Cryptoassets and Securities Law: A Game Changer in Quebec!

Summary

A recent decision by the Financial Markets Administrative Tribunal ("FMAT" or "Tribunal") re-examines the legal classification of cryptoassets in Securities Law[1] .

In this case, the Autorité des Marchés Financiers ("AMF"), the Quebec Securities Regulator, sought prohibition orders and blocking orders against the respondents. The respondents acted primarily as financial influencers on social media in connection with cryptocurrencies. Essentially, the AMF alleged that these "Finfluencers" had violated the Quebec *Securities Act* ("SA") by implementing a manipulation scheme known as "pump and dump" of cryptoassets.

The Tribunal granted only two of the prohibitions requested by the AMF in connection with unregistered brokerage activities. More significantly, however, the Tribunal reassessed the law applicable to conservatory measures and cryptoassets, particularly with regard to their classification as investment contracts subject to securities legislation:

- **Cryptoassets and investment contracts**: An investor who trades cryptoassets does not enter into an investment contract, and their "manipulation" cannot constitute a violation of the SA because these assets are not “securities”.

- **Social media**: Offering the public subscriptions to social media groups where cryptoassets are discussed and buy/sell signals are given does not constitute an investment contract.

- **Burden of proof**: outside certain exceptions, the burden of proof applicable in connection with applications for Conservatory Measures requires conclusive and preponderant evidence, not *prima facie* evidence.

[1] *Autorité des Marchés Financiers* v. *Gagnon et al.,* 2024-033-002, August 22, 2025.

These conclusions therefore rendered the provisions and violations under the SA inapplicable. In other words, if there is no investment contract, there is no security and the *Securities Act* does not apply.

These three conclusions constitute a major re-examination and change in the treatment of cryptoassets in Securities Law. In particular, the Court chose to follow the path laid out by recent U.S. case law in Ripple[2] . This decision distinguishes between the sale of cryptoassets by promoters, which may qualify as an investment contract, and sales made by investors on decentralized exchange platforms, which do not qualify as investment contracts.

[2] *Securities and Exchange Commission* v. *Ripple Labs Inc., Bradlye Garlinghouse and Christian A. Larsen*, 2023 US Dist. LEXIS 120486 (SDNY July 13, 2023 (United States District Court – Southern District of New York).

Detailed analysis

1. **Burden of proof**

The Court makes an important finding regarding the burden of proof.

In particular, it emphasizes the importance of applying the correct burden of proof with regard to the freezing orders sought by the AMF as a “conservatory” measure, pending the outcome of a full invetigation by the securities regulator. The Court emphasizes that a total freeze of a person's assets is a drastic measure because it has the immediate effect of preventing that person from spending a single penny to meet their basic needs. This places the person in a position of extreme financial hardship, in addition to severely restricting their ability to retain a lawyer to defend themselves.

. **Ex parte hearing**

Section 115.1 of the *Act Respecting the Regulation of the Financial Sector* ("ARRFS") provides for an exception for the Tribunal with regard to the burden of proof:

> However, a decision adversely affecting the rights of a person may, if urgent action is required or to prevent irreparable injury, be rendered without a prior hearing.

The judge emphasizes that in such circumstances, the applicable burden of proof is "probative evidence of apparent breach." This burden is generally referred to as a "prima facie" burden. However, the applicable context is that of an *ex parte* hearing (in the absence of a party) or, at the very least, where a context and evidence of urgency or irreparable injury is presented by the AMF.

Since the case was not *ex parte* and neither urgency nor irreparable injury was alleged or supported by conclusive evidence from the AMF, the *prima facie* burden of proof was inapplicable.

. **Other situations**

Outside the specific case provided for in section 115.1 ARRFS, the ordinary burden of proof, that of a preponderance of evidence, is always applicable.

Therefore, this was the applicable burden of proof that the AMF had to meet in the present case.

