

COURT OF APPEAL FOR ONTARIO

CITATION: Shirodkar v. Coinbase Global, Inc., 2025 ONCA 298

DATE: 20250422

DOCKET: COA-24-CV-0449

Huscroft, Monahan and Gomery JJ.A.

BETWEEN

Shantanu Shirodkar

Plaintiff (Appellant)

and

Coinbase Global, Inc., Coinbase, Inc., Coinbase Europe Limited and  
Coinbase Canada Inc.

Defendants (Respondents)

Peter Jervis, Golnaz Nayerahmadi and Douglas M. Worndl, for the appellant

Robert W. Staley, Cheryl M. Woodin, Douglas Fenton and Marshall Torgov, for  
the respondents

Heard: March 24, 2025

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of  
Justice, dated March 21, 2024, with reasons reported at 2024 ONSC 1399.

**Gomery J.A.:**

[1] The appellant, Shantanu Shirodkar, seeks to lead a class action against  
the respondents, Coinbase Global, Inc. and its subsidiaries Coinbase Inc.,

Coinbase Canada Inc., and Coinbase Europe Limited.<sup>1</sup> Coinbase is an online platform for trading in crypto-assets. The appellant alleges that the respondents violated the *Securities Act*, R.S.O. 1990, c. S.5, and other provincial securities statutes by failing to meet statutorily mandated disclosure and registration requirements for security dealers. He proposes to certify the claim on behalf of everyone in Canada who entered into crypto rights contracts or transacted in tokens with the respondents between October 8, 2019 and the certification date.

[2] The respondents moved to dismiss or stay the action on jurisdictional grounds. The motion judge granted their motion. She found that the Superior Court of Justice in Ontario has no jurisdiction over the claims asserted against the non-Canadian respondents, and that the action against them should be dismissed. Although the court has jurisdiction over Coinbase Canada, the motion judge concluded that Ireland is a preferable forum for the adjudication of the appellant's claims. She accordingly stayed the remaining action against Coinbase Canada.

[3] The appellant contends the motion judge erred in her analysis of both jurisdiction *simpliciter* and *forum non conveniens*. In particular, he argues that the motion judge misinterpreted the scope of a user agreement he executed with Coinbase Canada by failing to consider the unique context of crypto-trading and

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<sup>1</sup> I will refer to the respondents respectively as Coinbase Global, Coinbase Inc., Coinbase Canada, and Coinbase Europe. I will refer collectively to the respondents other than Coinbase Canada as the "non-Canadian respondents".

the “intertwined web of Coinbase entities” of which the respondents form part. He contends that her decision deprives an untold number of Canadians of meaningful access to justice.

[4] I would dismiss the appeal. The motion judge correctly interpreted the choice of forum clause in Coinbase Canada’s user agreement in finding that it did not retroactively confer on Ontario courts jurisdiction over the appellant’s claims against third parties, namely the non-Canadian respondents. The appellant has failed to identify any reversible error in the motion judge’s analysis of jurisdiction *simpliciter*, which reflects the principles set out in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, or in her discretionary decision to stay the action based on *forum non conveniens*.

#### **A. Background**

[5] Coinbase is one of the world’s largest platforms for the transaction of digital assets such as cryptocurrency and cryptocurrency contracts. In the words of the respondents’ affiant, Dhawal Sharma, the Coinbase platform “functions as a marketplace that allows users to enter into transactions with other users to buy and sell digital assets.” Coinbase has no “bricks and mortar” locations through which it offers services. Its platform is accessible only online.

[6] The parent company, Coinbase Global, is a publicly traded holding company domiciled in Delaware. Its subsidiary, Coinbase Inc., also headquartered in

Delaware, operates the software that identifies potential transactions on Coinbase by matching users wishing to buy or sell digital assets, and then processes and settles the transactions. Parties wishing to use the Coinbase platform must enter into user agreements with subsidiaries of Coinbase Inc. or of Coinbase Global, such as Coinbase Europe (incorporated and domiciled in Ireland) and Coinbase Canada (incorporated and domiciled in Canada).

[7] The appellant purchased and sold cryptocurrency assets through Coinbase between October 2017 and January 2021. He executed three user agreements with various Coinbase entities in 2017 and 2020.

[8] In October 2017, while living in France, the appellant opened a Coinbase account online by entering a user agreement with Coinbase UK Ltd. That company has since been dissolved and was not named as a defendant to this action.

[9] The appellant's last Coinbase transaction in France was on October 23, 2019. He then relocated to Canada. Coinbase Canada was doing business in Canada as of late 2020, but only for the purpose of employing individuals in Canada working remotely on Coinbase's global operations. It registered with various government agencies and filed an Initial Return with the Ontario Ministry of Government Services indicating that it commenced business activity in Ontario on December 11, 2020.

