



Affected Users:

On March 24, 2020, the Trustee served a Motion Record seeking an Order authorizing the Trustee to comply with a production demand issued by the Canada Revenue Agency (the “CRA”).

A copy of the Production Demand can be found [here](#). A list of items sought by the CRA within the Production Demand is summarized at the end of this communication.

Upon direction of the Official Committee, Representative Counsel has been working with the Trustee and the CRA to address the Trustee’s response to the CRA’s Production Demand.

This communication presents you with (1) a summary of the background, (2) the decision and rationale of the Official Committee, and (3) the resulting negotiations by Representative Counsel.

1. Background

On September 17, 2019, the Ontario Superior Court of Justice (Commercial List) (the “Court”) granted the [Law Enforcement Order](#), which authorized the Trustee to comply with demands for information and documents issued by law enforcement agencies, regulators and tax authorities.

The [Written Endorsement](#) of the Court for the Law Enforcement Order provided that the Trustee would not comply with a Production Demand made by the CRA without providing Representative Counsel with reasonable advance notice and an opportunity to apply to the Court to seek relief.

By written notice, the CRA advised the Trustee that the corporate income tax returns of QuadrigaCX were selected for audit (the “**Quadriga Audit**”). Pursuant to [section 231.1\(1\) of the Income Tax Act](#) (“ITA”), the CRA requested a detailed list of books and records be made available to it in order to complete the Quadriga Audit (the “**Formal Request**”).

As reported by the Trustee in the [Third Report of the Monitor](#) dated March 1, 2019, the Trustee could not locate books and records that would typically be maintained in a business of Quadriga’s size and scale. In the course of administering Quadriga’s estate, the Trustee has collected information and documents from internal and third party sources. The information collected is summarized in the Third and Sixth Reports of the Monitor, and is stored in an eDiscovery database (the “**Database**”). Both reports can be reviewed [here](#).

The Database includes the personal information of Affected Users that they may have provided to Quadriga when opening their account, as well as Affected Users’ transaction history.

Given the lack of traditional books and records, the Trustee proposed to respond to the Formal Request by providing a copy of the Database to the CRA. The Database had previously been provided to RCMP in accordance with the [Law Enforcement Order](#).

As required by the [Written Endorsement](#), the Trustee gave notice to Representative Counsel about its intention to comply with the Formal Request, at which time the matter was brought to the Official Committee for deliberation.

The Official Committee deliberated and considered the advice of Representative Counsel. The debate focused primarily on the following issues: (i) the litigation costs and time associated with resisting compliance with the Production Demand, (ii) the delay such a dispute could cause in a distribution to creditors, and (iii) the nature of the privacy rights being affected by the Trustee's compliance with the Production Demand.

Representative Counsel advised the CRA and the Trustee of the Official Committee's concerns with respect to the Trustee's proposed response. In particular, Representative Counsel noted that the Formal Request was not a demand to produce documents and the Trustee, without a further order of the Court, did not have the authority to produce the Database in response to the Formal Request.

On February 26, 2020, the CRA issued a new production demand (the "**Production Demand**") pursuant to [section 231.2 of the ITA](#). In short, section 231.2 of the ITA provides that the CRA may require that any person produce any information or document, subject to certain requirements.

a. Delay to Distribution

The Official Committee's primary objective is to move the bankruptcy process towards a distribution expeditiously.

When appointed, a trustee in bankruptcy is responsible for filing the tax returns of the bankrupt. Under [section 149.4 of the *Bankruptcy and Insolvency Act*](#) (the "**BIA**"), unless a trustee retains a sufficient reserve to pay income tax claims, a trustee cannot declare a dividend until the expiration of three months after the trustee has filed all returns that are required to be filed. A tax return also needs to be filed in order to crystallize any claim the CRA may have for unpaid taxes (if any). As we know, Quadriga did not file tax returns.

Practically, to achieve the objective of expediting distributions, the prevailing view from the Official Committee's debates was that the Quadriga Audit needed to be completed to allow the Trustee to complete the filing of a tax return and crystallize any claim of the CRA for unpaid taxes. The prevailing view was that an expeditious distribution required a consensual resolution of the Trustee's response to the Production Demand to avoid the often lengthy litigation process. In evaluating the length of time the litigation could take, the Official Committee had to take into account potential appeals to each level of Court including the Supreme Court of Canada.

