

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID PARKER

Plaintiff

- and -

BLACKBERRY LIMITED

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**DISCOVERY PLAN
(Dated as of October 16, 2020)**

The Parties agree, subject to any amendments in writing or any order the Court may make, to the following discovery plan made pursuant to Rule 29.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

Any defined terms have the meanings ascribed to them in the pleadings.

A. INTENDED SCOPE OF DOCUMENTARY DISCOVERY: Having regard to principles of relevance (defined by the pleadings and the common issues listed in the order of June 1, 2020) and proportionality, the parties will make reasonable efforts to search for and to produce any non-privileged documents in the categories of documents set out below. The parties are not precluded from making requests for additional documents on discovery or bringing any necessary motions in this regard. This includes that the defendant expressly reserves its right to pursue productions from, and discovery of, other class members besides the representative plaintiff at the appropriate time. For clarity, the representative plaintiff has not consented to such further documentary or oral discovery of other class members.

Types of Documents to be Searched For

The parties will search for all forms of documents as defined in rule 30.01 of the Rules of Civil Procedure (“Documents”).

Documents to be Searched for and Produced

The parties will search for and produce – subject to privilege and subject to appropriate confidentiality terms being agreed upon/ordered to protect confidential information – relevant Documents, including the following.

1. Any emails or other Documents between BlackBerry and class members, in the time period December 1, 2016 to the end of February 2017, relating to: their employment situation and options at BlackBerry; their offers of employment from Ford and decision-making in respect of those offers; and their acceptance of those offers.
2. Any emails or other Documents between Ford and class members, in the time period December 1, 2016 to end of March 2017, relating to: their employment situation and options at BlackBerry; their offers of employment from Ford and discussions or negotiations in respect their offers; their decision-making in respect of those offers and their acceptance of them.
3. Any emails or other Documents between class members and others (including, colleagues, family members, or friends), between December 1, 2016 and the end of March 2017, relating to: their employment situation and options at BlackBerry; their offers of employment from Ford and decision-making in respect of those offers; and their acceptance of those offers.
4. Any internal emails or other Documents between BlackBerry representatives and BlackBerry's managers and team of human resources personnel, including those who were interacting with class members in the course of Project Silver, regarding the process of Ford making offers of employment to class members and how to respond to class members' questions during that process (in the period December 2016 through to the end of February 2017).
5. The FAQ document that was used by BlackBerry human resources representatives or managers for purposes of assisting with answering employee questions (previously produced), and any communications or other Documents given to the human resources representatives or managers providing further direction in respect of the FAQ.
6. The offers of employment from Ford and executed employment agreements with Ford.
7. Documents which outline the Ford benefit plan or program in which class members were entitled to participate upon joining Ford.
8. Class members' resignation letters or other forms of resignation notices sent by them to BlackBerry.
9. Class members' employment contracts with BlackBerry that were in effect as of the time period December 1, 2016 to the end of February 2017.
10. Documents reflecting any discussion between BlackBerry and Ford regarding ending the employment of the class member employees, including any discussion regarding:

- (i) not paying statutory, common law and/or contractual entitlements upon termination from BlackBerry to those employees; and
 - (ii) not transferring contractual severance entitlements for the class employees to Ford.
- 11. Any emails or other Documents internal to BlackBerry and between BlackBerry and Ford regarding whether class members would be entitled to receive statutory, common law and/or contractual termination entitlements upon their departure from BlackBerry.
- 12. Documents reflecting the information that BlackBerry provided to Ford in respect of the class members' employment with BlackBerry for the purpose of Ford considering whether to make employment offers to employees, including:
 - (a) Documents that BlackBerry produced to Ford for this purpose; and
 - (b) communications and other Documents between BlackBerry and Ford regarding the provision of this information.
- 13. Documents exchanged between BlackBerry and Ford concerning whether employees had or had not accepted employment with Ford.
- 14. Documents relating to the offers of employment made by Ford in December 2016 to the BlackBerry managers, and the communications and other Documents in respect of those offers;
- 15. Documents reflecting the arrangement between BlackBerry and Ford to allow Ford to offer employment to any of the class members, and in particular:
 - a. any internal BlackBerry Documents reflecting the arrangement between it and Ford to allow Ford to offer employment to any of the class members;
 - b. any internal BlackBerry Documents reflecting an intention to terminate class member employees in connection with the Ford transaction;
 - c. the agreement between BlackBerry and Ford relating to BlackBerry employees and the opportunity for Ford to offer employment to them, namely, the Personnel, Premises and Asset Agreement dated October 24, 2016; and
 - d. any communications or other Documents with Ford relating to the implementation of the Personnel, Premises and Asset Agreement dated October 24, 2016.

