

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID PARKER

Plaintiff

- and -

BLACKBERRY LIMITED

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992

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

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## **PART I – OVERVIEW**

1. The Representative Plaintiff, David Parker (“Mr. Parker”), brings this unopposed motion to seek approval of a proposed settlement (the “Proposed Settlement”) entered into by Mr. Parker and the Defendant, BlackBerry Limited (“BlackBerry”) (together, the “Parties”). In particular, Mr. Parker seeks approval of the settlement agreement dated February 13, 2025 (the “Settlement Agreement”).<sup>1</sup>
2. The Proposed Settlement relates to certain harm the Class Members allege they suffered due to the way that BlackBerry arranged to transfer their employment to the Ford Motor Company of Canada (“Ford”). In the action, the Class Members alleged that the transaction between BlackBerry and Ford eliminated certain statutory, contractual, and/or common law entitlements, and they made allegations about BlackBerry’s communications with Class Members and the sharing of Class Members’ employment information with Ford as part of the transaction.<sup>2</sup> BlackBerry expressly denied the allegations and claims and has maintained its position throughout in strongly defending the action.<sup>3</sup>
3. The Proposed Settlement provides for an all-inclusive payment of \$4 million in exchange for a full and final release of the Class Members’ claims against BlackBerry relating to or arising from their employment with BlackBerry or the cessation of their employment, including in respect of all matters raised, or which could reasonably have been raised, in this action.<sup>4</sup> After the proposed allocation to legal fees, disbursements, administrative costs for distributing the settlement, and taxes (\$1.9 million) and the proposed honoraria for the

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<sup>1</sup> Affidavit of Karine Dion [Settlement Approval] affirmed on July 17, 2025 [“Dion SA Affidavit”] at para 3 and Exhibit “A” [Plaintiff’s Settlement Approval Motion Record [PSAMR]], Tab 3, p. 153-154 and p. 170.

<sup>2</sup> Dion SA Affidavit at para 34 [PSAMR], Tab 3, p. 160.

<sup>3</sup> Dion SA Affidavit at para 9 [PSAMR], Tab 3, p. 155.

<sup>4</sup> Dion SA Affidavit at Exhibit “A” [PSAMR], Tab 3, p. 170.

four instructing Class Members (\$70,000.00), there will be \$2,030,000.00 plus any accrued interest to distribute to the 281 eligible Class Members, which will be paid as general damages.<sup>5</sup>

4. The Proposed Settlement is fair, reasonable, and in the best interests of the Class. The Proposed Settlement will provide meaningful redress to the Class Members and will avoid the expense and risk of protracted litigation. Further, the Proposed Settlement provides for a straightforward distribution process which will minimize administration costs and will allow for a timely distribution of settlement funds to eligible Class Members.
5. The Proposed Settlement promotes access to justice and judicial economy. Consequently, the Proposed Settlement should be approved.

## **PART II - FACTS**

### ***Background***

6. This class proceeding is about BlackBerry's actions related to 285<sup>6</sup> employees (the "Class Members") transferring to Ford in early 2017, and whether BlackBerry failed to provide them with certain entitlements and breached its duty of good faith.<sup>7</sup>
7. 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 section 96 of the *Employment Standards Act, 2000* seeking termination pay and/or severance pay and did not withdraw that complaint within two weeks.<sup>8</sup>

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<sup>5</sup> Dion SA Affidavit at paras 31-33 [PSAMR], Tab 3, p. 159-160.

<sup>6</sup> 289 less four opt-outs.

<sup>7</sup> Dion SA Affidavit at paras 6-7 and Exhibit "C" [PSAMR], Tab 3, p. 154 and p. 184.

<sup>8</sup> Dion SA Affidavit at para 12 and Exhibit "E" [PSAMR], Tab 3, p. 156 and p. 218.

8. Mr. Parker alleged that, rather than providing 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”).<sup>9</sup>
9. 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.<sup>10</sup>

### ***Litigation history***

10. 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.<sup>11</sup>
11. 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;<sup>12</sup>
  - 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;<sup>13</sup>

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<sup>9</sup> Dion SA Affidavit at para 7 [PSAMR], Tab 3, p. 154.

<sup>10</sup> Dion SA Affidavit at para 8 [PSAMR], Tab 3, p. 155.

<sup>11</sup> Dion SA Affidavit at paras 6 and 10 and Exhibit “B” [PSAMR], Tab 3, p. 154-155 and p. 177.

<sup>12</sup> Dion SA Affidavit at para 7 and Exhibit “C” [PSAMR], Tab 3, p. 154 and p. 184.

<sup>13</sup> Dion SA Affidavit at paras 11 and 12 and Exhibit “E” [PSAMR], Tab 3, p. 155-156 and p. 218.

