

# Ontario court grants Anton Piller Order in cryptocurrency heist

May 02, 2022

Recently, the Ontario Superior Court of Justice (ONSC) granted an Anton Piller Order to the plaintiff in *Cicada 137 LLC v. Medjedovic*, 2021 ONSC 8581 (*Cicada 137*), in connection with the alleged theft of \$15 million in digital assets from the plaintiff's digital wallet. This is important as it shows the court's willingness to intervene and provide protection related to the hacking of digital assets, such as cryptocurrency. This case is also interesting as the defendant has raised the defence that "Code is Law," which is an untested online theory which provides that it is acceptable for a user to exploit a weakness "within the parameters of the programming code."

## Background

The defendant, Andean Medjedovic (the Defendant or Mr. Medjedovic), is a 19 year-old with a master's degree in mathematics from the University of Waterloo who was, until very recently, living with his parents.

Cicada 137 LLC (the Plaintiff or Cicada), was incorporated to hold cryptocurrency tokens on behalf of a small number of investors of the Indexed Finance facility. The Plaintiff states that the Defendant hacked the source code and induced Indexed Finance to transfer \$15 million in tokens to his personal account. The Defendant has admitted to moving the tokens.

In addition to the Plaintiff's claim, there is now also a second action with two representative plaintiffs advancing a class action on behalf of all of the holders of the cryptocurrency tokens taken by the Defendant.

## Anton Piller Order

The Plaintiff was able to trace the tokens to the Defendant's account and applied to the ONSC to grant an Anton Piller Order to preserve these tokens. An Anton Piller Order is a form of preservation order used where there is risk that a defendant may destroy or conceal evidence. If granted, the applicant is permitted to enter the defendant's property in order to seize relevant devices and records. The seized items are then placed in the control of an independent third party, pending determination of the matter.

The Defendant did not defend himself in this action; however, as he was living with his parents at the time of the alleged theft, his parents brought a motion opposing the Anton Piller Order. Ultimately, the court granted Cicada an Anton Piller Order to search for passwords and other evidence that could lead them to locate and preserve the cryptocurrency tokens. Under this order, Cicada seized electronic devices, belonging to both Mr. Medjedovic and his parents.

The court made the following important comments:

This is a very serious matter for which an Anton Piller Order is justified. A very substantial amount of value has been taken. **Moreover, the plaintiff's expert provides evidence about the magnitude of hacking of digital assets to date. As this new form of investing and commerce grows, it is fundamentally important to the stability of the economy and the online market place that that the integrity of these assets be maintained. The investing and transacting public need assurance that the law applies to protect their rights. Despite what some might think, the law applies to the internet as it does to all relations among people, governments, and others .**

We note that, since the granting of the Anton Piller Order in this decision, the Plaintiff did **carry out a search of Mr. Medjedovic's parents' home, but it seems the Defendant had already left the house, with his computers and phone, to whereabouts unknown.** Mr. Medjedovic has failed to appoint legal counsel, or attend further court appearances, and has been noted in contempt by the Ontario courts.

## Code is Law

Although a trial of this matter has not yet been conducted, the court has signalled that it **has started considering the Defendant's defence that the "Code is Law."** This untested theory states that it is acceptable for a user to exploit a weakness "within the parameters of the programming code" to induce another user to enter into an unfavourable transaction trade, as the source code is public information and users are aware, or should be aware, of the risk of placing their cryptocurrency assets in a virtual repository.

The Defendant's position is that the "Code is Law" would be a complete defence to the Plaintiff's claims against him. If this argument was successful, it would permit the Defendant, and presumably future hackers, to act as he did and exploit the code for financial gain without legal consequence.

## Key considerations

As blockchain and cryptocurrency technology improves and becomes increasingly mainstream, the Cicada 137 decision evidences the willingness of Canadian courts to consider cryptocurrency analogous to paper currency, including an application of the same restrictions as one would expect in a commercial litigation involving physical assets. This decision represents the first of, no doubt, many decisions that will continue to develop the common law and its treatment of ownership of digital assets.

**BLG's Disputes Group** will continue to provide updates on this case and other cases involving cryptocurrency litigation. Reach out to your trusted advisor at BLG or any of the contacts below to discuss how this decision may impact your business operations.

By

[Raphael Jacob](#), [Andrew Pozzobon](#), [Mathew Grainger](#)

Expertise

[Disputes](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.