

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID PARKER

Plaintiff

- and -

BLACKBERRY LIMITED

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992

FACTUM OF THE PLAINTIFF (FEE APPROVAL)

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PART I – OVERVIEW

1. This is an unopposed motion seeking court approval of: (a) Class Counsel’s fees and disbursements; and (b) honoraria for the Representative Plaintiff and the three other Instructing Class Members (together the “Representative Class Members”).
2. The Representative Plaintiff, David Parker (“Mr. Parker”), brought this action against BlackBerry Limited (“BlackBerry”) on behalf of former BlackBerry employees who were offered and accepted employment with the Ford Motor Company of Canada (“Ford”) between January 1, 2017 and April 30, 2017 (the “Class Members”). Mr. Parker alleged that, in arranging to transfer the Class Members to Ford, BlackBerry failed to provide them with certain entitlements, breached its duty of good faith, and breached Class Members’ privacy. Mr. Parker sought compensation for the Class Members to address the harm they allegedly suffered as a result of BlackBerry’s actions.¹ BlackBerry expressly denied the allegations and claims and has maintained its position throughout in strongly defending the action.²
3. Class Counsel, Nelligan O’Brien Payne LLP (“Nelligan Law”) has been representing the Class Members since this proceeding began in February 2017.³ After eight years of hard-fought litigation, Mr. Parker and BlackBerry (the “Parties”) reached a proposed settlement (the “Proposed Settlement”) at the second pre-trial conference held on January 24, 2025 ahead of the common issues trial scheduled to begin on June 2, 2025. The Parties entered into a Settlement Agreement on February 13, 2025 (the “Settlement Agreement”).⁴

¹ Affidavit of Karine Dion [Fee Approval] affirmed on July 17, 2025 [“Dion FA Affidavit”] at paras 7-9 and Exhibit “C” [Plaintiff’s Fee Approval Motion Record [PFAMR]], Tab 3, p. 154-155 and p. 189.

² Dion FA Affidavit at para 10 and Exhibit “D” [PFAMR], Tab 3, p. 155 and p. 208.

³ Dion FA Affidavit at para 41 [PFAMR], Tab 3, p. 163.

⁴ Dion FA Affidavit at paras 30-33 and Exhibit “A” [PFAMR], Tab 3, p. 160-161 and p. 175.

4. The successful settlement of this action was never guaranteed. The proceeding raised novel questions and arguments which, had it been litigated to trial, could have resulted in an all or nothing decision in terms of potential damage awards for the Class Members.⁵ The Proposed Settlement will provide timely and meaningful redress to Class Members and, importantly, will provide finality after years of protracted litigation.
5. Class Counsel seeks \$1,900,000.00 (including taxes) for fees and disbursements and for the administration of the settlement. This amount is appropriate given the retainer agreements entered into with the Representative Class Members, the commitment and risk undertaken by Class Counsel, and the results achieved for the Class. Class Counsel is seeking a 1.13 uplift on its fees, which falls well below many other approved settlements.
6. In addition, Class Counsel seeks a \$25,000.00 honorarium for Mr. Parker and a \$15,000.00 honorarium for each of John Veniot, Karmindar Brar, and Michael Dawson (the “Instructing Class Members”), totaling \$70,000.00. This amount is appropriate considering the time, effort, and risk undertaken by these individuals to advance the class proceeding.

PART II – FACTS

Background

7. This class proceeding is about BlackBerry’s actions related to the Class Members, a group of 285 employees,⁶ transferring to Ford in 2017, and whether BlackBerry failed to provide them with certain entitlements owed and breached its duty of good faith.⁷
8. The Class is defined as:
All persons in Canada who were employees and/or dependent contractors of BlackBerry Limited (“BlackBerry”), who worked for BlackBerry in Canada, and who were offered and accepted employment with the Ford Motor Company of Canada (“Ford”) between January 1, 2017 and April 30, 2017, while excluding BlackBerry employees who filed a complaint pursuant to

⁵ Dion FA Affidavit at paras 64 and 66 [PFAMR], Tab 3, p. 169.

⁶ 289 less four opt-outs.

⁷ Dion FA Affidavit at paras 7 and 8 and Exhibit “C” [PFAMR], Tab 3, p. 154-155 and p. 189.

section 96 of the *Employment Standards Act, 2000* seeking termination pay and/or severance pay and did not withdraw that complaint within two weeks.⁸

9. Mr. Parker alleged that, rather than providing the Class Members with certain entitlements upon transfer to Ford, BlackBerry entered into an agreement with Ford that allowed Ford to offer employment to the Class Members without recognizing their years of service with BlackBerry, in violation of the sale of business protections in the Ontario *Employment Standards Act, 2000* (the “ESA”).⁹
10. Mr. Parker sought damages relating to the transfer as well as for BlackBerry’s alleged bad faith in the manner of transfer and for BlackBerry allegedly avoiding certain statutory protections and sharing the Class Members’ personal information with Ford without the Class Members’ consent. Had Mr. Parker been successful in the claim with respect to the termination of employment, Mr. Parker claims that the Class Members’ *ESA* damages would have amounted to approximately \$6.7 million, and their contractual damages would have amounted to approximately \$11.6 million.¹⁰

Litigation history

11. Mr. Parker filed the Notice of Action on February 15, 2017. The action has been actively litigated over the past eight years, with BlackBerry vigorously defending at every stage.¹¹
12. The key steps in the action have included:
 - a. Mr. Parker filed the Statement of Claim on March 17, 2017 and the Amended Statement of Claim on June 7, 2018;¹²
 - b. A contested certification motion, which included a multi-day hearing, significant affidavit evidence, cross-examinations, and a refusals motion related to the cross-examinations. On May 27, 2019, Justice Michel Z Charbonneau (“Justice Charbonneau”) certified the claim as a class proceeding;¹³

⁸ Dion FA Affidavit at para 13 and Exhibit “E” [PFAMR], Tab 3, p. 156 and p. 223.