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

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<sup>14</sup> Dion SA Affidavit at para 13 and Exhibit "F" [PSAMR], Tab 3, p. 156 and p. 229.

<sup>15</sup> Dion SA Affidavit at para 9 and Exhibit "D" [PSAMR], Tab 3, p. 155 and p. 203.

<sup>16</sup> Dion SA Affidavit at para 14 and Exhibit "G" [PSAMR], Tab 3, p. 156 and p. 232.

<sup>17</sup> Dion SA Affidavit at para 15 and Exhibits "H" and "I" [PSAMR], Tab 3, p. 156, p. 235 and p. 490.

<sup>18</sup> Dion SA Affidavit at para 23 and Exhibit "J" [PSAMR], Tab 3, p. 157-158 and p. 499.

<sup>19</sup> Dion SA Affidavit at para 16 [PSAMR], Tab 3, p. 156.

<sup>20</sup> Dion SA Affidavit at para 17 [PSAMR], Tab 3, p. 156.

<sup>21</sup> Dion SA Affidavit at para 18 [PSAMR], Tab 3, p. 157.

<sup>22</sup> Dion SA Affidavit at para 27 [PSAMR], Tab 3, p. 158.

<sup>23</sup> Dion SA Affidavit at para 24 and Exhibit "K" [PSAMR], Tab 3, p. 158 and p. 505.

<sup>24</sup> Dion SA Affidavit at para 19 [PSAMR], Tab 3, p. 157.

- n. BlackBerry examined five additional Class Members from July to November 2023;<sup>25</sup>
- o. On December 15, 2023, BlackBerry provided responses to written undertaking questions of its former Chief Executive Officer (“CEO”);<sup>26</sup>
- p. On May 1, 2024, the Parties attended a discovery refusals motion, which led to further productions. Following these further productions, BlackBerry had produced over 7,000 documents;<sup>27</sup>
- 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,<sup>28</sup>
- r. The Parties entered into the Settlement Agreement on February 13, 2025.<sup>29</sup>

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.<sup>30</sup>

- 12. 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.<sup>31</sup>

### ***The Proposed Settlement***

- 13. The Proposed Settlement includes an all-inclusive settlement amount of CDN \$4,000,000.00, consisting entirely of legal fees, interest, general damages, and any expenses incurred to administer the settlement.<sup>32</sup>

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<sup>25</sup> Dion SA Affidavit at para 20 [PSAMR], Tab 3, p. 157.

<sup>26</sup> Dion SA Affidavit at para 21 [PSAMR], Tab 3, p. 157.

<sup>27</sup> Dion SA Affidavit at para 22 and 25 and Exhibit “L” [PSAMR], Tab 3, p. 157-158 and p. 514.

<sup>28</sup> Dion SA Affidavit at para 29 [PSAMR], Tab 3, p. 158-159.

<sup>29</sup> Dion SA Affidavit at para 30 [PSAMR], Tab 3, p. 159.

<sup>30</sup> Dion SA Affidavit at para 10 [PSAMR], Tab 3, p. 155.

<sup>31</sup> Dion SA Affidavit at para 28 [PSAMR], Tab 3, p. 158.

<sup>32</sup> Dion SA Affidavit at para 31 [PSAMR], Tab 3, p. 159.



14. After the agreement in principle was reached, the Parties spent several weeks negotiating the specific terms of the Settlement Agreement, Notice Plan, and Distribution Protocol.

The Parties entered into the Settlement Agreement on February 13, 2025.<sup>33</sup>

### **PART III – ISSUES**

15. The issue for this Court to determine is whether to approve the Proposed Settlement.

### **PART IV – LAW AND ARGUMENT**

16. A class proceeding settlement is not binding unless approved by the Court.<sup>34</sup> For the Court to approve the settlement, it must be fair, reasonable, and in the best interests of the Class.<sup>35</sup>

The settlement does not have to treat all Class Members equally but rather must be fair and reasonable for the Class as a whole.<sup>36</sup> The key issue the Court considers in determining whether to approve the settlement is whether it falls within a zone of reasonableness.<sup>37</sup>

17. In *Dabbs v Sun Life Assurance Co of Canada*, the Ontario Court of Justice explained that:

[A]ll settlements are the product of compromise and a process of give and take and settlements rarely give all parties exactly what they want. Fairness is not a standard of perfection. Reasonableness allows for a range of possible resolutions. A less than perfect settlement may be in the best interests of those affected by it when compared to the alternative of the risks and costs of litigation.<sup>38</sup>

18. In determining whether to approve the settlement, a Court may consider the following factors, though not all factors need to be present or be given equal weight:

- a. The likelihood of recovery or likelihood of success;
- b. The amount and nature of discovery, evidence, or investigation;
- c. The proposed settlement terms and conditions;
- d. The recommendation and experience of counsel;

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<sup>33</sup> Dion SA Affidavit at para 30 [PSAMR], Tab 3, p. 159.

