

**CITATION:** Adelman v. IBM Canada Limited, 2026 ONSC 420  
**COURT FILE NO.:** CV-23-00693572-0000  
**DATE:** 20260127

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
JASON ADELMAN ) *Chris Foulon and Behzad Hassibi, for the*  
 ) Plaintiff  
 )  
Plaintiff )  
 )  
– and – )  
 )  
IBM CANADA LIMITED ) *Aislinn E. Reid and Lauren Harper, for the*  
 ) Defendant  
Defendant )  
 )  
 )  
 ) **HEARD:** November 17-20, 2025  
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 )  
 )

2026 ONSC 420 (CanLII)

**PARGHI J.**

**REASONS FOR JUDGMENT**

- [1] On August 3, 2004, Jason Adelman began working with Platform Computing, which was later acquired by IBM Canada Limited (“IBM”). Mr. Adelman initially worked as a senior program manager in platform computing, and in the years that followed took on roles as a director, senior manager, and program director in different parts of the company. On February 1, 2020, he was promoted to the role of Executive Director, Development and Support, AI Ops and Observability. The following year, he became Executive Director, Strategic Partnerships.
- [2] On January 6, 2023, IBM notified Mr. Adelman that it was terminating him without cause, effective two weeks later. At the time, he was 59 years old. His employment letter from IBM did not contain any provisions governing termination.

- [3] Mr. Adelman now sues for wrongful dismissal. He states that he was entitled to 24 months of notice and claims various other entitlements, including in respect of his loss of restricted stock units and stock options that would have vested during his notice period had IBM not improperly cancelled them upon his termination.
- [4] IBM pleads that Mr. Adelman was not wrongfully dismissed, although at trial it acknowledged that he was owed reasonable notice and proposed 20 to 22 months as an appropriate notice period. In its Statement of Defence and for some time after this action was commenced, IBM denied that Mr. Adelman was entitled to damages in respect of his restricted stock units and stock options, but in the weeks before trial it acknowledged that Mr. Adelman was in fact entitled to such damages, although it quantifies them differently.
- [5] The issues before me are:
- a. What reasonable notice period Mr. Adelman was entitled to, and what damages he is entitled to in lieu of base salary, pension contributions, benefits, and employee stock purchase plan participation for that notice period;
  - b. Whether Mr. Adelman was entitled to be paid a bonus during his notice period, and if so in what amount;
  - c. Whether Mr. Adelman was entitled to be paid a bonus for 2022, the last full year that he worked at IBM, and if so in what amount;
  - d. The quantum of damages owed to Mr. Adelman in relation to the restricted stock units and stock options that would have vested in February 2024; and
  - e. Whether Mr. Adelman is entitled to aggravated, moral, or punitive damages as a consequence of IBM's cancellation of his restricted stock units and stock options when it terminated him.
- [6] For the reasons below, I find as follows:
- a. Mr. Adelman was entitled to a reasonable notice period of 24 months, and to damages for his lost base salary, pension contributions, and benefits during that notice period, in the amount of \$532,975.68. He was not entitled to damages in respect of his employee stock purchase plan participation during the notice period.
  - b. He was not entitled to any bonus during his notice period.
  - c. He was entitled to be paid a bonus for 2022 of \$24,227, together with an associated pension amount of 4%, or \$969.08.
  - d. He is entitled to damages in relation to the restricted stock units and stock options that would have vested in February 2024, in the amount of \$269,508.27.

- e. He is not entitled to aggravated, moral, or punitive damages in relation to IBM's cancellation of his restricted stock units and stock options.