⁹ Dion FA Affidavit at para 8 [PFAMR], Tab 3, p. 155.

¹⁰ Dion FA Affidavit at para 9 [PFAMR], Tab 3, p. 155.

¹¹ Dion FA Affidavit at paras 5 and 7 [PFAMR], Tab 3, p. 154-155.

¹² Dion FA Affidavit at para 8 and Exhibit “C” [PFAMR], Tab 3, p. 155 and p. 189.

¹³ Dion FA Affidavit at paras 12 and 13 and Exhibit “E” [PFAMR], Tab 3, p. 156 and p. 223.

- c. BlackBerry unsuccessfully sought leave to appeal the Certification Decision to the Ontario Divisional Court;¹⁴
- d. BlackBerry filed the Statement of Defence on December 19, 2019;¹⁵
- e. The certified common issues were confirmed on June 1, 2020 as follows:
 - A. Does BlackBerry's conduct amount to a termination of the Class Members' employment?
 - B. If so, what is the date of termination for the purposes of calculating notice requirements?
 - C. Are the Class Members entitled to general and/or punitive damages for BlackBerry's conduct?
 - D. If the Class Members are entitled to punitive damages, what is the appropriate quantum?¹⁶
- f. The Parties exchanged affidavits of documents and documentary productions on April 6, 2021. BlackBerry initially produced over 6,000 documents;¹⁷
- g. The Parties brought a motion, on consent, on April 20, 2021 for an order approving a confidentiality protocol regarding the treatment of confidential information;¹⁸
- h. The examination for discovery of BlackBerry's representative, on May 2 to 4, 2022;¹⁹
- i. The examination for discovery of Mr. Parker on May 12 and 13, 2022;²⁰
- j. Mr. Parker sent BlackBerry further written discovery questions on May 17, 2022;²¹
- k. The Parties attended an in-person mediation on November 9, 2022;²²
- l. On April 12, 2023, the Parties exchanged motion records related to examining additional witnesses and discovery refusals, which resolved on June 29, 2023;²³
- m. On September 6, 2023, the Plaintiffs examined a second BlackBerry representative;²⁴
- n. BlackBerry examined five additional Class Members from July to November 2023;²⁵

¹⁴ Dion FA Affidavit at para 15 and Exhibit "G" [PFAMR], Tab 3, p. 156 and p. 238.

¹⁵ Dion FA Affidavit at para 10 and Exhibit "D" [PFAMR], Tab 3, p. 155 and p. 208.

¹⁶ Dion FA Affidavit at para 16 and Exhibit "H" [PFAMR], Tab 3, p. 157 and p. 240.

¹⁷ Dion FA Affidavit at para 17 and Exhibits "I" and "J" [PFAMR], Tab 3, p. 157, p. 244 and p. 499.

¹⁸ Dion FA Affidavit at para 25 and Exhibit "K" [PFAMR], Tab 3, p. 159 and p. 508.

¹⁹ Dion FA Affidavit at para 20 [PFAMR], Tab 3, p. 158.

²⁰ Dion FA Affidavit at para 21 [PFAMR], Tab 3, p. 158.

²¹ Dion FA Affidavit at para 22 [PFAMR], Tab 3, p. 158.

²² Dion FA Affidavit at para 29 [PFAMR], Tab 3, p. 160.

²³ Dion FA Affidavit at para 26 and Exhibit "L" [PFAMR], Tab 3, p. 159 and p. 514.

²⁴ Dion FA Affidavit at para 23 [PFAMR], Tab 3, p. 158-159.

²⁵ Dion FA Affidavit at para 23 [PFAMR], Tab 3, p. 158-159.

- o. On December 15, 2023, BlackBerry provided responses to written undertaking questions of its former Chief Executive Officer (“CEO”);²⁶
- p. On May 1, 2024, the Parties attended a refusals motion, which led to further productions, following which BlackBerry had produced over 7,000 documents;²⁷
- q. On December 4, 2024, the Parties attended a pre-trial conference. On January 24, 2025, the Parties attended a second pre-trial conference, during which the Parties reached the Proposed Settlement; and,²⁸
- r. The Parties entered into the Settlement Agreement on February 13, 2025.²⁹

In addition to these steps, the Parties attended numerous case conferences before Regional Senior Justice Calum MacLeod (“RSJ MacLeod”) and Justice Charbonneau regarding the production of documents, discoveries, and various timetables relating to the litigation.³⁰

13. As a result of the upcoming common issues trial, scheduled to begin on June 2, 2025, the litigation and trial preparation were ongoing in parallel with negotiation discussions.³¹

The Proposed Settlement

14. The Proposed Settlement was achieved through good faith, arm’s-length negotiations assisted by RSJ MacLeod. The settlement discussions began at the first pre-trial conference and concluded with the Parties reaching the Proposed Settlement at the second pre-trial conference. During these negotiations, the Parties exchanged numerous offers to settle.³²
15. After the agreement in principle was reached, the Parties spent several weeks negotiating the terms of the Settlement Agreement, Notice Plan, and Distribution Plan. The Parties entered into the Settlement Agreement on February 13, 2025.³³

²⁶ Dion FA Affidavit at para 23 [PFAMR], Tab 3, p. 158-159.