<sup>34</sup> *Class Proceedings Act*, 1992, S.O. 1992, c. 6, s. 27.1(3).

<sup>35</sup> *Class Proceedings Act*, 1992, S.O. 1992, c. 6, s. 27.1(5).

<sup>36</sup> *Kaplan v PayPal CA Limited*, 2021 ONSC 1981 at para 53.

<sup>37</sup> *McCarthy v Canadian Red Cross Society*, [2001] OJ No 2474 (SC) at para 14.

<sup>38</sup> *Dabbs v Sun Life Assurance Co of Canada*, [1998] OJ No 2811 at para 30, aff'd [1998] OJ No 3622.

- e. The future expense and likely duration of litigation;
- f. The number of objectors and nature of objections;
- g. The presence of good faith, arm's length bargaining and the absence of collusion;
- h. The information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations; and,
- i. The nature of communications by counsel and the representative plaintiff with class members during the litigation.<sup>39</sup>

**The Proposed Settlement is fair, reasonable, and in the best interests of the Class**

***a. The likelihood of recovery or success***

19. 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 was any bad faith conduct relating to the manner of transfer to Ford. The novelty of this case made it difficult to predict the outcome. Notably, prior to this class proceeding being certified, the Ministry of Labour dismissed two complaints filed by former BlackBerry employees (based on this same set of facts) alleging that BlackBerry had terminated their employment by transitioning them to Ford.<sup>40</sup>
20. 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 not have received any damages.<sup>41</sup>
21. While the Plaintiff maintains that BlackBerry's actions amounted to a termination of the Class Members' employment and/or the transfer had been conducted in bad faith, they acknowledge the significant risk that the Court would not agree, or if it did, that BlackBerry

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<sup>39</sup> *Doucet v The Royal Winnipeg Ballet*, [2022 ONSC 976](#) at para 48; *Kaplan v PayPal CA Limited*, [2021 ONSC 1981](#) at para 53.

<sup>40</sup> Dion SA Affidavit at paras 48 and 49 and Exhibit "T" [PSAMR], Tab 3, p. 164 and p. 555.

<sup>41</sup> Dion SA Affidavit at para 50 [PSAMR], Tab 3, p. 164.

would likely appeal such a decision.<sup>42</sup> BlackBerry maintained its position throughout the litigation, denying the Plaintiff's allegations and claims in this regard, and vigorously defended it.<sup>43</sup> Given the unique circumstances of the case, and the high-risk nature of the litigation, the Proposed Settlement is in the best interests of the Class as it provides Class Members with guaranteed compensation in respect of certain elements of the claim and avoids the risk and time of a trial on the merits.

***b. The amount and nature of discovery, evidence, or investigation***

22. The Proposed Settlement was reached after eight years of hard-fought litigation and after the Parties had completed extensive investigation and legal research, reviewed extensive evidence, and completed the discovery phase of the proceeding.<sup>44</sup> These steps included:

- a. Extensive documentary discovery: BlackBerry produced over 7,000 documents which Class Counsel thoroughly reviewed and upon which BlackBerry representatives were questioned;
- b. Numerous examinations for discovery, as outlined in paragraph 11 above;
- c. Multiple motions, as outlined in paragraph 11 above;
- d. The Parties attended an in-person mediation in November 2022 for which comprehensive mediation briefs were exchanged;
- e. The Parties attended two pre-trial conferences for which comprehensive pre-trial conference briefs, including witness lists, were exchanged. In preparing the witness list, Class Counsel spoke extensively to Class Members about their evidence; and,
- f. The Parties had begun preparing for the common issues trial.<sup>45</sup>

23. As a result of the significant disclosure and examinations, the Parties were able to engage in informed discussions and negotiations. The Parties were well informed of the risks and potential outcomes of proceeding to a common issues trial.<sup>46</sup>

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<sup>42</sup> Dion SA Affidavit at para 54 [PSAMR], Tab 3, p. 165.

<sup>43</sup> Dion SA Affidavit at paras 9 and 10 [PSAMR], Tab 3, p. 155.

<sup>44</sup> Dion SA Affidavit at paras 57 and 58 [PSAMR], Tab 3, p. 165-167.

<sup>45</sup> Dion SA Affidavit at para 58 [PSAMR], Tab 3, p. 165-167.

<sup>46</sup> Dion SA Affidavit at para 59 [PSAMR], Tab 3, p. 167.

