Ontario

Capital Markets Tribunal

Tribunal des marchés financiers

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Citation: *Nvest Canada Inc (Re)*, 2024 ONCMT 25
Date: 2024-11-01
File No. 2023-1

IN THE MATTER OF
NVEST CANADA INC., GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY and WARREN CARSON

REASONS AND DECISION
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	October 25, 26, 27, November 6, December 11, 2023, and April 18, 2024; final written submission received on July 5, 2024	
Decision:	November 1, 2024	
Panel:	James Douglas	Chair of the Panel
	Andrea Burke	Adjudicator
	William Furlong	Adjudicator
Appearances:	Brian Weingarten	For the Ontario Securities Commission

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REASONS AND DECISION

1. OVERVIEW

[1] This enforcement case is about the sale and promotion of "GXTokens" which were touted as crypto investments, as well as corporate shares by unregistered parties, without a prospectus or relevant exemptions.

[2] The Ontario Securities Commission alleges that between January 2018 and May 2020 (the **Material Time**) the respondents created a crypto asset called GXToken, and sold these tokens globally, including to Ontario investors. The Commission alleges that the GXTokens are securities, something that must be established in order for there to be any related breaches under the *Securities Act*[1] (the ***Act***). The Commission also alleges that the respondents sold shares in Nvest Canada Inc. and GX Technology Group Inc.

[3] The Commission alleges, as a consequence, that:

a. Shorupan Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXTokens and shares in Nvest Canada and GX Technology, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Warren Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXTokens, and shares in Nvest Canada and GX Technology, contrary to s. 53(1) of the *Act*; and

c. Pirakaspathy and Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) and s. 53(1) of the *Act* and are therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[4] In light of this alleged misconduct the Commission seeks significant sanctions in the form of administrative monetary penalties, permanent prohibitions, disgorgement and an order for costs.

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[1] RSO 1990, c S.5 (***Act***)

[5] For the reasons below, we find that:

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest, contrary to s. 53(1) of the *Act*; and

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[6] Also, for the reasons below, we have ordered sanctions for the respondents' misconduct that:

a. ban the respondents from participating in the Ontario capital markets for a period of 10 years;

b. ban Pirakaspathy and Carson from being or becoming directors or officers of any issuers or registrants for a period of 10 years;

c. require each respondent to pay an administrative penalty of $200,000;

d. require the respondents, on a joint and several basis, to disgorge $293,493.19 to the Commission; and

e. require the respondents, on a joint and several basis, to pay costs to the Commission in the amount of $162,390.10.

[7] Before outlining the background facts, we first address our decision to proceed with the combined merits and sanctions hearing in the absence of the respondents.

2. PRELIMINARY MATTERS

2.1 Proceeding in the absence of the respondents

[8] None of the respondents attended or otherwise participated in the combined merits and sanctions hearing or in any other aspect of this proceeding.

[9] The Notice of Hearing and the Statement of Allegations were properly served on all respondents other than Carson. The Tribunal was satisfied that the requirement for "reasonable notice" had been met for Carson and ordered[2] that the requirement for service of the Notice of Hearing and Statement of Allegations on Carson be waived. At the same time, the Tribunal ordered that the requirement for service on the respondents of all future processes in this proceeding also be waived. The Tribunal also ordered[3] that the merits and sanctions stages of the proceeding be heard together.

[10] Where notice of a hearing has been given to a party to a proceeding and the party does not attend the hearing, the Tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.[4] While rule 21(3) of the Rules (the Rules that were in place at the time of this hearing) expressly refers to the notice of a hearing being "served" on a party, s. 6(1) of the *Statutory Powers Procedures Act* (**SPPA**) simply provides that the parties to a proceeding shall be given "reasonable notice" of the hearing.

[11] Accordingly, we were satisfied that we could proceed with this hearing in the absence of the respondents.

3. BACKGROUND

3.1 The respondents

[12] Nvest Canada was incorporated federally in December 2017 and was dissolved in November 2022. Nvest Canada's registered office address was at all times in Ontario.

[13] Pirakaspathy and Carson were the first directors of Nvest Canada and they continued as the only directors throughout the Material Time. Throughout the Material Time, Nvest Canada's corporate filings identified Ontario addresses for each of Pirakaspathy and Carson. While no share registers for Nvest Canada

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[2] (2023) 46 OSCB 2689

[3] (2023) 46 OSCB 3617

[4] *Statutory Powers Procedure Act* (**SPPA**), RSO 1990, c S.22, s 7(1); *Capital Markets Tribunal Rules of Procedure* (**Rules**), r 24(3) (formerly, r 21(3))

were introduced in evidence, an organization chart shared with a crypto exchange identifies Pirakaspathy and Carson as the 80% and 20% shareholders of Nvest Canada, respectively.

[14] The Commission also established that various versions of the name "Nvest" were used to refer to Nvest Canada when engaged in its business activities, including "Nvest", "NvestBank" and "Nvest Global Enterprises Inc."

[15] Pirakaspathy's Facebook and Instagram accounts show that he represented himself as the CEO of "Nvest". In various documents Carson also represented himself to be the Chief Executive Officer of Nvest Canada. In a YouTube video of a live launch event for the GXToken, Pirakaspathy and Carson were identified as co-founders of Nvest Canada and Carson was identified as the Chief Operating Officer.

[16] GX Technology (formerly named Global Xchange Co. Inc.) was incorporated federally in March 2018 and dissolved in April 2023. GX Technology's registered office address was at all times in Ontario, at the same address as Nvest Canada.

[17] Pirakaspathy and Carson were the first directors of GX Technology and they continued as the only directors throughout the Material Time. Throughout the Material Time, GX Technology's corporate filings also identified Ontario addresses for each of Pirakaspathy and Carson. While no share registers for GX Technology were introduced in evidence, the organization chart referred to above identifies Pirakaspathy and Carson as the 78.5% and 20% shareholders of GX Technology, respectively.

[18] The Commission established that the names "Global X Change" and "Global X Change Inc." were used interchangeably to refer to GX Technology when engaged in business activities, including in connection with GXTokens. Corporate searches for "Global X Change Inc." returned no matches, and we are satisfied that Global X Change Inc. was not a Canadian corporation, but simply an unregistered corporate or business name that was used to refer to GX Technology.

[19] Carson's Facebook account shows that Carson represented himself as the CEO of "Global X Change".

[20] Pirakaspathy also appears as a signing officer for GX Technology on the GX Broker Dealer Agreement discussed below. In a YouTube video of a live launch event for the GXToken, Pirakaspathy was also introduced as the co-founder of "Global X Change".

[21] Pirakaspathy represented that "Nvest" was the parent company behind "Global X Change". A document sent by Pirakaspathy to an investor represented that Nvest Canada beneficially owned the shares of "Global X Change Inc." Multiple investor witnesses understood Nvest Canada to be the parent company of "Global X Change". Whether Nvest Canada actually owned the shares of GX Technology was not established, and this would be inconsistent with the organization chart referred to above that indicated that Pirakaspathy and Carson owned both the Nvest Canada shares and the majority of the GX Technology shares. However, the Commission did establish that Nvest Canada was represented to be the parent company of GX Technology and also that Nvest Canada and GX Technology were affiliated companies owned and controlled by Pirakaspathy and Carson.

4. MERITS ISSUES AND ANALYSIS

[22] The issues relevant to the merits of the case are as follows:

a. Are the GXTokens securities?

b. Did Pirakaspathy, Nvest Canada and GX Technology engage in the business of trading securities without registration contrary to s. 25(1) of the *Act*?

c. Did Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distribute securities contrary to s. 53(1) of the *Act*?

d. Should Pirakaspathy and Carson be deemed under s. 129.2 of the *Act* to have violated Ontario securities law for permitting, authorizing or acquiescing in the corporate respondents' breaches?

[23] Our analysis and conclusions on each of these issues are set out below.

4.1 Are the GXTokens securities?

[24] The Commission's allegations of breaches of the *Act* relating to the GXTokens are based on the Commission first establishing that the alleged breaches related to securities.

[25] The Commission submits that the GXTokens themselves are securities as they are "investment contracts" under the *Act*.[5] In the alternative, the Commission submits that, similar to the finding of this Tribunal in *Hogg (Re)* [6], the transaction or scheme for the offer and sale of the GXTokens, including all of the surrounding circumstances and the representations made to investors about the GXTokens, is an "investment contract" and therefore a security.

[26] We find that the GXTokens considered alone are not "investment contracts". However, we accept the Commission's alternative submission. We find that the direct initial sale transactions of the GXTokens to purchasers that are the subject of this case, considering all the surrounding circumstances of those sales and the related representations to prospective purchasers, are "investment contracts" and therefore securities under the *Act* (the **GXToken Securities** or **GXToken Security**).

[27] Before setting out our reasons for this finding, we first set out some of the relevant facts about the GXTokens and the context in which they were sold to investors.