²⁷ Dion FA Affidavit at paras 18 and 27 and Exhibit “M” [PFAMR], Tab 3, p. 157, p. 160, and p. 523.

²⁸ Dion FA Affidavit at para 32 [PFAMR], Tab 3, p. 160.

²⁹ Dion FA Affidavit at para 33 [PFAMR], Tab 3, p. 161.

³⁰ Dion FA Affidavit at para 5 [PFAMR], Tab 3, p. 154.

³¹ Dion FA Affidavit at para 30 [PFAMR], Tab 3, p. 160.

³² Dion FA Affidavit at paras 30 and 32 [PFAMR], Tab 3, p. 160.

³³ Dion FA Affidavit at para 33 [PFAMR], Tab 3, p. 161.

16. The Proposed Settlement includes an amount of \$4 million, consisting of legal fees, interest, general damages, and expenses to administer the settlement. The proposed distribution of the \$4,000,000.00 is as follows:

- a. \$2,030,000.00 plus any accrued interest as compensation to the 281 eligible Class Members, which shall be paid as general damages;
- b. \$1,900,000.00 for Class Counsel's fees, disbursements, administration costs for distributing the settlement funds to Class Members, and applicable taxes; and
- c. \$70,000.00 for honorarium payments: \$25,000.00 for the Representative Plaintiff and \$15,000.00 for each of the three other Instructing Class Members.³⁴

The retainer agreements

17. The Representative Class Members each entered into a retainer agreement with Class Counsel on February 14 or 15, 2017 (the "Retainer Agreements"), which state:

I ACKNOWLEDGE that Nelligan O'Brien Payne's fees will be calculated based on a base fee determined by reference to the time spent on this matter on my behalf, plus a multiplier, as determined and approved by the Superior Court of Justice. I understand, when determining a reasonable multiplier the Superior Court of Justice by way of past practice has considered such things as risk, complexity of the issues, the results obtained, urgency and other factors used in setting a reasonable fee.

...

I understand that legal fees, including disbursements, beyond the initial cash retainer, shall only be payable in the event of recovery by way of the Class Proceeding. For the purposes of this agreement recovery is defined as the receipt of monies or benefits in any manner whatsoever including, but not limited to, settlement or Court Order, as a result of efforts made on my behalf by Nelligan O'Brien Payne.

...

I hereby agree to share equally in the payment of any award of costs made against David Parker in favour of the Employer in the class proceeding.³⁵

Time docketed to date and disbursements incurred

18. As of the second pre-trial conference, on January 24, 2025 (when the Parties reached the Proposed Settlement), Class Counsel's lawyers, clerks, and students had spent

³⁴ Dion FA Affidavit at paras 47 and 48 and Exhibit "P" [PFAMR], Tab 3, p. 165 and p. 547.

³⁵ Dion FA Affidavit at para 38 and Exhibit "N" [PFAMR], Tab 3, p. 162 and p. 530.

approximately 5,236 hours on this file, totaling approximately \$1,539,681.72 and had incurred approximately \$49,089.80 (both amounts are pre-HST) in disbursements.³⁶

PART III – ISSUES

19. The issues to be determined are:

- a. Should the Court approve Class Counsel’s fees and disbursements?
- b. Should the Court approve the \$25,000.00 honorarium for the Representative Plaintiff and the \$15,000.00 honorarium for each of the Instructing Class Members?

PART IV – LAW AND ARGUMENT

A. Class Counsel’s fees and disbursements should be approved

20. On a motion to approve class counsel’s fees, there are two primary considerations: (1) the retainer agreement;³⁷ and (2) whether the fees are fair and reasonable.³⁸ With respect to the second criterion, the Court considers: the results achieved, including the number of class members expected to make a claim for settlement funds and, of them, the number expected to receive settlement funds; the risk assumed by class counsel; and, the proportionality of the fees and disbursements in relation to the amount of settlement funds.³⁹

The legal fees are consistent with the Retainer Agreement

21. When determining whether to approve the fees, the Court must first consider the retainer agreement.⁴⁰ In *Cannon v Funds for Canada Foundation* (“*Cannon*”), the Ontario Superior Court of Justice (“ONSC”) recognized that if a fee arrangement is understood and accepted by the representative plaintiffs, it is presumptively valid.⁴¹ While *Cannon* involved a

³⁶ Dion FA Affidavit at para 41 [PFAMR], Tab 3, p. 163.

³⁷ *Redublo v CarePartners*, 2022 ONSC 1398 at para 81.

³⁸ *Class Proceedings Act*, 1992, S.O. 1992, c. 6, s. 32(2.1); *Lavier v MyTravel Canada Holidays Inc.*, 2013 ONCA 92 at para 22; *Ainslie v Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para 38.

³⁹ *Class Proceedings Act*, 1992, S.O. 1992, c. 6, s. 32(2.1).

⁴⁰ *Redublo v CarePartners*, 2022 ONSC 1398 at para 81.