[10] On November 20, 2020, using a computer in Ontario, the appellant entered another user agreement (the “Second User Agreement”). The counterparties to the Second User Agreement were Coinbase Ireland Limited and the respondent Coinbase Europe. The appellant did not have access to services from Coinbase Ireland Limited, however, and that entity was not named as a defendant to this action.

[11] On November 22, 2020, the appellant accepted a further user agreement with Coinbase Europe (the “Third User Agreement”). Another company, CB Payments, Ltd., was also a counterparty, but once again its services were inaccessible to the appellant, and it was not named as a defendant to this action.

[12] The Second User Agreement’s Governing Law Section stated: “This Agreement and the relationship between us shall be governed by the laws of Ireland and the non-exclusive jurisdiction of the Irish courts, subject to any local mandatory law, or rights available to Consumers”. The Third User Agreement’s Governing Law section stated: “This Agreement and the relationship between us shall be governed by the laws of England and Wales, subject to any local mandatory law, or rights available to Consumers”.

[13] In January 2021, the appellant executed his last purchase of digital assets on Coinbase from his home computer in Ontario, accessing the platform through Coinbase Europe pursuant to the Third User Agreement.

[14] On November 22, 2022, the appellant issued his statement of claim against the respondents. He seeks a declaration that the crypto rights contracts and tokens sold and distributed on the Coinbase trading platform meet the definition of securities in the Ontario *Securities Act* and analogous provisions in other provincial securities statutes, and that the respondents violated the *Act* by failing to meet statutorily mandated disclosure and registration requirements. The appellant seeks statutory damages under s. 133 of the *Act*, which provides a private right of action against “the dealer or offeror” who failed to comply with certain requirements, including the obligation in some circumstances to deliver a prospectus to purchasers. The appellant proposes to certify the proceeding as a class action on behalf of everyone in Canada who entered into crypto rights contracts or transacted in tokens with the respondents between October 8, 2019, and the certification date.<sup>2</sup>

[15] In early 2023, Coinbase Canada began to offer user services to Coinbase clients in Canada. It applied for a limited registration with the Ontario Securities Commission that would exempt it from issuing a prospectus to users. Pending the Commission’s ruling on the application, Coinbase Canada undertook to comply

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<sup>2</sup> The appellant’s materials include a draft Amended Statement of Claim. Among other things, it proposes an alternative or additional representative plaintiff, Adeel Kazim; asserts common law causes of action against the respondents; and alleges that the filings to the AMF and OSC constitute an admission that some or all of the respondents have breached Ontario’s *Securities Act* and other Canadian securities legislation. The draft Amended Statement of Claim was not before the motion judge, as it bears a date after the motion was heard. I give it no consideration.

with its proposed terms. Coinbase Europe had previously engaged with Ontario and Quebec's securities regulators, similarly applying for registration as a restricted dealer and exemption from prospectus requirements. Coinbase Europe's application was not pursued after Coinbase Canada applied for registration.

[16] As of February 22, 2023, Canadian Coinbase users, including the appellant, were prompted to execute a new user agreement with Coinbase Canada.

[17] The appellant did not execute the initial version of the Coinbase Canada user agreement. On May 7, 2023, however, after the respondents served their motion to stay or dismiss on jurisdictional grounds, the appellant logged on to the Coinbase platform and accepted an updated version of the Coinbase Canada user agreement (the "Canadian User Agreement"). This Agreement includes a non-exclusive choice of forum clause in favour of Ontario courts and a choice of law provision in favour of the laws of Ontario.

[18] In April 2024, the Ontario Securities Commission granted Coinbase Canada limited registration on the terms it had proposed in 2023, including an exemption from providing users with a prospectus.<sup>3</sup>

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<sup>3</sup> See *Re Coinbase Canada Inc.* (2024), 47 O.S.C.B. 3081.

**B. The motion judge's decision**

[19] On April 25, 2023, the respondents served a notice of motion to dismiss or stay the action based on lack of jurisdiction and *forum non conveniens*. The respondents submitted that the Ontario courts had no jurisdiction over the claims against the non-Canadian respondents and that Ireland, Coinbase Europe's domicile, was the clearly more appropriate forum for the action as a whole.

