

JAN 22 2019

S-190709  
No.  
Vancouver Registry



*In the Supreme Court of British Columbia*

**In the Matter of the *Business Corporations Act*, SBC 2002, c. 57**

Between

**Jennifer Robertson, as Executor of the Estate of Gerald  
Cotten**

Petitioner

and

**Quadriga Fintech Solutions Corp.**

Respondent

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**PETITION TO THE COURT**

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**This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petition(s)
  - (1) 2 copies of the filed response to petition, and
  - (2) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

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- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, and
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is:  <b>CAMP FIORANTE MATTHEWS MOGERMAN LLP</b> #400 – 856 Homer Street Vancouver, BC V6B 2W5  Fax number address for service (if any) of the petitioner: (604) 689-7554  E-mail address for service (if any) of the petitioner: service@cfmlawyers.ca
(3)	The name and office address of the petitioner's lawyer is:  <b>CAMP FIORANTE MATTHEWS MOGERMAN LLP</b> #400 – 856 Homer Street Vancouver, BC V6B 2W5

### CLAIM OF THE PETITIONER

#### PART 1: ORDER(S) SOUGHT

1. An order pursuant to s. 235(1) of the *Business Corporations Act* dispensing with notice of this application;
2. An order that a general meeting of the shareholders (the "Meeting") of Quadriga Fintech Solutions Corp. ("QFS") be held at 400 – 856 Homer Street in Vancouver, British Columbia on Friday, January 25, 2019 at 10:00am (PST) for the following purposes:

- (a) to elect directors of QFS; and
  - (b) to transact such other business as may properly come before the Meeting.
3. With respect to the Meeting, an order:
- (a) dispensing with the need to set a record date for the Meeting for the purposes of determining those shareholders entitled to receive notice of, and vote at, the Meeting;
  - (b) that the notice requirements for the Meeting as required by the Articles of QFS shall be varied, and the petitioner shall distribute the Notice of Meeting on or before Wednesday, January 23, 2019 at 5:00 pm (PST) to be delivered by courier to the address of each shareholder who continues to have both a legal and beneficial interest in QFS as set out in the last available shareholder register dated November 30, 2015 (shareholder register), except notice to Lovie Horner shall be delivered by email, and notice to Crypto Consulting Group Ltd., as the beneficial owner of certain shares in QFS, shall be delivered by email;
  - (c) in the alternative to (b), that notice of the Meeting is dispensed with except that notice shall be provided by email to Lovie Horner and Crypto Consulting Group Ltd.;
  - (d) waiving the obligation under s. 185 of the *Business Corporations Act* that the directors place before the Meeting the annual financial statements of QFS;
  - (e) that the shareholders may attend the Meeting by telephone conference call; and
4. An order that the petitioner's costs of this application shall be reimbursed in full by QFS on a solicitor client basis.

## **PART 2: FACTUAL BASIS**

### **The parties**

1. Jennifer Robertson is the Executor of the Estate of Gerald Cotten, (the "petitioner"), and is the beneficial owner of 16,800,000 common shares in QFS, which is approximately 43% of the company's shares.
2. The petitioner was granted probate of the will of Mr. Cotten on January 2, 2019.
3. QFS is a corporation incorporated under the *Business Corporations Act*, SBC 2002, c 57 and has a registered records office of 1500 – 409 Granville Street, Vancouver, BC.

4. QFS is a reporting company, but does not actively carry on any business, and its shares have been cease traded.
5. QFS is the indirect parent company of 0984750 B.C. Ltd., a British Columbia corporation that is in the business of cryptocurrency exchange.
6. Since 2016, there had been only one officer and director of both QFS and 0984750 B.C. Ltd., who was Gerald Cotten ("Cotten"), one of the co-founders of these companies.
7. Cotten died unexpectedly on December 9, 2018, leaving both QFS and 0984750 B.C. Ltd. with no officers or directors.

### **Background**

8. This petition is brought because there are no officers or directors of either QFS or 0984750 B.C. Ltd., leaving 0984750 B.C. Ltd. unable to effectively carry on its business.
9. This rare and exceptional situation means that a shareholders' meeting must be held as quickly as possible to elect new directors, so that the companies can carry on business, and regularize their affairs without further delay.
10. Cotten's sudden passing left the petitioner in the unhappy state of having to ascertain the current state of the shareholdings of both 0984750 B.C. Ltd. and QFS, of which she had no direct knowledge, attempting to provide some interim leadership and direction to 0984750 B.C. Ltd. pending the appointment of new management, all while grieving the sudden and shocking loss of her husband.
11. This application has been brought to the court as quickly as possible given the extraordinary circumstances.