4.1.1 The context in which the GXTokens were promoted and sold

[28] The Commission submits that the respondents developed and sold a crypto asset called the GXToken. Although it is evident that GXTokens were represented to be crypto assets, we are not satisfied on the evidence adduced by the Commission that the GXTokens were, in fact, crypto assets developed using blockchain technology. Nevertheless, we are satisfied that "notional digital assets" called

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[5] *Act*, s. 1(1) "security" paragraph (n)
[6] 2024 ONCMT 15 (***Hogg***)

GXTokens and represented to be crypto assets were sold to investors. Witnesses testified that they could log in to an online account or platform or digital "Nvest wallet" to see a representation of the number of GXTokens that they had purchased and their purported value. One investor witness confirmed that there was never a way to actually exchange or sell or obtain a refund for the GXTokens once purchased and this evidence was corroborated in a number of the investor questionnaires that were collected by the Commission.

4.1.1.a Global X Change and the GXBroker program

[29] GXTokens were promoted and sold alongside two other related concepts:

a. "Global X Change"; and

b. the "GXBroker program".

[30] "Global X Change" was described as an "exchange operating system" that was a "one-stop-shop" for a user to get access to all the crypto currency exchanges. The Global X Change environment or platform was described as offering various free features that would allow users to buy, store, sell, send and receive crypto assets. It is not clear whether the Global X Change was ever actually built or functioned as represented.

[31] The "GXBroker program" was a multi-level marketing program. The GXBroker program was represented as a way for GXToken investors to run their own digital cryptocurrency brokerage business using the Global X Change operating system for their business. Investors could join the GXBroker program by acquiring GXTokens and "staking" the specified number required for participation in the program (described as a method for "proving" ownership of the GXTokens).

[32] The requirement to stake GXTokens was described as a means of demonstrating one's commitment to the GXBroker program and also as an alternative to charging a monthly fee for access to the GXBroker program. The act of staking the required number of GXTokens would change an individual investor's account from that of a user to that of a GXBroker. Investors could also join an enhanced

level of the GXBroker program called the "GXBroker-Dealer" program, if they staked a US $100,000 investment in GXTokens.

[33] GXBrokers and GXBroker-Dealers were told that they would be paid commissions for driving sales of additional GXTokens in the Global X Change platform as well as for GXToken sales by GXBrokers and GXBroker-Dealers they were responsible for recruiting. These commissions were in US dollars, but if a GXBroker opted to convert commissions to GXTokens, they would receive a 15 percent bonus. The Commission called as a witness one investor who earned commission as a GXBroker, Investor LJ. Investor LJ's evidence was that her commissions were in GXTokens that were never exchangeable into dollars.

[34] Global X Change Inc. (that is, GX Technology) was represented as being responsible for developing GXTokens and the "GX Platform" as well as being responsible for the "Token Generation Event", or "Initial Coin Offering" for the GXTokens. A maximum of 350,000,000 GXTokens would be or were created, with a maximum of 300,000,000 available for purchase, the balance reserved for other purposes, including for founders and advisors. Investors were told that the GXTokens would be released for sale to the public in three different phases, with the purchase price to increase with each phase of the sale.

4.1.1.b GXToken document disclosure

[35] It was represented that once all the GXTokens were sold, the Global X Change platform would be opened up to trade in other crypto assets, and GXBrokers and GXBroker-Dealers would also be able to earn commissions on the sale of other crypto assets on the platform.

[36] The Commission adduced evidence of various documents provided to some GXToken investors.

[37] Investor PW received the following documents from Pirakaspathy sent from an "Nvestbank" email address in connection with his investment in GXTokens:

a. GXToken Generation Event Disclosure Document (**Disclosure Document**);

b. GXToken Sale Agreement; and

c. GXBroker Dealer Agreement.

[38] The Disclosure Document was issued on behalf of "Global X Change Inc.", which we accept to be GX Technology. The Disclosure Document states that a copy in electronic form is available through the company website. Whether that was actually the case was not established. The Disclosure Document sets out the terms upon which GXTokens were offered for purchase and states: "(t)he only right the Tokens bring is the right to hold the Tokens and potentially use the Tokens to participate in the GX Platform if offered in the future. Tokens carry no other rights, whether express or implied, and do not represent or grant any ownership right, share or security (or equivalent or analogous right) in the Company…".[7]

[39] The Disclosure Document contains a section on "Application of Funds" and states that the "Whitepaper" posted on the company website (which was not put into evidence or referred to by any witness) sets out the intended business model of the company in promoting the adoption of GXTokens. The Disclosure Document further provides that funds raised from the sale of GXTokens will be applied:

a. to the costs of operating the Token Generation Event, including legal, marketing and technical costs;

b. as set out in the Whitepaper; and

c. to ongoing working capital of the company.

[40] The Disclosure Document identifies numerous risks associated with the GXToken investment, including:

a. the development and deployment of a functioning "GX Platform" could be delayed or not occur, and this could directly impact the potential for

[7] Exhibit 2, GXToken Generation Event Disclosure Document, Exhibit A to the Affidavit of Sherry Brown, affirmed on October 18, 2023

adoption and use of the GXToken, which are intended to be used to access the "GX Platform"; and

b. although the company will seek to have the GXTokens listed on third party exchanges that might facilitate the trading of GXTokens, the company has no control over the actions of such third party exchanges.

[41] The GXToken Sale Agreement indicates that Global X Change (that is, GX Technology) is developing GXTokens and the GX Platform and that GXTokens may be used to access the GX Platform. Among other things, the Agreement sets out various terms and conditions related to the purchase of GXTokens, and requires confirmation that the purchaser has read and understood the Whitepaper and the Disclosure Document and acknowledges the risks set out in those documents.

[42] Some investor witnesses testified that they did not receive any such documents. Some investor questionnaires obtained by the Commission similarly indicated that the investor had not received any documentation, but had purchased GXTokens online. The Commission did not establish what documentation, if any, was provided to or acknowledged by online purchasers of GXTokens.

4.1.1.c The promotion of GXTokens

[43] The Commission also established that GXTokens were promoted in various ways, including through in-person meetings, live promotional events, and 210 widely disseminated and publicly available videos that were posted on two YouTube channels during the Material Time.

4.1.2 Is the "investment contract" test met in this case?

[44] In deciding whether an investment is a security, we must give the term a broad and purposive meaning, given that the *Act* is remedial legislation intended to protect the investing public. The *Act* must be "read in the context of the economic realities to which it is addressed" and "substance, not form, is the

governing factor".[8] Investor protection is the "overarching lens" through which we should view the attributes of an alleged security.[9]

[45] The term "investment contract" is not defined in the *Act*, but the test for the existence of an investment contract is well-established and includes the "Common Enterprise Approach" adopted by the Supreme Court of Canada in *Pacific Coast Coin*. An investment contract is comprised of four elements:

a. an investment of money;

b. with a view to a profit;

c. in a common enterprise where the success or failure of the enterprise is interwoven with, and dependent on, the efforts of persons other than the investors; and

d. the efforts made by those others significantly affect the success or failure of the enterprise.[10]

[46] Below we find that the facts of this case satisfy the Common Enterprise Approach. Before we turn to that analysis, we address a few preliminary issues.

[47] First, we adopt here the reasoning of the Tribunal in *Hogg (Re)*[11] on the question of whether there must be a technically valid and enforceable written or oral common law contract in relation to each of the sale transactions for the GXTokens for us to find that there is an "investment contract". We are satisfied that this is not necessary, given that an investment contract may be a "contract, transaction or scheme".[12] In this case, the fact that the Commission did not establish the existence of a common law contract in relation to each of the sale

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[8] *Pacific Coast Coin Exchange v Ontario Securities Commission*, [1978] 2 SCR 112 (***Pacific Coast Coin***) at p 127; see also *VRK Forex & Investments Inc (Re)*, 2022 ONSEC 1 (***VRK***) at paras 22, 24, 33 aff'd 2023 ONSC 3895 (Div Ct) (***VRK Appeal***)

[9] *VRK* at para 24; *VRK* Appeal at para 15

[10] *Pacific Coast Coin*

[11] *Hogg* at paras 93-94

[12] See *Re Pacific Coast Coin Exchange of Canada Ltd et al v Ontario Securities Commission*, 1975 CanLII 686 (ONSC), citing *SEC v W.J. Howey Co.* (1946), 328 U.S. 293 at 298-299; *Hogg* at paras 93-94

transactions for the GXTokens and also the fact that not every purchaser of GXTokens may have received the same documents or heard the same or all representations in relation to GXTokens, does not preclude a finding of an "investment contract".

[48] Second, also adopting the reasoning of this Tribunal in *Hogg*,[13] we find that an investment contract can exist when some or all of the relevant facts are either untrue when they are represented to investors or the promises to investors do not materialize.

[49] Third, we have considered the fact that GXTokens could be staked by an investor in order to access the GXBroker program, and therefore potentially had a utility function in the sense of having a consumptive value or meaningful utility. We have done so because arguably tokens that possess only utility functions might not meet either the view to a profit or common enterprise elements of the investment contract test. However, we accept the Commission's submission that, on the facts of this case, any utility function that the GXTokens may have had does not preclude a finding of an "investment contract". The inclusion of utility functions in a token does not preclude the finding of an "investment contract" if, on the relevant facts, the "investment contract" test is otherwise satisfied, as we find below.

[50] We note that the Commission established that many investors bought GXTokens without any intention of using them to access the GXBroker program, including by purchasing more GXTokens than were required for staking. The one investor witness who did acquire GXTokens in order to access the GXBroker program, Investor LJ, testified that she also acquired GXTokens with the expectation of profit. At least one YouTube promotional video explained that it was available to a GXBroker to "unstake" GXTokens and sell them (impliedly at a profit).