2. **Investment contract**

All of the breaches alleged by the AMF in this case were essentially related to the concept that the cryptocurrency at issue was an investment contract within the meaning of the SA and hence subject to securities regulation and the remedies provided for in the SA.

The Court noted that the criteria for an investment contract are as follows:

- A contract whereby a person undertakes;
- having been led to expect profits;
- to participate in the risk of a venture;
- by a contribution of capital or loan;
- without having the required knowledge to carry on the venture
  or
  without obtaining the right to participate directly in decisions concerning the carrying on of the venture.

The Court also emphasizes that the term "cryptoasset" is not defined as a security in the SA. Therefore, purchase, sale and promotion of cryptoassets are not regulated by the SA unless the cryptoassset in question meets all the criteria of an investment contract.

3. **Alleged breaches**

The alleged breaches in this matter took three forms:

1. Trading cryptoassets for the benefit of third-party investors;
2. Offering subscriptions to private groups on social media to receive buy-sell signals for cryptoassets;
3. Manipulating the cryptoasset market ("pump and dump").

The Court concluded that only the first breach had been proven and dismissed the other two.

. **Trading cryptoassets for the benefit of a third-party investor**

At a preliminary level only in the context of seeking a freeze order, the court concluded that trading cryptoassets for the benefit of an investor in return for remuneration meets the criteria of an investment contract.

The fact that Finfluencers offer such services without being registered with the AMF therefore constituted an apparent breach of the SA.

- **Offering subscriptions to private groups on social media to receive buy-sell signals for cryptoassets**

The decision concluded that offering a subscription to groups on social networks, whether for remuneration or not, does not constitute an investment contract.

The members of these groups had the right to participate directly in decisions concerning the carrying on of the venture, as they clearly had the right to follow or not follow the recommendations to buy and sell cryptoassets.

The Court also pointed out that there is no evidence that the members of the groups did not have the knowledge required to carry on the venture. On the contrary, the relatively high membership fees and the stated objectives of the groups, namely to publish buy and sell signals for cryptoassets, are likely to attract investors with a high level of sophistication and knowledge of the world of cryptoassets and stocks.

In cases where no membership fee is required, the contribution criterion is simply absent and no investment contract can exist.

More broadly, the Court emphasized that classifying subscriptions to financial publications, often by unregistered financial experts, as investment contracts would deprive investors of an important source of information.

- **Cryptoasset market manipulation (pump and dump)**

The decision concludes that the Finfluencers did not violate the SA in connection with the manipulation, promotion, and dumping ("pump and dump") of the cryptoasset market. This is because the transactions and cryptoassets in question did not qualify as investment contracts.

The judge first notes that the term "cryptoasset" is not defined in the Securities Act. The SA would only apply to a cryptoasset if it qualified as an "investment contract."

If a cryptoasset is purchased from a promoter, an investment contract might potentially exist because the purchaser may be trying to participate in the underlying

business or venture by contributing funds. However, all other criteria for an investment contract must also be met.

Conversely, there can be no investment contract where a person purchases the same cryptoasset from another holder of the cryptoasset because the contribution does not go to finance the underlying business or venture.

When investors purchase cryptoassets through decentralized exchange platforms (DEX) for primarily speculative purposes, the money contributed is not paid to the promoters to finance the underlying business. The money is paid to other token holders who have simply decided to sell their tokens. These are not investment contracts, but simple purchases/sales for essentially speculative purposes.

In this sense, the nature of a cryptoasset and its potential classification as an investment contract may vary depending on the economic reality surrounding each transaction.

4. American inspiration and recommendations to the Legislator

The judge highlights several legal developments in the US that inform his decision. He pointed out that securities law and the concept of investment contracts derive from US law[3] .