⁴¹ *Cannon v Funds for Canada Foundation*, 2013 ONSC 7686 at para 8.

percentage-based fee arrangement, the same principles can be applied to the Retainer Agreements in the within case, which state that fees will be calculated based on a base fee determined by the time spent on the matter plus a multiplier. The Representative Plaintiff understood and accepted the Retainer Agreement.⁴²

22. Class counsel is seeking approval of \$1,900,000.00 (including HST) for fees, disbursements, taxes, and for the costs required to bring the settlement and fee approval motions and to administer the settlement, with \$1,800,000.00 credited to amounts incurred up to the point of the Proposed Settlement, and \$100,000.00 to cover costs after that date and to administer the settlement (based on our estimated cost for completing these steps).⁴³

23. At the date of the Proposed Settlement, Class Counsel's docketed time was approximately \$1,539,681.72 and disbursements were \$49,089.80 (both amounts are pre-HST). The total cost including dockets, disbursements, and HST was approximately \$1,794,980.93 at that time. That said, BlackBerry paid \$227,000.00 following the Certification Motion and BlackBerry's application for leave to appeal the Certification Decision. As such, there is an outstanding balance of \$1,567,980.93 up to the date of the Proposed Settlement.⁴⁴

24. Class Counsel therefore seeks a multiplier of 1.13 on amounts up to the Proposed Settlement. This multiplier is much lower than what has been awarded in other cases. For example, in *Malette v Bank of Montreal*, the Court noted that a multiplier of 2.6 is in the mid-range.⁴⁵ In *Kaplan v PayPal CA Limited*, the Court noted that a multiplier in the range of 2.5 is well within the acceptable range.⁴⁶

⁴² Affidavit of David Parker affirmed on July 15, 2025 ["Parker Affidavit"] at para 17 [PFAMR], Tab 2, p. 15-16.

⁴³ Dion FA Affidavit at para 40 [PFAMR], Tab 3, p. 163.

⁴⁴ Dion FA Affidavit at para 41 [PFAMR], Tab 3, p. 163.

⁴⁵ *Malette v Bank of Montreal*, 2021 ONSC 2922 at para 4.

⁴⁶ *Kaplan v PayPal CA Limited*, 2021 ONSC 1981 at para 91.

25. Class Counsel has allocated \$100,000.00 of the settlement funds as an estimate of the costs to finalize the settlement, bring the motions for settlement and fee approval, and administer the settlement. Class Counsel is not expecting an uplift on this amount.⁴⁷

26. These amounts are broken down in the following chart:

FEES UP TO PROPOSED SETTLEMENT	
Total Fees Incurred Up to Pre-Trial Conference	\$ 1,539,681.72
HST on Fees	\$ 200,158.62
Total Disbursements Up to Pre-Trial Conference	\$ 49,089.80
HST on Disbursements	\$ 6,050.79
Total Actual Cost	\$ 1,794,980.93
Amount Paid from Certification Motion	\$ 227,000.00
Amount Paid from Settlement	\$ 1,800,000.00
Total Combined Legals Paid	\$ 2,027,000.00
Formula to Calculate Uplift	uplift = $\frac{\text{Total Combined Legals Paid}}{\text{Total Actual Cost}}$
Total Uplift on Past Fees	1.13
FEES AFTER PROPOSED SETTLEMENT	
Estimated Future Cost	\$ 100,000.00
Amount Paid from Settlement	\$ 100,000.00
Uplift on Remaining Fees	1.00

The fees are fair and reasonable in the circumstances

27. Additional factors that the Court may consider in determining whether the fees are fair and reasonable include: (a) the factual and legal complexities of the matter; (b) the risk undertaken; (c) the degree of responsibility assumed by class counsel; (d) the monetary value of the matters; (e) the importance of the matter to the class; (f) the degree of skill and competence demonstrated by class counsel; (g) the results achieved; (h) the ability of the class to pay; (i) the expectations of the class; and (j) the opportunity cost to class counsel.⁴⁸

⁴⁷ Dion FA Affidavit at para 43 [PFAMR], Tab 3, p. 164.

⁴⁸ *Ainslie v Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para 39; *Smith Estate*, 2011 ONCA 233 at para 80.

a. The factual and legal complexities of the matter

28. This action involved novel facts which would have required the Court to consider whether BlackBerry's actions amounted to a termination of the Class Members' employment and whether there had been bad faith conduct relating to the manner of transfer. The novelty of this case made it difficult to predict the outcome, including the outcome of the Certification Motion, where BlackBerry argued that the matter was not appropriate for a class proceeding. The Certification Motion involved multiple examinations, a productions and refusals motion, and a multi-day hearing. BlackBerry then unsuccessfully sought leave to appeal the decision to the Divisional Court.⁴⁹

29. The action was also factually complex, as is evidenced by the documents produced by BlackBerry, totaling over 7,000, many of which were lengthy and required significant resources to review. Notably, the transition of Class Members to Ford arose following various complex agreements between BlackBerry and Ford which, along with their drafts, were key documents in the litigation. Class Counsel reviewed these documents extensively and spent a full day examining a BlackBerry witness on this transaction. In addition, BlackBerry produced several other lengthy documents including documents containing metadata that needed to be reviewed and Excel tables containing large amounts of data spread across multiple tabs/sheets.⁵⁰

b. The risks and responsibility assumed, and the skill and competence demonstrated by Counsel

30. The *Class Proceedings Act, 1992* aims to incentivize counsel to pursue class actions to increase access to justice. Class counsel's fees are meant to compensate counsel for the risk that they may receive no payment when taking on a class action.⁵¹

⁴⁹ Dion FA Affidavit at paras 12, 15, and 64 [PFAMR], Tab 3, p. 156 and p. 169.