[51] Fourth, we have considered the question of what is the "investment contract" in this case, a question that is a fact specific inquiry. As noted above, the

[13] *Hogg* at para 95

Commission's principal submission is that the GXTokens themselves are the "investment contract" and therefore the security. The Commission submits that the GXTokens had both digital and non-digital characteristics, and the non-digital characteristics were "shaped by the representations of the respondents". We understand the Commission's submission to be that the representations and promises made to investors in relation to the GXTokens are somehow embodied in and a part of the GXTokens themselves.

[52] We are not satisfied that the GXTokens can themselves be an investment contract. The GXTokens, considered alone, do not incorporate or reflect what purchasers of the GXTokens might reasonably expect from their investments, including the promises and representations that were made to purchasers. Instead, we accept the Commission's alternative submission and find that, similar to the approach taken by this Tribunal in *Hogg*,[14] the purchasers' reasonable expectations, based upon the representations that were made to them, are an essential element of what we find to be the investment contract. The investment contract (and therefore the security) here is the transaction or scheme for the offer and sale of the GXTokens, including the economic reality of all of the surrounding circumstances and, in particular, the representations made to investors.

[53] Below we set out our consideration of the elements of the Common Enterprise Approach and our reasons for finding that there is an investment contract in this case.

4.1.2.a Investment of money

[54] This first element of the test (an investment of money) can be satisfied if there was a payment.[15]

[14] *Hogg* at paras 104-107

[15] *Hogg* at para 111

[55] The Commission established that the sale of GXTokens involved the payment of currency by investors through credit card transactions, direct wires from bank accounts, cheques or other electronic processing methods.

[56] The Commission established that during the Material Time:

a. 18 Ontario investors purchased GXTokens for a total of $61,121.69. These funds were paid to a number of accounts, including accounts in the following names: Nvest Canada, Global Xchange Co Inc., Carson, GXOTC Incorporated, Generation Z International Inc., and Virtual Sales Agency Inc. (**VSA**);

b. one Ontario investor, GL, paid a total purchase price of $99,985 ($100,000 less fees) for what he believed to be a purchase of shares in Nvest Canada and an "add-on bonus" of GXTokens, with purchase funds paid to an account in the name of Nvest Canada;

c. another Ontario investor, PW, acquired GXTokens and shares in GX Technology for a total payment of $129,736.50. A part of the purchase funds ($39,736.50) was paid to an account in the name of Global Xchange Co. Inc. (which we accept is GX Technology), with the balance of the purchase funds coming from the rolling over of previous funds (totalling $90,000) that Investor PW had provided to Pirakaspathy (by way of a draft and cheque made out to Acid Marketing Solutions Inc. and Nvest Canada) to invest generally in the crypto space on his behalf; and

d. three non-Ontario investors (based in Australia, British Columbia and Saskatchewan) purchased GXTokens for $2,605 in total, with purchase funds paid to accounts in the name of GXOTC, VSA and Nvest Canada.

[57] Of the foregoing amounts totalling $293,493.19, the Commission established that:

a. $173,471.26 went to an Nvest Canada account and both Pirakaspathy and Carson had signing authority over this account;

b. $46,021.50 went to a Global Xchange Co Inc. account (which we take to be a GX Technology account) and Carson had signing authority over this account;

c. $7,500 went to a Generation Z account associated with Pirakaspathy and Pirakaspathy was identified as the CEO and a director of Generation Z;

d. $17,407.90 went to two VSA accounts over which Carson had signing authority;

e. $40,000 went to an Acid Marketing account over which Carson had signing authority and where the account forms listed Carson as a director and Pirakaspathy was associated with the account; and

f. $4,060.53 went to two GXOTC accounts associated with Carson.

[58] The Commission also submits that we should find that there was a much broader scope of global sales of GXTokens, beyond the sales summarized above. In making this submission, the Commission relies on:

a. a single extract from a single promotional YouTube "Crypto Broker Academy" video posted on December 11, 2019, with a background image titled "GXBroker Network" and an image of Pirakaspathy under the heading "Nvest CEO Explains". This single extract represents that as at the time of the video there were 997 GXBrokers worldwide, and a total $1.077 million value of GXTokens sales; and

b. banking and financial evidence which the Commission submits demonstrates that "significantly more" GXTokens were sold. This banking and financial evidence is in the form of transaction records from Stripe, a payment processor, with memo details indicating "Buy GXT". The Commission's investigator testified, and we accept, that entries with this memo detail correspond to funds received for sales of GXTokens additional to those identified above. Although neither the Commission nor the Commission's investigator tallied the amounts of these additional GXToken transactions, based on our review of the evidence, the total

amount of additional GXToken transactions evidenced by these records is approximately US $76,000.

[59] The Commission did not adduce any evidence that corroborates the quantum of GXToken sales referred to in the December 11, 2019, YouTube video. Given the obvious promotional nature of the video, and the lack of corroborating evidence, we do not accept that it establishes the true extent of GXToken sales. We are, however, satisfied that the transaction records from Stripe do establish on a balance of probabilities that there were additional GXToken sales, albeit much more limited in amount.

[60] This element of the test is satisfied. The Commission's case is restricted to the initial sales of GXTokens by or on behalf of GX Technology and we find that the economic reality is that, regardless of which bank account the sales proceeds were deposited into by the respondents and consistent with the representations in the Disclosure Document, the sale proceeds would have been understood by investors to be available for use by the enterprise offering the GXTokens.

4.1.2.b View to a profit

[61] It is appropriate to take a broad approach in deciding whether an investment of money is made "with a view to a profit". A profit includes "all types of economic return, financial benefit or gain."[16] We adopt the approach of this Tribunal in *Hogg*[17] and conclude that the Commission need not establish that each individual purchaser of the GXTokens had an expectation of profit, but need only establish that given all of the circumstances, investors would have reasonably had the expectation.

[62] We are satisfied, based on the evidence of the four investor witnesses who testified, that they each purchased GXTokens with an expectation of profit.

[63] We are also satisfied that the investment potential and expected profitability of the GXTokens was widely promoted. This promotion included numerous

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[16] *Edward Furtak et al.*, 2016 ONSEC 35 at para 82, aff'd 2018 ONSC 6616 (Div Ct)

[17] *Hogg* at paras 116-118

statements about the investment potential of GXTokens and representations that they would appreciate in value made in multiple YouTube promotional videos. These included numerous "Global X Change" branded videos in which Pirakaspathy appeared and was identified as the CEO of Nvest which was described as "the parent company of GX Technology". In these videos, Pirakaspathy told investors that given the finite number of GXTokens, they could expect "incredible dividends" and prices to "skyrocket" as "speculators" and "whales" came along, GXTokens became tradeable on exchanges, and the value of becoming a GXBroker became clear. The projected future increase in the price or value of GXTokens was also similarly promoted through "Crypto Broker Academy" YouTube videos hosted by Sal Khan, an individual represented to be Global X Change's President of Client Operations.

[64] Given the scope of publication of the representations about the anticipated profitability of the GXTokens, we conclude that investors would have reasonably had an expectation of a profit from their investments. The investor witnesses were in fact shown to have such expectation. The Commission has satisfied its burden that the investment of money was made with a view to a profit.

4.1.2.c "Common enterprise" and "efforts of others"

[65] We consider the third and fourth elements of the test together, as they are interwoven.[18]

[66] A common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)."[19] The third and fourth elements are satisfied if there is a common enterprise where the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.[20]

[67] We conclude that these elements of the test are met in this case. The investors' role was limited to advancing money in return for the GXTokens. Based on the

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[18] *Pacific Coast Coin* at 128-129; *Hogg* at para 119

[19] *Pacific Coast Coin* at 129

[20] *Pacific Coast Coin* at 128-129

various representations that were made widely to investors, we find that investors would reasonably have expected that the profitability of their investment depended upon the efforts of others to increase the value of the GXTokens.

[68] Each of the investor witnesses confirmed that they understood the profitability of their investment depended on the efforts of others to increase the value of GXTokens.

[69] Representations were made in the Disclosure Document and in various widely available promotional YouTube videos that the following efforts would lead to an increase in the demand for and price of the GXTokens:

a. the successful development and deployment of the "GX Platform" that would be important to the use and adoption of GXTokens;

b. the successful development of the Global X Change operating system or platform, that would support and increase demand for participation in the GXBroker program;

c. the provision of training and technical support to GXBrokers in order to grow the GXBroker network; and

d. arrangements to have the GXTokens listed on multiple third party exchanges.

[70] Having found that GXToken Securities are "investment contracts" and therefore securities, we turn now to consider the breaches of the *Act* that have been alleged by the Commission.

4.2 Unregistered trading in breach of s. 25(1)

[71] The Commission alleges that Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading in relation to the sale of GXToken Securities and also in relation to the sale of shares of Nvest Canada and GX Technology, contrary to s. 25(1) of the *Act*.

[72] Subsection 25(1) of the *Act* provides, in part, as follows:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,
>
> a) is registered in accordance with Ontario securities law as a dealer; or
>
> b) …

[73] The *Act* further defines "trade" or "trading" to include, among other things:[21]

> (a) any sale or disposition of a security for valuable consideration, …,
>
> […]
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[74] The Tribunal determines whether a person or company has engaged in the business of trading in securities by looking at the evidence as a whole, including the surrounding circumstances and the impact on investors or potential investors. As to the scope of "acts in furtherance of a trade", it may include things such as promotional activities, organizational activities, administrative activities or the processing of payments relating to the trading at issue. In other words, the registration requirement extends beyond those engaged directly in acts of solicitation and sale.[22].