**Reasonable notice**

- [7] When Mr. Adelman was terminated, he received \$39,584.72 on account of pay in lieu of notice of termination and \$91,836.55 on account of statutory severance pay under the *Employment Standards Act, 2000*, S.O. 2000, c. 41. He also received salary for the pay period immediately after termination and modest amounts for benefits and pension, detailed below.
- [8] Mr. Adelman's position, in his Statement of Claim and at trial, was that he was entitled to 24 months of reasonable notice, with the result that he is now entitled to two years' base salary and bonus as damages for wrongful dismissal. I consider his entitlement to a bonus during the reasonable notice period separately below. I consider his entitlement to the other amounts sought during the notice period (base salary, damages in lieu of pension, and damages in lieu of benefits) here.
- [9] In its Statement of Defence, IBM pleaded that Mr. Adelman was not wrongfully terminated, meaning that he was not entitled to any payments beyond what he received at termination. I do not accept this position. It is clear that Mr. Adelman was entitled to reasonable notice under the common law. At trial, IBM submitted that Mr. Adelman is entitled to 20 to 22 months of notice. IBM did not amend its Statement of Defence before trial to reflect its apparent change in position on the issue of notice period. While this approach may have cost consequences, that matter is for another day.
- [10] In determining the reasonable notice period under the common law, I am to rely on the factors set forth by this court in *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.). These factors consist of the character of the employment, the length of service, the age of the employee, and the availability of similar employment, having regard to the experience, training, and qualifications of the dismissed employee (at p. 145, cited with approval in *Honda v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362, at para. 28).
- [11] Having regard to Mr. Adelman's experience, training, and qualifications and the character of his employment, the evidence is that Mr. Adelman obtained a Bachelor of Science in systems design engineering from the University of Waterloo and a Master of Business Administration from Tel Aviv University. He testified that he began his professional career as a software developer and worked his way up over time, eventually managing a team of developers and then moving into strategic partnership work. His CV shows that he began as a quality assurance engineer, and over time worked in different parts of the company with various titles including software developer, team lead, development manager, senior program manager, director, and senior manager. He was promoted to an executive level position in February 2020, and at the time he was terminated in January 2023 he was the Director – Strategic Partnerships.

- [12] His executive level positions were band D positions, meaning that they were on the lowest of four executive levels. As Director – Strategic Partnerships, Mr. Adelman had a team of nine non-executive employees (architects, developers, and product managers) reporting directly to him. His evidence was that he and his team were tasked with building a close technical relationship with a strategic partner, to explore ways in which IBM might leverage its technology in the partner’s business and eventually go jointly to market with the partner. It is uncontested that this project, which began before Mr. Adelman took on this role, did not ever generate revenue and that the strategic partnership was eventually abandoned, leading to the dissolution of the team in 2022. When that happened, Mr. Adelman worked to help his team members find new roles within or outside of IBM.
- [13] When IBM acquired Platform Computing, Mr. Adelman’s start date with IBM was recognized as August 3, 2004, the date on which he started working with Platform Computing. Thus, at the time he was terminated, Mr. Adelman had been with IBM for 18 and a half years.
- [14] He was 59 years old when he was terminated.
- [15] Finally, there appears to be limited similar employment available, based on the fact that he still has not found employment since leaving IBM, close to three years after his dismissal, despite having taken steps to find new employment that IBM concedes were reasonable. The parties agree that during the 24 month notice period claimed by Mr. Adelman, he applied for 100 positions, received four interviews (for different positions at four different companies), and received no job offers. He did consulting work for two companies but earned no income from either one during the notice period claimed.
- [16] Considering these factors, I am of the view that 24 months’ notice is appropriate.
- [17] In coming to this view, I am informed by the court’s decision in *Nagpal v. IBM Canada Ltd.*, 2021 ONSC 6853, which, like this case, involved IBM. In *Nagpal*, a non-executive employee who worked in software-related management positions, had 24 years of service, and was 47 when terminated was awarded a notice period of 22 months. Mr. Adelman was more senior than Mr. Nagpal; held an executive position, unlike Mr. Nagpal; and, importantly, was 12 years older than Mr. Nagpal when terminated. In my view, notwithstanding that he had fewer years of service with the company than Mr. Nagpal, this supports the position that he is entitled to a longer notice period than Mr. Nagpal was awarded.
- [18] Mr. Adelman’s base salary at the time he was dismissed was \$242,046 annually. Based on this, I calculate his damages for lost base salary during the notice period as \$484,092.
- [19] At the time he was dismissed, Mr. Adelman participated in IBM’s defined contribution match pension plan, with a 4% contribution rate. As such, he is also entitled to damages in lieu of those pension contributions for the duration of the notice period. These damages amount to 4% of his base pay during the 24-month notice period, or \$19,363.68.

- [20] He also participated in IBM's group insurance benefits plan at the time of his dismissal. The parties agree that his damages for his loss of benefits amount to \$1,230 per month. Over the duration of his notice period, these damages amount to \$29,520.
- [21] Finally, Mr. Adelman was also a participant in IBM's employee stock purchase plan, which enabled him to buy IBM stock at a discount. He states that he lost the opportunity to participate in the plan during his notice period and is entitled to damages as a result. In assessing this question, I must evaluate whether the stock purchase plan was discretionary or "integral" to Mr. Adelman's compensation; if it was integral, then there is no doubt that he would have received this benefit during the notice period and is entitled to damages in lieu of the benefit upon wrongful termination (*Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, [2020] 3 S.C.R. 64, at paras. 58-59). There is insufficient evidence on this question and as such, I am unable to find that Mr. Adelman is entitled to these damages.
- [22] Finally, IBM does not contest that Mr. Adelman complied with his duty to mitigate. As such, there is no amount to be deducted for any failure to mitigate.
- [23] Accordingly, Mr. Adelman is owed \$532,975.68 in damages for his base salary, loss of benefits, and loss of pension contributions for the 24-month notice period.