⁵⁰ Dion FA Affidavit at para 18 [PFAMR], Tab 3, p. 157.

⁵¹ *Kaplan v PayPal CA Limited*, 2021 ONSC 1981 at para 87.

31. Class Counsel undertook the significant risk, by entering into a contingency agreement, that they may not recover any costs. This risk was heightened by the fact that Class Counsel did not enter into a litigation funding agreement.⁵² Given the novelty of the case, there was no certainty of a return on this litigation. Notably, prior to this proceeding being certified, the Ministry of Labour dismissed two complaints filed by former BlackBerry employees alleging that BlackBerry had terminated their employment by transitioning them to Ford.⁵³
32. Further, depending on the findings made by the Court in respect of the Plaintiff's allegations (including in respect of termination of employment), the Class Members may have received no damages, and Class Counsel may have received no compensation.⁵⁴
33. The Proposed Settlement provides Class Members with access to justice and achieves judicial economy, thus furthering the objectives of the *Class Proceedings Act, 1992*. Class Counsel has diligently advanced this proceeding for over eight years in the face of strong opposition from BlackBerry. Besides a small retainer of \$500.00 from each of the four Representative Class Members and the award of costs resulting from the Certification Motion, Class Counsel received no compensation for their years of effort.⁵⁵ Class Counsel financed the litigation both in terms of time spent and by paying all disbursements to date.

c. Class Counsel's Experience

34. Class Counsel have acted as counsel in numerous employment class actions and have extensive experience representing clients in employment matters more generally. Nelligan Law is a leading employment law firm in Ottawa. The lead counsel, Janice Payne, is an experienced employment lawyer who has worked on numerous employee-side class

⁵² *Breckon v Cermaq Canada Ltd.*, 2024 FC 225 at paras 140-142.

⁵³ Dion FA Affidavit at para 65 and Exhibit "U" [PFAMR], Tab 3, p. 169 and p. 570.

⁵⁴ Dion FA Affidavit at para 66 [PFAMR], Tab 3, p. 169.

⁵⁵ Dion FA Affidavit at para 67 [PFAMR], Tab 3, p. 169-170.

actions. Further, Class Counsel consulted with a partner in the class actions group of Koskie Minskey LLP, a leader in class action litigation, for the purpose of this litigation.⁵⁶

d. The opportunity cost to Class Counsel

35. Class Counsel spent considerable time pursuing this litigation. Had Class Counsel not been pursuing this litigation, they could have been completing fee-for-service work, which is normally pursued by Class Counsel (as opposed to contingency-based work).⁵⁷

36. As of the date of the second pre-trial conference, Class Counsel had spent approximately 5,236 hours on this file, totaling \$1,539,681.72 (pre-HST). Class Counsel has and will spend further time finalizing the settlement, bringing these motions, and administering the settlement. This represents an enormous opportunity cost.⁵⁸

e. The results achieved

37. In considering the results achieved, a Court may consider the monetary value of the settlement and the effectiveness of the notice program and proposed distribution plan.⁵⁹

38. The Proposed Settlement is a good result for the Class: 281 of 285 Class Members will receive substantial compensation while avoiding the risks of litigation. In addition, the notice program, through which almost all Class Members will receive direct notice of the Proposed Settlement, will ensure that the take-up rate is exceptionally high. Finally, the simplicity and efficiency of the claims process will ensure that the settlement funds are easily accessible to Class Members and will be paid out in a timely fashion.

39. Class Members will receive substantial compensation, distributed in a fair manner that is prorated to their years of service with BlackBerry: \$2,030,000.00 plus any accrued interest

⁵⁶ Dion FA Affidavit at paras 68 and 69 [PFAMR], Tab 3, p. 170.

⁵⁷ Dion FA Affidavit at paras 70 and 71 [PFAMR], Tab 3, p. 170.

⁵⁸ Dion FA Affidavit at paras 34, 35, and 41 [PFAMR], Tab 3, p. 161 and p. 163.

⁵⁹ See for example: *Dufault v The Toronto-Dominion Bank*, [2024 ONSC 961](#) at para 27.

will be paid to Class Members as general damages. The payments are expected to range from \$789.15 for a Class Member with 1.81 years of service to \$15,141.19 for a Class Member with 17.32 years of service, with the average payment being \$7,224.20.⁶⁰

40. While the Proposed Settlement provides for a lesser amount than that claimed, given the risks and costs of litigation, the potential all or nothing outcome, and BlackBerry's opposition, the Proposed Settlement is a good outcome.⁶¹

41. The notice program in this action is greatly superior to that in most class actions. The Class Members' names and, for the most part, contact information, are known to Class Counsel, which allows Class Counsel to carry out the Notice Plan and administer the claims in an efficient and cost-effective manner. Class Counsel has provided direct notice to approximately 99.6% of Class Members and is optimistic that all Class Members will submit a claim for settlement funds, so the take-up rate should be close to 100%.⁶²

42. Compensation will be provided to Class Members in a straightforward and cost-efficient manner, which will maximize the funds available to Class Members. Class Members simply need to complete a Claim Administration Form confirming their length of service with BlackBerry and contact details so that Class Counsel can send them a cheque with their share of the settlement funds. In most cases, Class Members will not need to produce any evidence. Class Members who dispute their years of service (which Class Counsel anticipates will be minimal, if any, since BlackBerry has provided this information), will need to provide documentation to confirm their start date with BlackBerry.⁶³

⁶⁰ Dion FA Affidavit at paras 48-51 [PFAMR], Tab 3, p. 165-166.