[75] The Tribunal has consistently looked to the criteria set out in Companion Policy 31-101 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to inform its determination of whether a person or company is engaged in the business of trading for the purposes of s. 25(1) of the *Act* (i.e., the "business trigger" test). The criteria include factors such as:

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[21] *Act*, s 1(1)

[22] *Hogg* at para 190

a. directly or indirectly carrying on the securities trading activity with repetition, regularity or continuity;

b. receiving or expecting to receive compensation for the securities trading activity; and

c. directly or indirectly soliciting securities transactions.

4.2.1 Unregistered trading of GXToken Securities

[76] Having found the GXToken Securities to be a security, we have no difficulty in concluding that the sales activities of Pirakaspathy, Nvest Canada and GX Technology in relation to GXToken Securities required them to be registered, unless they were otherwise exempt from registration. The Commission established that none of Pirakaspathy, Nvest Canada or GX Technology was registered to trade in securities during the Material Time. The onus then shifted to these respondents to demonstrate their entitlement to rely upon an available exemption from registration, an onus which they did not meet.

[77] The evidence clearly established that not only did Pirakaspathy, Nvest Canada and GX Technology engage in trading in GXToken Securities with repetition, regularity and continuity over the Material Time, they also directly or indirectly solicited investors to purchase GXToken Securities. In regard to the criteria of directly or indirectly trading and directly or indirectly soliciting referenced above, the Commission established that:

a. Pirakaspathy directly solicited investments by Investors PW, LJ and GL in GXTokens;

b. Pirakaspathy engaged in numerous acts in furtherance of trades in GXTokens, including by acting as a central figure in the YouTube video promotional campaign, soliciting investors at a live Global X Change kickoff event in Toronto, and meeting with potential investors including Investors PW, LJ and GL;

c. the YouTube video promotional campaign in which Pirakaspathy regularly was featured was branded with the Global X Change business name (used

by GX Technology) and also tied directly to Nvest Canada, as Pirakaspathy was frequently identified as appearing as the co-founder of Nvest Canada "the parent company of Global X Change";

d. GX Technology was the company responsible for the GXToken Generation Event and behind a website promoting the investment in GXTokens; and

e. Piraskapathy distributed documentation related to an investment in GXTokens to Investor PW.

[78] Despite representations and promises made in promotional videos and directly to one or more of the investor witnesses who testified at the hearing regarding the development of other services, including the creation of the Global X Change operating system, there was almost no evidence of any progress on any of these items. Indeed, the only activity that Pirakaspathy, Nvest Canada and GX Technology seemed to engage in over the Material Time, other than the direct promotion and sale of GXToken Securities, was the promotion of the GXBroker program, which was a multi-level marketing scheme intended to enhance, directly or indirectly, the solicitation of sales of GXToken Securities.

[79] As to remuneration flowing directly or indirectly to Pirakaspathy, Nvest Canada and GX Technology from the sale of GXTokens, Pirakaspathy candidly admitted in one of the promotional YouTube videos that "[w]here we make our money is by signing up brokers" or, in other words, by selling GXTokens to investors which, in turn, could be staked to qualify them to be a GXBroker. The Commission correctly points out that there is no evidence of any other revenue or profit-generating aspect of the respondents' business during the Material Time. This was a business solely devoted to selling GXTokens for the purpose of generating revenue/profit from those sales. Proceeds of GXToken sales were received into bank accounts in the names of Nvest Canada, Global Xchange Co. Inc. (i.e., GX Technology) and other accounts over which Pirakaspathy had control.

[80] The Commission's argument for liability for unregistered trading against Nvest Canada and GX Technology was based on the principle, familiar to the criminal

law, that Pirakaspathy and/or Carson were the "directing minds" or "alter egos" of the corporate entities such that their breaches of the *Act* should be regarded as the breaches of the corporations. We did not consider it necessary to rely on the alter ego principle in finding that Nvest Canada and GX Technology engaged in unregistered trading in relation to GXToken Securities, given that there was extensive evidence, as referenced above, that the corporate entities themselves engaged in trades or acts in furtherance of trades in relation to GXToken Securities.

4.2.2 Alleged unregistered trading in the shares of Nvest Canada and GX Technology

[81] While the Commission also alleges in its Statement of Allegations that Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading in relation to the shares of Nvest Canada and GX Technology, it did not pursue this allegation in closing submissions. Accordingly, we see no need to address this issue and decline to do so.

4.3 Illegal distributions in breach of s. 53(1)

[82] The Commission alleges that the respondents illegally distributed securities, specifically, GXToken Securities, shares in GX Technology, and shares in Nvest Canada contrary to s. 53(1) of the *Act*.

[83] Subsection 53(1) provides that:

> no person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[84] "Distribution" is defined in s. 1(1) of the *Act* to mean, amongst other things not relevant for present purposes, "a trade in securities of an issuer that have **not been previously issued**" or "a trade in previously issued securities of an issuer **from the holdings of any control person**" (emphasis added). "Control person" is defined in s. 1(1) of the *Act* to mean, amongst other things, a person or company or combination of persons or companies acting in concert who hold

sufficient voting rights attached to all outstanding voting shares of an issuer to affect material control of the issuer, with 20 percent of such voting rights being deemed, in the absence of evidence to the contrary, to satisfy the requirements of the definition.

4.3.1 Distribution of the GXToken Securities contrary to s. 53(1) of the *Act*

[85] In order to establish a breach of s. 53(1) of the *Act* the Commission must establish that a respondent: a) traded in a security; b) the trade in the security was a "distribution"; and c) no preliminary prospectus or prospectus was filed with the Commission.

[86] The evidence established that all of the respondents, including Carson, actively engaged in trading or acts in furtherance of trading in relation to GXToken Securities. All of the respondents were actively engaged in promoting the GXToken Securities and soliciting investors to purchase them. The promotional and sales activities of Pirakaspathy, Nvest Canada and GX Technology are detailed above.

[87] As to Carson, without purporting to provide an exhaustive list of his promotional and sales activities, the evidence established that:

a. he participated in one or more of the live promotional events relating to the sale of GXTokens;

b. he participated in the sale of GXTokens to the investor witness, KM;

c. he met with Investors PW, GL and LJ in connection with their acquisition of GXTokens;

d. he assisted Investor PW in setting up his Nvest wallet to hold his GXTokens; and

e. some GXTokens sales proceeds were received in an account in Carson's name and other accounts over which Carson had control.

[88] The Commission established that the GXToken Securities sold to the 23 identified investors were securities that had not been previously issued. There was no

evidence of any secondary market trades in GXTokens. Accordingly, the trades in GXToken Securities were a distribution within the meaning of the *Act*.

[89] The Commission also established that GX Technology did not file a preliminary prospectus or prospectus for the GXToken Securities with the Commission as required by s. 53(1) of the *Act*. If an exemption was available to GX Technology, the onus was on it to establish eligibility. GX Technology did not meet this onus.

[90] Accordingly, we are satisfied that the Commission established that each of the respondents breached s. 53(1) of the *Act* in relation to GXTokens.

4.3.2 Alleged distributions of shares in GX Technology and Nvest Canada contrary to s. 53(1) of the *Act*

[91] The Commission further alleges that all of the respondents engaged in illegal distributions of the shares of GX Technology and Nvest Canada. The Commission led evidence of:

a. a single trade of either 10,000 or 100,000 shares of GX Technology in June 2019 to Investor PW; and

b. a trade or acts in furtherance of a trade (which trade may ultimately never have taken place) in an indeterminate number of shares of Nvest Canada to Investor GL, in or about the spring or summer of 2019.

[92] The Commission established that neither GX Technology nor Nvest Canada filed a preliminary prospectus or prospectus with the Commission in connection with any distribution of company shares. If an exemption was available to either of GX Technology or Nvest Canada in respect of these obligations, the onus was on them to establish eligibility, an onus which neither company met. Accordingly, if the trade to Investor PW of GX Technology shares and the trade or acts in furtherance of a trade to Investor GL of Nvest Canada shares were distributions of the company shares in question, the respondents who participated in those distributions contravened s. 53(1) of the *Act*.

[93] Investor PW testified that he wanted to acquire GXTokens, not equity in either of the respondent companies. Beginning in 2017, he dealt primarily with Pirakaspathy, but also on occasion with Carson. Investor PW made three payments totalling $129,736.50 over the period January 2018 to February 2019: $40,000 on January 10, 2018, to Acid Marketing; $50,000 on July 6, 2018, to Nvest Canada; and $39,736.50 on February 18, 2019, to GX Technology. Investor PW provided the initial $90,000 for Pirakaspathy to invest on his behalf in the "crypto space". When Investor PW decided to purchase GXTokens, the understanding was that his initial $90,000 would be rolled into the purchase along with the additional $39,736.50.