**Whether Mr. Adelman was entitled to be paid a bonus during his notice period, and if so in what amount**

- [24] I find that Mr. Adelman is not entitled to any bonus during his notice period.
- [25] There is a two-part test for determining whether a wrongfully dismissed employee is entitled to damages for the loss of bonus entitlement. The first part of the test asks whether the bonus was an integral part of the employee's compensation package, such that there is a common law entitlement to damages in lieu of bonus. The second part asks whether, if the bonus was an integral part of the employee's compensation package, there is any language in the bonus plan that would specifically remove the employee's common law entitlement (*Dawe v. The Equitable Life Insurance Company of Canada*, 2019 ONCA 512, 435 D.L.R. (4th) 573, at para. 48, and cases cited therein; *Matthews*, at paras. 52-55). The employee is entitled to the bonus they "would have earned during the reasonable notice, as a component of damages for wrongful dismissal", absent clear language limiting their common law rights (*Lin v. Ontario Teachers' Pension Plan*, 2016 ONCA 619, 402 D.L.R. (4th) 325, at para. 89).
- [26] The test for determining whether a bonus is integral is well-established. I am to consider whether Mr. Adelman received a bonus each year, albeit in different amounts; whether the bonuses were required in order for IBM to remain competitive with other employers; whether bonuses were historically awarded and IBM never exercised its discretion against Mr. Adelman, and whether the bonuses constituted a significant component of Mr. Adelman's overall compensation (*Wolfman v. Rocktenn-Container Canada, L.P.*, 2015 ONSC 1432, [2015] O.J. No. 1118 (Q.L.); *Bain v. UBS*, 2016 ONSC 5326, 274 A.C.W.S. (3d) 331, at para. 83, aff'd 2018 ONCA 190, 289 A.C.W.S. (3d) 550).

- [27] Based on these indicia, I am of the view that Mr. Adelman's bonus was not integral to his compensation.
- [28] First, I am not persuaded that Mr. Adelman received a bonus each year. His evidence was that he first became eligible for a bonus program at IBM in 2012. Mr. Adelman testified that he earned bonuses through the GDP program. He did not testify as to how often he earned GDP bonuses. Nor did he provide documentary evidence on that issue. When he was promoted to become an executive in February 2020, he became eligible for IBM's separate bonus program for executives. In 2020, he earned a bonus of \$36,954, all of which was associated with the two months he spent in the strategic partnerships unit at IBM; he earned a zero bonus for the first ten months of that year, when he worked in the software unit. In 2021, he earned a bonus of \$11,483. In 2022, his last full year of employment at IBM, he did not earn a bonus.
- [29] Read as a whole, this evidence does not support the claim that he received a bonus each year.
- [30] Second, there is no evidence to suggest that the bonuses were required for IBM to stay competitive with its competitors. The evidence before me was that bonuses are determined based on IBM's overall business results, an executive's business unit's results, and the executive's own individual performance. Market competitiveness does not feature into the decision. To the contrary, the evidence of Linda Zaccardi, IBM Canada's Global Compensation Director, was that IBM uses base salaries, and not bonuses, to maintain competitiveness within the market.
- [31] Third, the evidence does not persuade me that bonuses were historically awarded. Ms. Zaccardi's evidence, borne out by the documentary record before me, was that managers are required to "differentiate" their bonus decisions, so that the highest performing employees get the highest bonuses. With this in mind, IBM provides those making bonus determinations with a "skip rate" that identifies what percentage of employees in each bonus pool should receive a zero bonus so that employees in the top of the pool can get higher bonuses. Ms. Zaccardi also testified, and IBM's documents show, that under the bonus plan, bonus payments are not guaranteed and may vary from zero to 300% of an individual's target incentive. There is no minimal level of bonus payment expected. Asked whether in practice executives are ever awarded zero bonuses, she answered, "Yes, all the time." Jessica Rockwood, an IBM executive and Mr. Adelman's supervisor from mid-2020 to late 2021, testified that she had herself received a zero bonus in the past.
- [32] Nor does the evidence show that IBM never exercised its discretion against Mr. Adelman, as discussed above. For example, he was not granted a bonus for the 10 months of 2021 in which he worked in the software unit. While there is some evidence that he received bonuses in the growth driven profit-sharing (GDP) program, there is no evidence that he consistently received such bonuses.