### **Articles of incorporation**

12. With respect to elections of new directors in the absence of any directors, the articles of incorporation of QFS (the "Articles") provide:

#### **14.7 Shareholders May Fill Vacancies**

If the Company has no directors or fewer directors in office than the number set pursuant to these Articles as quorum of directors, the shareholders may elect or appoint directors to fill any vacancies on the board of directors.

13. The Articles do not specify how or when such an election or appointment may be accomplished.

14. There are no provisions in the Articles that address calling a shareholders' meeting in urgent circumstances.
15. Quorum of shareholders is described in the articles as follows:

### **11.3 Quorum**

Subject to the special rights and restrictions attached to the shares of any class or series of series of shares, the quorum for the transaction of business at a meeting of shareholders is two persons who are, or who represent by proxy, shareholders who, in the aggregate, hold at least 5% of the issued shares entitled to be voted at the meeting.

### **Developments since Cotten's death**

16. The petitioner has obtained a copy of the QSF shareholder register, which confirms that Cotten held 16,800,000 shares, which is approximately 43% of the issued shares.
17. The next largest shareholder with 4,200,000 shares, equalling approximately 11% is Lovie Horner, a former director of QSF, and the partner of co-founder Mike Patryn.
18. Ms. Horner consents to the relief sought in this application.
19. The petitioner and Ms. Horner, together, hold more than 50% of the shares of QFS.
20. Mr. Patryn has advised the petitioner that Crypto Consulting Group Ltd. (CCG) has purchased the beneficial interest of many of the remaining shareholders of QFS, but the legal title has not been transferred as there is an outstanding cease trade order against QFS.
21. Mr. Patryn is the sole director of CCG. CCG also consents to the relief sought in this application.
22. In order for the business of 0984750 B.C. Ltd. and QFS to be carried on, new directors and officers must be appointed, which requires that the meeting be held as quickly as possible.
23. Given the nature of the business of 0984750 B.C. Ltd., it is imperative that directors be appointed so that it can resume all its corporate activities as quickly as possible.

### **Prejudice to QFS and its shareholders**

24. There will be no prejudice to any shareholders of QFS who do not receive notice of the Meeting, as the majority of the company's shareholders consent to the relief sought, and will control the outcome of the Meeting.
25. Rather, further delaying the Meeting would be prejudicial to the business and affairs of both QFS and 0984750 B.C. Ltd., which would therefore also be prejudicial to the interests of the remaining minority shareholders.

### **PART 3: LEGAL BASIS**

26. The petitioner pleads and relies on the *Business Corporations Act*, SBC 2002, c. 57 (the "BCBCA").
27. Section 186 of the BCBCA provides:

#### **Powers of court**

**186** (1) The court may, on its own motion or on the application of the company, the application of a director or the application of a shareholder entitled to vote at the meeting,

(a) order that a meeting of shareholders be called, held and conducted in the manner the court considers appropriate, and

(b) give directions it considers necessary as to the call, holding and conduct of the meeting.

(2) The court may make an order under subsection (1)

(a) if it is impracticable for any reason for the company to call or conduct a meeting of shareholders in the manner required under this Act, the memorandum or the articles,

(b) if the company fails to hold a meeting of shareholders in accordance with this Act or the regulations or its memorandum or articles, or

(c) for any other reason the court considers appropriate.

(3) Without limiting subsection (1), the court may order that the quorum or notice required by the memorandum or articles or this Act or the regulations be varied or dispensed with in respect of a meeting.

28. The court has broad discretion to make orders regarding the conduct of a meeting of shareholders to create a perception of fairness among shareholders

and to ensure that the best interests of the company are obtained. There must be sufficient evidence to justify the court's intervention in the company's affairs.

*Kingsway Financial Services Inc. v. Kobex Capital Corp.*, 2015 BCSC 2155 at para 22.

29. In the exercise of its discretion under s. 186(1), the court's focus must be on the interests of the company's shareholders as a whole, not the interests of any single group.

*Proprietary Industries Inc. v. eDispatch.com*, 2001 BCSC 1850 at para 24

30. The British Columbia Court of Appeal considered the discretion conferred under section 186 in *Telus Corporation v. Mason Capital Management LLC* in the context of a protracted shareholders' dispute. Mr. Justice Groberman noted:

It seems to me that s. 186 of the *Business Corporations Act* (quoted above) gives the court ample powers to give directions and make orders to ensure that the meetings take place in an orderly manner and without causing undue confusion.

