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## Central Bank Digital Currency: 10-Minute Legal Primer

Presentation by Chetan Phull  
for the Blockchain Hub,  
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# Chetan Phull

*Principal Lawyer*



## FOCUS & CLIENTS

Chetan Phull has a regulatory focus in blockchain, cryptocurrency, privacy, cybersecurity, artificial intelligence, and IT contracts.

He also litigates cases related to software, digital assets, online platforms, regulatory investigations, online defamation, and cyber insurance. His litigation experience includes trials, applications, motions, and appeals, with upwards of \$40 million in dispute.

Chetan services a diverse range of sophisticated clients including public companies, financial institutions, investment firms, large private corporations, and high net worth crypto investors.

## LAW BOOKS & ARTICLES

Chetan is the author of [Big Data Law in Canada](#), an 11-chapter book that critically examines various areas of law affecting data-driven enterprises.

He has also authored several [compilations](#) and [articles](#) on blockchain and virtual asset regulation, spanning [securities](#), [commercial transactions](#), [banking](#), [taxation](#), and [digital asset litigation](#).

Chetan also has publications appearing in the [Journal of International Arbitration](#), and the [Journal of International Banking Law & Regulation](#). In addition, his work has been [translated into Thai](#) by the Thai Arbitration Institute.

## SPEAKING ENGAGEMENTS

Chetan has delivered seminars on blockchain and privacy laws for the [Ontario Bar Association](#), [Osgoode Professional Development](#), the [BlockchainHub at York University](#), and the [Government of Dubai Legal Affairs Department](#).

He is a frequent speaker at industry events including the [MPWR Crypto Mining Summit](#), [Futurist Conference](#), [DEFCON Toronto](#), and [Cyber Tech & Risk](#).

## CERTIFICATIONS

- CipherTrace Certified Examiner (forensic cryptocurrency investigation) (2019)
- Certified Information Privacy Professional - CIPP/C (2019)
- Called to the Bars of Ontario, New York State and Massachusetts (2013)

## EDUCATION

- Clerkship, Nova Scotia Court of Appeal (2011-2012)
- Master of Laws, University College London (2010-2011)
- Juris Doctor, Queen's University (2007-2010)
- Bachelor of Music in Composition, University of Toronto (2003-2007)

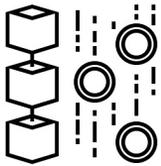
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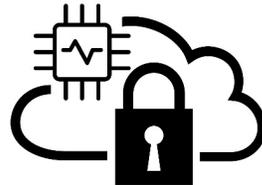
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## Expertise



*Blockchain &  
Cryptocurrency*



*Data Privacy &  
Artificial Intelligence*



*IT, Software &  
Internet Contracts*



*Litigation &  
Arbitration*

# Legal Resources



[Big Data Law in Canada](#)



[Data Privacy & Blockchain Law Slideshow](#)

[\(March 2019\)](#)



[Smartblock Law Guide to Security Tokens,  
OTC Trades, Prospectus Exemptions, and  
Registration](#)



[Smartblock Law Guide to Cryptocurrency  
Contracts, Litigation, Monetary Instruments,  
and Financial Institution Regulations in  
Canada](#)



[Smartblock Law Crypto-Tax Primer](#)



[Other Articles](#)

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- You should obtain formal legal advice particular to your situation.

# Roadmap

- Intro – G7 overview of CBDCs
- Legal foundations of Canada's Central Bank
- Legal foundations of Crypto-CAD
- Financial Stability Board document (not helpful for CBDCs)
- Libra Association – will it interfere with the Central Bank's role?

# Introduction

The G7 recently outlined three types of CBDCs:

- i. digital tokens that can be used by financial institutions (eg for interbank and securities settlements);
- ii. **accounts at the central bank for the general public; and**
- iii. **digital “cash” token that could be used by the general public in retail payments....**

[“Investigating the impact of global stablecoins”, by the G7 Working Group on Stablecoins (October 2019).]

My focus today is on the combination of (ii) and (iii).

# Introduction

“Providing the general public with access to central bank money could take a jurisdiction into uncharted waters.... These risks need to be considered with more practical matters, such as requirements relating to anti-money laundering and countering the financing of financing requirements, satisfying supervisory and tax regimes, and **having the legal authority to issue a CBDC.**”

Today we will be focusing on the last item, i.e. legal authority to issue a CBDC.

# Canada's Central Bank

The Constitution gives Parliament the exclusive jurisdiction to legislate over:

- “Currency and Coinage”, and
- “Banking, Incorporation of Banks, and the Issue of Paper Money”.

*[The Constitution Act, 1867, s.91, paras 14-15.]*

# Canada's Central Bank

- A CBDC deals with more than just currency. It impacts the legal core of “banking” itself.
- Consider that the issuance of paper money triggers “banking” (rather than “currency and coinage”).

“The concept of a central bank with a monopoly over the issuance of paper currency emerged later. It therefore made sense to include the issuance of paper money under ss. 91(15), rather than under s. 91(14) which deals with currency and coinage.”

[*Canadian Western Bank v. Alberta*, 2003 ABQB 795 (CanLII) at para 107.]

# Canada's Central Bank

Parliament gave Canada's Central Bank an exclusive roll with respect to Canada's money system.

Preamble of the *Bank of Canada Act*:

“it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit ... and generally to promote the economic and financial welfare of Canada;”

# Canada's Central Bank

Section 25(1) of the *Bank of Canada Act*:

“The Bank has the sole right to issue notes and those notes shall be a first charge on the assets of the Bank.”