[20] The motion judge granted the motion. She dismissed the action against Coinbase Global, Coinbase Inc. and Coinbase Europe on the ground that the courts of Ontario had no jurisdiction over the claims against those entities on the bases of presence-based, consent-based, or assumed jurisdiction. She found that none of the non-Canadian respondents carried on business in Ontario. Although the Canadian User Agreement operated retroactively, the motion judge concluded that it bound only the users who accepted it and Coinbase Canada. She rejected the appellant's argument that the non-Canadian respondents had attorned to the jurisdiction of Ontario courts through their dealings with Canadian regulators. She likewise disagreed that the court should assume jurisdiction based on *Van Breda* factors.

[21] The motion judge held that Ontario did have presence-based jurisdiction over Coinbase Canada. She relied principally on the filing of an Initial Return with the Ontario Ministry of Government Services in December 2020 to find that

Coinbase Canada commenced business in Ontario at that time. The motion judge also noted that Coinbase Canada employs 150 to 200 people across Canada, including key members of the Coinbase Canada team who carry out their duties in Ontario.

[22] The motion judge nonetheless stayed the action against Coinbase Canada based on *forum non conveniens*. She found that the appellant never transacted on the Coinbase platform through Coinbase Canada and that Coinbase Canada had little or no involvement in the transactions conducted through Coinbase Europe that gave rise to the appellant's claims. Based on her findings about the circumstances in which those claims arose and expert evidence adduced by the respondents, she found that Ireland was the clearly more appropriate forum for their adjudication.

### **C. Issues**

1. Did the motion judge err in interpreting the Canadian User Agreement?
2. Did the motion judge err in applying the *Van Breda* "real and substantial connection" test?
3. Did the motion judge err in finding that Ontario is a *forum non conveniens* and that Ireland is the preferred forum to adjudicate the action?

**(1) The motion judge did not err in rejecting the appellant’s argument that the Canadian User Agreement confers jurisdiction on Ontario courts over his claims against all the respondents**

[23] The appellant argues that, properly interpreted, the Canadian User Agreement unequivocally gives Ontario courts jurisdiction not only over his claims against Coinbase Canada but over his claims against Coinbase Europe, Coinbase Inc., and Coinbase Global. His position is that, through this agreement, the respondents effectively all consented to submit disputes to the jurisdiction of Ontario Courts. I disagree.

[24] Section 13.19 of the Canadian User Agreement, entitled “Governing Law”, states that: “This Agreement and the relationship between us shall be governed by the laws of Ontario, Canada.” Section 10.2 establishes a complaint and dispute resolution process. Should this process fail to resolve a complaint, s. 10.4 of the Agreement provides as follows:

**10.4** ... Any complaints, claims, disagreements or disputes arising out of or in connection with this Agreement or relating in any way to your access to or use of the Coinbase Services, the Coinbase Platform or the Site, any Communications you receive, any products sold or distributed through the Coinbase Services, the Coinbase Platform, the Site or this Agreement and prior versions of this Agreement, including claims and disputes that arose between us before the effective date of these terms, that cannot be resolved via the complaint process set out in Section 10.2 above, may be adjudicated by a court of competent jurisdiction located in Ontario,

Canada. You agree to submit to the non-exclusive jurisdiction of the courts of Ontario, Canada.

[25] The motion judge found that s. 10.4 applies retroactively, in that it governs disputes arising in connection with both current and prior versions of the Canadian User Agreement, “including claims and disputes that arose between us before the effective date of these terms”. She found that it did not apply, however, to prior disputes that a Canadian user might have against another Coinbase company. The motion judge noted that the only Coinbase counterparty to the Canadian User Agreement is Coinbase Canada. She also noted that the Agreement specifies that references therein to “Coinbase”, “we”, “our” or “us” are to Coinbase Canada, whereas “Coinbase Group” is defined as “Coinbase Canada and all affiliated and other group companies of those companies (including Coinbase, Inc.)”. Taking this into account, she reasoned that s. 10.4 captured only claims against Coinbase Canada:

The Canadian User Agreement is between Coinbase Canada and the Canadian users. It does not purport to bind any other party. While it operates retroactively, the language around the retroactivity is very specific and limited to disputes that arose between “us”. Although “us” in [*sic*] defined in the Canadian User Agreement as a reference to Coinbase Canada, that interpretation of the word “us” in the forum clause is non-sensical. It can only properly be understood as a reference to the counterparties to the agreement, that is “we” and “you”, defined in the Canadian User Agreement as Coinbase Canada and the Canadian user. If the language was intended to capture retroactively disputes between the Canadian user and other Coinbase entities, the clause

would have referred to “disputes that arose between you and the Coinbase Group”, a term that is also defined in the Agreement.