- [33] Finally, the bonuses did not constitute a significant component of Mr. Adelman's compensation. In 2020, Mr. Adelman earned a bonus of \$36,954, equivalent to 16.6% of his base salary. In 2021, he earned a bonus of \$11,500, equivalent to 3.6% of his base salary. There is no evidence as to the frequency or quanta of any bonuses he received before he became an executive, and there is no evidence that those bonuses formed a significant portion of his pay.
- [34] I therefore conclude that the bonus was not an integral component of Mr. Adelman's compensation. As such, he is not entitled to damages in lieu of bonus payments during his notice period.
- [35] Because I have made that conclusion, I need not consider IBM's assertion that there was clear language limiting Mr. Adelman's right to the bonus once he ceased to be actively employed by IBM.

**Whether Mr. Adelman was entitled to be paid a bonus for 2022, and if so in what amount**

- [36] I find that Mr. Adelman was entitled to be paid a bonus for 2022.
- [37] I accept that his bonus was a discretionary one. However, "Simply because a bonus is awarded in the sole discretion of an employer does not mean that it can be done in an arbitrary or unfair fashion or that the employer can decide that an employee should not get a bonus without following a fair, identifiable process. ... [T]he exercise must be done in a fair manner. The court must analyze the evidence in a particular case and decide whether the process that was followed was fair and reasonable" (*Bain v. UBS Securities Canada Inc.* 2016 ONSC 5263, 274 A.C.W.S. (3d) 331, at para. 90, aff'd 2018 ONCA 190, 289 A.C.W.S. (3d) 550). As the Court of Appeal has put it, where an agreement "provides for a discretionary bonus, there is an implied term that the discretion will be exercised in a fair and reasonable manner" (*Bowen v. JC Clark Ltd.*, 2022 ONCA 614, 473 D.L.R. (4th) 555, at para. 35).
- [38] In my assessment, the process that was followed in determining that Mr. Adelman was not entitled to any bonus for 2022, if indeed it can be called a process at all, was neither fair nor reasonable. To the contrary, the record strongly suggests that he was denied a bonus simply because he had left IBM before the 2022 bonuses were paid out. This is not a fair or reasonable basis for the decision. Indeed, Ms. Zaccardi acknowledged on cross-examination that it would not be fair for an employee to be denied a bonus only because of a pending separation.
- [39] IBM maintains the position that it does not automatically give zero bonuses to employees who have left IBM. Rather, says IBM, employees who separate from IBM are still bonus-eligible if they were working on December 31 of the year to which the bonus decision pertains. IBM further asserts that Mr. Adelman's zero bonus decision was rooted in the fact that he spent 2022 working on a project that did not generate revenue.
- [40] I am unable to accept either claim.

- [41] Notably, Mr. Adelman’s 2022 executive compensation statement, issued by IBM, states quite clearly that he was denied a bonus for 2022 because he had left the company by the time bonuses were paid out. The statement contains a note that states: “For 2022 he separated before AIP [annual incentive program] payment date (for 2023 cycle) so he is not eligible for AIP payment.”
- [42] This language could not be clearer. IBM offered no persuasive evidence to explain it away.
- [43] For example, IBM offered no evidence from anyone involved in the actual decision to give Mr. Adelman a zero bonus for 2022. Michelle Pellegrin, a Global Vice President at IBM, was asked whether, based on her knowledge of the bonus program and her experience reviewing employees in connection with the program, the decision to give Mr. Adelman a zero bonus “made sense” to her. She testified that it did, and offered reasons as to why, in her view, a zero bonus might have been justifiable. But her evidence was mere speculation. She did not make any bonus-related decisions for Mr. Adelman for 2022 or at all. Nor did any of the other IBM witnesses who testified before me. I therefore place no weight on their evidence on this issue.
- [44] IBM offered only two pieces of actual evidence as to the process through which it purportedly decided to give Mr. Adelman a zero bonus. The first consisted of an email from a human resources employee telling Mr. Adelman that he would be a part of the assessment to receive a bonus. The second consisted of the testimony of Ms. Zaccardi suggesting that because Mr. Adelman’s name appeared on a “planning tool” spreadsheet documenting the decision to give him a zero bonus, this meant that he was considered for a bonus. In other words, the bonus decision makers – whom IBM never clearly identified by name or role – must have considered Mr. Adelman for a bonus because his name was on the spreadsheet and they put a zero beside it.
- [45] This evidence is not persuasive. Ms. Zaccardi acknowledged in cross-examination that the presence of Mr. Adelman’s name on the spreadsheet did not necessarily mean that he was assessed for a bonus. Even otherwise, the fact that his name was on the spreadsheet would suggest that Mr. Adelman was considered for a bonus and rejected, but would offer no proof at all of the fairness and reasonableness of that decision.
- [46] Meanwhile, the bonus “planning tool” spreadsheet for 2021 for the bonus pool that Mr. Adelman was in contains a “comments” column about each employee in the pool. The column contains observations about which individuals should be given higher or lower bonus eligibility based on their performance. Some employees have a comment stating “Skip – Low Performance”. Others have a comment stating “Skip – Pending Separation”. One has a comment stating, “Separated on Jan 28, 2022. Not eligible for” bonus.
- [47] In my view, this document makes clear that individuals who had separated or had a pending separation from IBM were “skips” – that is, they were “skipped” in the bonus allocation and given zero bonuses.

