

CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

N°: 200-11-025040-182

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE ACT RESPECTING
THE REGULATION OF THE FINANCIAL
SECTOR :**

AUTORITÉ DES MARCHÉS FINANCIERS,

Plaintiff

v.

DOMINIC LACROIX,

Defendant

and

**RAYMOND CHABOT ADMINISTRATEUR
PROVISOIRE INC.,**

Interim Administrator

and

**THE AD HOC COMMITTEE OF INVESTORS
OF PLEXCOIN,**

Intervenant

and

MAXIME VAILLANCOURT et als.,

and

**LEMIEUX NOLET INC., *ès qualité of trustee
to the estates of DL Innov Inc., Micro-Prêts
Inc. and Finaone Inc.,***

Other Intervenants

**APPLICATION FOR THE PAYMENT OF LEGAL FEES OF COUNSEL FOR
THE AD HOC COMMITTEE OF INVESTORS OF PLEXCOIN**

**TO THE HONOURABLE MR. JUSTICE DANIEL DUMAIS OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF QUÉBEC, THE
INTERVENANT STATES AS FOLLOWS:**

INTRODUCTION

1. This Application is made by the Intervenant *Ad Hoc Committee of Investors of Plexcoin* (the “**Committee**”) for an order from this Court to authorize and direct payment of the reasonable professional fees and disbursements of counsel for the Committee;
2. The Committee requests that the payment of the counsel’s reasonable professional fees and disbursements be paid from the funds to be distributed by the Interim Administrator to the investors of Plexcoin pursuant to the plans of distribution to be submitted and approved by the Court;

A. THE INITIAL PROCEEDINGS BY THE AMF

3. On or about July 20, 2017, the Autorité des marchés financiers (the “**AMF**”) instituted proceedings against the defendant and other parties regarding the cryptocurrency Plexcoin, in which thousands of investors have invested;
4. Proceedings related to Plexcoin were also commenced in the United States pursuant to a complaint filed by the *Securities and Exchange Commission* (the “**SEC**”) on December 1, 2017 before the *U.S. District Court for the Eastern District of New York*;
5. On July 5, 2018, on application by the AMF, Raymond Chabot Administrateur Provisoire Inc. has been appointed as Interim Administrator to the assets of defendant Lacroix;
6. Since his appointment, the Interim Administrator has succeeded in recovering some of the assets of defendant Lacroix, including cryptocurrencies, cash and mining equipment;

B. THE PLEXCOIN INVESTORS AND AD HOC COMMITTEE

7. Thousands of people have invested in Plexcoin during its presale in August 2017 and official launch in October 2017;
8. The mandate of the Interim Administrator was to seize, collect and recover as many assets of defendant Lacroix as possible, and to distribute the proceeds thereof to the investors of Plexcoin. As such, the investors of Plexcoin are the principal initial beneficiaries of these proceedings and it became important that they should be properly represented before the Court;
9. Given the number of investors, the management of investor communications requires considerable resources. The creation of an *ad hoc* committee and the appointment of representative counsel would ensure that the investors’ interests are communicated to the Interim Administrator and to the Court in the most effective way;

10. On or about November 7, 2019, the investors formed the Intervenant *Ad Hoc* Committee of Investors of Plexcoin and resolved to retain the services of Mtre Jean-Yves Simard, then of Lavery, De Billy LLP, now with DS Lawyers Canada LLP, to represent their interests and advocate their position before this Court;
11. On or about November 14, 2019, the Committee filed an *Application to Appoint an Investors Committee and a Representative Counsel*, as appears from the Court record;
12. On December 6, 2019, the Court granted in part the Application of the Committee and ordered that the *Ad Hoc* Committee of Investors of Plexcoin had standing to appear before the Court and was composed of the following investors, each of whom purchased Plexcoin at the ICO, namely:
 - Skip Shapiro from the United States;
 - Michael Isang from Nigeria;
 - Rose Thomas from the United States;
 - Marx Hu from Malaysia;
 - Roehl Dumlao from the Philippines;
 - Steve McQueen from the United States;
 - Frank D'Assisi from Canada;
 - Calvin Tewari from the Netherlands;
 - Javier Puente from the United States,

the whole, as more fully appears from the Court record. For ease of reference, the Committee files in support hereof a copy of the December 6, 2019 order from this Court (the “**Appointment Order**”), as **Exhibit Plex-1**;

13. In the Appointment Order, the Court noted:

[20] It is quite obvious that we are heading into a dispute between, at least, the ICO investors, the Second group and the trustee for Lacroix's bankrupt companies. Lacroix himself does not request an interest in the assets but intends to make submissions.

