



# CRYPTOCURRENCY LITIGATION & DISPUTES

***Michael Garellek***  
**Partner**



# CRIMINAL LAW – EARLY BITCOIN LITIGATION

- **Early Cases – Silk Road Trilogy.**

1. *Ulbricht* (February 2015)
2. *Faiella and Shrem* (January 2015)
3. *Bridges and Force* (March 2015)



- **General Criminal Cases** – Hacking of Bitcoin wallets, kidnappers requesting ransom payments in Bitcoin, terrorist financing
- **Anti-Money Laundering / Bank Secrecy Act Violations** –
  - *Coin.mx - Murgio and Lebedev* (July 2015)

# SECURITIES REGULATORS AND THEIR MANDATE

- **Active Agencies:** Autorité des marchés financiers (“AMF”), Ontario Securities Commission (“OSC”), U.S. Securities and Exchange Commission (“SEC”)
- **Mandate:** Protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation
- **Prescribed Disclosure:** The prospectus and continuous disclosures – compare with ICOs which require expert technical knowledge to really understand
  - Whitepapers
  - Simple Agreement for Future Tokens (SAFTs) – the investment contract

# INITIAL COIN OFFERINGS (ICOs)

- **Canadian Guidance**

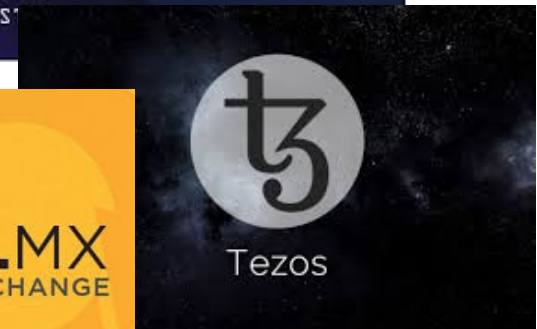
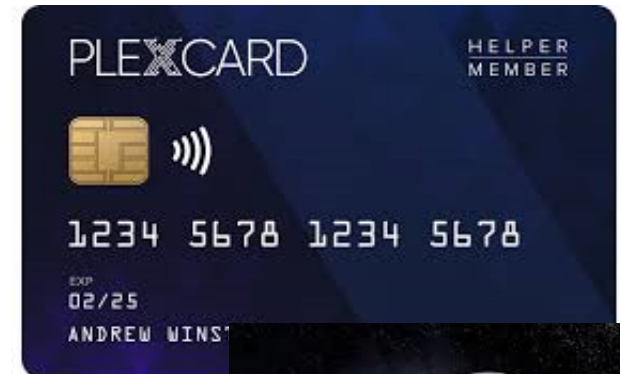
- OSC News Release “Highlights Potential Securities Law Requirements for Businesses Using Distributed Ledger Technologies” (March 2017)
- CSA Staff Notice 46-307 – *Cryptocurrency Offerings* (Aug 2017)
- OSC Tweet (Oct 2017) – encouraging reaching out to the LaunchPad
- AMF Press Release (Jan 2018) – avoid “costly surprises”

- **US Guidance**

- SEC Statement on Promotion of ICOs by Celebrities (Nov 2017)
- SEC Chairman Jay Clayton Statement on Cryptocurrencies (Dec 2017)

*“Prospective purchasers are being sold on the potential for tokens to increase in value – with the ability to lock in those increases by reselling the tokens on a secondary market – or to otherwise profit from the tokens based on the efforts of others. These are key hallmarks of a security and a securities offering.”*





# ICO – SECURITIES LITIGATION - US

- **Enforcement Actions**

- **SEC**

- DAO (July 2017) – an unincorporated entity – in July 2016 a hacker diverted 1/3 of the proceeds and per the SEC investigation, the token is a security and the platforms trading DAO are exchanges - \$150 M raised
    - REcoin (Sept 2017) (parallel criminal) – founder Maksim Zaslavskiy arrested for attempting to sell unregistered securities by luring investors with false promises of sizeable returns from novel technology - \$300 K raised
    - Centra Tech (2018) (parallel criminal) – alleged fraudulent issue of CTRs based on false claims and market manipulation - \$32 M raised and promoted by celebs
    - In 2018, reports of dozens of subpoenas being issued to crypto-related tech companies

# ICO – SECURITIES LITIGATION CANADA

- **Enforcement Actions**

- **AMF**

- Plexcoin (July – Nov 2017) (parallel proceeding by SEC) – TMF issued *ex parte* orders against PlexCorps (unincorporated) and Dominic Lacroix but they continued to raise funds – later found in contempt
    - Antivolatility (Apr 2018) – TMF issued *ex parte* CTO and an order closing various websites. Suspected raising funds for crypto issuance (ZZZs) – investigation is ongoing



- **OSC**

- USI Tech (Feb 2018) – multi-level marketing scheme from Dubai selling bitcoin “BTC” packages – temporary CTO issued and similar CTO in by the TMF in March
    - Enquiries sent to cryptocurrency exchanges and token platforms

# CIVIL - LITIGATION

- Few judicial opinions or significant cases in this area
- Largely contractual disputes involving participants in crypto-currency space (e.g. disputes over bitcoin mining equipment, etc.)
- Several large cases appear to be on their way / could have resulted:
  1. **Tezos**: Raised approx. \$232 M in tezzies in the ICO. Civil class action filed in California (Oct 2017) alleging sale of unregistered securities, securities fraud, false advertising and unfair competition
  2. **R3 v. Ripple Labs** : Litigation in the State of New York (Sep 2017) between a banking consortium and cryptocurrency platform alleging failure to honor option to buy 5 BN units of XRP for 1 cent
  3. **Others**: Parity, NextBlock, etc.



# QUESTIONS?