking and Payment in Canada* (Carswell, 2008, e-loose-leaf) at §3:10.20 and §4:50.10:

> No currently existing virtual currency fulfils the technical definition of a "money", since all lack either or both official status as legal tender under some relevant law, and/or general acceptance as a medium for the settlement of debts of all kinds. All have limited uses or acceptance, and no fixed value. Notwithstanding those defects, a transfer of a sum denominated in a virtual currency may qualify technically as a "payment". But a transfer of virtual currency is more reliably characterized as the acquisition of a speculative investment by the transferee, or (for some purposes) a transaction in the nature of a barter, but not sale under most statutory definitions.

35. Further, the federal *Currency Act* requires transactions involving "money" in Canada to be carried out in Canadian currency, currency of a foreign country, or a unit of account defined with respect to currencies.[32]

36. Decisions of courts in New Zealand, England & Wales and Singapore support the view that cryptocurrencies are a form of property.[33] None of these courts has found that cryptocurrency is "money".

37. Accordingly, the Cryptocurrency Claims are not in the nature of debts because they arise from obligations to deliver a form of property, not to pay money.

38. In addition, the value of a Cryptocurrency Claim in CAD cannot be readily ascertained by arithmetic. It can only be derived by reference to the CAD value or price of cryptocurrency, which changes on the open market. The need for this additional investigation and reference to extraneous evidence of market prices shows that Cryptocurrency Claims are unliquidated claims for the purpose of the BIA.

C. Damages for Cryptocurrency Claims Should be Assessed as at February 5, 2019

39. BlockCAT submits that damages for Cryptocurrency Claims should be presumptively assessed at the date of breach. Given that QuadrigaCX had shut down operations and admitted its insolvency by January 31, 2019, that there was extensive global media coverage of QuadrigaCX's CCAA filing and the "missing" $190 million in cryptocurrency, and that most Cryptocurrency

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[32] *Currency Act*, RSC 1985, c C-52 at s 13(1).

[33] *Ruscoe v Cryptopia Limited (in liquidation)*, [2020] NZHC 728 at para 133 [Link]; *AA v Persons Unknown & Ors, Re Bitcoin*, [2019] EWHC 3556 (Comm) at para 61 [Link]; *B2C2 Limited v Quoine PTC Limited*, [2019] SGHC (I) 03 at para 142 [Link].

Claims are apparently for $10,000 or less, BlockCAT submits that February 5, 2019 is the correct date for assessing damages for Cryptocurrency Claims.

(a) Damages for Loss of Property Are Presumptively Assessed at the Date of Breach

40. The leading text *Law of Damages* argues that damages for loss of property should be assessed at the date of the wrong, not the date of judgment, when the value of the property increases between the date of the wrong and the date of judgment. Professor Waddams argues that this is consistent with the rule applied in a falling market and avoids the possibility of "speculat[ing] at the defendant's expense, reaping the benefit of an increase in value without bearing the risk of the loss.". The author emphasizes the strength of this argument in the case of "speculative property":

> This argument seems particularly strong in the case of speculative property, such as some corporate shares. If shares promised by a seller are not delivered, the buyer ought to decide immediately whether or not to speculate in those shares. If, on the seller's breach, the buyer chooses not to buy shares of the same company, but the shares of some other company, she will be entitled to keep any profit on the substitute investment and ought not to recover from the seller the profit on an investment she chose not to make. The failure of the buyer to profit by the increase in value between the date of the wrong and the date of judgment is due not to the seller's wrong but the buyer's choosing to invest the money elsewhere. If the law permitted the buyer to recover the increase in value of the shares promised when and only when they were not replaced, there would be an incentive to the buyer, if a rise in value were anticipated, not to replace the shares, even though they were the best possible investment, but rather to choose another, less profitable, investment, knowing that failure to replace the shares would increase the defendant's ultimate liability. <u>The argument for an early crystallization of damages is that it leaves the litigants as free as possible to conduct their affairs as they would otherwise think best, thereby minimizing the total cost of prolonging the dispute.</u>[34] (emphasis added.)

[34] Stephen M. Waddams, *Law of Damages* (Carswell, 1991, e-loose-leaf) at 1.670 & 1.680.