- [48] Asked about the spreadsheet “comments” in cross-examination, Ms. Zaccardi acknowledged that “skip low performance” means that the reason for “skipping” the bonus was low performance. However, somewhat perplexingly, she testified that “skip pending separation” does not necessarily mean that the reason for “skipping” the bonus was that the employee had a pending separation from IBM. She testified that an employee with a pending separation is still eligible for a bonus, but their separation could still be the manager’s reason for the skip. On further questioning, she suggested that “pending separation” often correlates with “low performance”.
- [49] I do not accept this explanation. It is inconsistent with the plain meaning of the words of the document. Furthermore, there were employees who were documented as being given zero bonuses because of low performance. They are distinct from the employees who were documented as receiving zero bonuses due to a pending separation.
- [50] In my view, the spreadsheet makes it amply clear that there were many occasions in Mr. Adelman’s own bonus pool in which employees who had a pending separation were given zero bonuses because of their pending separation. The spreadsheet reflects what Mr. Adelman’s 2022 executive compensation statement expressly states: that employees with a pending separation are given zero bonuses. I do not see how it could plausibly be read any other way.
- [51] Similarly, another spreadsheet showing bonus allocations in the ecosystems pool, where Mr. Adelman worked in 2021, reveals that all of the individuals who received zero bonuses for the year were no longer working in the group by the end of December. This further shows that, contrary to IBM’s position, there was a routine practice of granting zero bonuses to employees who left IBM.
- [52] IBM does not point me to any counter-examples in which employees with a pending separation were given bonuses.
- [53] IBM asserts, through witnesses who did not actually make Mr. Adelman’s zero bonus decision, that he was likely given a zero bonus for 2022 because he spent the entire year working on a project that did not generate revenue and which was shut down partway through the year. It is certainly true that Mr. Adelman worked that year in a business unit that generated no revenue. Yet in 2021, he spent two months of the year working on the same project. It generated as little revenue then as it did in 2022. And he received a bonus for those two months of work. In the face of this evidence, it is difficult to see how the 2022 zero bonus decision is rational, or truly rooted in the “no revenue” rationale offered by IBM.
- [54] The record accordingly does not support IBM’s position that its 2022 bonus decision in respect of Mr. Adelman was fair and reasonable. To the contrary, it leads me to conclude on the balance of probabilities that Mr. Adelman was given a zero bonus for 2022 simply because, by the time the 2022 bonuses were paid out, Mr. Adelman had left IBM. This was not fair. It was not reasonable. It was not consistent with IBM’s proclaimed practice.

- [55] The question then becomes what quantum of bonus Mr. Adelman is owed for 2022.
- [56] In my view, it would not be appropriate to grant Mr. Adelman a bonus consistent with the one he earned for the two months of 2021 in which he worked in the ecosystems pool. It is uncontested that the strategic partnership he had been working on was shut down in 2022, and that once the project wound down he spent his time helping his team members find alternative employment and looking for such employment himself. The work he did in 2022 was thus qualitatively quite unlike the work he had done before, even within the same unit. His role was different and he spent his time very differently. His bonus from those two months of 2021 is therefore not a helpful benchmark.
- [57] In these circumstances, it is appropriate to grant Mr. Adelman a 2022 bonus equivalent to the average of the bonuses he received for the two preceding years. The jurisprudence supports the use of this approach in similar situations (*Celestini v. Shoplogix Inc.*, 2023 ONCA 131, 166 O.R. 93d 368, at para. 59). As discussed above, his bonuses for 2020 and 2021 were \$36,954 and \$11,500, respectively. I accordingly award him a bonus for 2022 of \$24,227.
- [58] I also award a pension amount of 4% of that bonus amount, or \$969.08.