[94] Despite his professed interest in acquiring only GXTokens, Investor PW received a share certificate dated June 1, 2019, for 100,000 shares of GX Technology. The cover email from Pirakaspathy dated June 24, 2019, indicates that, in exchange for his investment, Investor PW had become a "GX Founder", which entitled him to become a "GXBroker Dealer", receive 1,603,572 GXTokens for the purchase price of $132,507.50 (i.e., the total sum of Investor PW's investment according to Pirakaspathy), and receive 10,000 Class A Shares in GX Technology. The discrepancy between the $132,507.50 amount in this cover email and the other evidence indicating that Investor PW's total payment was $129,736.50 was not explained.

[95] The discrepancies in the documentary evidence relative to any shares in GX Technology received by Investor PW are manifest. The Commission offered no explanation of the difference in the number and class of shares referenced in the share certificate versus the covering email. No minute book, share register or directors' resolution of GX Technology was tendered into evidence to establish that any shares received by Investor PW were issued from treasury by GX Technology. Moreover, the Commission's position in its closing submissions was that GX Technology was a wholly owned subsidiary of Nvest Canada (arguably inconsistent with an issuance from treasury), but offered no evidence that the shares purportedly received by Investor PW came from Nvest Canada.

[96] Accordingly, the Commission did not satisfy us on a balance of probabilities that any GX Technology shares received by Investor PW were either shares that had not been previously distributed or shares from the holdings of a "control person"[23] (someone holding at least 20% of the voting shares), thereby meeting the other potentially applicable definition of a "distribution"[24] under the *Act*. More fundamentally, the June 24, 2019, cover email from Pirakaspathy calls into question whether any shares received by Investor PW were a sale or disposition "for valuable consideration" and therefore a "trade"[25] within the meaning of the *Act*. We find that Investor PW's intention to buy GXTokens, considered together with the language of the June 24, 2019, cover email, is more consistent with Investor PW's total investment being attributed to the purchase of GXTokens.

[97] In contrast to Investor PW, Investor GL testified that he was only interested in investing in Nvest Canada. Over the period March 2019 to July 2019, he engaged in a number of exchanges with Pirakaspathy and Carson on WhatsApp where they discussed, among other things, the purchase of shares. Unfortunately, there is no identification in the exchange of the issuer of the shares. However, Investor GL was unwavering in his evidence that his intention was to purchase shares of Nvest Canada from Nvest Canada.

[98] The documentary evidence produced by Investor GL included a wire transfer of $100,000 to Nvest Canada on June 25, 2019. Investor GL testified that this was "my commitment to investment (*sic*) in this company for an exchange of some equities".[26] Despite receiving a confirmation on August 17, 2019, that his funds had been applied towards the purchase of 68,359 GXTokens, Investor GL's response to a question from the Chair seeking clarification of this apparent inconsistency was that the GXTokens he received were an "add-on bonus" to his purchase of Nvest Canada shares.

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[23] *Act*, s 1(1)
[24] *Act*, s 1(1)
[25] *Act*, s 1(1)
[26] Hearing Transcript, October 27, 2023 at p 61, lines 15-16

[99] Investor GL never received a share certificate for the unspecified number of shares of Nvest Canada he claims to have purchased. The Commission did not produce a minute book, directors' resolution or share register of Nvest Canada confirming the purchase. Nevertheless, Investor GL was a forthright witness whose credibility went unchallenged. His oral evidence, coupled with the WhatsApp exchange referred to above, were sufficient evidence of a trade or acts in furtherance of a trade in Nvest Canada shares on the part of Pirakaspathy, Carson and Nvest Canada to give rise to an adverse inference in the absence of any response from the respondents. Accordingly, we conclude that Pirakaspathy, Carson and Nvest Canada breached s. 53(1) of the *Act* with respect to Investor GL's intended purchase of Nvest Canada shares.

4.4 Deemed liability pursuant to s. 129.2 of the *Act*

[100] The Commission seeks an order that each of Pirakaspathy and Carson is deemed liable under s. 129.2 of the *Act* for the breaches of s. 25(1) and s. 53(1) of the *Act* by each of Nvest Canada and GX Technology.

[101] Section 129.2 of the *Act* provides that a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted, or acquiesced in the issuer's non-compliance with the *Act*.[27]

[102] The Commission submits that the threshold for liability under s. 129.2 is low.[28] The Commission submits that liability has been met in this case because:

a. both Pirakaspathy and Carson acted as the directing minds of Nvest Canada and GX Technology since their inception;

b. they were both actively involved in the daily operations of the companies; and

c. they were both actively involved in Nvest Canada's and GX Technology's sales of the GXTokens as well as the sale of company shares, including

[27] *Act*, s 129.2

[28] *Momentas Corporation (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 at para 118

through the activities that are identified above in our reasons as evidence of Pirakaspathy's direct breach of s. 25(1) of the *Act* in connection with GXTokens and Pirakaspathy's and Carson's direct breach of s. 53(1) of the *Act* in connection with both GXTokens and Nvest Canada shares.

[103] The Commission clarified that it was only asserting that:

a. Pirakaspathy and Carson should be deemed liable under s. 129.2 of the *Act* for both corporations' breaches *in the alternative* to a finding that they each directly breached s. 25(1) and s. 53(1); and

b. because the Commission has not alleged that Carson is directly liable under s. 25(1) of the *Act*, he should be deemed liable under s. 129.2 of the *Act* for Nvest Canada's and GX Technology's breaches of s. 25(1) of the *Act* in respect of GXTokens.

[104] Given the Commission's clarification, and our findings above of direct breaches related to ss. 25(1) and 53(1) by Pirakaspathy and of s. 53(1) by Carson, we have only considered whether Carson should be deemed liable pursuant to s. 129.2 for Nvest Canada's and GX Technology's breaches of s. 25(1). We accept the Commission's submissions and conclude that he should. We otherwise dismiss the other allegations in the alternative of deemed liability under s. 129.2.

4.5 Conduct contrary to the public interest

[105] The Commission alleges in the Statement of Allegations that each of the respondents also engaged in conduct that is contrary to the public interest. The Commission clarified that this is an allegation in the alternative, in the event that we do not conclude that the Commission has established the pleaded breaches of the *Act*.

[106] Although we have not found any breaches of s. 53 of the *Act* in connection with the transfer of GX Technology shares to Investor PW, we decline to find that any of the respondents' conduct in relation to that transfer engages our public interest jurisdiction. The Commission made no submissions on the point and the

Statement of Allegations includes only a non-particularized allegation of conduct contrary to the public interest.

4.6 Summary of findings on the merits

[107] In summary, we have found:

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest Canada, contrary to s. 53(1) of the *Act*; and

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[108] We now turn to consider the appropriate sanctions and costs.

5. SANCTIONS AND COSTS

5.1 Overview

[109] On April 21, 2023, the Tribunal ordered[29] that the merits hearing and the sanctions and costs hearing in this proceeding be heard together. Accordingly, what follows are our reasons and decision on the applicable sanctions and costs.

[110] The Commission sought:

a. permanent market participation bans against all of the respondents;

b. permanent bans against Pirakaspathy and Carson from being or becoming directors or officers of any issuers or registrants;

c. administrative penalties of $500,000 against each respondent;

[29] (2023) 46 OSCB 3617

d. an order for disgorgement in the amount of $293,493.19 against the respondents on a joint and several basis; and

e. costs in the amount of $306,487.60 payable by the respondents on a joint and several basis.

[111] For the reasons set out below, we conclude that it is in the public interest to order that:

a. the respondents are banned from participating in the Ontario capital markets for a period of 10 years;

b. Pirakaspathy and Carson are banned from being or becoming directors or officers of any issuers or registrants for a period of 10 years;

c. each respondent pay an administrative penalty of $200,000;

d. the respondents, on a joint and several basis, disgorge $293,493.19 to the Commission; and

e. the respondents, on a joint and several basis, pay costs in the amount of $162,390.10.

5.2 Legal framework for sanctions

[112] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the *Act*'s purposes, which include the protection of investors from unfair, improper and fraudulent practices, and the fostering of fair and efficient capital markets.[30]

[113] The sanctions listed in s. 127(1) of the *Act* are protective and preventative, as opposed to punitive, and are intended to be exercised to prevent future harm to Ontario's capital markets.[31]

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[30] *Act*, s 1.1

[31] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[114] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case.[32] Determining the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case.

[115] In multiple previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions.[33]

[116] The Commission submits that the appropriate sanction factors to be considered in this case are:

a. the seriousness of the misconduct;

b. any aggravating factors; and

c. specific deterrence and general deterrence.

[117] We have considered whether there are any other factors that might be relevant (for example, potentially mitigating factors) and have concluded that we do not have any evidence relevant to any other factors. We therefore have limited our consideration, for the purposes of these reasons, to the factors the Commission has relied upon.

[118] Before applying these factors to the facts of this case, we will briefly address the Commission's submissions regarding the ability of the Tribunal to order sanctions against dissolved corporations as Nvest Canada was dissolved in November 2022 and GX Technology was dissolved in April 2023.

5.3 Sanctions against dissolved corporations

[119] We agree with the Commission's submission that the Tribunal has the power to order sanctions against dissolved corporations. In *Cook (Re)*,[34] the Tribunal reciprocated a British Columbia Securities Commission's order against a dissolved corporation. In doing so, the Tribunal held that this was appropriate

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[32] *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19 at paras 28, 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60

[33] *Norshield Asset Management (Canada) Ltd. (Re)*, 2010 ONSEC 16, (2010) 33 OSCB 7171 at paras 77, 92

[34] 2018 ONSEC 6 (***Cook***)

because the dissolved corporation could be revived in the future and it would serve a general deterrence purpose.[35] We find that the same considerations apply in this proceeding and we will consider appropriate sanctions against Nvest Canada and GX Technology despite their dissolution.

