

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE ROBERT J. SMITH

March 16, 2021

B E T W E E N:

GLEN SNOWBALL

Plaintiff

- and -

BLACKBERRY LIMITED
(FORMERLY, RESEARCH IN MOTION LIMITED)

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O., 1992, c. 6

AMENDED ORDER

THIS MOTION, made by the Plaintiff for an order certifying this proceeding as a class proceeding, appointing the Plaintiff as representative Plaintiff, and providing for notice to the Class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended (the “CPA”), was heard this day at the court house, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

ON READING the all the materials filed, and on hearing the submissions of counsel for the Plaintiff and the Defendant,

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

2. **THIS COURT ORDERS** that the Class (or “Class Members” as applicable) is defined as follows:

All consumers in Canada (as defined in the Consumer Protection Act, or other similar/equivalent Consumer Protection Legislation), excluding Québec consumers (as defined in the Québec Consumer Protection Act), who had a BlackBerry Smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger (“BBM”), and/or internet services interrupted during the period of October 11 to 14, 2011 (the “Service Disruption Period”).

3. **THIS COURT ORDERS** that Glen Snowball is appointed as the Representative Plaintiff on behalf of the Class.

4. **THIS COURT ORDERS** that Consumer Law Group P.C. is appointed as lawyers for the Class (“Class Counsel”).

5. **THIS COURT ORDERS** that the common issues are as follows:

- (a) Did the Defendant fail to provide BlackBerry users with adequate email, BlackBerry Messenger service (“BBM”), and/or internet services during the Service Disruption Period?
- (b) Did the Defendant owe the Class Members a duty to use reasonable care to maintain stable, continuous and uninterrupted service on its system/data centre?
- (c) Did the Defendant act negligently in failing to meet the above standard?

- (d) Was the Defendant's failure to use reasonable means so as to provide Class Members with stable, continuous, and uninterrupted email, BBM, and/or internet services a breach of:
 - (i) contract?
 - (ii) its express or implied warranties?
 - (iii) the implied covenant of good faith and fair dealing?
 - (iv) the implied warranty that its services would be of a "reasonably acceptable quality" as per the *Consumer Protection Act*, s. 9 (1) or other similar/equivalent Consumer Protection Legislation?
- (e) Did the Defendant's negligence, breach of contract, express or implied warranties, implied covenant of good faith and fair dealing, and/or s. 9 (1) of the *Consumer Protection Act* or other similar/equivalent Consumer Protection Legislation proximately cause loss or injury and damages to Class Members?
- (f) Was the Defendant unjustly enriched by having received monies for its services during the Service Disruption Period?
- (g) Is the Defendant liable to Class Members for:
 - (i) reimbursement of the prorated amount of Class Members' monthly data plans for the period covering the Service Disruption Period?
 - (ii) disgorgement of the monies received by the Defendant for its services during the Service Disruption Period?
- (h) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?

6. **THIS COURT ORDERS** that the Notice of Certification, in the form attached as Schedule A to this Order (the “Notice of Certification”), is approved.

7. **THIS COURT ORDERS** that within 60 days of the issuance of this Order, the Notice of Certification be provided to the Class by Class Counsel as follows:

- (a) by sending a copy of the Notice of Certification via email to each Class Member who has provided their email address to Class Counsel;
- (b) by publishing once in The Globe and Mail and the National Post in a size no less than 1/3 of a page;
- (c) by issuing a press release on CNW Canada Newswire attaching a copy of the Notice of Certification;
- (d) by posting the Notice of Certification on Class Counsel’s website at www.clg.org; and
- (e) by posting the Notice of Certification on the Defendant’s website with a link stating “Notice to BlackBerry users” until 90 day after the issue of this Order.

8. **THIS COURT ORDERS** that within 30 days of the issuance of this Order, the Defendant will provide Class Counsel with an electronic list (in Excel or other database format), containing, in separate fields, the names and last known addresses and email addresses of all Class Members.

9. **THIS COURT ORDERS** that within 30 days of the issuance of this Order, the Defendant shall pay a sum to be determined, in trust to Consumer Law Group P.C., for the sole purpose of funding the publication of the notice to Class Members as described in paragraphs 7 and 8 above.

10. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering to Class Counsel written notice in the manner described in the Notice of Certification on or before the expiry of the 90th day after the issue of this Order.

11. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 90th day after the issuance of this Order.

12. **THIS COURT ORDERS** that Class Counsel will serve on the Defendant and file with the court an affidavit stating the number of persons who have opted out of the class proceeding in accordance with this Order within 30 days of the opt-out deadline set out in paragraph 10 above.

13. **THIS COURT ORDERS** that any other proposed class action relating to this class proceeding be stayed pending further order of this Court and that no other class proceeding may be issued relating to this class action without first obtaining leave of this Court.

14. **THIS COURT ORDERS** that this motion shall be granted with costs, as agreed between the parties.



Justice Robert J. Smith

Schedule “A” to the Certification Order

NOTICE OF CERTIFICATION AS A CLASS PROCEEDING

Snowball v. BlackBerry Limited

Court File No.: 16-70667-CP

INTRODUCTION

On *[date to be inserted]* the Ontario Superior Court of Justice certified the above action as a class proceeding and appointed Mr. Snowball as the representative Plaintiff on behalf of the following class.

All consumers in Canada (as defined in the Consumer Protection Act, or other similar/equivalent Consumer Protection Legislation), excluding Quebec consumers (as defined in the Québec Consumer Protection Act), who had a BlackBerry Smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger (“BBM”), and/or internet services interrupted during the period of October 11 to 14, 2011.