**The quantum of damages owed to Mr. Adelman in relation to his RSUs and stock options**

- [59] At the time he was terminated, Mr. Adelman owned restricted stock units (“RSUs”) and stock options in IBM. It is common ground between the parties that IBM gave Mr. Adelman his entitlements in respect of the unvested equity that was scheduled to vest on February 21, 2023 – the month after his termination – but cancelled all the unvested RSUs and stock options that would have vested in February 2024. IBM did so on the basis that Mr. Adelman was no longer entitled to that equity upon termination.
- [60] Mr. Adelman seeks damages for his loss of those RSUs and stock options. He asserts that they were improperly cancelled and would have vested during the notice period. Because of the cancellation, he lost the right to sell his shares into the market, which is compensable (*Poplack v. Intermetco Ltd.*, [1999] O.J. No. 555, 24 C.C.P.B. 102 (Ont. Ct. (Gen. Div.)), at paras. 41, 46). The equity at issue consists of 607 RSUs that were scheduled to vest on February 3, 2024; 98 RSUs that were scheduled to vest on February 21, 2024; and 99 stock options that were scheduled to vest on February 21, 2024.
- [61] IBM now acknowledges that its cancellation of the unvested RSUs and stock options was contrary to law. The RSUs and stock options owned by Mr. Adelman were governed by various documents, including IBM’s Equity Award Agreement and Terms and Conditions documents. Those governing documents contained termination-related provisions identical to those that the court considered in *Milwid v. IBM Canada Ltd.*, 2023 ONSC 490, 85 C.C.E.L. (4th) 243 aff’d 2023 ONCA 702, 487 D.L.R. (4th) 312, and which the court held did not unambiguously extinguish an employee’s common law right to RSUs vesting during the notice period. In short, *Milwid* makes clear that Mr. Adelman is entitled to

damages in respect of those RSUs and stock options. The parties agree on this point. The only remaining dispute is over how Mr. Adelman's damages are to be calculated.

- [62] Mr. Adelman asserts that his damages should be calculated based on the value he would have received for the equity had he sold it on a timeline consistent with his usual practice. He gave evidence that he did receive, after termination, equity entitlements in respect of the unvested equity that was going to vest on February 21, 2023. After those stock options and RSUs vested, he held them for 402 days on average before selling them. This was consistent with what he described as his "passive investing" philosophy toward IBM equity – namely, that he "tended to leave things there" until he needed the money for something else. This is what he did in respect of the equity that vested in February 2023. He testified that he likely would have followed the same philosophy in respect of the equity scheduled to vest in February 2024. On this basis, he asks that I assess his damages based on the value at which he would have sold the equity 402 days after they vested.
- [63] In my view, this approach is appropriate. The case law is clear that I am to quantify the value of Mr. Adelman's loss of the RSUs and stock options "on the basis of what would have probably happened" had he been employed until the end of the notice period. I am to consider "whether [he] would have exercised such [equity] grants, when he would have done so, and the market price of the shares as at the date of their sale" (*O'Reilly v. Imax Corporation*, 2019 ONSC 342, 52 C.C.E.L. (4th) 50, at para. 65). In assessing when he would have exercised the equity grants, the "better indicator" is "his actual sales activities during the reasonable notice period in respect of other RSU and stock options" (*O'Reilly v. Imax Corporation*, 2019 ONSC 1239, 52 C.C.E.L. (4th) 85 at paras. 5, 6, and 9; aff'd 2019 ONCA 991, 59 C.C.E.L. (4th) 175, at paras. 59, 62).
- [64] Mr. Adelman's evidence, which was clear and uncontroverted, was that he had a "passive investing" philosophy; that his equity that vested in 2023 had been held, on average, for 402 days before he sold it; and that he probably would have sold the 2024 equity along a similar timetable. His sale of the equity that vested in 2023 represents his actual sales activities during the reasonable notice period, in respect of other IBM RSUs and stock options. Based on *O'Reilly*, that sale is an appropriate indicator of when he would have sold the 2024 RSUs and stock options.
- [65] I accordingly award these damages as follows:
- a. In respect of the 607 RSU units that were scheduled to vest on February 3, 2024, based on a holding time of 402 days, the implied sales date would have been March 11, 2025. The NASDAQ stock price for IBM as at that date was \$248.95 USD. Based on the Bank of Canada exchange rate as at that date, of 1.4451, these units would have sold on that date for \$218,372.89 CAD.
  - b. In respect of the 98 RSUs that were scheduled to vest on February 21, 2024, based on a holding time of 402 days, the implied sales date would have been March 29, 2025. The NASDAQ stock price for IBM as at that date was \$244.00 USD. Based on the Bank of Canada exchange rate as at March 28, 2025 of 1.4307 (Bank of