41. Citing Professor Waddams, the Ontario Court of Appeal has stated that in general, where a plaintiff has been deprived of property, damages should generally be assessed at the date of the wrong, regardless of whether the value of the property goes up or down after that date:

> 22 … Almost invariably, the plaintiff is entitled to have his or her damages assessed at the date of the breach, not the date that judgment is obtained. A common example occurs where the value of the property of which the plaintiff has been deprived declines in value between the date of the wrong and the date of judgment. In this circumstance, the plaintiff is nevertheless entitled to damages at the date of the defendant's wrong. The same is generally true when the value of the property increases between the date of the wrong and the date of judgment. See S.M. Waddams, *The Law of Damages*, looseleaf (Aurora: Canada Law Book, 1991) at 1-28 - 1-30.[35]

42. BlockCAT emphasizes that this case involves cryptocurrencies, not securities, but it acknowledges that in cases involving securities, Canadian courts have held that damages may crystallize and be assessed not on the date of breach but within a reasonable mitigation period thereafter.

43. In particular, the *Asamera* decision by the Supreme Court of Canada holds that a claimant has an obligation to purchase replacement shares in the market within a reasonable period after the breach and that damages crystallize by the end of that period:

> Subject always to the precise circumstances of each case, this will impose on the injured party the obligation to purchase like shares in the market on the date of breach (or knowledge thereof in the plaintiff) or more frequently within a period thereafter which is reasonable in all the circumstances. The implementation of this principle must take cognizance of the realities of market operations including the nature of the shares in question, the strength of the market when called upon to digest large orders to buy or sell, the number of shares qualified for public trading, the recent volatility of the price, the recent volume of trading, the general state of the market at the time, the susceptibility of the price of the shares to the current operation of the corporation, and similar considerations. [36]

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[35] *The Treaty Group Inc. v. Drake*, 2007 ONCA 450 (CanLII) at para 22 [Link].

[36] *Asamera Oil Corporation Ltd. v Sea Oil & General Corporation et al*., [1979] 1 SCR 633 at page 664 [Link] ["***Asamera***"].

44. In *Kinbauri*, the Ontario Court of Appeal observed that *Asamera* confirms that as a general rule, when computing contract damages, the value of the loss is presumptively determined at the date of the breach of the contract.[37] The Court of Appeal noted that the Supreme Court of Canada departed from this general rule in *Asamera* because of “the special circumstances of that case”, including the number of shares in issue, market fluctuations and the time required to arrange the financing and acquisition of replacement shares.[38] Indeed, in *Asamera*, the Supreme Court noted that the cost of acquiring replacement shares was “in the range of $800,000 to $1,000,000” (in 1950s dollars) and “the market was thin and probably could not have absorbed large purchases or sustained the quoted prices in the face of large sales”.[39]

45. *Asamera* therefore does not establish any rule that there must be a lengthy mitigation period after the date of breach before damages crystallize in securities cases. Decisions after *Asamera* confirm that damages for claims involving securities will crystallize promptly after the date of breach. As the British Columbia Court of Appeal noted in *Hongkong Bank of Canada v. Richardson Greenshields of Canada Ltd*:

> It is clear from the judgment of Estey, J. in *Asamera Oil v. Sea Oil* (supra) that where a purchase or sale of marketable securities is involved the measure of what might be reasonable in a sale of goods case will not necessarily apply. Subject to market conditions and the plaintiff's knowledge and familiarity with the market, greater promptitude in mitigation will be expected in a case involving the purchase or sale of marketable securities.[40]

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[37] *Kinbauri Gold Corp. v Iamgold International African Mining Gold Corp.*, 2004 CanLII 36051 (ONCA) at para 65 [Link] [“***Kinbauri***”].

[38] *Kinbauri* at para 67 [Link].

[39] *Asamera* at page 666 & 672 [Link].

[40] *Hongkong Bank of Canada v Richardson Greenshields of Canada ltd.*, 1990 CanLII 857 (BCCA) [Link] [“***Hongkong Bank***”].

46. Likewise, in *Secord et al v Global Securities*, the British Columbia Supreme Court observed: "Shares or other securities are so readily transferable that the period for mitigation of loss following a tort or breach of contract in respect of those shares will generally be very brief."[41]

47. By way of illustration, in *Hongkong Bank*, the mitigation period was three business days from the date of knowledge of the breach.[42] In *Murray v Xerox*, Justice Hoy (as she then was) held that a "well-compensated senior executive" could have financed the purchase of replacement shares on the same day as the breach.[43]

(b) Damages for Cryptocurrency Claims Should be Assessed as of February 5, 2019

48. BlockCAT respectfully submits that the appropriate date for valuing unliquidated Cryptocurrency Claims is February 5, 2019, the date on which QuadrigaCX and other applicants obtained the Initial Order under the *CCAA*.

49. Fixing February 5, 2019 as the valuation date would be consistent with the presumption that damages for loss of property are assessed at the date of the wrong. Further, even if the logic of *Asamera* and other cases involving securities is applied, it was reasonable and entirely feasible for Affected Users with Cryptocurrency Claims to have promptly mitigated their damages by purchasing replacement cryptocurrency by February 5, 2019.