The judge highlighted the rapid evolution of legislation and case law on cryptoassets:

- The *GENIUS Act*, which aims to enable and regulate activities involving the use of stablecoin-type cryptoassets;
- The *Ripple* decision, which distinguishes the existence of an investment contract between a contribution to the promoters of a cryptoasset for the purpose of financing an underlying venture and where individuals purchase cryptoassets from other investors on a DEX. These transactions, known as "programmatic sales," are impersonal and are not related to a transaction with a cryptoasset promoter. An investment contract may exist in the case of a

[3] *SEC v. W. J. Howey Co.,* Supreme Court of the United States of America, 328 U.S. 293 (1946) essentially by the Supreme Court of Canada in *Pacific Coast Coin Exchange* v. *Ontario Securities Commission*, 1977 CanLlll 37 (SCC), (1978) 2 SCR 112 and by the Quebec legislature in the definition of "investment contract" contained in the second paragraph of section 1 of the *Securities Act*.

direct transaction with a promoter but cannot exist in the case of "programmatic sales."

The Court emphasizes that it must exercise caution in order to avoid unexpectedly blocking the development of the financial and commercial sector in relation to cryptoassets. In particular, the Legislator must be allowed, in light of these developments, to take the decisions it deems appropriate to promote the competitiveness and integrity of the financial market while providing adequate protection for the investing public.

5. **Orders**

In view of the violation relating to cryptoasset trading for the benefit of third parties, the following prohibitions have been issued:

- Prohibiting the respodents from engaging in any activity with a view to carrying out, directly or indirectly, a transaction concerning an investment contract.
- Prohibiting the respondents from acting as advisors or investment fund managers.

However, these prohibitions must be read in light of the Tribunal's overall findings.

As the Tribunal concluded that a cryptoasset did not qualify as an investment contract when bought and sold between investors, this type of transaction remains permitted.

Activities on social media, such as offering subscriptions to discussion groups on cryptoassets, also remain permitted.

Trading on behalf of third-party investors without being duly registered would be prohibited by the above prohibitions.

It should also be noted that the Court did not grant any of the freeze orders sought by the AMF, considering that the majority of the alleged offenses were not proven to have occurred. Furthermore, the AMF had not alleged that investors lost money, nor had it presented any conclusive evidence that the respondents were still engaged in illegal activities or that they were in possession of sums belonging to investors.

6. **What happens now?**

The FMAT decision radically changes the legal landscape for the analysis of cryptocurrencies in Quebec. Since the securities regime is standardized across provinces, its conclusions may also impact the rest of Canada.

This decision will likely have a significant impact in Quebec and Canada in the area of cryptocurrencies and securities. Regulators in other provinces will be interested in closely monitoring this decision and its developments.

The AMF may seek to appeal this decision in order to overturn the outcome. There are three possible levels of appeal: the Court of Quebec, the Quebec Court of Appeal, and ultimately the Supreme Court of Canada. As for the latter, the conclusions of the decision may have national significance, warranting a Supreme Court hearing, but it is too soon to assess. What is clear is that if the decision is appealed, it may take several years before a final and definitive outcome. In the interim, the entire Canadian cryptocurrency market will remain in legal limbo, awaiting confirmation or reversal. This is an unfortunate situation considering the unpredictability this would create and the economic importance of the cryptoasset market.

It is conceivable that several current and future cases before the financial courts will be influenced by this decision. It is even possible that individuals involved in previously settled cases may seek to reopen their cases on the basis of this decision.

It is also possible that the Quebec Legislator and those in other provinces will seek to correct the shortcomings raised by the Court and amend the *Securities Act* and its equivalents in other provinces. This is particularly true in light of developments in the United States, which are more favorable to the cryptoasset market and give that economy an edge over the Canadian market.

It is also important to note, for financial influencers in Quebec, that this decision contradicts the publications issued by the AMF in their regard. See in particular, this recent AMF publication[4] . It would be wise for influencers to review their obligations after reading this decision.

The views and opinions expressed in this article are for informational purposes only and do not constitute legal advice. Readers should consult a qualified legal professional on their specific circumstances.

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[4] Autorité des Marchés Financiers, " Finfluencers: Master the rules of the game!", https://lautorite.qc.ca/en/professionals/finfluencers.

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