[26] The motion judge accepted the respondents’ submission that the retroactivity provision was simply intended to ensure that amendments to the standard form agreement would not render the dispute resolution clause meaningless.

[27] The appellant contends that the motion judge’s interpretation of s. 10.4 is subject to review for correctness, and that it is incorrect.

[28] A motion judge’s analysis of jurisdiction *simpliciter* is a question of mixed fact and law, “reviewable for palpable and overriding error, unless an error in the application of the test can be attributed to an extricable question of law”: *Kyko Global Inc. v. M/S Crawford Bayley & Co.*, 2021 ONCA 736, at para. 13, citing *Airia Brands Inc. v. Air Canada*, 2017 ONCA 792, 417 D.L.R. (4th) 467, at para. 39, leave to appeal refused, [2017] S.C.C.A. No. 476. However, the specific focus of this ground of appeal is the motion judge’s interpretation of a standard form contract. The interpretation of a standard form contract attracts the correctness standard where it has precedential value and there is “no meaningful factual matrix specific to the particular parties to assist the interpretation process”: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, at para. 46.

[29] The Canadian User Agreement is a standard form contract of adhesion; the terms were dictated by Coinbase Canada with no room for negotiation by users. The record does not disclose how many people in Canada have entered into the Agreement with Coinbase Canada, but the respondents' affiant Mr. Sharma acknowledges that Coinbase has millions of users worldwide. According to a survey by the Ontario Securities Commission attached to an affidavit sworn by a member of the appellant's legal team, Coinbase transactions account for 42% of crypto transactions by Canadians. Assuming this to be accurate, the interpretation of the Canadian User Agreement could have precedential value. In oral argument, the respondents' counsel conceded that the review of the Canadian User Agreement could attract a correctness standard, based on the *Ledcor* factors.

[30] Even applying a correctness standard, however, I see no error in the motion judge's conclusion that the Canadian User Agreement grounds the jurisdiction of Ontario courts only over Coinbase Canada, and not the non-Canadian respondents.

[31] The appellant argues that the forum selection clause governs claims against all Coinbase respondents, for three reasons. First, s. 10.4 refers to "claims and disputes that arose between us before the effective date of these terms". Second, Coinbase Canada's operations are intertwined with the operations of the non-Canadian respondents. Third, the Second and Third User Agreements recognize users' right to sue in their domestic courts under local consumer legislation.

[32] With respect to the retroactivity argument, I agree with and adopt the motion judge's cogent analysis of the language and scope of s. 10.4. Read in the context of the Agreement as a whole, it does not retroactively confer jurisdiction to Ontario courts over historic claims against non-parties to the Canadian User Agreement. The only parties to the Agreement are Coinbase Canada and its users. Had Coinbase Canada intended to bind other Coinbase companies to the dispute resolution provision in the Agreement, s. 10.4 would refer to disputes between its users and the Coinbase Group. The "claims and disputes that arose between us before the effective date of these terms" described in s. 10.4 clearly encompass only prior claims against Coinbase Canada. Accordingly, "prior versions of this Agreement" captures earlier versions of the Canadian User Agreement, not any user agreement ever accepted by any Canadian user accessing services offered through other Coinbase companies.

[33] The appellant argues that this reading is illogical because the reference to "prior versions of this Agreement" appears in the very first version of the Canadian User Agreement. I agree with the motion judge that this reference merely anticipates that there will be later versions of the Agreement, as indeed there were.

[34] The appellant's second argument is that the non-Canadian respondents are necessarily caught by s. 10.4 because of the nature of the claims against them and their relationship with each other. Relying on *Momentous Corporation v. Canadian American Association of Professional Baseball Ltd.*, 2010 ONCA 722,

103 O.R. (3d) 467, aff'd 2012 SCC 9, [2012] 1 S.C.R. 359; *Novatrax International Inc. v. Hägele Landtechnik GmbH*, 2016 ONCA 771, 132 O.R. (3d) 481; and *Bank of Nevis International Limited v. Kucher*, 2024 ONCA 240, leave to appeal to S.C.C. refused, 41313 (November 21, 2024), he contends that the intertwined nature of the Coinbase respondents' operations is relevant to the interpretation of the forum selection clause.

[35] Contrary to the appellant's assertion in his factum, these decisions do not establish that "a forum selection clause governs the *entirety* of the claims against *all* defendants where ... one of the defendants is a party to the agreement, the claims against it are 'intertwined with' the claims against non-signatory defendants, and the relief sought against all defendants arises out of 'the same transaction and occurrences' or raise common questions of fact and law." This assertion mischaracterizes the basis for these decisions and conflates the jurisdiction analysis with the *forum non conveniens* analysis.