50. By the date of the Initial Order, February 5, 2019:

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[41] *Secord et al v Global Securities Corporation et al.*, 2000 BCSC 1544 at para 188 [Link] var'd on other grounds 2003 BCCA 85 (CanLII) [Link].

[42] *Hongkong Bank* [Link].

[43] *Murray v Xerox Corporation Inc.*, 2004 CanLII 19142 (ONSC) at para 79 [Link].

(a) The QuadrigaCX platform had been shut down for a week and customer balances were frozen.

(b) QuadrigaCX had publicly admitted that it could not locate or access $190 million in cryptocurrency.

(c) QuadrigaCX had publicly admitted that it was insolvent.

(d) QuadrigaCX's inability to locate of access $190 million in cryptocurrency and resulting insolvency had been widely reported in Canadian and global media.

(e) Certain Affected Users had already been considering litigation against QuadrigaCX.

51. A week later, by February 12, 2019:

(a) Notice of the *CCAA* proceeding had been published in the Globe & Mail, on various web sites and the QuadrigaCX subreddit.

(b) Email notice had been sent to all but 11 of QuadrigaCX's creditors with claims greater than $10,000.

52. Accordingly, by February 5, 2019, or very shortly thereafter, Affected Users with Cryptocurrency Claims knew or should have known that QuadrigaCX:

(a) had ceased operating;

(b) could not locate or access most of the cryptocurrency supposedly held in its cold wallet;

(c) was insolvent; and

(d) was subject to court protection under the *CCAA*.

53. In contrast to *Asamera*, where replacing the shares would have cost $800,000 to $1,000,000 (in the late 1950s) and would have been challenging due to an illiquid market, this is not a case where the size of the replacement purchase or the market conditions reasonably prevented Affected Users from purchasing replacement cryptocurrency by February 5, 2019:

(a) It appears that the average claim value is approximately CAD$13,150 (if valued as at February 5, 2019).[44]

(b) The apparent average value of the claims for bitcoin, if valued as at February 5, 2019, is approximately CAD$11,125.[45] The apparent average value of Ethereum claims is even lower, only CAD$1,052.80.[46]

(c) Shortly after the Initial Order, the Monitor and QuadrigaCX identified only 1,658 known creditors with claims worth more than $10,000.[47]

(d) As of February 2019, there were numerous alternative options within Canada and elsewhere to purchase cryptocurrency for CAD, including the Coinbase and Kraken cryptocurrency exchanges.[48]

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[44] According to paras 18 and 34 of the Seventh Trustee's Report, MR-Trustee at Tab 2, pages 7 and 14-15, the Trustee has received 17,053 completed claim forms as of September 11, 2020. These claims, if valued as at February 5, 2019, would have a total value of approximately CAD$224.4 million, of which approximately CAD$126.3 million was attributable to Cryptocurrency Claims. The average value of a claim is therefore approximately $13,150 as at February 5, 2019.

[45] There were 9,991 claims received that included claims for Bitcoin, and all Bitcoin claims had a CAD equivalent value as at February 5, 2019 of $111.1M, giving an average of $11,124.93.

[46] There were 8,743 claims received that included claims for Ethereum, and all Ethereum claims had a CAD equivalent value as at February 5, 2019 of $9.2M, giving an average of $1,052.80.

[47] First Report of the Monitor at para 9 MR at Tab 1E, pages 95-96.

[48] Stevens Affidavit at para 15, MR at Tab 1, page 4.

(e) Unlike securities markets, cryptocurrency exchanges generally operate on a 24 / 7 / 365 basis and cryptocurrency can be purchased immediately if a customer has a funded account.[49]

(f) At the time, it typically only took a few days to open and fund a new account on alternative cryptocurrency exchanges, if that was required.[50]

(g) The largest cryptocurrency markets, such as for bitcoin and Ethereum, were highly liquid, trading hundreds of millions, sometimes billions, of dollars per day in February 2019.[51] Over $4.5 billion USD of bitcoin was reportedly traded on February 5, 2019, as was over $1.9 billion USD of Ethereum.[52]

54. Accordingly, in general, to the extent each Affected User with a Cryptocurrency Claim is allowed a mitigation period, they could be reasonably expected to have promptly entered the cryptocurrency markets to replace the lost cryptocurrency and mitigate their damages by February 5, 2019. In any event, a claimant's impecuniosity is not normally an excuse which relieves the claimant of a duty to mitigate.[53]

D. Fairness Considerations

55. In considering the valuation date, the Court should also consider what valuation date Affected Users with Cryptocurrency Claims would be seeking if cryptocurrency prices had

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[49] Stevens Affidavit at para 17, MR at Tab 1, page 5.

