

Corporate Securities Law

August 7, 2012

OSC Decision Finds Former RIM Employee Acted “Contrary to the Public Interest” Despite No Insider Trading Violation

The August 1, 2012 decision of the Ontario Securities Commission (“OSC”) in the insider trading case involving Paul Donald (“Donald”), a former employee of Research in Motion Ltd. (“RIM”), provides a clear indication of the perspectives of the regulator on improper trading activities and on the breadth of its powers and preparedness to act where it concludes that there has been inappropriate trading.

The OSC concluded that Donald, a former employee of RIM, had learned at a RIM golf event that RIM was considering an acquisition of Certicom. The day after the golf event Donald purchased \$300,000 of Certicom shares, a purchase from which he benefited personally when he received \$600,000 of proceeds from RIM when RIM acquired all of the shares of Certicom the following year for a gross profit of \$295,000.

The OSC concluded that Donald was not guilty of insider trading under the *Securities Act* (Ontario) (the

“Act”), a determination based primarily on the fact that at the relevant time RIM had not yet reached the stage of formally proposing to acquire Certicom despite expressed interest known internally in respect of such a potential transaction. However, the OSC concluded that though there was not any technical breach of the insider trading provisions of the statute, the purchase of Certicom shares by Donald while he was in possession of undisclosed material facts regarding RIM’s interest in Certicom constituted conduct contrary to the public interest and was abusive of the capital markets and to confidence in the capital markets. The OSC panel stated that market participants and officers of public companies are expected to adhere to a high standard of behaviour and that by purchasing securities with knowledge of material facts which had not been generally disclosed, Donald failed to meet that standard. The OSC has scheduled a sanctions hearing for September 13, 2012 with respect to the finding.

The OSC’s decision is a clear example of how the regulator will use its discretion under the Act to look beyond the technical provisions of the Act and make an order in circumstances where it concludes that there is conduct contrary to the public interest. The OSC speaks in particular of the high standard of behaviour that should apply to public company executives and is a decision that clearly indicates that rigour and prudence should be applied to all trading activities.

Please contact any member of our Corporate Securities Group to discuss the OSC decision or continuous disclosure / insider trading requirements.