[36] In *Momentous*, *Novatrax* and *Bank of Nevis*, plaintiffs who sued in Ontario faced motions to dismiss or stay by defendants with whom they had entered in a contract containing a choice of forum clause requiring arbitration of any disputes under foreign law. Other parties who were not parties to the contracts were also named defendants. In each case, this court upheld stays or dismissals of proceedings against all defendants so that claims that were "intertwined" could be heard together in the forum designated by the clause. In none of them, however,

did the court find that a contractual choice of forum clause in favour of Ontario courts can be the basis for jurisdiction over a non-signatory to a contract.

[37] *Momentous* dealt with an exclusive forum selection clause, the applicability of which could only be rebutted by showing “strong cause” as to why the forum designated in the clause should not prevail. The plaintiffs failed to meet the test, and this court agreed with the motion judge’s determination that, since the defendants who were not party to the agreement containing the forum selection clause were necessary parties to the action against those who were, the claims had to be dealt with together in the designated forum.

[38] In contrast, the choice of forum clause in the Canadian User Agreement is non-exclusive, and the strong cause test does not apply: see *Forbes Energy Group Inc. v. Parsian Energy Rad Gas*, 2019 ONCA 372, 93 B.L.R. (5th) 169, at para. 6.

[39] *Novatrax* was also a case in which the plaintiff failed to show strong cause for proceeding in Ontario rather than the foreign forum designated in an exclusive jurisdiction clause. While finding that the facts of that case required the clause to “drive the stay analysis”, Brown J.A. affirmed that “a court lacks the jurisdiction to compel those who are not parties to an arbitration agreement to submit their claims to arbitration”: at paras. 22-24.

[40] The defendants in *Bank of Nevis* included a company and its owner, a natural person. The court found that the owner was bound by a choice of forum

clause in a contract to which the company was a party, though he was not. But this finding was based on the facts as pleaded by the plaintiff, who alleged that the owner controlled the company and was personally liable for its conduct. The court found that a plaintiff could not invoke privity of contract to dispute the application of a forum selection clause while at the same time alleging that the corporate veil should be pierced for the purpose of claiming damages for contractual breach against an individual defendant. Once again, in *Bank of Nevis*, the court was dealing with an exclusive jurisdiction clause.

[41] Beyond this, *Momentous*, *Novatrax*, and *Bank of Nevis* concerned whether a plaintiff could sue in Ontario even though it had agreed, in a contract, to litigate their dispute, or at least a central element of it, in another forum. Here, the question is whether an Ontario court can assume jurisdiction over a foreign defendant based on a contract to which it was not a signatory. These are fundamentally different questions.

[42] Third, the appellant contends that s. 10.4 must be interpreted in light of the terms governing potential consumer claims described in the Second and Third User Agreements. He argues that, in those Agreements, Coinbase Europe recognized that a user could bring a claim based on local consumer legislation before their domestic courts and that this lawsuit is such a claim, as the disclosure requirements in Ontario's *Securities Act* are designed to protect consumers. This

argument was advanced for the first time in oral argument before this court, and so was not considered by the motion judge.

[43] This argument has no merit. The appellant is suggesting that Coinbase Europe (the only respondent who was a counterparty to the Second and Third User Agreements) waived any right to raise a jurisdictional objection at any point in the future by recognizing that users could advance consumer claims in their local courts. It cannot reasonably be inferred that, when it entered into the Second and Third Agreements in 2020, Coinbase Europe anticipated the creation of an agreement between users and Coinbase Canada in 2023 and agreed to be bound by the choice of forum and choice of law terms in it.

[44] At the hearing before this court, the appellant advanced other consent-based jurisdiction arguments based on the respondents' dealings with Canadian securities regulators. The motion judge heard and rejected these arguments, and that aspect of her decision was not challenged in the appellant's notice of appeal. Nor were the respondents' dealings with Canadian regulators argued as a basis for finding consent-based jurisdiction in the appellant's factum. In any event, I see no error in the motion judge's conclusion that there is no indication in the filings to securities regulators by the non-Canadian respondents that they consented to the jurisdiction of Ontario courts with respect to claims set out in the action.

[45] I would accordingly not grant the appeal on this ground.

**(2) The motion judge did not err in declining to assume jurisdiction over the non-Canadian respondents based on the “real and substantial connection” test**

[46] The *Van Breda* framework requires the court to review factors that arguably connect the subject matter of the litigation to the forum. Once established, a connecting factor gives rise to a presumption of jurisdiction. To rebut this presumption, the defendant “must establish facts which demonstrate that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them”: *Van Breda*, at para. 95. If the presumption is rebutted, the action should be stayed or dismissed: *Van Breda*, at paras. 97, 100.