⁶¹ Dion FA Affidavit at para 47 [PFAMR], Tab 3, p. 165.

⁶² Dion FA Affidavit at paras 58-61 [PFAMR], Tab 3, p. 167-168.

⁶³ Dion FA Affidavit at para 54 [PFAMR], Tab 3, p. 166.

43. The settlement funds will be distributed in two installments to allow Class Counsel to hold back a portion of the funds in case a Class Member successfully disputes their start date with BlackBerry (the “Holdback”). The Holdback will ensure that there are sufficient funds to pay Class Members. Further, if some Class Members do not make claims, their settlement entitlement will be added to the Holdback to be split amongst Class Members who do make claims. The settlement funds are being held in an interest-bearing account, so the Holdback will also ensure that any accrued interest will be paid out to Class Members through the second payment. Class Counsel expect to make all payments by March 2, 2026.⁶⁴ The use of a holdback in this manner is preferable because it maximizes the compensation available for Class Members by avoiding a *cy-près* distribution.⁶⁵
44. Prior to determining that Class Counsel would administer the settlement funds, Class Counsel consulted with settlement administrators and determined that it would be less costly to administer the funds rather than hire a third party to do so.⁶⁶
45. The straightforward Notice Plan and claims process ensures that the take-up rate will be extremely high and the value of the settlement will go to the Class.

f. Importance of the matter to the Class

46. Beyond the monetary value of the matter, the issues raised in this employment class action were important to Class Members. The Supreme Court of Canada has acknowledged the fundamental importance of work to an individual, stating that:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly

⁶⁴ Dion FA Affidavit at paras 56 and 57 [PFAMR], Tab 3, p. 167.

⁶⁵ *Kaplan v PayPal CA Limited*, 2021 ONSC 1981 at para 63.

⁶⁶ Dion FA Affidavit at para 52 [PFAMR], Tab 3, p. 166.

significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self respect.⁶⁷

47. A common theme amongst Class Members was that BlackBerry should be held accountable for certain harm the Class Members allege they suffered due to the way that the transfer to Ford was structured.⁶⁸

g. The expectation of the Class and the ability of the Class to pay

48. The Representative Class Members agreed to the terms in the Retainer Agreements. The Representative Plaintiff believes the fees are fair and reasonable.⁶⁹

49. The fees and disbursements sought by Class Counsel were detailed in the Notice of Settlement Approval Hearing distributed to the Class in accordance with the Court-approved Notice Plan. To date, Class Counsel has received no objections.⁷⁰

50. The settlement is large enough that the Class can pay the fees sought.⁷¹

51. The fees and disbursements sought by Class Counsel are appropriate, considering the Retainer Agreements, the history of the action, the risks undertaken by Class Counsel, and Class Counsel's diligence in advancing the matter and achieving a successful outcome.

B. The honorarium for each of the Representative Class Members should be approved

52. Class Counsel seeks approval of an honorarium of \$25,000.00 for the Representative Plaintiff and \$15,000.00 for each of the Instructing Class Members for their extraordinary contributions to advancing this class proceeding on behalf of the Class Members.

53. An honorarium may be awarded in exceptional cases where the representative plaintiff has made an exceptional contribution resulting in success for the class.⁷² The Ontario Court of

⁶⁷ *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313, 1987 CanLII 88 (SCC) at para 91.

⁶⁸ Dion FA Affidavit at paras 74 and 75 [PFAMR], Tab 3, p. 171.

⁶⁹ Parker Affidavit at para 17 [PFAMR], Tab 2, p. 15-16; Dion FA Affidavit at para 38 and Exhibit "N" [PFAMR], Tab 3, p. 162 and p. 530.

⁷⁰ Dion FA Affidavit at para 72 [PFAMR], Tab 3, p. 171.

⁷¹ Dion FA Affidavit at para 73 [PFAMR], Tab 3, p. 171.

⁷² *Berg v Canadian Hockey League*, 2024 ONSC 1573 at para 61.

Appeal, in *Fresco v Canadian Imperial Bank of Commerce*, explained that exceptional circumstances could include exposure to a real risk of costs or significant personal hardship to prosecute the action.⁷³ Other factors that a court may consider include:

(a) active involvement in the initiation of the litigation and retainer of counsel; (b) exposure to a real risk of costs; (c) significant personal hardship or inconvenience in connection with the prosecution of the litigation; (d) time spent and activities undertaken in advancing the litigation; (e) communication and interaction with other class members; and (f) participation at various stages in the litigation, including discovery, settlement negotiations and trial.⁷⁴

54. Courts have also recognized that, in certain circumstances, payments are appropriate for instructing plaintiffs, even if they are not named.⁷⁵ In *Doucet v The Royal Winnipeg Ballet*, the Court considered this issue and, in determining that it was not appropriate to award honoraria to non-representative plaintiffs in that particular case, the Court noted that while the class members may support the effort to move a class action forward, they do not take on the added legal obligations and financial risks of a representative plaintiff.⁷⁶ In the within case, the Instructing Class Members did take on those added legal obligations and financial risks, and it is appropriate to expand the honorarium payment to them.⁷⁷

The Representative Class Members' efforts

55. The Representative Class Members have facilitated Class Members' access to justice by representing the Class Members for over eight years. They have spent a substantial amount of their personal time to advance the action, effectively instruct Class Counsel, and advance the Class' interests. Specifically, their involvement has included:

a. Retaining Class Counsel. All four individuals entered into Retainer Agreements;

⁷³ *Fresco v Canadian Imperial Bank of Commerce*, [2024 ONCA 628](#) at para [111](#).