[You are receiving this notice because it has been determined that you may be a member of the class - *for direct mail recipients only*]. If you are a member of the class, your rights will be affected. Each member of the class who does not opt out of the class action will be bound by the terms of any judgment or settlement, whether favourable or not, in respect of the class action. Each member of the class may be entitled to share in the amount of any judgment awarded or settlement reached in the class action.

WHAT DO I NEED TO DO?

You do not need to do anything if you want to participate in the class action. If you DO NOT want to participate, then you need to complete the opt-out form attached hereto by *[date to be inserted]*.

WHAT IS THE CASE ABOUT?

The representative Plaintiff has commenced a claim against BlackBerry Limited (the “Defendant”). The representative Plaintiff has brought the claim on his own behalf and on behalf of the class against the Defendant for its alleged failure to properly compensate Class Members for monies that they paid out for data usage during the time period of October 11 to 14, 2011, when the service was not actually available (the “Service Disruption Period”). The Defendant denies all allegations made by the Plaintiff and intends to defend the lawsuit.

On *[date to be inserted]*, the Ontario Superior Court of Justice ruled that this action may proceed as a class action. Class certification itself is not determinative of the merits of the claim or

likelihood of success of any member of the class and the Court has not yet ruled on the merits of the claim.

HOW WILL THE CASE PROCEED?

The class action has two stages. The first stage is the resolution of the common issues, a list of which can be accessed at www.clg.org.

A date for the trial of these common issues will be set shortly. This judgment will apply to all class members who do not “opt out”.

If these common issues are resolved in favour of the class, at the second stage the court will determine what if any further steps are required to determine the amount payable to each class member.

WHO ARE THE LAWYERS FOR THE CLASS?

The lawyers for the class are:

Consumer Law Group P.C.
251 Laurier Ave. West, Suite 900
Ottawa, Ontario, K1P 5J6
Phone : 1-888-909-7863
E-mail: blackberry@clg.org
Website: www.clg.org

The costs of litigating the action, including all disbursements (out-of-pocket expenses such as retaining experts and court fees) has been and will continue to be paid for by Consumer Law Group P.C.

HOW DO I FIND OUT MORE?

Class members who wish to be informed about the status of the class action should monitor Consumer Law Group P.C.’s website at www.clg.org and if you provide your contact information, you will be periodically contacted with updates.

Any questions about the matters in this notice should be addressed to Consumer Law Group P.C. The certification order and other information are available on the website www.clg.org or answers may be obtained by calling 1-888-909-7863.

DO I NEED TO PAY ANYTHING?

You do not need to pay anything out of your own pocket. If the case is successful, the fees payable to class counsel will be paid out of any judgment and will not be paid directly by class members. Any fees are subject to approval of the court. The court will decide what is fair.

The arrangement compensates the lawyers for the risk they have assumed in advancing the case and the legal work performed. The lawyers do not receive any money to pay them for their work on the case unless the case is successful. Even if the class loses the case, class members are not responsible for the fees of any of the lawyers involved in the case.

YOU MUST OPT OUT IF YOU DO NOT WISH TO PARTICIPATE IN THE CLASS ACTION

Class members who do **not** wish to participate in the class action must opt out.

Whether or not the action is successful, the members of the class who do not opt out will be bound by the judgment. This means that, after this class action is completed, you cannot start your own action for the same claim.

If you wish to opt out of the class action, you must complete and sign the Opt-Out Election Form [attached hereto - *for direct mail recipients only*] (available on Consumer Law Group P.C.'s website at www.clg.org), and deliver it on or before [*date to be inserted*] to Consumer Law Group P.C. at the following address:

Black Service Outage Class Action
Consumer Law Group P.C.
251 Laurier Ave. West, Suite 900
Ottawa, Ontario, K1P 5J6

Or by fax to: **(613) 627-4893**

No class member will be permitted to opt out after [*date to be inserted*].

This notice was approved by the Ontario Superior Court of Justice.

Opt-Out Election Form

If you are a class member who completes and submits this form, you will be irrevocably excluded from any further participation in the class action certified against BlackBerry Limited.

By submitting this opt-out form, you are confirming that you do not wish to be a class member anymore.

By no longer being a member of the class action, you will not be eligible to receive any compensation resulting from any out-of-court settlement between the parties or from damages that may be awarded by the Court.

This form must be completed and received no later than *[Date to be inserted]*. Opt-out forms received after *[Date to be inserted]* will not be valid.

| | | |
|--|--------------------|---------------------|
| LAST NAME: | FIRST NAME: | |
| ADDRESS: | | |
| CITY: | PROVINCE: | POSTAL CODE: |
| PHONE: | EMAIL: | |
| PHONE # of BlackBerry mobile device you used during October 11 to 14, 2011 <u>if known:</u> | | |

DECLARATION:

I, _____, a member of the Class in the class action *Snowball v. BlackBerry Limited*, bearing Ontario Superior Court of Justice Court file number 13-57203 CP, wish to opt out of the Class Action. I declare that I have read the foregoing and understand that by opting out of the class action against BlackBerry Ltd., I will no longer be a member of the class action. I understand that by opting out, I will not be entitled to receive any payments awarded to the Class.

Date:

Signature

GLEN SNOWBALL
Plaintiff

-and-

Court File No. 13-57203 CP
BLACKBERRY LIMITED
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA

AMENDED CERTIFICATION ORDER

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