**(a) The motion judge’s analysis of the *Van Breda* factors**

[47] The appellant relied on two presumptive connecting factors. He argued that the respondents carried on business in Ontario and that they committed a statutory tort in Ontario by failing to comply with s. 71(1) of the *Securities Act*.

[48] Relying on findings made in her analysis of presence-based jurisdiction, the motion judge found that none of the non-Canadian respondents was carrying on business in Ontario.

[49] Reviewing the elements of the statutory tort alleged in the statement of claim, she found that:

- The appellant's purchase of the alleged securities took place in Ireland through Coinbase Europe;
- The contractual relationship between the appellant and Coinbase Europe was formed in Ireland;
- The steps to accept, execute, and fulfill the appellant's trades in digital assets on the Coinbase platform occurred outside of Ontario;
- The physical server infrastructure used to operate the Coinbase platform is located outside of Ontario;
- The appellant accessed the Coinbase platform to execute trades in digital assets from his home computer in France and later from his home computer in Ontario; and
- The appellant allegedly suffered damages in Ontario.

[50] The motion judge noted that, at para. 89 of *Van Breda*, the Supreme Court held that an allegation that a plaintiff has suffered damages in Ontario does not constitute a presumptive connecting factor. This left the appellant's accessing of the Coinbase platform from Ontario as the sole presumptive connecting factor. The motion judge found that the respondents had rebutted the presumption arising from this weak connection, reasoning that:

If the [appellant]'s choice to use his home computer in Ontario to conduct trades on the Coinbase Platform were sufficient to ground jurisdiction, every jurisdiction in the world where anyone purchased digital assets on the Coinbase Platform would also have jurisdiction. This

universal jurisdiction is exactly what our courts have cautioned against. [Citations omitted.]

[51] The motion judge concluded that, “viewed practically, it would not be reasonable for the [respondents] to expect that they would be called to answer proceedings in Ontario in the circumstances where almost every element of the alleged tort occurred outside Ontario and only a relatively minor element of the tort occurred in Ontario”.

[52] The motion judge rejected the appellant’s argument that Ontario should assume jurisdiction over the non-Canadian respondents based on the impact of Coinbase’s activities in this province. The appellant relied on evidence that the Coinbase trading platform is popular in Canada and that Canadian securities regulators have taken steps to regulate crypto-trading platforms. The motion judge found that this evidence fell short of establishing that Ontario is substantially affected by the conduct of the non-Canadian respondents.

**(b) The motion judge did not commit an error in principle or palpable and overriding error in applying the *Van Breda* test**

[53] The appellant has not persuaded me that the motion judge erred in applying *Van Breda*.

[54] It was open to the motion judge to find that the non-Canadian respondents did not carry on business in Ontario, and that the only element of the statutory tort alleged by the appellant besides his damages was his access to the Coinbase

platform from his home computer in Ontario. It was likewise open to her to find that access to a global internet platform from Canada is, at best, a weak presumptive connecting factor, which the respondents had rebutted. Although the activity in question is somewhat different in this case, her conclusion on the latter point is consistent with the principles articulated in *Yip v. HSBC Holdings plc*, 2017 ONSC 5332, at para. 211, aff'd 2018 ONCA 626, 141 O.R. (3d) 641, at paras. 45-50, leave to appeal refused, [2018] S.C.C.A. No. 410.

[55] The appellant argues that *Sharp v. Autorité des marchés financiers*, 2023 SCC 29, 487 D.L.R. (4th) 467, establishes that provincial securities legislation applies to foreign defendants whose cross-border conduct adversely affects domestic investors and capital markets, and that this links the subject-matter of his action to Ontario. This argument confuses adjudicative and legislative jurisdiction. In *Sharp*, the question was whether the Quebec *Securities Act*, C.Q.L.R., c. V-1.1, applied extra-territorially (legislative jurisdiction), not whether Quebec courts had jurisdiction over the defendant (adjudicatory jurisdiction): at paras. 115, 123 and 136.

[56] The motion judge properly focused her analysis on whether Ontario had adjudicative jurisdiction. She correctly found that the appellant's assertion of a cause of action under an Ontario statute does not automatically mean that an Ontario court has jurisdiction over the claim.

[57] The appellant contends that the respondents' dealings with provincial securities regulators prove that they expected that they could be subject to claims in Ontario. The motion judge canvassed the evidence and argument on this point at length in her analysis of consent-based jurisdiction. She rejected the appellant's submission that, by taking steps to obtain limited registration from Canadian securities regulators, the non-Canadian respondents consented to the jurisdiction of Ontario courts with respect to claims by private citizens. I see no error in her reasoning.

