Goodmans LLP Update

Supreme Court of Canada Refuses Leave to Appeal on Insider Trading and Tipping Restrictions Case

On December 13, 2018, the Supreme Court of Canada dismissed applications by Howard Jeffrey Miller and Man King Cheng for leave to appeal the Ontario Court of Appeal's decision in *Finkelstein v. Ontario Securities Commission* ("***Finkelstein***"), establishing it as the leading authority on restrictions on insider trading and tipping in Ontario.

We reported on the Court of Appeal's decision in our February 8, 2018 Update, *Ontario Court of Appeal Clarifies Scope of Insider Trading and Tipping Restrictions*.

Background

The Ontario *Securities Act* (the "**Act**") prohibits persons or companies in a "special relationship" with an issuer and who have knowledge of material non-public information about the issuer ("inside information") from trading ("insider trading"), or encouraging others to trade ("tipping"), in securities of the issuer or disclosing the inside information to others (except for disclosure made "in the necessary course of business").

In *Finkelstein*, the Court of Appeal considered the extent to which the prohibitions against insider trading and tipping applied to information passed along a chain of several individuals: a Canadian lawyer disclosed inside information to his investment advisor friend, who passed the inside information on to an accountant, who disclosed the information to another investment advisor (Miller) and his colleague (Cheng). Miller and Cheng then bought shares of a company based on this information for their own benefit and others' benefit, and also disclosed the information to other individuals. The Ontario Securities Commission (OSC) found that they had breached the insider trading and tipping restrictions in the Act. Specifically, the OSC held that each of the tippees in the chain of information were in a "special relationship" with the issuer company.

The Ontario Divisional Court upheld the OSC's decision with respect to each individual except Cheng, as the Divisional Court concluded the OSC made certain factual errors regarding Cheng's situation. Miller appealed his conviction to the Court of Appeal, and the OSC appealed the Divisional Court's ruling with respect to Cheng. The Court of Appeal upheld the OSC's decision with respect to both Miller and Cheng.

Scope of Insider Trading and Tipping Restrictions

The Court of Appeal's decision establishes that even a tippee far removed from the initial source of inside information could be guilty of illegal insider trading and tipping if the facts support an inference that a reasonable person in the tippee's circumstances would have assumed the information originated from an insider or another person in a "special relationship" with the issuer. The Court of Appeal also endorsed the OSC's statement that market registrants should be held to a higher standard than retail investors, meaning there will be a stronger inference that a market registrant tippee ought reasonably to have known the tipper was a person in a "special relationship" with the issuer.

Individuals and corporations should ensure that if there is any doubt as to the materiality of information, the information is kept confidential and no trading takes place until it has been generally disclosed or is clearly no longer material. Even an allegation of a breach of the Act could have immense consequences for the reputations of those involved.

Please contact any member of our Corporate Securities Group or our Litigation Group to discuss this development.

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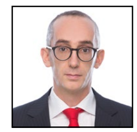

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