Canada does not have a posted rate for March 29), these units would have sold on that date for \$34,210.90 CAD.

- c. In respect of the 99 stock options that were scheduled to vest on February 21, 2024, based on a holding time of 402 days, the implied sales date would have been March 29, 2025. The NASDAQ stock price for IBM as at that date was \$244.00 USD. The evidence indicates that the strike price for Mr. Adelman's options was \$124.51 per share. The difference between these amounts, which is the amount that Mr. Adelman would have earned when he sold the shares, is \$119.41 USC per share. Based on the Bank of Canada exchange rate as at March 28, 2025, these 99 shares would have sold for \$16,924.48 CAD.

[66] The total damages award in respect of the improperly cancelled RSUs and stock options is accordingly \$269,508.27.

[67] IBM urges me to use other approaches to value these damages. In my view, those other proposed approaches are not appropriate. For example, IBM urges me to value Mr. Adelman's options as at their vesting dates of February 3, 2024 and February 21, 2024. In my view, in the absence of Mr. Adelman's uncontested evidence on his investment philosophy and the duration of time for which he held the equity that vested in February 2023, this might have been a reasonable approach. However, in light of that evidence as to Mr. Adelman's actual sales activities during the reasonable notice period in respect of other IBM RSUs and stock options, and in the face of this court's findings in *O'Reilly*, I am of the view that the "implied sales date" proposed by Mr. Adelman is more appropriate. It more accurately calculates what the real value of Mr. Adelman's RSUs and stock options would have been, had IBM not wrongfully dismissed him.

### **Whether Mr. Adelman is entitled to aggravated and/or punitive damages**

[68] Mr. Adelman claims aggravated damages, sometimes referred to as moral damages. Such damages are compensatory. To recover them, an employee must show that they suffered mental distress above and beyond the normal distress suffered as a result of termination, and that that increased distress must have been in the reasonable contemplation of the employer. The employer's conduct must have been "unfair or in bad faith by being, for example, untruthful, misleading or unduly insensitive" (*Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at p. 704).

[69] Mr. Adelman claims aggravated damages in relation to IBM's cancellation of his RSUs and stock options upon his termination. He submits that IBM only agreed that he was entitled to damages for the cancellation of his equity in October 2025, a few weeks before trial, notwithstanding the clear finding of this court, upheld on appeal, in *Milwid*. In his Amended Statement of Claim, he pleads that IBM's actions "[d]espite" the "clear" ruling of the court in *Milwid* "amount to open defiance of binding judicial precedent" and are "of the utmost bad faith". He describes IBM's conduct as "reprehensible," "flagrant and high-handed," stating that IBM was "full[y] aware" that its cancellation of the RSUs and stock

options was “contrary to law” and has nonetheless “forced” him to “litigate a settled legal issue.”