[21] Although the RCAP, AMF and SEC already took position in favor of the ICO investors in their proposed Plan of distribution, the Court considers it should allow the Committee to intervene through its representative counsel. It is expedient given the issues in dispute. The Committee's participation, legally represented, can certainly contribute usefully to the debate.

[22] The practice of appointing a representative counsel for special groups of stakeholders is acknowledged under the Companies Creditors Arrangement Act. By analogy, it should also be permitted in the current file. The intervention will facilitate the hearing and ensure that those who have an interest are heard, if such is their desire.

14. The Court however decided then not to allow the request of the Committee for the payment of the fees of the representative counsel, noting:

[38] The Court shares the view of Justice Newbould in *Urbancorp*¹⁶. It does not agree that the fees be paid from the recovered assets. However, the Court is willing to allow that individual payments be made to the law firm upon express instructions from an investor and subject to the limit of his/her recovery once the plan is executed. If such authorisations are given, the Committee could come back with a new application to this end.

(emphasis added)

15. In view of the Court's direction, express instructions were given to the Interim Administrator by the Plexcoin investors through the Committee on September 8, 2021, requesting that an amount representing 5% of any dividend or distribution to be paid by the Interim Administrator to the investors of Plexcoin under a plan of distribution be paid directly to the Committee's counsel for legal fees incurred in the representation of their interests in this matter, as appears from the direction of payment dated September 8, 2021 (the "**Direction of Payment**"), **Exhibit Plex-2**;

C. THE APPOINTMENT OF THE COMMITTEE AND ITS COUNSEL WAS USEFUL TO THE CASE

16. The appointment of the Committee and its counsel was useful to the case, and provided the Court with constant input and active representation of the interests of the Plexcoin investors including, without limitation:
- a. Attendance and representation at each case management hearing;
 - b. Reviewing and commenting on the initial Plan of Distribution dated November 4, 2019, including numerous exchanges with the Interim Administrator;
 - c. Attendance and representation in the context of the motion for declaratory judgment presented by the Interim Administrator, including, without limitation:
 - i. Attending the out of court examination of Mrs. Isabelle Côté from the AMF (July 13, 2020);
 - ii. Filing a written Outline of Position (August 13, 2020) arguing against the intervention of the other creditors and investors of defendant

Lacroix, and in favor of distributing the funds collected by the Interim Administrator only to the Plexcoin investors;

- iii. Attending the 5-day hearing on the motion for declaratory judgement from August 31 to September 4, 2020, including cross examination of witnesses, and making representations. At this hearing, it was the Committee, not the AMF, who advocated for the interests of the Plexcoin investors;
 - d. Reviewing and commenting on the Claims Process proceedings, including the filing of a *Summary Contestation of the Motion for Claims Procedure* dated March 29, 2021, attendance and representations at the Court hearing on or about April 29, 2021, and several exchanges with the Interim Administrator and his counsel;
 - e. Several email and telephone conversations with (i) the Committee, (ii) over 30 individual investors requesting update and assistance with the filing of proofs of claims, and (iii) the Interim Administrator as to the Claims Process;
 - f. Reviewing and commenting on the Plans of Distribution dated December 3, 2021, including numerous exchanges with the Interim Administrator;
 - g. Reviewing and commenting on the Amended Plans of Distribution dated December 10, 2021, including exchanges with the Interim Administrator;
17. The Committee and its counsel's primary function has been to consult with the investors, take position on the issues in the case which impact their interests, provide an efficient channel of communication at all levels including from the investors to and from the Interim Administrator and the Court;