*c. The proposed settlement terms and conditions*

24. In considering whether the settlement should be approved, a Court may consider the monetary value of the settlement and the effectiveness of the notice and distribution plan.<sup>47</sup>

25. The Proposed Settlement provides for \$4,000,000.00, consisting of legal fees, interest, general damages, and expenses incurred to administer the settlement. Class Counsel will administer the settlement.<sup>48</sup> 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 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.<sup>49</sup>

*i. The excluded Class Members*

26. In determining the reasonableness of the Proposed Settlement, the Court must consider whether the settlement is in the best interests of the class as a whole, not the small segment of ineligible class members.<sup>50</sup>

27. The Proposed Settlement will provide compensation to Class Members who did not opt out of the class proceeding and who completed at least three months of service with BlackBerry (the "eligible Class Members"). Of the 289 class members, four individuals opted out and four individuals completed less than three months of service with BlackBerry, leaving 281 Class Members who are eligible for compensation.<sup>51</sup>

28. The Proposed Settlement relates to certain alleged harm suffered by Class Members as a result of BlackBerry's:

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<sup>47</sup> See for example: *Dufault v The Toronto-Dominion Bank*, [2024 ONSC 961](#) at para [27](#).

<sup>48</sup> Dion SA Affidavit at para 37 [PSAMR], Tab 3, p. 161.

<sup>49</sup> Dion SA Affidavit at para 32 and Exhibit "M" [PSAMR], Tab 3, p. 159 and p. 521.

<sup>50</sup> *Dufault v The Toronto-Dominion Bank*, [2024 ONSC 961](#) at para [33](#).

<sup>51</sup> Dion SA Affidavit at para 33 [PSAMR], Tab 3, p. 159-160.

- a. Alleged bad faith in carrying out a transfer to Ford without Class Members maintaining their *ESA* right for their service to be recognized by Ford;
  - b. Communications with Class Members in carrying out the above-noted transfer; and
  - c. Alleged sharing with Ford of personal information concerning Class Members' employment without their express consent.<sup>52</sup>
29. The four Class Members with less than three months of service did not suffer the harm to which the Proposed Settlement relates ("excluded Class Members"). The excluded Class Members were hired in January 2017, in anticipation of the Class Members' move to Ford on March 1, 2017. Through litigation, the Plaintiff learned that these individuals knew that Ford would be making them employment offers and BlackBerry sought their permission to share their personal information with Ford.<sup>53</sup> It is therefore reasonable to exclude these individuals from receiving settlement funds.

*iii. Compensation for eligible Class Members*

30. Eligible Class Members will receive substantial compensation, distributed in a fair manner, that is prorated to their years of service with BlackBerry. Class Members with five or more years of service will receive twice as much compensation for every year of service.<sup>54</sup>
31. 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. The average payment is expected to be \$7,224.20.<sup>55</sup>
32. The payments will be paid as general damages since the payments are in respect of any harm suffered by Class Members as a result of BlackBerry's alleged bad faith relating to the transfer of employment, and the claim the Plaintiff advanced in this regard – which claim BlackBerry denied.

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<sup>52</sup> Dion SA Affidavit at para 34 [PSAMR], Tab 3, p. 160.

<sup>53</sup> Dion SA Affidavit at para 34 [PSAMR], Tab 3, p. 160.

<sup>54</sup> Dion SA Affidavit at para 35 [PSAMR], Tab 3, p. 160.

<sup>55</sup> Dion SA Affidavit at para 36 [PSAMR], Tab 3, p. 161.

*iv. The notice program*

33. The notice program in this action is greatly superior to that in most class actions. The Class Members are a group of 285 individuals whose names and, for the most part, contact information, are known to Class Counsel, which allows Class Counsel to carry out the Court-approved Notice Plan and administer the claims in an efficient and cost-effective manner. As a result of the Notice Plan, Class Counsel is optimistic that all Class Members will submit a claim for settlement funds, so the take-up rate should be close to 100%.<sup>56</sup>
34. Class Counsel has the contact information for all but one Class Member and has therefore provided direct notice to approximately 99.6% of Class Members. Class Counsel provided direct notice of the settlement approval hearing to the Class Members in April 2025 by way of mail, email, or both where possible. In addition, Class Counsel posted notice of the settlement approval hearing on Class Counsel's website and on its social media platforms and issued a press release regarding the Proposed Settlement.<sup>57</sup>
35. Class Counsel will notify eligible Class Members of the settlement approval by providing notice in accordance with the Notice Plan. Class Counsel will provide direct notice and will post notice of the approval on Class Counsel's website and social media platforms.<sup>58</sup>

*v. The claims process*

36. Compensation will be provided to Class Members in a straightforward manner that 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 their contact details. In most cases, Class Members will not need to produce any evidence. Only

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<sup>56</sup> Dion SA Affidavit at paras 43 and 44, and Exhibits "N" and "O" [PSAMR], Tab 3, p. 162-163, p. 527 and p. 529.

