

PUBLICATION

What happens with Cryptocurrency in a Divorce

Asher M. Macdonald

March 7, 2018

Division of matrimonial property is a major issue for divorcing couples. Each party may have questions about what property qualifies as a divisible asset, what property is exempt from division (which I previously wrote about [here](#)) and how to value the assets, and when. In this day and age, these questions can be more complex than you might expect; specifically, I'm talking about cryptocurrency.

You've heard of Bitcoin. Maybe you've heard of Ether, or Stellar, or Ripple, or any number of cryptocurrencies. Maybe you understand them, and maybe you don't, at least not yet, but you likely believe as I do that blockchain technology is here to stay. For that reason, it's a short jump to understanding that there is a real, tangible value to cryptocurrency. News about Bitcoin millionaires pervades the mainstream, including 16 year olds' who turned their Bar Mitzvah money into seven-figure investments. There are multiple marketplaces, globally and here in Canada, that trade cryptocurrencies in great volumes for large value.

So, what does this mean from a perspective of matrimonial property division?

It seems simple to say that cryptocurrency is likely to be treated the same as a security, like any other investment in stock; a taxable investment, similar to holdings within an unregistered account, subject to adjustment for capital gains. But it's not so simple, because there are numerous complexities with cryptocurrency that set it apart:

Disclosure: Cryptocurrency is not held in a bank account; it's stored on the blockchain itself. You can access the currency by interacting with the blockchain itself via a crypto 'wallet' (which is itself confusing because your wallet doesn't hold anything, it just verifies the public and private keys necessary to gain access and sign transactions).

Why does this matter? Because you can't just walk into your crypto bank and ask for statements evidencing transactions in your account over a certain period. The best you're likely to get is exported worksheets from exchanges that track all of your transactions, but that is a long way from providing a clear picture of your crypto balance and valuation. You can also get screenshot of your wallet depicting balance of the amount of a particular cryptocurrency associated with your public and private keys.

Questions arise: When was that screenshot taken? Is that your only wallet? Have there been any transactions in or out of your 'account' since separation? The blockchain is a public ledger, and everything is verifiable, but the

information is not consolidated into a simple quarterly statement from a brokerage: Who is responsible for consolidating and paying for the tracing of all the transactions through multiple avenues to come up with a final number? Is that akin to an expert valuation?

Valuation: There is no singular authority on cryptocurrency values. Different exchanges may have different trade values at different times. Only a few cryptocurrencies have trading pairs with fiat currency (mostly US Dollar); most cryptocurrencies have trading pairs with another cryptocurrency.

For instance, if you own Bitcoin, Ethereum, or Litecoin, there is an associated USD price; however, if you own Stellar, or Ripple, or Icon, or Iota, or any number of alternative tokens or coins, you will only find a value relative to one of the larger coins (typically Bitcoin or Ethereum). While it is expected that many of the legitimate currencies will have a direct fiat trading pair, it has not happened yet and there's no telling when it will happen.

Until then, if a spouse owns a cryptocurrency without a fiat trading pair, there must be a conversion process. This begs the question: Which exchange or institution will be used to peg a valuation? Further, how do you verify the value of the cryptocurrency when only an amount owned is provided at a singular point in time that may not have any pegged fiat (i.e., Canadian dollar) value?

Another issue is time of valuation. Parties can pinpoint a price at a set date, as is so often the case in Alberta, but they need to understand the volatility and velocity of the market, and drastic price swings of cryptocurrency in short periods of time. Given the length of time it typically takes to agree on asset values and to finally execute an agreement, the price of a specific cryptocurrency might have dropped 60% or increased 200%.

For this reason, agreements that divide cryptocurrency should be extremely specific about valuation dates and times. And since the valuation process may end up being akin to an expert valuation, perhaps there needs to be a preliminary written agreement about valuation dates prior to engagement.

What about corporate interests? One spouse or the other might have a corporate ownership with an interest in fintech ('financial technology') and peer-to-peer payments, fueled by cryptocurrency. The ultimate goal would be to give the corporation a value for purposes of dividing property between spouses, but as we've seen there could be great difficulty in finding a value. Who is currently qualified to perform corporate valuations where cryptocurrency is involved?

Risk: In the case of stocks or bonds or other registered or unregistered investments, the issue of risk doesn't arise. Trust is placed in financial institutions and funds are underwritten and insured. There are also regulatory processes in place to back track transactions and ensure funds aren't lost when being moved around and between accounts. These principles are so inherent in the way we do business, most people don't even think about them.

This is not the case with cryptocurrency, which is largely unregulated. The end user bears all of the risk in ensuring all transactions are completed properly.

For instance, transferring cryptocurrency involves inputting a 16-digit hash (an alphanumeric string that represents the 'destination' of a transaction). If the digits are entered incorrectly, the cryptocurrency could be irrevocably sent to a different address altogether to the benefit of an anonymous person. Some cryptocurrencies require a 'memo' with the transaction as another identification step, but failure to include one could result in the transaction, and cryptocurrency, being lost altogether.

Should a spouse who is obliged to transfer cryptocurrency to another as a division of property be on the hook for such a loss? What about the risk of the receiving spouse not understanding how to manage the cryptocurrency wallet or access their funds? Should a transferring spouse be required to "cash out" from crypto into fiat before making a settlement payment?

What about the extremely large risk of compromised exchanges or wallets and stolen cryptocurrency? What if spouses reach a settlement agreement that contemplated cryptocurrency and accounts for its value, but the crypto is exposed or stolen before the transfer can complete? Who bears the loss? Does the settlement agreement wind back?

Family lawyers are only beginning to address these questions, which are sure to become more and more prevalent as blockchain technology continues to grow.

If you have questions about cryptocurrency in your [family law](#) matters, whether pre-marriage or post-separation, or anywhere in between, please contact the author, a member of our firm's Family Law group, and our new [Cryptocurrency & Blockchain](#) group that is actively involved in Calgary's blockchain community.