[50] Stevens Affidavit at para 16, MR at Tab 1, pages 4-5.

[51] Stevens Affidavit at para 18, MR at Tab 1, page 5; Historical Cryptocurrency Market Data, MR at Tab 1G pages 133-182 ["**Exhibit "G"**"].

[52] Exhibit "G", MR at Tab 1G pages 163 and 171.

[53] *Alton Artisans Guild in Carriage Works Inc. v Clearway Construction Ltd.*, 1998 CarswellOnt 202 [Link: Westlaw] at paras 134-137.

declined after February 5, 2019 and were *lower* on the date of bankruptcy than the date of the Initial Order. Undoubtedly, they would be seeking to crystallize and assess their damages on February 5, 2019. Indeed, they would be correct because, as described above, in a falling market, damages are generally assessed at the date of breach. It is only fair that the same date be used in a rising market.

E. Conclusion

56. BlockCAT therefore submits that, in the circumstances of this case, February 5, 2019 is the correct valuation date, even if one allows for a reasonable mitigation period after the date of breach. By contrast, using April 15, 2019 as the valuation date would be an excessively long mitigation period. As QuadrigaCX's shutdown and insolvency were the subject of global media attention in early February 2019, there is no evidence that all Affected Users with Cryptocurrency Claims reasonably required 10 weeks to crystallize their damages and acquire replacement cryptocurrency. Using the date of bankruptcy to value Cryptocurrency Claims would effectively allow creditors with Cryptocurrency Claims to speculate at the expense of creditors with CAD and USD Claims.

PART IV - ORDER SOUGHT

57. BlockCAT respectfully requests an order fixing February 5, 2019 as the date for valuing Cryptocurrency Claims in accordance with subsection 135(1.1) of the BIA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of December, 2020.

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SCHEDULE "A":
LIST OF AUTHORITIES

No.	Case
1.	*AA v Persons Unknown & Ors, Re Bitcoin*, [2019] EWHC 3556 (Comm).
2.	*Alton Artisans Guild in Carriage Works Inc. v Clearway Construction Ltd.*, 1998 CarswellOnt 202.
3.	*Asamera Oil Corporation Ltd. v Sea Oil & General Corporation et al.*, [1979] 1 SCR 633.
4.	*B2C2 Limited v Quoine PTC Limited*, [2019] SGHC (I) 03.
5.	*Brazeau v Attorney General (Canada)*, 2019 ONSC 3426.
6.	*Hongkong Bank of Canada v Richardson Greenshields of Canada ltd.*, 1990 CanLII 857 (BCCA).
7.	*Kinbauri Gold Corp. v Iamgold International African Mining Gold Corp.*, 2004 CanLII 36051 (ONCA).
8.	*Murray v Xerox Corporation Inc.*, 2004 CanLII 19142 (ONSC).
9.	*Nalcor Energy v Grant Thornton*, 2015 NBQB 20.
10.	*Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100.
11.	*Ruscoe v Cryptopia Limited (in liquidation)*, [2020] NZHC 728.
12.	*Secord et al. v Global Securities Corporation et al.*, 2000 BCSC 1544 var'd on other grounds 2003 BCCA 85 (CanLII).
13.	*Stelco Inc., Re*, 2004 CanLII 24933 (ONSC).

SCHEDULE "B":
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.**

Claims provable

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

121(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Determination of provable claims

135 (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Claims in foreign currency

215.1 A claim for a debt that is payable in a currency other than Canadian currency is to be converted to Canadian currency

(a) in the case of a proposal in respect of an insolvent person and unless otherwise provided in the proposal, if a notice of intention was filed under subsection 50.4(1), as of the date the notice was filed or, if no notice was filed, as of the date the proposal was filed with the official receiver under subsection 62(1);

(b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or

(c) in the case of a bankruptcy, as of the date of the bankruptcy.

Definitions

253 In this Part, …

net equity means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, less any indebtedness of the customer to the securities firm on the date of bankruptcy including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy;

***Currency Act*, RSC 1985, c. C-52.**

Contracts, etc.

13 (1) Every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the payment of or the liability to pay money shall be made, executed, entered into, done or carried out in the currency of Canada, unless it is made, executed, entered into, done or carried out in

(a) the currency of a country other than Canada; or

(b) a unit of account that is defined in terms of the currencies of two or more countries.

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

Court File No. & Estate No. CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE RESPONDING PARTY, BLOCKCAT TECHNOLOGIES INC.
(Trustee's Motion re: Claims Process)

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