<sup>57</sup> Dion SA Affidavit at paras 43-45, and Exhibits "P" and "Q" [PSAMR], Tab 3, p. 162-163, p. 531 and p. 536.

<sup>58</sup> Dion SA Affidavit at para 47 [PSAMR], Tab 3, p. 163-164.

Class Members who dispute their years of service (which Class Counsel anticipates will be minimal, if any, since BlackBerry has already provided this information), will need to provide documentation of their start date with BlackBerry.<sup>59</sup>

37. Subject to any delay in approving this settlement, Class Members will have until December 31, 2025 to provide their Claim Administration Form.<sup>60</sup> This timeframe is reasonable considering the simplicity of the form and the direct notice provided to Class Members.

*vi. The Distribution Protocol*

38. The settlement funds will be paid by taking into account Class Members' years of service with BlackBerry as at February 28, 2017.<sup>61</sup> Through litigation, BlackBerry provided Class Counsel with Class Members' start dates. Upon reaching the Proposed Settlement, BlackBerry provided updated information to confirm the Class Members' start dates. Class Members will also confirm their start date through the Claim Administration Form and can dispute their years of service in the unlikely event that the information is incorrect.<sup>62</sup>

39. The settlement funds will be allocated as follows:

- a. Class Members with less than 3 months of service will not receive settlement funds;
- b. The remaining Class Members will be divided into two tiers:
  - i. Tier 1: Class Members with less than five years of service, and
  - ii. Tier 2: Class Members with five or more years of service.<sup>63</sup>

40. The payments will be made 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 (the "Holdback"). The Holdback will ensure that there are sufficient funds to pay Class

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<sup>59</sup> Dion SA Affidavit at para 39 [PSAMR], Tab 3, p. 161.

<sup>60</sup> Dion SA Affidavit at para 39 [PSAMR], Tab 3, p. 161.

<sup>61</sup> Dion SA Affidavit at para 35 [PSAMR], Tab 3, p. 160.

<sup>62</sup> Dion SA Affidavit at para 39 [PSAMR], Tab 3, p. 161.

<sup>63</sup> Dion SA Affidavit at para 33 and 35 [PSAMR], Tab 3, p. 159-160.

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 to Class Members through the second payment.<sup>64</sup> 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.<sup>65</sup>

41. The first installment will be paid via cheque after December 31, 2025 (the date by which Class Members must submit a Claim Administration Form) as follows:

- a. Tier 1: \$400 per complete or partial year of service; and,
- b. Tier 2: \$800 per complete or partial year of service.

Class Counsel will deliver a report to the Court by January 30<sup>th</sup>, 2026 confirming the number of Class Members who completed a Claim Administration Form and received the first payment as well as the total amount distributed to Class Members.<sup>66</sup>

42. By no later than March 2, 2026, the entire Holdback, which is estimated to be approximately \$172,248.77 plus interest and any unclaimed funds, will be distributed as a second installment payment via cheque as follows:

- a. The Holdback shall be paid on a prorated basis to all Class Members in the same proportion as the first installment;
- b. The Holdback for each Class Member shall be calculated as follows:
  - i. The Holdback amount will be divided by half the cumulative sum of the total years of service of all Tier 1 Class Members and the full cumulative sum of all Tier 2 Class Members (hereinafter referred to as the “Holdback Multiplier”);
  - ii. Each Class Member shall receive:
    - 1. Tier 1: the Holdback Multiplier times half of their years of service (including partial years of service); and

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<sup>64</sup> Dion SA Affidavit at para 41 [PSAMR], Tab 3, p. 162.

<sup>65</sup> *Kaplan v PayPal CA Limited*, 2021 ONSC 1981 at para 63.

<sup>66</sup> Dion SA Affidavit at Exhibit “M” [PSAMR], Tab 3, p. 521.



2. Tier 2: the Holdback Multiplier times their full years of service (including partial years of service).<sup>67</sup>

43. Within 60 days following the final distribution of the settlement funds, Class Counsel will deliver a report to the Court confirming the number of Class Members who received funds and the total amount distributed to Class Members.<sup>68</sup> This method ensures that there will be no remaining funds following the second round of payments.<sup>69</sup>

***d. The recommendation and experience of counsel***

44. Where the parties are represented by reputable and experienced counsel, the court may assume, in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement.<sup>70</sup> The court gives a higher degree of deference in cases such as the within case where the action settles at a late stage. In *Cannon v Funds for Canada Foundation*, the Ontario Superior Court of Justice stated that, “[i]n a late stage settlement, the supervising class action judge will be justified in assuming that class counsel had a complete or almost complete understanding of the risks and rewards of further litigation and the court will be more comfortable relying on class counsel’s recommendation that the settlement is indeed in the best interests of the class.”<sup>71</sup>

45. 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

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<sup>67</sup> Dion SA Affidavit at para 42 and Exhibit “M” [PSAMR], Tab 3, p. 162 and p. 521.

