

March 27, 2020

**Bennett v Lenovo (Canada) Inc and Superfish Inc**

**CV-15-523714-CP**

- *Ms. Callaway* for the Representative Plaintiff
- *Mr. Patel* for the Defendant Lenovo

*Class action. Telephone hearing. Motion for approval of the proposed settlement with defendant Lenovo, the legal fees payable to class counsel, the distribution protocol and the suggested \$2000 honorarium for the representative plaintiff. The class action involves defective computer software preloaded into Lenovo computers that could be exploited to access the user's private information. As it turned out, no such exploitation occurred. The background facts are set out in the Lenovo certification decision, 2017 ONSC 5853 and in the Superfish certification/settlement approval decision, 2017 ONSC 6578. The Superfish action was settled in the US for \$1 million and in Canada for about \$151,000. The Lenovo action was settled in the US for \$8.3 million. The Canadian settlement with Lenovo is now before this court.*

1. The proposed \$700,000 settlement is approved. Using the American settlement amount as a comparative metric (that is, a 10:1 comparison) the proposed \$700,000 falls within the zone of reasonableness. I am satisfied that this settlement is fair and reasonable and in the best interests of the class.
2. The suggested Distribution Protocol is sensible and easily approved.
3. The proposed payment of a \$2000 honorarium to Mr. Bennett for his exceptional effort and participation as representative plaintiff is more than reasonable and is also approved.
4. My only concern relates to the timing and amount of the legal fees payable to class counsel in both the *Lenovo* and *Superfish* matters. I have no difficulty, in principle, approving the retainer agreements and the 25% contingency as fair and reasonable: see my reasons in *Cannon* and *Brown*. In the settlement hearing today, however, I raised a concern about the possibility that a full or even significant "take up" may not be achieved because of the relatively modest amounts of pay-out and may require a cy-pres distribution. This would suggest a delay in the payment of the legal fees until the actual take-up has been determined. Ms. Callaway made a number of submissions (about the availability of email contact and the likelihood of class member claims) that in result persuaded me that a significant take up will indeed be achieved. The legal fees/disbursements/follow-up fees are therefore approved and should be paid forthwith.

Orders to go accordingly.

Signed: *Justice E. P. Belobaba*