5.4 Relevant factors

5.4.1 Seriousness of the misconduct

[120] The Commission correctly submits that the respondents' misconduct is serious. The registration and prospectus requirements of the *Act* are cornerstones of the securities regulatory regime in Ontario.[36]

[121] Compliance with the registration requirements of the *Act* "ensures that those who engage in the business of trading in securities meet the applicable proficiency, integrity and financial solvency requirements of the *Act*."[37] The registration requirements of the *Act* are, as the Commission submits, key investor protection provisions of Ontario securities law, whose breach will always lead to increased risk to investors.

[122] The respondents' misconduct was repeated and extended throughout 2019 and 2020, adding to its seriousness.

[123] The Commission further submits that registration is of "paramount" importance in the evolving crypto asset sector because investors are faced with "various and complex products, high volatility, and high risk", suggesting that compliance with the registration requirements of the *Act* is somehow more important in this case than perhaps in others involving similar investor impact, market scope and temporal duration. Leaving aside the issue of whether this was a case that actually involved the crypto asset sector, we do not subscribe to the view that the importance of registration is necessarily a function of the type of product involved.

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[35] *Cook* at paras 22-24

[36] *Polo Digital Assets Ltd (Re)*, 2022 ONCMT 32 (***Polo Digital***) at paras 71, 84

[37] *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 at para 100

[124] The Commission correctly submits that the prospectus requirements of the *Act* are intended to ensure that prospective investors are provided with the requisite information to make informed investment decisions and that the risks associated with potential investment opportunities are fully disclosed to the investing public. In a disclosure-based securities regulatory regime such as Ontario's, compliance with the prospectus requirements is critical to achieving both the investor protection and the broader market integrity purposes of the *Act*. While again the Commission submits that the prospectus requirements are of particular importance in relation to crypto assets, we do not subscribe to this view for the same reason as we declined to adopt the Commission's similar submission in relation to an enhanced importance of the registration requirements in the crypto context.

5.4.2 Aggravating factors

[125] The Commission submits that there are a number of aggravating factors present in this case that justify the sanctions sought, including:

a. one or more letters sent by the Commission to Pirakaspathy in August 2018 and July 2019 warning him to consider the applicability of Ontario securities law to Nvest Canada's business were ignored;

b. the respondents aggressively promoted the GXToken and the GXBroker program over YouTube, thereby affording a global audience for the sale of securities in contravention of the *Act*;

c. the respondents made use of a multi-level-marketing scheme (i.e., the GXBroker program) to enhance sales of GXTokens;

d. in a video posted on YouTube, the respondents advised that GXBrokers did not require a "license" in order to sell GXTokens, thereby putting investors who became GXBrokers at risk of breaching Ontario securities law by not being registered;

e. the respondents operated out of a physical location previously occupied by a branch of a Canadian chartered bank that they called "NvestBank" and

referred to it in at least one YouTube video as such in order to lend the appearance of legitimacy to their business activities;

f. the respondents cited a non-existent Canadian corporation "Global X Change Inc." as being responsible for the Token Generation Event, which was misleading;

g. Investor GL was solicited to purchase equity shares in Nvest Canada but instead was sold GXTokens and was later listed on an organization chart provided to a crypto exchange as a shareholder of GX Technology; and

h. the organizational chart sent to the crypto exchange also listed both Investors PW and GL as directors of GX Technology, which was false.

[126] For the reasons set out below we have found that only two of these factors are aggravating factors to be taken into account: a) ignoring the Commission's warning letters, to which we ascribe some weight, and b) representing to GXBrokers that licensing was not required.

[127] The warning letters sent by the Commission to Pirakaspathy focussed on various products identified on Nvest Canada's website and referenced prospectus and registration requirements in relation to such products. The letters did not specifically reference GXTokens. However, in addition to their warning about the identified products they did include a generic reminder that Nvest Canada is required to consider the applicability of the *Act* "to any current and proposed business activities, including those related to creating, managing and offering securities in Ontario". In the circumstances, we consider the sale of GXToken Securities in the face of the letters to be a somewhat aggravating factor, but not as significant an aggravating factor as had the letters specifically warned about the sale of GXTokens.

[128] We find the fact that the respondents told GXBrokers that they did not require a license to sell GXTokens was established and should also be taken into account by us as an aggravating factor in our assessment of the appropriate sanctions to be ordered against the respondents.

[129] We reject the suggestion that the use of YouTube should be regarded as an aggravating factor in this case. The Commission led no probative evidence to establish that the use of YouTube had any significant impact on the volume or geographic scope of GXToken sales.

[130] Similarly, the suggestion that the GXBroker program was an aggravating factor in this case was not made out on the evidence. The Commission did not establish how many investors were induced to buy GXTokens by GXBrokers. One investor testified that, while she regarded the role of GXBroker as an employment opportunity, the opportunity never amounted to anything or led to any real income stream. Conversely, other witnesses stated they had no interest in becoming a GXBroker, presumably because they perceived little or no value in it.

[131] The balance of the factors that the Commission submits are aggravating factors for the purposes of assessing appropriate sanctions in this case all contain elements of what could be characterized as misrepresentation or fraud. However, the Commission did not allege misrepresentation or fraud in respect of these or any other acts of the respondents in its Statement of Allegations. The respondents therefore had no notice prior to the hearing that their good character or the propriety of their conduct would be raised as issues in this proceeding in this manner, as prescribed in s. 8 of the SPPA. Accordingly, we have declined to make any findings in respect of these further alleged aggravating factors or to give them any weight for the purposes of determining appropriate sanctions against the respondents in this case.

5.4.3 Specific and General Deterrence

[132] We agree with the submissions of the Commission that both general and specific deterrence are important for us to consider when imposing sanctions in this case.

[133] General deterrence aims to dissuade other like-minded individuals or companies from carrying on similar activities by showing that a respondent's misconduct is unacceptable and will not be tolerated by the Tribunal.[38] We have previously

[38] *Bradon Technologies* at para 46

made clear in these reasons our views regarding the importance of compliance by all market participants with the registration and prospectus requirements of the *Act*. It must be clear to others who might be inclined to engage in similar misconduct that doing so will attract significant sanctions.

[134] The purpose of specific deterrence is to discourage the respondents from repeating their misconduct and engaging in further future misconduct.[39] The respondents offered no explanation or acknowledgement of what led to their misconduct and have not admitted the seriousness of their breaches of Ontario securities laws. They have ignored this proceeding and have not offered any explanation for apparently ignoring the Commission's warning letters. In all these circumstances, specific deterrence is a relevant and important factor in fashioning sanctions in response to the respondents' breaches, both for the purpose of investor protection and for the maintenance of public confidence in Ontario's capital markets.

[135] The Commission submits that the growing popularity of crypto investments and the accessibility of social media platforms, such as YouTube, as vehicles to promote these investments, presents a significant risk to investors and enhances the need for deterrence in this case. While we do not foreclose the possibility that the facts in another case might warrant such a finding, we do not think that the evidentiary record in this case supports this submission.

5.5 Market Participation Bans

[136] The Commission requests comprehensive and permanent bans to remove the respondents from participating in Ontario's capital markets, including permanent trading and acquisition bans, the removal of all trading exemptions and registration bans.

[137] We agree with the Commission that market participation bans against all respondents are warranted. However, for the reasons that follow, we do not agree that permanent bans are appropriate given the nature of the breaches

[39] *Bradon Technologies* at para 46

found and taking into account all of the sanctioning factors and evidence relating thereto as described above. Accordingly, we find that each of the respondents should be banned from participating in the Ontario capital markets for a period of 10 years.

[138] We agree with the Commission's submission that participation in the capital markets is a privilege, not a right.[40] Under s. 127(1) of the *Act*, the Tribunal has the power to order that this privilege be limited, permanently or for such period of time as the Tribunal considers appropriate in the circumstances. There is no precise algorithm for determining the length of the appropriate market ban in any given set of circumstances. As indicated above, the exercise is contextual and each case will turn on its own facts.

[139] The Commission submits that permanent market participation bans are necessary in this case as against the corporate respondents for reasons of deterrence and in light of what it characterizes as the "extensive aggravating factors in this case". In support of its submissions respecting the corporate respondents, the Commission cites both *Mek Global Limited (Re)*[41] and *TCM Investments Ltd (Re)*.[42]

[140] With respect to the individual respondents, the Commission refers particularly to the following alleged aggravating factors:

a. their disregard of the Commission's warning letter;

b. the use of non-existent corporations in documentation concerning the GXToken;

c. the sale of GXTokens to Investor GL in place of Nvest Canada shares; and

d. the misrepresentation to an exchange that Investor GL was a shareholder of GX Technology.