<sup>68</sup> Dion SA Affidavit at Exhibit “M” [PSAMR], Tab 3, p. 521.

<sup>69</sup> Dion SA Affidavit at para 42 [PSAMR], Tab 3, p. 162.

<sup>70</sup> *Ainslie v Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para 31.

<sup>71</sup> *Cannon v Funds for Canada Foundation*, 2017 ONSC 2670 at para 5.

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.<sup>72</sup>

46. Class Counsel recommend the Proposed Settlement and believe that it is fair, reasonable, and in the best interest of the Class. The settlement provides for timely, meaningful redress to the Class Members which will be achieved through a simple claims procedure. Given the risks and costs of proceeding to a trial, both in terms of the financial costs and the time required to complete a common issues trial and exhaust any potential appeals, Class Counsel recommend the Proposed Settlement because it guarantees that Class Members will receive compensation now and will bring finality to this protracted litigation.<sup>73</sup>

47. Class Counsel recommended the Proposed Settlement to the four instructing Class Members who support the Proposed Settlement.<sup>74</sup>

***e. The future expense and likely duration of litigation***

48. Had the Parties not settled at the second pre-trial conference, Class Counsel would have needed to begin its trial preparations in earnest, which would have significantly increased the legal costs in a way that would have made any future settlement more difficult.<sup>75</sup>

49. The common issues trial was scheduled to take place in June 2025, following which a decision would likely have taken several months. Assuming the Plaintiff was successful at the common issues trial, the Defendant would have likely appealed the decision which would have led to further costs and delays prior to the resolution of the litigation.<sup>76</sup>

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<sup>72</sup> Dion SA Affidavit at paras 60-61 [PSAMR], Tab 3, p. 167.

<sup>73</sup> Dion SA Affidavit at para 62 [PSAMR], Tab 3, p. 167-168.

<sup>74</sup> Dion SA Affidavit at para 63 [PSAMR], Tab 3, p. 168; Affidavit of David Parker affirmed on July 15, 2025 [“Parker Affidavit”] at para 10 [PSAMR], Tab 2, p. 13.

<sup>75</sup> Dion SA Affidavit at para 55 [PSAMR], Tab 3, p. 165.

<sup>76</sup> Dion SA Affidavit at paras 51, 53, and 54 [PSAMR], Tab 3, p. 164-165.

50. If the Proposed Settlement is not approved, the Parties will move forward with the common issues trial which BlackBerry will surely strongly defend, as it has done throughout this litigation. The Parties estimate needing at least four weeks for the common issues trial, though more time may be required. The Parties would be subject to the Court's availability for a four-week hearing date, which likely would not take place until 2026 or even 2027, following which the Parties would need to wait for the Court's decision.<sup>77</sup>
51. This class proceeding is also subject to a confidentiality order which would complicate the common issues trial and consequently increase costs associated with the trial.<sup>78</sup>
52. A four-week in-person trial would require a significant investment of Class Counsel's time and resources which would reduce the funds available to the Class from a potential award.<sup>79</sup>
53. Further, a common issues trial would require the participation of Class Members. The Plaintiff identified 14 Class Members as potential witnesses for trial. These Class Members would need to dedicate a substantial amount of time to prepare for and testify at a trial.<sup>80</sup>

***f. The number of objectors and nature of objections***

54. Class Counsel carried out the Notice Plan in April 2025 by providing direct notice of the Proposed Settlement and the settlement approval hearing to the Class Members, posting notice of the settlement approval hearing on Class Counsel's website and its social media platforms, and issuing a press release regarding the Proposed Settlement.<sup>81</sup>
55. The deadline for Class Members to object to the Proposed Settlement was June 30, 2025. Class Counsel has not received any objections to the Proposed Settlement.<sup>82</sup>

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<sup>77</sup> Dion SA Affidavit at para 53 [PSAMR], Tab 3, p. 165.

<sup>78</sup> Dion SA Affidavit at para 52 [PSAMR], Tab 3, p. 164.

<sup>79</sup> Dion SA Affidavit at para 55 [PSAMR], Tab 3, p. 165.

<sup>80</sup> Dion SA Affidavit at para 56 [PSAMR], Tab 3, p. 165.

<sup>81</sup> Dion SA Affidavit at para 45 [PSAMR], Tab 3, p. 163.