[58] The appellant contends that the motion judge was bound to find that the respondents collectively carry on business in Ontario given the interconnected nature of the respondents' operations. He relies on *Sakab Saudi Holding Company v. Jabri*, 2022 ONCA 496, at para. 44, for the proposition that there is "no need to expressly and mechanically run through the *Van Breda* factors with respect to each defendant where the defendants are alleged to have acted in an interconnected way and under the direction of a single controlling mind".

[59] The motion judge properly rejected this argument. The circumstances in *Sakab* are distinguishable from this case. In *Sakab*, the defendant corporations allegedly orchestrated a massive fraud under the direction of a single controlling mind. The motion judge in *Sakab* found a *prima facie* case of conspiracy carried out from Ontario collectively by the defendants. In these circumstances, it was

unnecessary to consider the possible presumptive connecting factors between each defendant and Ontario.

[60] The situation is different here. There is no allegation of a single controlling mind and no allegation of fraud and conspiracy. This is a statutory claim, and “each defendant occupies different roles in the Coinbase group structure”. The motion judge accordingly determined that “undertaking the *Van Breda* analysis for each defendant would not be a ‘mechanical’ exercise, as the court found it would have been in *Sakab*.”

[61] Nor is there any suggestion that this is an oppression case like *Stubbs v. ATS International BV*, 2010 ONCA 879, 272 O.A.C. 386, on which the appellant also relies. The motion judge found that the activities of the non-Canadian respondents are not enmeshed with those of Coinbase Canada, and sorting their roles would not be akin to “trying to unscramble an egg”, as in *Stubbs*.

[62] In these circumstances, I agree with the motion judge that, as reaffirmed recently in *Sinclair v. Amex Canada Inc.*, 2023 ONCA 142, 478 D.L.R. (4th) 683, at para. 18, the court had to find an unrebutted presumptive connecting factor linking each defendant who opposed the claim proceeding in Ontario before it could assume jurisdiction over that defendant.

[63] I would accordingly not grant the appeal on this ground.

**(3) The motion judge did not err in finding that Ontario is a *forum non conveniens***

[64] Having found that the court had jurisdiction over only Coinbase Canada, the motion judge considered whether the action against that defendant should be stayed based on *forum non conveniens*. She found that, since Coinbase Canada apparently had no involvement in the transactions giving rise to the appellant's claims, allowing the claim against it to proceed in Ontario while claims against the other defendants would have to be adjudicated elsewhere would risk wasting judicial resources and producing conflicting decisions. The motion judge accepted the respondents' expert evidence about the suitability of Irish courts for the appellant's claim. She acknowledged that Ireland has no class action legislation but nonetheless concluded that Ireland was the preferable forum and stayed the action.

[65] A motion judge's *forum non conveniens* decision is discretionary. This court can intervene only if the motion judge "erred in principle, misapprehended or failed to take account of material evidence, or reached an unreasonable decision": *Kyko Global*, at para. 14.

[66] The appellant attacks the motion judge's reasoning for granting the stay on a variety of grounds. In my view, he has not identified an error justifying this court's intervention.

[67] The appellant contends that, since his claim is governed by Ontario's *Securities Act*, it would be better adjudicated by Ontario's courts. He relies on *Douez v. Facebook, Inc.*, 2017 SCC 33, [2017] 1 S.C.R. 751, at paras. 68-69 and *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, [2012] 1 S.C.R. 636, at para. 49. These decisions affirm that the law applicable to a claim is relevant to determining if a contractual choice of law provision should be enforced, and that the applicable law is a factor to consider in the *forum non conveniens* analysis. They do not stand for the proposition that a plaintiff can compel Ontario courts to accept jurisdiction over a claim, and for defendants to respond to that claim, simply by alleging a breach of an Ontario statute. This would give Ontario courts universal jurisdiction and encourage forum shopping.

[68] As a matter of comity, generally speaking, "securities litigation should take place in the forum where the securities transaction took place": see *Kaynes v. BP, p.l.c.*, 2014 ONCA 580, 122 O.R. (3d) 162, at paras. 41-42 and 48, leave to appeal refused, [2014] S.C.C.A. No. 452. When the appellant traded on the Coinbase platform, he did so through Coinbase Europe. None of the activities associated with these trades took place in Ontario, besides the appellant sometimes accessing the platform from his home computer in Ontario. The motion judge found that the appellant never transacted a purchase or sale on the Coinbase platform at a time when Coinbase Canada was the counterparty to his user agreement. This is not surprising since the appellant ceased trading on the

Coinbase platform before users could access it via Coinbase Canada, and more than two years before he accepted the Canadian User Agreement.