- [70] I do not award aggravated damages in the circumstances of this case. The evidence has not persuaded me that the harm Mr. Adelman suffered due to IBM’s conduct warrants aggravated damages.
- [71] Asked to explain the impact on him of IBM’s conduct in cancelling his equity options, he testified that it felt to him like “more neglect” on the heels of what he experienced during the final months of his employment, when his managers gave him “very little support” to find new job opportunities. IBM was “fail[ing] to address [his] concerns.” IBM changed its position on the issue only shortly before trial, to “drag out” everything. As a consequence, he experienced “stress and uncertainty,” not knowing if he would get paid and “waiting endlessly”. He also experienced financial challenges.
- [72] Without in any way diminishing Mr. Adelman’s experiences, I do not find that they are adequate to ground an award of aggravated damages. Mr. Adelman has not demonstrated that he suffered distress beyond the normal distress one would suffer as a result of termination. In cases where aggravated damages have been awarded, the courts have found, for instance, that the terminated employee was “put ... in an exceptionally vulnerable position” and experienced “significant stress ... on top of the stress” they were already experiencing having been terminated (*Telieur v. Aurora Hotel Group*, 2023 ONSC 1324, aff’d 2024 ONCA 213, at paras. 66-67); experienced “feelings of humiliation, diminished self-worth, anxiety, and depression” (*Pohl v. Hudson’s Bay Company*, 2022 ONSC 5230, 83 C.C.E.L. (4th) 45, at para. 61); or was “plagued by anxiety, depression, fear, poor sleep, frustration, and feelings of helplessness” (*Krmpotic v. Thunder Bay Electronics Limited*, 2024 ONCA 332, 495 D.L.R. (4th) 701 at para. 27). Based on the evidence before me, I do not find that Mr. Adelman has experienced distress similar in degree to what is required by the case law.
- [73] I also observe that the distress Mr. Adelman describes is not necessarily a consequence of the equity cancellation. His testimony was clear that some of his distress flows from his experiences before termination or from the stress of litigation itself.
- [74] Mr. Adelman also seeks punitive damages in connection with IBM’s cancellation of his equity. He submits that IBM’s conduct in the face of clear judicial authority from *Milwid* is the kind of reprehensible conduct that properly gives rise to punitive damages.
- [75] The Supreme Court of Canada articulated the principles governing punitive damages in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, holding (at para. 94) that punitive damages are very much the exception rather than the rule and are to be imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.
- [76] I am not of the view that IBM’s conduct meets this standard. It would certainly appear, based on the materials before me, that IBM did not acknowledge in writing that it had

improperly disentitled him from his equity until fairly late in the day. However, it is difficult to be certain that I am privy to all the discussions between the parties on the issue. Moreover, taking a position that ceases becomes legally untenable because in the course of litigation is not, in my assessment, akin to the type of behaviour that has awarded punitive damages in wrongful dismissal cases. That behaviour has included, for instance, an employer refusing to pay an employee the wages they were owed in a timely manner and issuing falsified Records of Employment (*Pohl*, at paras. 108 and 118); asking a terminated employee to continue working without pay, refusing to pay outstanding vacation pay, failing to make contributions to the employee’s RRSP plan, threatening “recovery” of property that the employee had already returned, and refusing to inform the employee about when he might be recalled to work (*Chalmers v. Airways Transit Service Ltd. and Badder Capital Group Ltd.*, 2023 ONSC 5725 at para. 159); and “embark[ing] on a malicious campaign to undermine the plaintiff’s ability to carry out his job functions and attempt[ing] to destroy his reputation with customers and clients of the defendant by making bizarre and defamatory statements about the plaintiff, accusing him of criminality and dishonesty, without a shred of justification” (*Koshman v. Controlex Corporation*, 2023 ONSC 7045, at para. 24).

[77] IBM’s conduct did not rise to this level. I am therefore not persuaded that punitive damages are appropriate.

[78] In my view, the issue of IBM’s conduct in respect of the equity cancellation is more appropriately considered at the stage of costs.

### **Damages**

[79] I accordingly award the following damages to Mr. Adelman:

Damages for lost base salary during notice period, based on 24-month notice period at \$20,170.50 base salary per month	\$484,092
Pension amount during notice period, based on 4% of base salary during 24-month notice period	\$19,363.68
Damages for loss of benefits during notice period, based on 24-month notice period at \$1,230 per month	\$29,520
2022 bonus	\$24,227
Pension amount of 4% of 2022 bonus	\$969.08
Damages for improperly cancelled RSUs and stock options	\$269,508.27
<b>Sub-total</b>	<b>\$827,680.03</b>

Less:	
Regular salary for the pay period immediately after termination	(\$9,277.35)
Severance	(\$91,836.55)
Payment in lieu of notice	(\$39,584.72)
Employee stock purchase plan	(\$415.75)
2 months' benefits	(\$2,460)
2 months' employer pension match	(\$1,954.48)
Sub-total	(\$145,528.85)
<b>Total</b>	<b>\$682,151.18</b>

**Conclusion**

- [80] Mr. Adelman is accordingly entitled to damages in the amount of \$682,151.18.
- [81] The parties are to work together to resolve costs. If they are unable to do so within 30 days, they are to contact my judicial assistant and I will set a timetable for costs submissions.

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Parghi J.

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**DATE:** 20260127

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

JASON ADELMAN

Plaintiff

– and –

IBM CANADA LIMITED

Defendant

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**REASONS FOR JUDGMENT**

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Parghi J.

**Released:** January 27, 2026