The Representative Plaintiff

The representative plaintiff, Mr. Parker, will conduct a search for all relevant Documents falling in the above categories that are within his power, possession or control. As stated above, BlackBerry reserves its right to subsequently seek documentary production from other class members; the Representative Plaintiff has not consented.

The Defendant

The defendant, BlackBerry, will conduct a search for all relevant Documents falling in the above categories that are within its power, possession or control.

Defendant’s custodians to be searched include:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. All class members (for documents on BlackBerry’s server only)
17. The other Canadian “December Managers” not listed above
18. Any representatives of BlackBerry who may have had communications with Ford in respect of categories 10, 11 12, 13, or 15 above.
19. Any other individuals BlackBerry knows or suspects to have relevant information and/or Documents.

B. DATES FOR SERVICE OF AFFIDAVIT OF DOCUMENTS:

Upon finalizing this discovery plan, parties’ counsel will further discuss and endeavour to agree on the timing for delivery of the affidavits of documents, failing which agreement a further case conference can convened. In advance of the date for exchange of the affidavits of documents parties’ counsel will consult for purposes of agreeing on appropriate confidentiality terms to protect confidential documents in the various categories of documents referred to above. If the parties cannot agree on such terms, the direction of the Court can be sought to address the issue and order appropriate terms.

C. INFORMATION RESPECTING THE MANNER OF THE PRODUCTION OF DOCUMENTS BY THE PARTIES AND ANY OTHER PERSONS

The parties will produce, together with their documentary productions, an electronic schedule A containing the following fields to enable coding and identification in document review software:

- Date of document (DD/MM/YYYY)

- Document type (e.g., memorandum, letter, contract, etc.)
 - Document description (e.g. email subject, title of agreement)
 - Author
 - Recipient
 - CC
- The parties will produce Schedules B and C in accordance with the Rules of Civil Procedure.

D. ORAL EXAMINATION UNDER RULE 31 AND INFORMATION RESPECTING TIMING AND LENGTH OF EXAMINATIONS

Upon finalizing this discovery plan, parties' counsel will further discuss and endeavour to agree on the timing for initial examinations for discovery, failing which agreement a further case conference can be convened.

BlackBerry reserves its right to seek to examine other class members besides Mr. Parker.

In respect of the location of examinations, the length of examinations, and the discovery representative of BlackBerry who will be examined, the parties agree to consult with each other following production of documents, and if any disputes arise the parties will seek direction from the Court as need be.

E. ANY OTHER INFORMATION INTENDED TO RESULT IN THE EXPEDITIOUS AND COST-EFFECTIVE COMPLETION OF THE DISCOVERY PROCESS

Undertakings

The parties agree that, on a best efforts basis, they shall deliver written answers to the undertakings within 90 days of the date on which the party is examined for discovery, or such later date as may be agreed to between the parties in the event 90 days is impractical, or such extension of time as may be granted by the Court.

Redactions

Each party may redact portions of relevant Documents to the extent that such portions contain information that is subject to privilege or is irrelevant, however, the grounds for each redaction must be identified. The parties agree that, if either party disagrees with the appropriateness of any redaction(s) made to a Document, the redaction(s) may be reviewed by way of motion to the Court.

Privilege

The parties agree that inadvertent production of privileged documents or information will not constitute a waiver of the privilege attaching to the documents or information, if reasonable good faith efforts have been made to identify and withhold privileged documents.

Service of Court Documents

The parties have agreed to accept service of all court documents electronically, to counsel, except where it is not practicable owing to the size of the document. Documents will be delivered in Microsoft Word or searchable PDF format where practicable, either by email, FTP site, or electronic storage device. Service of electronic Court documents by email will be acknowledged by opposing counsel as having been received.

As agreed upon by the parties.

DATED this 16th day of October, 2020

Nelligan O'Brien Payne LLP

Per:



Nelligan O'Brien Payne LLP

50 O'Connor St., Suite 300

Ottawa, ON K1P 6L2

Fax: 613.788.3655

Janice B. Payne (LSO# 16307P)

Tel: 613.231.8245

Andrew Montague-Reinholdt (LSO# 68239K)

Tel: 613.231.8244

Lawyers for the Plaintiff

DATED this 16th day of October, 2020

Torys LLP

Per:



Torys LLP

79 Wellington St. W., 30th Floor

Box 270, TD South Tower

Toronto, ON M5K 1N2

Fax: 416.865.7380

Arlen K. Sternberg (LSO #: 42344D)

Tel: 416.865.8203

Ryan Lax (LSO #: 63740E)

Tel: 416.865.8166

Lawyers for the Defendant