[69] The appellant contends that the motion judge should not have focused on his claims but on the claims of proposed class members: users who accepted the Canadian User Agreement and traded on the Coinbase platform through Coinbase Canada as of October 2019. There could be no such users prior to February 2023, because that is when Coinbase Canada began to provide access to the trading platform. There is no evidence with respect to users who accepted the Canadian User Agreement as of February 2023 and, in my view, the motion judge committed no error in declining to consider their hypothetical claims. As held in *Kaynes*, at para. 53: “as the claim has yet to be certified, it would be premature to place undue emphasis on loss of juridical advantage to those potential class members ... who are not yet before the court.”

[70] The appellant contends the motion judge failed to consider whether Irish courts would exercise jurisdiction over the claims against the foreign Coinbase entities. On the contrary, the motion judge accepted the expert evidence that, if the appellant sued the respondents in Ireland, Irish courts would accept jurisdiction over Coinbase Europe (which is domiciled there) and over any other Coinbase respondents determined to be necessary and proper parties to the litigation. She found that:

Ireland has a comprehensive scheme for the regulation of financial instruments or securities which substantially mirrors the substantive provisions of the *Securities Act* relied upon by the plaintiff in this action. Moreover, Ireland has developed its own approach to the regulation of digital assets. The evidence indicates that Irish courts would assume jurisdiction arising out of an alleged improper distribution of securities through Coinbase Europe.

[71] The appellant argues that the motion judge failed to consider access to justice concerns given the absence of a class action regime in Ireland. The motion judge considered the appellant's arguments on this loss of juridical advantage. As she found, a perceived loss of juridical advantage is outweighed by the importance accorded to comity in the *forum non conveniens* analysis: see *Kaynes*, at paras. 53-54, citing *Van Breda*, at para. 112.

[72] The appellant complains that the stay of his action is inconsistent with decisions made in respect of a similar Ontario action against two Canadian companies operating a cryptocurrency trading platform and their foreign parent for alleged breach of the Ontario *Securities Act*. In *Lochan v. Binance Holdings Limited*, 2023 ONSC 6714, aff'd 2024 ONCA 784 ("*Binance (ONCA)*"), leave to appeal to S.C.C. requested, 41615, Morgan J. declined to enforce the choice of forum clause on which the Binance defendants relied, finding at para. 42 of his

reasons that requiring the claim to be adjudicated in arbitration in Hong Kong would be “tantamount to denying relief”.<sup>4</sup>

[73] Unlike in this case, the evidence in *Binance* showed that enforcing the forum clause would be unconscionable and contrary to public policy. Users were required to accept Binance’s proposed terms of use, including the arbitration clause, within 30 seconds of seeking to open an account on the platform; the arbitration clause gave Binance the unilateral right to modify its terms; Binance changed the forum of the arbitration and governing law in the choice of law clause four times during the proposed class period, including, for a period of time, to an “unspecified location, under unspecified law, under unspecified administration and rules”; and submitting a dispute to the last forum for arbitration set by Binance, in Hong Kong, would cost the average user \$36,000: *Binance (ONCA)*, at para. 7. The Binance defendants did not dispute the Ontario courts’ jurisdiction over the claims, absent the choice of forum clause.

[74] Finally, the appellant argues that the motion judge mischaracterized the notion of comity in the context of cross-border, internet-based securities claims. This argument suggests that, because all Coinbase transactions take place online, there is no jurisdiction that can meaningfully regulate the respondents’ activities or

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<sup>4</sup> A class action against the Binance defendants has since been certified: *Lochan v. Binance Holdings Limited*, 2024 ONSC 2302, aff’d 2025 ONCA 221.

adjudicate claims against all of them, and that this militates for an expanded assumption of jurisdiction by Ontario courts. I do not agree that the nature of the respondents' activities is *sui generis*. As found by the motion judge, the evidence here shows that the courts of Ireland, the jurisdiction where Coinbase Europe is domiciled, are well positioned to adjudicate the appellant's claims.

[75] The motion judge's *forum non conveniens* analysis accordingly reveals no error in principle or misapprehension of material evidence that would justify appellate intervention.

#### **D. Disposition**

[76] I would dismiss the appeal with all-inclusive costs of \$50,000 to the respondents.

Released: April 22, 2025 "G.H."

"S. Gomery J.A."  
"I agree. Grant Huscroft J.A."  
"I agree. P.J. Monahan J.A."