The prevailing view from the Official Committee's debates was that the delay to a potential distribution caused by litigating a dispute with the CRA was not in the overall best interests of Affected Users.

b. Cost

The second consideration was costs. There were two primary drivers of costs: (i) the costs of litigating the dispute, and (ii) the costs that will flow if the Trustee was required to redact all Affected User personal information from the Database before complying with the Production Demand.

The costs of litigating the dispute were anticipated to be between \$50,000 and \$100,000 for the fees of Representative Counsel taking into account the costs of potential appeals. The fees of the Trustee and its counsel would be additional. The CRA utilizes lawyers from the Department

of Justice and does not directly incur legal fees. As a result, the cost of this dispute would be disproportionately borne by the Affected Users.

The second element of costs that was taken into account was the potential costs of redacting the personal information of Affected Users. In discussions with the Trustee, it was expected that the Trustee would be required to review each item in the Database, identify information that could potentially be personal information of Affected Users, determine whether such information was in fact personal information of an Affected User and redact same (the “**AU Personal Information Review**”). There were over 750,000 items in the Trustee’s database. It was also understood that this process would likely be completed manually, albeit potentially using contract lawyers to reduce costs where appropriate possible.

In considering this second element of costs, the Official Committee noted the costs associated with the “privilege review” conducted by the Trustee. The Trustee’s and its counsels’ fees with respect to law enforcement activities, have totaled \$637,157.18, as reported [here](#). In our view, the AU Personal Information Review would be significantly more time consuming and costly than the privilege review.

c. Nature of the Privacy Interests

The Official Committee deliberated on the privacy interests at hand. There were significant divergent views among the members of the Official Committee on the nature of the privacy interests. Among other things, Committee members debated at length concerns about sharing the information with the CRA, the safeguarding of that information, the nature of the personal information contained on the Database, the value of the privacy interest affected, and the reasonable expectations of Affected Users.

Following extensive debate, the majority view of the Official Committee was that the privacy interests affected and the value of such privacy interests were inherently personal.

The Official Committee also debated the reasonable expectation of privacy. It was noted that the Quadriga Audit could have occurred when Quadriga was operational. Quadriga, having been served with a similar Production Demand, could have complied without any consultation. The bankruptcy process created a unique environment where objections could be raised prior to the information being shared with the CRA.

The Official Committee’s View

After extensive debate, in particular regarding the inherently personal nature and value of the privacy interests affected, the majority view of the Official Committee was that it was not in the overall best interests of Affected Users to spend estate resources aggressively litigating with the CRA, and, if successful, the AU Personal Information Review would then be too expensive.

In order to balance the privacy interests of Affected Users, the Official Committee (by majority vote) instructed Representative Counsel to negotiate with the Trustee and the CRA to require that the Production Demand be made public by way of the motion served by the Trustee, with ample time for individual Affected Users to have the opportunity to retain independent counsel to resist the Trustee providing the Database to the CRA.

As a result, the prevailing view was that this approach appropriately balanced the interests of the Affected Users’ privacy interests while maximizing the resources available to the estate, while also avoiding additional delays in distribution.

Production Demand Overview

In summary, the CRA has requested that EY provide the following documents and information:

- Business financial records and documents for the taxation years ended in 2016 to 2018;
- Corporate legal records; and
- Other specific information, including:
 - Source Data and Reports/Records;
 - The QuadrigaCX Exchange Platform;
 - Fiat Transactions and Third Party Processors Information;
 - Customer/User Information;
 - QuadrigaCX and the Users' Fund Information;
 - Identified Accounts Information; and
 - Financial Statement Information.

For a detailed breakdown of the above categories of documents that have been sought by the CRA for the purposes of conducting an audit under s. 231.2 of the ITA, the Production Demand can be reviewed further [here](#).

If you have any questions on the above for Representative Counsel, please email quadrigacx@millerthomson.com with the following details included in your email:

- Your full name;
- Your QuadrigaCX ID;
- The amount of your claim; and
- The nature of your claim.

Representative Counsel is committed to responding to Affected Users, rather than members of the general public.

The Official Committee can also be reached at [@qcxccommittee](https://twitter.com/qcxccommittee) on Twitter.