<sup>82</sup> Dion SA Affidavit at para 64 and Exhibit "U" [PSAMR], Tab 3, p. 168 and p. 564.

***g. The presence of good faith, arm's length bargaining and the absence of collusion***

56. When a settlement is negotiated at arms-length and recommended by experienced class counsel, there is a strong presumption of fairness.<sup>83</sup> This litigation was hard fought. BlackBerry was represented by experienced counsel who vigorously defended the action.<sup>84</sup>
57. The Parties engaged in substantial negotiation discussions over the years. In November 2022, the Parties attended a mediation with William Kaplan, a well-known mediator. Following the mediation, the Parties engaged in litigation for over two years before reaching the Proposed Settlement.<sup>85</sup>
58. The Parties exchanged extensive briefs outlining their respective positions, including mediation briefs in November 2022 and pre-trial conference briefs in November 2024.<sup>86</sup>
59. The Parties attended two pre-trial conferences, during which they engaged in good faith, arm's-length negotiations with the assistance of RSJ MacLeod. During these negotiations, the Parties exchanged numerous offers to settle. Through extensive discussions, the Parties made significant progress in closing the gap between their positions and were ultimately able to reach the Proposed Settlement.<sup>87</sup>

**PART V – ORDER REQUESTED**

60. The Plaintiff seeks:
- a. An Order approving the Settlement Agreement pursuant to section 27.1 of the *Class Proceedings Act, 1992*.

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

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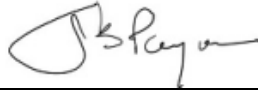
<sup>83</sup> *Redublo v CarePartners*, [2022 ONSC 1398](#) at paras 53-54.

<sup>84</sup> Dion SA Affidavit at para 26 [PSAMR], Tab 3, p. 158.

<sup>85</sup> Dion SA Affidavit at paras 27-29 [PSAMR], Tab 3, p. 158.

<sup>86</sup> Dion SA Affidavit at para 58 [PSAMR], Tab 3, p. 165-167.

<sup>87</sup> Dion SA Affidavit at paras 28 and 29 [PSAMR], Tab 3, p. 158.



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

Lawyers for the Plaintiff

## SCHEDULE “A” – LIST OF AUTHORITIES

1. *Kaplan v PayPal CA Limited*, [2021 ONSC 1981](#).
2. *McCarthy v Canadian Red Cross Society*, [2001] OJ No 2474 (SC) as attached at Appendix A.
3. *Dabbs v Sun Life Assurance Co of Canada*, [\[1998\] OJ No 2811](#).
4. *Doucet v The Royal Winnipeg Ballet*, [2022 ONSC 976](#).
5. *Dufault v The Toronto-Dominion Bank*, [2024 ONSC 961](#).
6. *Ainslie v Afexa Life Sciences Inc.*, [2010 ONSC 4294](#).
7. *Cannon v Funds for Canada Foundation*, [2017 ONSC 2670](#).
8. *Redublo v CarePartners*, [2022 ONSC 1398](#).

## **APPENDIX "A"**

1. *McCarthy v Canadian Red Cross Society*, [2001] OJ No 2474

McCarthy v. Canadian Red Cross Society

2001 CarswellOnt 2255, [2001] O.J. No. 2474, [2001] O.T.C. 470, 106 A.C.W.S. (3d) 193, 8 C.P.C. (5th) 349

**Michael McCarthy, Christine McCarthy and Derek Marchand, Plaintiffs and The Canadian Red Cross Society and The Attorney General of Canada, Defendants**

Winkler J.

Heard: January 29, 30, 2001

Judgment: June 22, 2001

Docket: 98-CV-143334

Proceedings: additional reasons to [2001 CarswellOnt 509 \(Ont. S.C.J.\)](#)

Counsel: *David Harvey, Lori Stoltz, Susan Vella*, for Plaintiffs

*P.R. Boeckle*, for Canadian Red Cross Society

*W. Knights*, for Attorney General of Canada

*Laurie Redden*, for Public Guardian and Trustee

*Linda Waxman*, for Children's Lawyer

*Malcolm Ruby, M.M. Fox, Mary Thomson*, for various Plan Participants

*William Dermody*, Friend of the Court

***Winkler J.:***

**Nature of the Motion**

1 The plaintiffs are the proposed representative plaintiffs in this intended class proceeding. On January 29, 2001 they brought a motion for approval of the partial settlement reached with the Canadian Red Cross Society ("CRCS") and certain other individuals and entities that are not currently parties to the action. These non-parties are identified collectively as the Plan Participants, a defined term in an on-going proceeding involving the CRCS under the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36 ("CCAA"). The CRCS and the Plan Participants were consenting to the certification of this action for the purpose of effecting the partial settlement, if the settlement was approved by the court as required under [s. 29\(2\) of the Class Proceedings Act, 1992, S.O. 1992, c.6](#). As part of the motion for approval of the settlement, the plaintiffs also sought ancillary relief in the form of an order barring the non-settling defendant from initiating or continuing any action against the settling parties for contribution or indemnity in respect of the claims asserted by the plaintiffs or the class members. In addition there was a companion motion seeking approval of the fees and disbursements of the class counsel.