D. THE PLANS OF DISTRIBUTION

18. On or about December 10, 2021, the Interim Administrator filed two proposed amended plans of distribution, being a *Plan de Distribution pour le Fonds Canadien Modifié* (the "**Canadian Plan**") and *Plan de Distribution pour le Fonds US Modifié* (the "**US Plan**" and together with the Canadian Plan, the "**Plans of Distribution**"), as appears from the Court record;
19. On or about December 3, 2021, the Interim Administrator filed a *Rapport de l'Administrateur Provisoire sur les Plans de Distribution* (the "**IA Report**"), as appears from the Court record;
20. Pursuant to the Plans of Distribution, and based on the information from the IA Report, the following is the Committee's understanding of the estimated distribution to the Plexcoin investors:

A- Total amount of claims filed by Plexcoin Investors in CAD\$ (capital of \$2.7M plus rate of return of 2.45%/month as per the Plan):		<u>3,360,000</u>
		Distributions to Plexcoin investors
B- Distribution of 100% of the US Fund (converted in CAD\$) under the US Plan		1,867,000
C- Balance of Plexcoin investors' claims to participate in the Canadian Plan (A – B)	1,493,000	
D- Amount available for distribution in the Canadian Plan, net of IA fees as at October 31, 2021, in CAD\$	3,900,000	
E- Total amount of claims in the Canadian Plan	34,000,000	
F- Distribution to Plexcoin investors under the Canadian Plan (D/E) x C		163,000
G- Distribution to SEC Claim (\$6M) under the Canadian Plan forfeited by SEC in favour of Plexcoin investors		646,000
H- Total distribution to Plexcoin investors (B+F+G) (in CAD\$)		<u>2,676,000</u>
I- % of distribution on Plexcoin investors' claims in capital of \$2.7M	95%	

21. Under the Direction of Payment Plex-2, the Plexcoin investors, through the Committee, have directed the Interim Administrator to remit an amount equal to 5% of the distribution to be paid to the Plexcoin investors under the Plans of Distribution to the undersigned legal counsel;
22. The Direction of Payment Plex-2 is consistent with the Court's direction at paragraph 38 of the Appointment Order cited above;
23. Based on the estimated distribution scenario detailed above, the fees to be paid to the undersigned counsel pursuant to the Direction of Payment Plex-2 would be estimated at \$133 800 (5% of \$2 676 000);
24. Under the circumstances, the amount of 5% of the distribution to Plexcoin investors is fair and reasonable, namely:
 - a. Except for a payment of USD\$8000 (to cover the costs of appealing the portion of the Appointment Order which dismissed the Committee's request for payment of its counsel's fees), counsel for the Committee has received no payment to date since it appeared in the case in 2019, in essence taking

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- the case on some form of contingency basis conditional on a favorable outcome for the Plexcoin investors;
- b. The Committee, representing the Plexcoin investors, has specifically approved such payment of 5% as evidenced by the Direction of Payment Plex-2;
 - c. Once a distribution under the Plans of Distribution is determined and approved, the Plexcoin investors may very well decide to direct payment of a portion of their distribution amount (i.e. 5%) to pay for legal counsel who assisted and advocated for their interests throughout the case;
 - d. Counsel for the Committee has spent an estimated 200 hours in the case;
 - e. The appointment of an investors' committee and the appointment of a representative counsel, as well as the issues submitted and decided in the motion for declaratory judgment and the judgment of the Court dated October 29, 2020, are novel issues never before seen in proceedings under the *Act respecting the regulation of the financial sector*;
 - f. The Committee's submissions through its counsel provided reasoned arguments and were valuable to the Court in weighing the different and opposing interests of the stakeholders;
 - g. The interventions and representations made by counsel for the Committee throughout the case have provided significant value to the Plexcoin investors, and also to the Court and the Interim Administrator;
 - h. The Plexcoin investors who have filed a proof of claim will receive over 90% of their investment in capital which is a favorable outcome in the circumstances;
 - i. The amount to be distributed to the Plexcoin investors' proofs of claims under the Canadian Plan would be sufficient to cover the 5% payment of legal fees, such that no moneys from either the US Plan or the SEC's distribution under the Canadian Plan would be used to pay such legal fees;
 - j. The payment of the legal fees to counsel for the Plexcoin investors in accordance with the Direction of Payment Plex-2 will not impact any distribution to any other party in the case;
25. In view of all of the foregoing, the Committee asks that his Court approve the Direction of Payment Plex-2 and instruct the Interim Administrator to pay the legal fees and disbursements of the undersigned counsel as per the terms of said Direction of Payment Plex-2;