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[40] *Polo Digital* at para 135

[41] *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek Global***) at para 111

[42] *TCM Investments Ltd. (Re)*, 2017 ONSEC 43 (***TCM Investments***) at para 6

[142] The Commission also points to the fact that through their conduct the respondents obtained $293,403.19 from 23 identified investors and the fact that the scope of the GXToken sales globally is "much greater". In support of its submissions respecting the individual respondents, the Commission cites *Xi Fuels Inc. (Re)*.[43]

[143] We have already expressed our views with respect to the Commission's list of aggravating factors, indicating those which we accept as applicable. With respect to the number of identified investors and the amount raised from them, they are neither insignificant nor titanic. As to the Commission's reliance upon other alleged "much greater" global sales, as explained above there was evidence of only approximately US $76,000 raised through these additional GXToken sales.

[144] We found the authorities relied upon by the Commission helpful but distinguishable. While all three cases found breaches of s. 25(1) and s. 53(1) of the *Act*, the facts and aggravating factors are different than those in our case. For example, the magnitude of the respondents' misconduct in *Mek Global*[44] was exponentially greater and was aggravated by the fact that they persisted in the misconduct despite warnings and the commencement of the proceedings and by making misleading statements to investors. In *TCM Investments*[45] the Tribunal found evidence of high pressure sales tactics and trading on behalf of investors, while in *Xi Biofuels*[46] the Tribunal made findings of misleading statements to investors, previous sanctions for similar misconduct against one individual respondent, and a sophisticated multi-jurisdictional scheme structured to avoid regulatory oversight.

[145] We find that permanent market participation bans are not appropriate. Instead, considering all of the circumstances, including collectively all of the sanctions ordered against the respondents, we find 10 years to be the appropriate period

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[43] *Xi Biofuels Inc. (Re)*, 2010 ONSEC 29 (***Xi Biofuels***)
[44] *Mek Global* at paras 104, 106, 108, 109
[45] *TCM Investments* at paras 6, 12
[46] *Xi Biofuels* at para 57

for market participation bans against each of the respondents. This is consistent with the market participation bans ordered in other decisions of this Tribunal involving breaches of both s. 25(1) and s. 53(1) of the *Act* that the Commission cited in connection with its submissions regarding the appropriate administrative penalties in this case.[47]

5.6 Director and Officer Bans

[146] The Commission also requests permanent director and officer bans, both as to issuers and registrants, against each of Pirakaspathy and Carson.

[147] In support of its request for director and officer bans against Pirakaspathy and Carson, the Commission simply relied upon the submissions it made in support of its request for market participation bans against all respondents. While we do not necessarily subscribe to the view that the factors that the Tribunal should take into account when considering market participation bans against individuals will always be identical or coextensive with those that the Tribunal should take into account when considering the propriety of director and officer bans against those same individuals, we do agree with the Commission that director and officer bans against both Pirakaspathy and Carson are warranted.

[148] It was demonstrably clear that neither Pirakaspathy nor Carson possessed the knowledge, skills or experience required to properly discharge the duties of a director or officer of an issuer or registrant. They were either oblivious to or willfully flouted their duties and responsibilities as directors and officers of market participants. However, for the reasons we articulated in relation to the Commission's request for permanent market participation bans, we do not agree that permanent bans against either of Pirakaspathy or Carson are warranted. In so determining we considered the nature of the breaches, the relevant sanctioning factors and the totality of the evidence. We find that each of Pirakaspathy and Carson should be required to forthwith resign any positions they hold as a director or officer of any issuers or registrants and that they

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[47] *MBS Group (Canada) Ltd. (Re),* 2013 ONSEC 15 at para 50; *MRS Sciences Inc. (Re)*, 2014 ONSEC 14 at paras 96, 98, 100; *Cartu (Re),* 2022 ONCMT 21 (***Cartu***) at paras 4, 26

should each be prohibited from becoming or acting as a director or officer of any issuers or registrants for a period of 10 years.

5.7 Monetary Sanctions

5.7.1 Administrative Penalties

[149] The Commission requests that we impose an administrative penalty of $500,000 against each of the respondents. The Commission submits that this amount is justified by the unique aggravating circumstances in this case, the multiple breaches of the *Act*, as well as the lack of any mitigating factors.

[150] We agree that it is appropriate to order administrative penalties against all respondents. However, we do not agree that the amounts sought by the Commission are warranted in view of the sanctioning principles outlined above and the breaches found, taking into account our views as to the relevant aggravating factors as set out above and also taking into the account the other sanctions we have ordered against the respondents. Instead, for the reasons set out below, we order that each of the respondents pay an administrative penalty of $200,000.

[151] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.[48] The Commission correctly submits that determining the appropriate administrative penalty in any given case is not a precise science. Rather, the penalty in each case must be determined based on the context and circumstances of that case. Prior decisions of the Tribunal may offer guidance as to quantum and assist in assessing proportionality, but will rarely be determinative of the result. The amount ordered in any particular case depends on a variety of factors, including a consideration of all sanctions imposed on each respondent individually, the goals of specific and general deterrence, the need

[48] *First Global Data Ltd. (Re),* 2024 ONCMT 25 (***First Global***) at para 150

for the penalty to be more than just a ”cost of doing business”, the scope and seriousness of the misconduct and the amount of money raised from investors.[49]

[152] The Commission cites a number of prior sanctions decisions of the Tribunal involving breaches of ss. 25(1) and 53(1) of the *Act*. Of those cases, none are on all fours with this case but, in our view, the decisions in *MBS Group (Canada) Ltd. (Re)* and *MRS Sciences Inc. (Re)* are the most helpful.

[153] As in the present case, the breaches found in *MBS* and *MRS* related solely to registration and illegal distribution violations. The administrative penalty ordered against the individual respondent in *MBS* was $100,000, although the Tribunal in that case found some mitigating factors, unlike the case before us. *MBS* also involved a larger number of investors and significantly higher aggregate investor losses (approximately $1.5 million). The individual respondents in *MRS* were all directors or *de facto* directors of the corporate respondent and were ordered to pay administrative penalties ranging from $30,000 to $200,000.

[154] The Commission submits that the quantum of administrative penalties ordered in *MBS* and *MRS* are not sufficient to satisfy deterrence goals in this case. The Commission seeks to distinguish the decisions in *MBS* and *MRS* by arguing that the decisions are not of recent vintage and did not involve crypto assets. While we do not foreclose the possibility that the passage of time may be appropriate to take into account when setting administrative penalties in some instances, we are satisfied that it is not warranted to achieve deterrence goals in this case. As to the Commission's suggestion that the crypto asset and social media elements of this case warrant higher administrative penalties, we have already expressed our views on the relevance of those factors to this case and do so without suggesting that they may not be relevant factors when assessing administrative penalties in other cases.

[49] *First Global* at paras 151-152

[155] The Commission submits that it would be more appropriate for us to look to the Tribunal's decisions in *Cartu (Re)*[50] and *Ava Trade Ltd. (Re)*[51] for guidance in setting the administrative penalties in this case. Both of those cases involved findings of breaches of s. 25(1) and s. 53(1) of the *Act*. The administrative penalties in those cases ranged from $500,000 to $1,000,000. However, it is significant that each of those cases involved a much greater number of investors and much larger aggregate amounts invested—*Cartu* involved more than $1.4 million raised from over 700 investors and *Ava* involved revenues of approximately $3.7 million from 1,400 accounts. Moreover, in *Cartu* there were findings of aggravating factors such as misleading and deceptive conduct which were not made out in our case. Lastly, the administrative penalty in *Ava Trade* was part of an approved settlement agreement which, in our view, limits its precedential value.

[156] The Commission also referred us to the Tribunal's decisions in *Polo Digital*[52] and *Mek Global*[53] as justification for an escalation of administrative penalties in the crypto asset context. In both of those cases, the Tribunal found the respondents to have breached s. 25(1) and s. 53(1) of the *Act*. In *Polo Digital* the Tribunal imposed an administrative penalty of $1.5 million and in *Mek Global* the Tribunal imposed an administrative penalty of $2 million. However, both cases involved active global crypto asset trading platforms. In each case, the scope and magnitude of the breaches significantly exceeded the proven scope and magnitude of the breaches in this case. *Polo Digital* involved revenues in excess of US $1.8 million and daily trading volumes of more than US $500 million. *Mek Global* involved many billions of dollars of daily trading volume, misconduct that was continuing, and a finding that a significant administrative penalty was also warranted to ensure that the respondents did not reap a windfall as a result of the Tribunal's inability to make a disgorgement order due to the respondents'

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[50] *Cartu* at paras 10-21, 31-11

[51] *Ava Trade Ltd. (Re)*, 2019 ONSEC 27, (2019) 42 OSCB 6520 at paras 3, 5, 12

[52] *Polo Digital* at para 134

[53] *Mek Global* at para 125

failure to cooperate with the Commission.[54] We do not take these cases to stand for the proposition that breaches of securities laws warrant higher administrative penalties simply by virtue of the fact that that they occur in the crypto asset context. Each case must be considered on its own facts.

5.7.2 Disgorgement

[157] The Commission seeks an order that the respondents disgorge $293,493.19 to the Commission on a joint and several basis, which it submits is the amount obtained by the respondents as a result of their non-compliance with Ontario securities law. For the following reasons, we make the order for disgorgement requested by the Commission.

