

March 26, 2025

ONTARIO COURT OF APPEAL UPHOLDS CERTIFICATION OF CLASS PROCEEDING ON BEHALF OF CRYPTOCURRENCY TRADERS: CONFIRMS THAT THE NOVELTY AND INHERENT RISK OF SUCH FINANCIAL INSTRUMENTS NECESSITATES ADEQUATE & TIMELY DISCLOSURE

by [Corey Groper](#)

On March 21, 2025, the Ontario Court of Appeal upheld the certification of a class proceeding on behalf of cryptocurrency traders against the world's largest crypto and asset trading platform, Binance Holdings Limited ("Binance"). The Court's decision highlights the complexity of cryptocurrency, which has been said to present "overarching investor protection concerns"¹, requiring enhanced disclosure requirements to ensure that investors are appropriately informed.

Background

Between 2019 and 2022, Binance, a Cayman Islands corporation with related entities, sold crypto derivative products to Canadian retail investors through its website.² A derivative is a financial instrument the value of which is derived from or based on an underlying interest or asset. The cryptocurrency derivatives sold through the Binance website (the "Cryptocurrency Derivatives") were contracts which derived their value based on the price movement of cryptocurrencies.³ Investors could purchase the Cryptocurrency Derivatives by creating a general Binance account. They would then pay for the Cryptocurrency Derivatives by loading funds or other assets into a digital wallet on the website.⁴

The Capital Markets Tribunal (the "CMT") has characterized cryptocurrency derivatives as "novel and complex products that are inherently risky".⁵ As cryptocurrency derivatives have been held to be securities within the meaning of the *Ontario Securities Act* (the "OSA")⁶, sellers are required to file a prospectus and deliver it to investors prior to selling them.⁷ Despite this, Binance never registered with the Ontario Securities Commission (the "OSC"),

¹ *Mek Global Limited (Re)*, 2022 ONCMT 15, at [para. 65](#).

² *Lochan v. Biance Holdings Limited*, 2024 ONSC 2302 ("*Lochan ONSC*"), [para. 1](#).

³ *Lochan v. Binance Holdings Limited*, 2025 ONCA 221 ("*Lochan ONCA*"), [para. 6](#).

⁴ *Lochan ONSC*, [para. 6](#).

⁵ *Lochan ONSC*, [para. 8](#), citing *Polo Digital Assets, Ltd. (Re)*, 2022 ONCMT 32, at [para. 68](#).

⁶ *Lochan ONSC*, [para. 8](#).

⁷ *Lochan ONSC*, [para. 9](#).

nor did it seek an exemption from registration. Moreover, Binance did not file a prospectus with respect to any of its offerings, including Cryptocurrency Derivatives.⁸

In June 2022, the plaintiffs commenced a proposed class action against Binance on behalf of all retail purchasers of Cryptocurrency Derivatives. The claim is based on section 133 of the OSA, which provides a right of action for rescission or damages against a company selling securities that fails to file or deliver a prospectus.⁹ The claim alleges that prospectus requirements are fundamental to Canadian securities laws since they ensure that investors are provided with full, true, and plain disclosure of all material facts relating to the securities being offered. It further asserts that such disclosure is particularly important in the context of Cryptocurrency Derivatives, where prices are said to be highly volatile and are typically highly leveraged, magnifying both the profits and losses associated with such transactions.¹⁰

The Certification Hearing

In certifying the proceeding as a class action, the motion judge found that the plaintiffs had little difficulty in satisfying the cause of action criterion under s. 5(1)(a) of the *Class Proceedings Act* (the “CPA”), since: (i) as noted, cryptocurrency derivative contracts have previously been held to be “securities” under the OSA; and (ii) the OSA requires that persons engaged in the business of trading in cryptocurrency contracts be registered and comply with prospectus requirements unless a specific exemption applies.¹¹ Since the claim alleged that Binance sold the Cryptocurrency Derivatives in violation of those requirements, it was not plain and obvious that it failed to disclose a recognizable cause of action. To the contrary, the motion judge stated that the causes of action pleaded in the claim fell “squarely within the statutory terms, and there [was] at least some basis in fact in the record to substantiate them.”¹²

The Appeal

Binance appealed the certification decision on a number of grounds, the first of which was that the motion judge erred in finding that the claim pled a reasonable cause of action because the proposed class members were not entitled to the remedy provided by s. 133 of the OSA, which is only available in cases where a prospectus has been filed but not delivered. Binance’s argument was based on the language of s. 71(1) of the OSA, the breach of which is required in order to engage the remedy available under s. 133. That provision requires the seller to deliver “the latest prospectus and any amendment to the prospectus filed”. According to Binance, the use of the word “filed” means that the filing of

⁸ Lochan ONSC, [para. 9](#).

⁹ Lochan ONSC, [para. 1](#).

¹⁰ Lochan ONCA, [paras. 9-10](#).

¹¹ Lochan ONCA, [para. 13](#).

¹² Lochan ONCA, [para. 14](#).

a prospectus is a necessary precondition for an offence under s. 71(1). In other words, absent a filed prospectus, s. 71(1) (and, by extension, s. 133(1)), has no applicability.¹³

Although the Court of Appeal acknowledged that the class's claim for a remedy under s. 133 may prove unsuccessful at trial, the issue on a certification motion is not whether the claim will ultimately succeed but, rather, whether it is "certain to fail".¹⁴ The Court was not prepared to make such a finding, especially after interpreting s. 71(1) of the OSA in a manner consistent with the purpose and objective of the statutory scheme (i.e., protecting investors from unfair, improper or fraudulent practices through, among other things, requirements for the timely, accurate and efficient disclosure of information).¹⁵

According to the Court of Appeal, the interpretation advanced by Binance would result in civil liability for failing to deliver a prospectus that had been duly filed, while "no such liability would attach to the arguably more serious and harmful circumstance where no prospectus has been filed at all". This, according to the Court, would "reward prior non-compliance and may well create an incentive for issuers not to file a prospectus, thereby reducing the disclosure available to investors".¹⁶ The Court went on to note that the absence of adequate disclosure is particularly concerning in relation to cryptocurrency derivatives which, as noted above, have been described as "novel and complex products that are inherently risky" and pose "serious investor protection concerns".¹⁷

Takeaways

While it remains to be seen whether the class will ultimately succeed in their claim for relief under s. 133, the Court provided useful direction regarding the critical importance that the prospectus requirement plays in protecting the general public and safeguarding investors from potentially illicit schemes. The decision also serves as a helpful reminder of the core purposes of the OSA, namely, "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets"¹⁸. The interpretation promulgated by Binance, which would deny investors a civil remedy for a seller's failure to file a prospectus, is obviously incompatible with these goals. Finally, the decision highlights the inherent risks and complexity involved in cryptocurrency, suggesting that enhanced disclosure requirements may be required to ensure that investors are adequately protected when trading in such potentially volatile instruments.

¹³ Lochan ONCA, [paras. 34-35](#).

¹⁴ Lochan ONCA, [para. 40](#).

¹⁵ Lochan ONCA, [paras. 42-43](#).

¹⁶ Lochan ONCA, [para. 44](#).

¹⁷ Lochan ONCA, [para. 45](#).

¹⁸ *Securities Act*, RSO 1990, c S.5, [s. 1.1](#).