FOR THERE REASONS, MAY IT PLEASE THE COURT:

DECLARE that the Direction of Payment dated September 8, 2021, providing for the payment of the legal fees and disbursements of counsel for the Intervenant *Ad Hoc Committee of Investors of Plexcoin* is fair and reasonable;

ORDER the Interim Administrator to pay the fees and disbursements of Mtre Jean-Yves Simard, of the law firm DS Lawyers Canada LLP, counsel for the Intervenant *Ad Hoc Committee of Investors of Plexcoin*, from the distribution amount to be paid to the Plexcoin investors under the Canadian Plan of Distribution (excluding any distribution resulting from the SEC forfeiting its own distribution in favour of the Plexcoin investors), in an amount representing 5% of said distribution amount;

THE WHOLE without costs, save in the event of contestation.

MONTREAL, December 21, 2021

DS Lawyers Canada LLP

DS LAWYERS CANADA LLP

(Mtre Jean-Yves Simard)

Lawyers for Intervenant *Ad Hoc* Committee of
Investors of Plexcoin

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Our file: 6714-1

AFFIDAVIT

I, the undersigned, **SKIP SHAPIRO**, businessman, residing at 318 Hawthorn Street, New Bedford, MA 02740, U.S.A., make oath and declare that:

1. I am an Investor of Plexcoin and a member of the *Ad Hoc Committee of Investors of Plexcoin*.
2. All the facts contained in the *Application for the Payment of Legal Fees of Counsel for the Ad Hoc Committee of Investors of Plexcoin* are true.

AND I HAVE SIGNED



SKIP SHAPIRO

Solemnly affirmed before me in

Chatham
this 21 day of December 2021

Manon Pariseau # 210370
Commissioner of Oaths

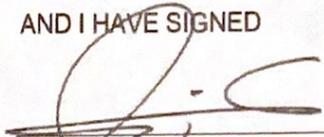


AFFIDAVIT

I, the undersigned, **JEAN-YVES SIMARD**, attorney, practicing within the law firm of DS Lawyers Canada LLP, at 1080, Beaver Hall Hill, Suite 2100, in Montréal, Québec H2Z 1S8 make oath and declare that:

1. I am the counsel of the *Ad Hoc* Committee of Investors of Plexcoin;
2. All the facts contained in paragraphs 16 and 24 of the *Application for the Payment of Legal Fees of Counsel for the Ad Hoc Committee of Investors of Plexcoin* are true.

AND I HAVE SIGNED



JEAN-YVES SIMARD

Solemnly affirmed before me in
Charlevoix
this 21 day of December 2021

Manon Pariseau # 210 370
Commissioner of Oaths



NOTICE OF PRESENTATION

TO:

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**Attorneys for Charles Hays Dupras
 and Camaron**

Take note that the *Application for the Payment of Legal Fees of Counsel for the Ad Hoc Committee of Investors of Plexcoin* will be presented before the Honourable Mr. Justice Daniel Dumais, on **January 25, 2022**, at the Quebec City Courthouse, 300 Jean-Lesage Boulevard, Québec, QC G1K 8K6, at a time and room to be determined.

MONTREAL, December 21, 2021

DS Lawyers Canada LLP

DS LAWYERS CANADA LLP

(Mtre Jean-Yves Simard)

Lawyers for Intervenant *Ad Hoc* Committee of
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**APPLICATION FOR THE PAYMENT OF LEGAL FEES OF
COUNSEL FOR
THE *AD HOC* COMMITTEE OF INVESTORS OF PLEXCOIN**

ORIGINAL



DS LAWYERS CANADA LLP

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