*Telus Corporation v. Mason Capital Management LLC*, 2012 BCCA 403 at para 85.

31. The petitioner's relief is two-fold. First, the petitioner seeks an order of the court calling the Meeting itself, since there is no other method through which the Meeting may be called.
32. Second, the petitioner seeks that the time for notice to the shareholders of the Meeting be abridged that the notice need only be delivered to the two other significant shareholders by email, and by courier to the last known address for the remaining shareholders due to the very urgent circumstances giving rise to this application.
33. Holding the Meeting as proposed in the petitioner's relief sought is in the best interests of QFS and its shareholders.

### **Calling of the Meeting**

34. In the normal course, a corporation is required to issue an information circular in respect of an annual general meeting or a meeting requisitioned by shareholders. That is ordinarily done by management of the corporation, instructed and overseen by the board of directors.
35. In QFS's case, the board of directors is nonexistent. There is no means by which QFS can conduct any business or run its day-to-day operations, let alone issue an information circular regarding a shareholders' meeting. QFS has no directors to instruct, manage, or oversee any of its functions, including the calling and

administration of a shareholders' meeting. In effect, QFS currently has no voice by which it can speak for itself.

36. Absent a court order, QFS is incapable of carrying out any functions, at all.

### **Notice of the Meeting**

37. The provisions of the BCBCA confer upon the shareholders the right to elect directors of QFS who can take charge of QFS's affairs. Pursuant to the BCBCA and the Articles, shareholders are entitled to a period of notice following the calling of a shareholders' meeting.

38. The petitioner submits that the Meeting must be held on an expedited basis. Typically, when a shareholders' meeting is called, directors remain in control of the corporation while the notice period elapses. Once the meeting is held, new directors are elected. The chain of command is uninterrupted. In those circumstances, the time for notice does not occasion any prejudice to the shareholders or the corporation, as the corporation remains under the guidance of a board of directors during the notice period.

39. Since Cotten's death in December 2018, QFS has had no guidance, management, or administration. No decisions about its business can be made. QFS cannot return to its normal operations unless and until the shareholders elect new directors. The petitioner submits that need for new directors is exigent, and should not be delayed by the standard notice period required before a shareholders' meeting can convene. The shareholders of QFS must elect new directors urgently.

40. The petitioner proposes a brief form of notice as set out as an exhibit to her affidavit, which confirms the date and place of the meeting, a conference call-in option, the purpose of the meeting and the proposed slate of new directors for QFS, along with a form of proxy.

41. The petitioner submits that the situation as described warrants an abridged notice period to the shareholders regarding the Meeting. The abridgment of the notice period will ensure that the Meeting occurs as soon as possible, such that the current affairs of QFS can be addressed and remedied by its shareholders.

### **Best interests of QFS and its shareholders**

42. The petitioner submits that it is in the best interests of QFS and its shareholders for the court to intervene and call the Meeting on the terms proposed.

43. The petitioner is the beneficial owner of 43% of the shares in QFS. Ms Horner and CCG will support the petitioner at the Meeting. In the aggregate, the petitioner, Ms. Horner and CCG own greater than the 50% of shares, and their presence, in person, by telephone, or by proxy will establish quorum at the Meeting.



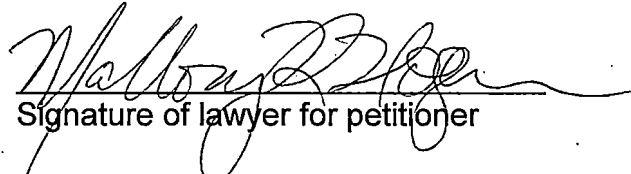
- 44. The urgencies currently affecting QFS's business, and by default its shareholders' interests, are such that it is impracticable to wait to hold the Meeting and observe the standard notice period.
- 45. It is imperative that the Meeting be called and held on an expedited basis. As long as QFS continues to be without directors, the company's affairs will be in jeopardy, which has a direct negative impact on its shareholders.
- 46. Given the unique and exigent nature of the underlying facts, the petitioner respectfully requests the court exercise its discretion under section 186 of the BCBCA and grant the relief sought.

**PART 4: MATERIALS TO BE RELIED UPON**

47. Affidavit #1 of Jennifer Robertson sworn on January 21, 2019.

The petitioner estimates that the hearing of the petition will take 30 minutes.

Date: January 22, 2019



Signature of lawyer for petitioner

Mallory K. Hogan

*To be completed by the court only:*

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master