Section 25(4) of the *Bank of Canada Act*:

“The form and material of the notes of the Bank shall be subject to approval by the Minister....”

# Canada's Central Bank

Section 2 “notes”:

“notes means notes intended for circulation in Canada”

*Bank of Canada Notes Regulations, section 2:*

Explicitly sets out denominations of “notes” in \$5, \$10, \$20, etc.

# Crypto-CAD

What is “money” and “legal tender” in Canada?

# Crypto-CAD

*Currency Act, section 13(1):*

13 (1) Every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the payment of or the liability to pay money shall be made, executed, entered into, done or carried out in the currency of Canada, unless it is made, executed, entered into, done or carried out in

- (a) the currency of a country other than Canada; or
- (b) a unit of account that is defined in terms of the currencies of two or more countries.

# Crypto-CAD

Rough translation of section 13(1) of the *Currency Act*:

Any contract involving the payment of “money” must be in reference to fiat currency.

# Crypto-CAD

In my article, "[Cryptocurrency Can't Be 'Money' in Canadian Commercial Law](#)" (April 26, 2018), I wrote:

*"Cryptocurrency has not yet achieved fiat status in any country, including Canada (Currency Act, s.3(1))."*

I concluded on this basis that cryptocurrency could not be "money" in a legal sense. However, a Canadian CBDC would require me to change this conclusion.

# Crypto-CAD

*Currency Act, section 8(1)(b):*

*8 (1) Subject to this section, a tender of payment of money is a legal tender if it is made*

*...*

*(b) in notes that are current under section 7.1.*

*Currency Act, section 7.1:*

*“A note is current for the amount of its denomination in the currency of Canada if it was issued under the authority of the Bank of Canada Act.”*

# Crypto-CAD

“since central bank notes are legal tender ... control of the note issue gives the bank control over what, in the last resort, is legally the basis of the whole financial system.”

[*Bank of Canada v. Bank of Montreal*, 1977 CanLII 36 (SCC), [1978] 1 SCR 1148 at para 176.]

# Crypto-CAD

Central Bankers' view:

*“a CBDC would be a liability of the central bank and be backed by the resources of government.”*

[“Crypto ‘Money’: Perspective of a Couple of Canadian Central Bankers” (Bank of Canada Staff Discussion Paper 2019-1, (February 2019) at page 21.)

# Financial Stability Board

The Financial Stability Board (“**FSB**”) is an international entity with the mandate of coordinating national financial authorities, and international standard-setting bodies, on matters of financial policy.

The G20 called on the FSB in June 2019 to examine regulatory issues raised by global stablecoin (“**GSC**”) arrangements.

# Financial Stability Board

On April 14, 2020, the FSB released a consultative document: “Addressing the regulatory, supervisory and oversight challenges raised by ‘global stablecoin’ arrangements”.

# Financial Stability Board

In this detailed document, the FSB expresses concern regarding global stablecoins.

However, the FSB specifically did not consider CBDCs:

“The wider monetary policy, monetary sovereignty and currency substitution questions ... and issues related to central bank digital currencies are ... outside the scope of the analysis.” (page 7)

# Libra Association

## Revised Whitepaper (April 2020)

“Four key changes have been made to address regulatory concerns that deserve specific attention, each of which is addressed briefly below and then in more depth in the updated white paper:

**1) Offering single-currency stablecoins in addition to the multi-currency coin.**

2) Enhancing the safety of the Libra payment system with a robust compliance framework.

3) Forgoing the future transition to a permissionless system while maintaining its key economic properties.

**4) Building strong protections into the design of the Libra Reserve.”**

# Libra Association

## Revised Whitepaper (April 2020)

Does Libra's "single-currency stablecoin" and "Reserve" clash with the Central Bank's exclusive jurisdiction to issue "notes"?

No concrete answer at this stage.

# Libra Association

## Revised Whitepaper (April 2020)

Recall section 25(1) of the *Bank of Canada Act*:

“The Bank has the sole right to issue notes and those notes shall be a first charge on the assets of the Bank.”

Recall section 25(4) of the *Bank of Canada Act*:

“The form and material of the notes of the Bank shall be subject to approval by the Minister....”

# Libra Association

## Revised Whitepaper (April 2020)

### Quotes from Libra's Whitepaper (April 2020):

“Each single-currency stablecoin will be fully backed by the Reserve, which will consist of cash or cash equivalents and very short-term government securities denominated in that currency.

...

“The Reserve will hold assets with very short-term maturity, low credit risk, and high liquidity. It will also maintain a capital buffer.

...

# Libra Association

## Revised Whitepaper (April 2020)

### Quotes from Libra's Whitepaper (April 2020):

“Single-currency stablecoins will only be minted and burned in response to market demand for that coin. Because of the 1:1 backing of each coin, this approach would not result in new net money creation.

...

# Libra Association

## Revised Whitepaper (April 2020)

Quotes from Libra's Whitepaper (April 2020):

“[Our] hope is that as central banks develop central bank digital currencies (CBDCs), these CBDCs could be directly integrated with the Libra network, removing the need for Libra Networks to manage the associated Reserves, thus reducing credit and custody risk. As an example, if a central bank develops a digital representation of the US dollar, euro, or British pound, the Association could replace the applicable single-currency stablecoin with the CBDC.

...

“The full backing of each coin is an essential component of the overall Libra payment system. We take threats to the Reserve very seriously....”

**FIN**

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