[158] Pursuant to paragraph 10 of s. 127(1) of the *Act*,[55] the Tribunal has the power to order disgorgement of "any amounts obtained as a result of the non-compliance" with Ontario securities law. Such an order is not limited to amounts received directly by a respondent but also includes amounts obtained from non-compliance carried out through a corporation by its directing minds[56], amounts raised by respondents even where the funds raised are received by entities not named as respondents[57], and amounts raised through one or more corporations that are part of "one fundraising and project execution enterprise."[58]

[159] The purpose of a disgorgement order is to ensure that respondents do not benefit from their breaches of the *Act*, to deter them and others from similar misconduct, and to restore confidence in the capital markets.[59]

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[54] *Mek Global* at para 106

[55] *Act*, s. 127(1)

[56] *Quadrexx Hedge Capital Management Ltd. (Re)*, 2018 ONSEC 3 at para 46

[57] *Phillips v Ontario (Securities Commission),* 2016 ONSC 7901 at para 77

[58] *First Global* at paras 114-115

[59] *Paramount Equity Financial Corporation (Re),* 2023 ONCMT 20 (***Paramount***) at para 71; *Polo Digital* at para 114.

[160] When considering whether a disgorgement order is appropriate and, if so, in what amount, the Tribunal has established the following non-exhaustive list of factors to consider:[60]

a. whether an amount was obtained by a respondent as a result of non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.

[161] We are satisfied that the aggregate sum of $293,493.19 is ascertainable as having been obtained by the respondents as a result of the breaches of Ontario securities law found to have been committed by them.

[162] With respect to the sales of GXTokens, Nvest Canada and GX Technology were treated as if they were one fundraising and project execution enterprise. Promotional videos, various documents, and email communications relating to the promotion and sale of GXTokens referred to both entities.

[163] With respect to the trade or acts in furtherance of a trade in Nvest Canada shares to Investor GL, we also find that Nvest Canada and GX Technology were treated as if they were one fundraising and project execution enterprise, given that the interactions with Investor GL in relation to Nvest Canada shares ultimately resulted in Investor GL being provided GXTokens in return for his funds.

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[60] *First Global* at para 86; *Paramount* at para 72

[164] Pirakaspathy and Carson also "obtained" the proceeds resulting from the breaches of Ontario securities law given their significant roles (as co-founders, sole directors, and shareholders) in Nvest Canada and GX Technology as well as their control over all of the various accounts that received the sale proceeds (including accounts in the names of entities that are not named as respondents but that were controlled by Pirakaspathy and Carson).

[165] We agree with the Commission's submission that once it has established the amount obtained as a result of a respondent's non-compliance with Ontario securities law, the onus shifts to the respondent to either disprove the reasonableness of the amount[61] or establish that those investors who suffered losses are likely to obtain redress[62]. Having failed to take part in any of the proceedings in this case, the respondents did not satisfy either of those onuses.

[166] In the circumstances, given the seriousness of the misconduct, we are satisfied that the requested disgorgement order is required for purposes of both specific and general deterrence. In this case, we find that a joint and several order for disgorgement as against all of the respondents is appropriate, given our finding that Nvest Canada and GX Technology were treated as if they were one fundraising enterprise and given Pirakaspathy's and Carson's significant roles.

5.8 Costs

[167] We turn now to the Commission's request that the respondents pay a portion of the costs incurred by it in this proceeding and in the investigation of this matter.

[168] The Commission seeks costs of $306,487.60 (comprised of $294,097.50 for fees and $12,390.10 for disbursements) against the respondents on a joint and several basis.

[169] For the reasons below, we conclude that it is appropriate to order that the respondents pay costs on a joint and several basis of $162,390.10, comprised of $150,000 for fees and $12,390.10 for disbursements.

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[61] *Polo Digital* at para 118

[62] *First Global* at para 122

[170] The Commission filed two affidavits of Yolanda Leung, a law clerk employed by the Commission, which set out in detail the fees sought and disbursements incurred by the Commission in relation to the investigation and proceeding in this matter. The Leung affidavit regarding fees (**First Leung Affidavit**) lists members of the Commission who participated in each phase of the investigation and proceeding, the hourly rates for their positions (which have been previously accepted by the Tribunal), and the time spent by them. The aggregate product of the time recorded multiplied by the respective hourly rates assigned to the personnel involved was $397,478.75.

[171] The First Leung Affidavit explains that the sum of $397,478.75 was calculated excluding:

a. time spent by members of the Enforcement Branch's Case Assessment team;

b. time spent by members of the File Team that resulted in a duplication of effort;

c. time spent by members of the File Team who recorded 35 or fewer hours on this matter; and

d. time spent by Case Leads and Assistant Investigators of the Enforcement Branch.

[172] Lastly, the First Leung Affidavit explains that the fees sought of $294,097.50 were arrived at by applying a further reduction of $103,381.25, by removing from the fees claimed the fees corresponding to a number of Commission personnel who spent time working on the matter.

[173] The Leung affidavit which details the disbursements incurred by the Commission (**Second Leung Affidavit**) simply provides an explanation and supporting evidence as to how the sum of $12,390.10 in disbursements is calculated.

[174] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law. A costs order is

discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[63] The Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and other market participants. As a consequence, costs orders help to foster fairness and efficiency in our capital markets, along with confidence therein.

[175] As is the case with an administrative penalty, determining the amount of a costs award is not a science.[64]. Respondents who contravene Ontario securities law should expect to contribute to the costs of the investigation and proceeding.

[176] However, while costs awards may reflect the Tribunal's approval or disapproval of procedural conduct or misconduct by one or more parties to a proceeding, they should not be an additional punitive response to the substantive breaches found.[65] Nor should a costs award act as a deterrent to a respondent's willingness, and ability, to pursue a full defence.[66] Adopting the language used by the Tribunal in *First Global,* costs awards should be "fair and proportionate".[67] When determining costs, the Tribunal should apply a balanced approach, taking into account various factors which assist in its assessment of the fairness and proportionality of the costs sought. A non-exhaustive list of these factors includes: (a) the seriousness of the respondent's misconduct; (b) the complexity of the issues; (c) the amount of investor harm at issue; (d) the number of investors harmed; (e) the length of the hearing and whether any of the parties engaged in any conduct that either unnecessarily lengthened the hearing or contributed to meaningfully to shortening it; and (f) the Commission's success in establishing its allegations.

[177] The Commission submits that the complexity of the issues in this case warranted the level of reimbursement of fees sought. In support, it cites the numerous bank accounts that were reviewed, the numerous variations of the corporate

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[63] *First Global* at para 231
[64] *First Global* at para 236
[65] *First Global* at para 236(a)
[66] *First Global* at para 236(a)
[67] *First Global* at para 252

respondents' names, and the hundreds of YouTube videos posted by the respondents. It also points to the fact that it called four investor witnesses as part of its case.

[178] In our view, this was a case of modest complexity involving unregistered trading and the illegal distribution of investment contracts and corporate shares. The banking evidence and YouTube videos, while voluminous, were not unduly complicated, nor did the corporate respondents' use of multiple variations of their legal names make the proceeding especially complex. The evidentiary portion of the merits hearing was less than four full hearing days.

[179] We have previously expressed our views as to the seriousness of the respondents' breaches of Ontario securities law and the relative size of the investor funds at issue in this case. With respect to the latter, it is relevant when considering proportionality in the context of a costs award to highlight that this case involved only 23 identified investors, and more than 75 percent of the investor funds were raised from only two of those investors, PW and GL. We also take into account the fact that the Commission dropped its allegations of breaches of s. 25 of the *Act* in relation to the corporate shares and was not successful in establishing a breach of s. 53 of the *Act* in relation to the GX Technology shares. In our view, an award of the full amount of the costs sought by the Commission in this case would not be fair and proportionate in the circumstances.

[180] In view of our findings regarding the factors relevant to fairness and proportionality in this case, we further reduced the fees recoverable by the Commission as costs for the proceeding and investigation in this matter to $150,000. Lastly, we found the total disbursements sought to be fair and reasonable and made no reduction in the amount recoverable as costs in respect thereof.

6. CONCLUSION

[181] For the above reasons, we conclude that:

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest Canada, contrary to s. 53(1) of the *Act*; and

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[182] For the above reasons, we order that:

a. the respondents shall cease trading in any securities or derivatives for a period of 10 years, pursuant to paragraph 2 of s. 127(1) of the *Act*;

b. the respondents shall be prohibited from acquiring any securities for a period of 10 years, pursuant to paragraph 2.1 of s. 127(1) of the *Act*;

c. any exemptions contained in Ontario securities law do not apply to the respondents for a period of 10 years, pursuant to paragraph 3 of s. 127(1) of the *Act*;

d. the respondents are prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of s. 127(1) of the *Act*;

e. Pirakaspathy and Carson shall resign from any position that they may hold as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*;

f. Pirakaspathy and Carson shall be prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*;

g. the respondents shall each pay an administrative penalty of $200,000 pursuant to paragraph 9 of s. 127(1) of the *Act*;

h. the respondents shall, on a joint and several basis, disgorge $293,493.19 to the Commission, pursuant to paragraph 10 of s. 127(1) of the *Act*; and

i. the respondents shall, on a joint and several basis, pay to the Commission $162,390.10 for the costs of the investigation and hearing.

Dated at Toronto this 1st day of November, 2024.

"James Douglas"

James Douglas

"Andrea Burke"

Andrea Burke

"William J. Furlong"

William J. Furlong