2 In reasons released February 20, 2001, I refused to approve the proposed settlement advanced by the plaintiffs on two grounds:

(a) that the settlement was unfair to the derivative claimants intended to be included in the class; and

(b) the absence of evidence to support the granting of the release that would enure to the benefit of the Plan Participants

The motion was dismissed with leave to file further and better material that would address these deficiencies. The parties have now provided the court with supplementary materials and renew their motion for the relief set out above.



8 As stated, the CRCS is currently subject to a court supervised CCAA proceeding. The proposed partial settlement and its funding is a product of that proceeding. Accordingly, the plaintiffs move for approval of the partial settlement, certification on consent and certain ancillary relief.

9 Section 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, mandates court approval of settlements in class proceedings. Having reviewed the record and considered the submissions of class counsel and other interested parties, and the supplementary materials filed by the parties in response to my earlier ruling, I conclude that the concerns noted in my earlier reasons have been adequately addressed and that the motion ought to be granted. My reasons follow.

### ***Settlement Approval***

10 The partial settlement for which the plaintiffs sought approval on the earlier motion was described as follows at paragraph 19 of the plaintiffs' factum:

The Plan represents the settlement reached among the CRCS and certain other parties referred to as "Plan Participants", which include such entities as pharmaceutical companies, insurance companies, hospitals and individual physicians. The CRCS settlement is a national settlement that covers the class actions in British Columbia, Ontario and Quebec and will only become effective if courts in all three jurisdictions approve it. The settlement creates a fund of approximately \$63 million for people infected directly or indirectly with Hepatitis C as a result of blood received in Canada before 1986 or after July 1, 1990...

11 As stated above, I rejected the settlement on two main grounds. The first was the manner in which the derivative claims were to be treated under the proposed settlement. The plaintiffs were proposing that the derivative claims would be extinguished under the settlement without any compensation being provided. I found this to be unacceptable.

12 The settlement now proposed to the court contemplates that certain monies will be distributed equally among all infected class members, in three instalments. The payments will be made by instalment to insure that the fund is not depleted in the event that there are delayed claims from class members due to individual circumstances. In addition, the derivative claimants will receive payments in accordance with their relationship to the infected claimant. Spouses and minor children of a claimant or the parents of a minor infected child will receive \$300.00, while all other close relatives, including siblings, will receive \$100.00. However, the total amount payable in respect of all of the derivative claims relating to a single infected class member will be capped at \$800.00. If the total potential derivative claims for any one infected class member exceed that amount, the derivative claimants will receive pro-rated amounts totalling \$800.00. Further, if there are no derivative claims asserted in respect of an infected class member, that class member will be entitled to receive the \$800.00 amount set aside for derivative claims.

13 The Children's Lawyer has expressed concerns regarding the manner in which the settlement proposes to deal with the derivative claims. The concerns relate to the unequal payments that will be made depending on the number of derivative claims asserted and the possibility that the manner in which the settlement is structured will discourage derivative class members from making claims. I am not persuaded that these concerns are sufficient to justify a rejection of the settlement.

14 Settlements in class proceedings do not have to meet a threshold of perfection. Rather, the test is whether or not the settlement is fair, reasonable and in the best interests of the class as a whole. Further, in determining this the court looks to whether the settlement is within a zone or "range of reasonableness". In this case, there is a finite settlement fund available.

15 The proposed distribution of that settlement is "fair, reasonable and in the best interests of the class as a whole". Although there will likely be unequal amounts distributed under the settlement, the cap on derivative claims is set in such a manner that the potential inequality is insignificant in the context of the test to be applied on settlement approvals. Further, the capped amount is reasonable in consideration of the total compensation being offered under the settlement. Treating the infected class member and the derivative claimants associated with him or her as a unit for the purposes of compensation is an innovative method of distributing a limited fund to class members with differing bases for claims.

## **SCHEDULE “B” – RELEVANT STATUTES**

### **1. Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 27.1(3).**

#### **Not binding without court approval**

(3) A settlement under this section is not binding unless approved by the court.

### **2. Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 27.1(5).**

#### **Settlement must be fair and reasonable**

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be.

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 PLAINTIFFF**  
**(SETTLEMENT APPROVAL)**

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