⁷⁴ *Berg v Canadian Hockey League*, [2024 ONSC 1573](#) at para [62](#).

⁷⁵ *Doucet v The Royal Winnipeg Ballet*, [2023 ONSC 2323](#) at para [105](#).

⁷⁶ *Doucet v The Royal Winnipeg Ballet*, [2023 ONSC 2323](#) at para [96](#).

⁷⁷ Parker Affidavit at para 8 [PFAMR], Tab 2, p. 12.

- b. Speaking to, corresponding with, and meeting with Class Counsel to keep apprised of the action and to instruct Class Counsel. The Representative Class Members made themselves available to receive updates, review materials, and provide instructions, including with respect to the Proposed Settlement. They were fully engaged and took the time to discuss the Proposed Settlement with Class Counsel and privately amongst themselves so that they could effectively provide instruction to Class Counsel;
 - c. Providing evidence in the Certification Motion and attending examinations on their Affidavits;
 - d. Providing information to Class Counsel to assist with the drafting of documents including the Statement of Claim, certification documents, their Affidavits on which they were cross-examined, detailed written statements produced by Mr. Veniot, Mr. Dawson, and Mr. Brar in response to an undertaking request; the mediation brief, the pre-trial conference brief, and various motion materials.
 - e. Reviewing documents including the pleadings, mediation briefs, motion materials, pre-trial conference briefs, and Court decisions;
 - f. Providing documents for the Affidavit of Documents;
 - g. Mr. Parker attended examinations for discovery and was orally examined for two days following which he provided further answers to undertakings, questions taken under advisement, and/or refused;
 - h. Mr. Parker travelled to Toronto to attend the mediation, and Mr. Veniot, Mr. Brar, and Mr. Dawson attended virtually;
 - i. Assisting Class Counsel with trial preparation; and,
 - j. The Representative Class Members attended both virtual pre-trial conferences.⁷⁸
56. The Representative Class Members' participation was exceptional. They have taken time off work, travelled, incurred costs, and spent countless hours diligently advancing the interests of the Class.⁷⁹

The risks undertaken by the Representative Class Members

57. The Representative Class Members assumed significant financial and personal risks that go beyond the responsibilities expected of representative plaintiffs. The Representative

⁷⁸ Parker Affidavit at paras 3, 4, and 7 [PFAMR], Tab 2, p. 9-12.

⁷⁹ Parker Affidavit at paras 3, 4, and 7 [PFAMR], Tab 2, p. 9-12.

Class Members took on an enormous financial risk by advancing the litigation with no indemnification agreement in place. In addition, the Representative Class Members, and in particular Mr. Parker, took on exceptional personal and reputational risk in the face of changing employment circumstances, when they chose to represent the Class in this lawsuit against BlackBerry just prior to starting new employment with Ford.⁸⁰

58. The significant financial risk that the Representative Class Members undertook weighs heavily in favour of approving the honoraria.⁸¹ Class Counsel did not agree to indemnify the Representative Class Members, and there was no third-party funding agreement. Indeed, the Retainer Agreements state that, “I hereby agree to share equally in the payment of any award of costs made against David Parker...” With no indemnification agreement, the Representative Class Members faced an enormous loss had this action not succeeded.⁸² Given Class Counsel’s fees, it is safe to assume that BlackBerry’s fees are significant.⁸³

59. The Representative Class Members also undertook significant personal risk to advance the litigation. At the time the Notice of Action was filed in February 2017, the employment circumstances of the Class Members were uncertain. They were still employees of BlackBerry and were about to transition to Ford. Since Ford was not recognizing their service, they had little statutory or contractual protections in their new employment. Their involvement in this action ran the real risk of Ford considering them to be problematic employees and hindering their career advancement. Indeed, the concern was significant

⁸⁰ Parker Affidavit at paras 5, 6, and 8 [PFAMR], Tab 2, p. 11-12.

⁸¹ *Doucet v The Royal Winnipeg Ballet*, [2023 ONSC 2323](#) at para 61.

⁸² Parker Affidavit at paras 5 and 8 [PFAMR], Tab 2, p. 11-12; Dion FA Affidavit at para 38 and Exhibit “N” [PFAMR], Tab 3, p. 162 and p. 530.

⁸³ Dion FA Affidavit at para 80 [PFAMR], Tab 3, p. 172.

enough that on February 15, 2017, Class Counsel wrote to BlackBerry to remind them that this was an *ESA* claim and, as such, the Class Members should not face a reprisal.⁸⁴

60. Prior to starting the action, Class Counsel met with approximately 20 other Class Members and, while several individuals expressed interest in participating, the Representative Class Members were the only individuals willing to take on the risks of advancing this action. The other Class Members refused to step forward because they were concerned that doing so could affect their employment with Ford. Mr. Parker in particular was the only Class Member willing to put his name forward to be the public face of the Class, and but for his willingness to do so, the action likely would not have commenced.⁸⁵

61. These facts are similar to those in *Charette v Trinity Capital Corporation* (“*Charette*”), where the ONSC awarded a \$50,000.00 honorarium to each of two representative plaintiffs who were actively involved in, and had taken on substantial risk to advance, the contested litigation.⁸⁶ Like in this case, the Court in *Charette* noted that the representative plaintiff (before being joined by the second representative plaintiff) was the only investor willing to act as the representative plaintiff, and both representative plaintiffs had faced exposure to a real risk of costs because third party funding was not obtained until after certification.⁸⁷

62. Similarly, in *Cannon*, the ONSC awarded a \$50,000.00 honorarium to the representative plaintiff to compensate him for his extraordinary effort in advancing the case over the course of eight years.⁸⁸ Like the within case, the representative plaintiff in *Cannon* was the only class member willing to act as representative plaintiff, spent over 280 hours working

⁸⁴ Parker Affidavit at paras 6 and 8 and Exhibit “E” [PFAMR], Tab 2, p. 11-12 and p. 150; Dion FA Affidavit at para 78 [PFAMR], Tab 3, p. 172.

