Secondary Market Misrepresentation in Crypto: Insights from the Ontario Superior Court of Justice

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A recent decision by the Ontario Superior Court of Justice in *Banach v. Galaxy Digital Holdings Ltd., 2026 ONSC 4534* is emerging as a critical reference point for digital asset investors, class actions, and corporate disclosure obligations. The judgment establishes decisive principles regarding secondary market misrepresentations, the assessment of materiality for cryptocurrency disclosures, and the liability associated with the promotion of algorithmic stablecoins. The ruling also sheds light on the broader implications for the permissibility and opportunity of class action crypto disputes globally. **Background**The precedent case arose from a class action against Galaxy Digital Holdings Ltd. (“Galaxy”), an investment company heavily engaged in the digital asset industry, and its senior management. The plaintiff alleged that Galaxy failed to disclose material risks associated with its core digital asset holdings, specifically Luna and its associated algorithmic stablecoin, TerraUSD. Between May 2021 and May 2022, Galaxy’s CEO heavily promoted Luna. However, in May 2022, Luna and TerraUSD entered a “death spiral,” wiping out $40 billion in market value globally, which resulted in a 42.9% drop in Galaxy’s share price and a $300 million quarter-to-date loss.

The plaintiff claimed that Galaxy’s public disclosures during the class period contained misleading omissions regarding the operation and inherent risks of the Terra blockchain and algorithmic stablecoins, particularly the risk of a “death spiral," whilst simultaneously selling their Luna holdings.

The Court's Key Findings The Ontario Superior Court granted the plaintiff leave to proceed under the Ontario Securities Act and certified the action as a class proceeding. The Court's detailed judgment provided several critical findings:

- **Materiality Exceeds Strict Percentages:** The defendants argued that Luna was a relatively small portion of Galaxy's total portfolio during most of the class period and was therefore not legally material. The Court rejected this quantitative defense in full. It held that the test for materiality is whether the omitted information would significantly alter the "total mix of information" available to a reasonable investor. The intense promotional campaign by Galaxy's CEO made Luna fundamentally material to the company's valuation in the eyes of the market, demonstrating that risks cannot be ignored based on percentage alone.
- **Public Corrections:** Following the collapse of Luna, the CEO issued public statements acknowledging the risks of algorithmic stablecoins and the resulting losses. The defendants dismissed these as *ex post facto* musings. However, the Court categorized these statements as actionable "public corrections," revealing to the market the material facts and risks that Galaxy was obligated to disclose all along.

Comparing Permissibility of Class Action Crypto Disputes in Global Jurisdictions The *Banach* decision highlights Canada's permissive "opt-out" class action regime, which seamlessly aggregates massive retail investor claims. For digital asset issuers and exchanges operating globally, the permissibility of class action crypto disputes varies drastically across other major jurisdictions:

- **London (England & Wales):** The English legal system does not possess a direct equivalent to the North American opt-out class action for securities fraud. Claimants generally rely on Group Litigation Orders (GLOs) under the Financial Services and Markets Act (FSMA) or representative actions. GLOs operate on an "opt-in" basis, requiring upfront funding from each claimant. Representative actions require all claimants to share the "same interest," making it exceedingly difficult to aggregate the claims of retail investors who purchased digital assets at varying times and prices.

- **Hong Kong & Singapore:** Neither Hong Kong nor Singapore currently supports a statutory class-action regime. Mass claims are limited to traditional representative proceedings, which mandate a rigid "same interest" test. Consequently, mass retail actions over crypto market misrepresentations face significant procedural hurdles. These jurisdictions heavily favor bilateral commercial litigation and institutional arbitration for digital asset disputes, limiting the threat of plaintiff-driven mass securities torts.
- **DIFC (Dubai) & ADGM (Abu Dhabi):** As leading offshore common law jurisdictions in the Middle East, the DIFC and ADGM provide highly sophisticated courts capable of handling complex digital asset disputes. While they offer mechanisms for group litigation, these operate on an opt-in basis. Neither jurisdiction permits the sweeping, opt-out class actions seen in Ontario, thereby providing an efficient venue for organized institutional investors but inherently shielding token issuers from the asymmetric exposure of North American retail class actions.

Looking Ahead The Ontario Court's decision serves as a definitive warning that generic risk disclosures are insufficient for complex digital assets and that public promotional activities can elevate an asset's legal materiality. Categorizing bespoke digital assets under generic umbrellas constitutes a material misrepresentation if unique structural risks are omitted. For global practitioners and stakeholders operating in this space, navigating the distinct procedural realities of global financial hubs will be essential for effective collective redress and mitigating exposure to class actions.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com