⁸⁵ Dion FA Affidavit at paras 77-79 [PFAMR], Tab 3, p. 171-172.

⁸⁶ *Charette v Trinity Capital Corporation*, [2019 ONSC 3153](#) at paras 89-97.

⁸⁷ *Charette v Trinity Capital Corporation*, [2019 ONSC 3153](#) at paras 90-94.

⁸⁸ *Cannon v Funds for Canada Foundation*, [2017 ONSC 2670](#) at para 13.

on the case, suffered the notoriety of being the named plaintiff in a highly publicized claim, and took on financial risk by intervening in a proceeding that was not covered by an indemnification agreement. The Court noted that, for these contributions, an honorarium of \$30,000.00 would be appropriate, and added an additional \$20,000.00 to recognize a specific financial sacrifice that the representative plaintiff had made.⁸⁹

63. As it was in *Charette* and *Cannon*, it is appropriate in this case to recognize the exceptional efforts and risk undertaken by the Representative Class Members. They made exceptional contributions in a heavily contested litigation that resulted in success for the Class, and they were exposed to real financial and personal risks to prosecute the action. This falls within the exceptional circumstances required for courts to award honoraria.

Other factors weighing in favour of an honorarium

64. The Proposed Settlement achieves monetary success for the Class Members and does so in a timely manner with a straightforward claims process that is expected to allow for an excellent take-up rate amongst Class Members.

65. The Notice of Settlement Approval disseminated in April 2025 advised Class Members that Class Counsel would be seeking the honoraria for the Representative Class Members. To date, Class Counsel has received no objections.⁹⁰

66. The honoraria would recognize the critically important roles that the Representative Class Members played in resolving this matter and facilitating access to justice for the Class.

PART V – ORDER REQUESTED

67. Class Counsel respectfully requests that the Court approve:

- a. Class Counsel’s fees and disbursements; and

⁸⁹ *Cannon v Funds for Canada Foundation*, [2017 ONSC 2670](#) at paras 14-17.

⁹⁰ Dion FA Affidavit at para 81 and Exhibits “S” and “T” [PFAMR], Tab 3, p. 172 and p. 557 and p. 562.

b. Honoraria for the Representative Class Members.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17 day of July, 2025

A handwritten signature in black ink, appearing to read "J. Payne", is positioned above a horizontal line.

Janice Payne, Andrew Montague-Reinholdt, Karine Dion, Rhian Foley
Nelligan O'Brien Payne LLP

Lawyers for the Plaintiff

SCHEDULE “A” – LIST OF AUTHORITIES

1. *Redublo v CarePartners*, [2022 ONSC 1398](#).
2. *Lavier v MyTravel Canada Holidays Inc.*, [2013 ONCA 92](#).
3. *Ainslie v Afexa Life Sciences Inc.*, [2010 ONSC 4294](#).
4. *Cannon v Funds for Canada Foundation*, [2013 ONSC 7686](#).
5. *Malette v Bank of Montreal*, [2021 ONSC 2922](#).
6. *Kaplan v PayPal CA Limited*, [2021 ONSC 1981](#).
7. *Smith Estate*, [2011 ONCA 233](#).
8. *Breckon v Cermaq Canada Ltd.*, [2024 FC 225](#).
9. *Dufault v The Toronto-Dominion Bank*, [2024 ONSC 961](#).
10. *Reference re Public Service Employee Relations Act (Alta.)*, [\[1987\] 1 SCR 313](#), 1987 CanLII 88 (SCC).
11. *Berg v Canadian Hockey League*, [2024 ONSC 1573](#).
12. *Fresco v Canadian Imperial Bank of Commerce*, [2024 ONCA 628](#).
13. *Doucet v The Royal Winnipeg Ballet*, [2023 ONSC 2323](#).
14. *Charette v Trinity Capital Corporation*, [2019 ONSC 3153](#).
15. *Cannon v Funds for Canada Foundation*, [2017 ONSC 2670](#).

SCHEDULE “B” – RELEVANT STATUTES

1. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 32(2.1).

Fees must be fair and reasonable

(2.1) The court shall not approve an agreement unless it determines that the fees and disbursements required to be paid under the agreement are fair and reasonable, taking into account,

- (a) the results achieved for the class members, including the number of class or subclass members expected to make a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who are and who are not expected to receive monetary relief or settlement funds;
- (b) the degree of risk assumed by the solicitor in providing representation;
- (c) the proportionality of the fees and disbursements in relation to the amount of any monetary award or settlement funds;
- (d) any prescribed matter; and
- (e) any other matter the court considers relevant.

DAVID PARKER
Plaintiff

and

BLACKBERRY LIMITED
Defendant
Court File No. CV-17-71659-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**FACTUM OF THE PLAINTIFF
(FEE APPROVAL)**

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