

**CITATION:** *Warren v. Canaccord Genuity Corp.*, 2026 ONSC 547  
**COURT FILE NO.:** CV-20-00634105  
**DATE:** 20260128

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** CRAIG WARREN, Plaintiff

**AND:**

CANACCORD GENUITY CORP., Defendant

**BEFORE:** Schabas J.

**COUNSEL:** *Gordon Capern and Douglas Montgomery*, for the Plaintiff

*Dena N. Varah, Aoife Quinn and Adam Davis*, for the Defendant

**HEARD:** September 15 - 19, 22, 25, 26, 29, October 1, 2025

**REASONS FOR JUDGMENT**

**Overview**

[1] This is a wrongful dismissal action. The plaintiff, Craig Warren (“Warren”), was fired without cause by the defendant, Canaccord Genuity Corp. (“Canaccord”), on September 6, 2019. Warren had been employed as an investment banker by Canaccord for the previous 18 years. At the time his employment was terminated he held a senior position as a Managing Director in Canaccord’s mining group. He was 52 years old in 2019.

[2] As a Managing Director, beyond his base salary which had not changed in several years, Warren’s annual income was dependent on the size of his annual bonus. That bonus fluctuated from year to year. It was discretionary and was to be based on two factors: the size of Canaccord’s Canadian Capital Markets Pool and Warren’s individual performance.

[3] There are two main issues in dispute: (a) the length of the notice period to which Warren is entitled; and (b) the size of the bonus or bonuses Warren would have received during the notice period. A third issue is the impact of mitigation, as Warren was able to find alternative employment in early 2020.

[4] Warren submits that he was entitled to 24 months notice “and in no circumstance less than 21” months. Canaccord submits that 16 months is appropriate. For the reasons that follow, I find that the period of reasonable notice is 21 months.

[5] Warren submits his bonus should be fixed in comparison to the compensation and bonuses awarded to two Managing Directors in the mining group during the notice period. Those

individuals joined Canaccord at, or shortly after, the date when Warren left. Canaccord submits that the bonus should be calculated based on the average of Warren's bonuses in the three years before his termination.

[6] For the reasons set out below, I find that the comparator approach is appropriate. Accordingly, applying that approach and taking into account what Canaccord has paid Warren and the impact of mitigation, this results in an award of damages to Warren in the amount of \$2,540,073.95.

### **Period of reasonable notice**

[7] It is well-accepted that in the absence of having just cause to terminate an employee an employer must either (1) provide the employee with reasonable advance notice of termination, or (2) make a payment in lieu of notice. This is an implied term in every employment contract: *Honda Canada Inc. v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362 at para. 50. In this case, Canaccord did not provide advance notice to Warren of his termination, and therefore is obliged to pay Warren damages in lieu of notice. Those damages must represent the salary, including bonuses and other benefits that Warren would have received had he worked through the notice period: *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, [2020] 3 S.C.R. 64, at para. 49.

[8] In *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 115, McLachlin J. (as she then was) stated that “the length of the notice period is based on the time reasonably required to find similar employment.” However, should an employee find alternate employment more quickly, the period of notice is not reduced; rather, the income from new employment is addressed in mitigation: *Holland v. Hostopia Inc.*, 2015 ONCA 762, 392 D.L.R. (4th) 650 at para. 61.

[9] Relevant factors in determining the appropriate period of reasonable notice remain those set out long ago in *Bardal v. Globe and Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. S.C.), at p.145; *Wallace* at paras. 81-82. In *Bardal*, McRuer C.J.H.C. said that “[t]he reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.”

[10] It has been observed that many cases have applied a “rule of thumb” that an employee should receive one month of notice for each year of service: see *Ryshpan v. Burns Fry Ltd.* (1995), 10 C.C.E.L. (2d) 235 (Ont. S.C.), at para. 11. However, in *Minott v. O’Shanter Development Company Ltd.* (1999), 42 O.R. (3d) 321 (C.A.), the Court of Appeal rejected the proposition that there is a “rule of thumb” of one month per year of employment, in part because it risks overemphasizing years of service above the remaining factors set out in *Bardal*. In any event, longer and shorter notice periods have been applied in many cases, having regard to the particular circumstances of the case and the factors noted in *Bardal*: see e.g. *Bain v UBS*, 2016 ONSC 5362 at para. 79, aff d 2018 ONCA 190, 46 C.C.E.L. (4th) 50.

[11] There is, therefore, no “rule of thumb” or starting point of one month per year. Rather, I must exercise my judgment, applying the *Bardal* factors and any other relevant circumstances that arise in this case, to arrive at an appropriate period of reasonable notice.

[12] Warren was a long-time employee of Canaccord, having worked there for 18 years. He joined Canaccord in 2001 as a senior associate. He was promoted to Vice-President three months after being hired. In 2004 he was made a Director and in 2008 he was promoted to Managing Director. From 2003 until 2015, Warren worked under and reported directly to Jens Mayer, the head of Canaccord’s Canadian investment banking group.

[13] After Canaccord acquired Genuity in 2010, Warren entered into a new employment agreement confirming his position as a Managing Director. Although Mayer was made a co-head of mining following the merger of Canaccord and Genuity – with Ted Hirst in Vancouver’s former Genuity office being the other co-head – Warren continued to report to Mayer.

[14] When Mayer left Canaccord in early 2016, Warren became the most senior person in the Toronto mining group. Warren then reported to Hirst, who became Global Head of Resources, and to Hirst’s Vancouver colleague, Gunnar Eggertson, who became Head of Mining. However, the Toronto and Vancouver offices operated quite independently. This highlights the senior position Warren held and the significant responsibilities associated with his position, both of which favour a longer notice period.

[15] Witnesses for Canaccord agreed that a Managing Director is a “very senior role.” As the only Managing Director in the Toronto mining group, Warren was responsible for sourcing business in addition to working on and sometimes overseeing transactions brought in by others. He supervised several other employees for whom he made recommendations respecting bonuses and advancement. Warren had primary responsibility for clients that provided significant revenue to Canaccord. His work was highly specialized, focused on metals and mining. Except for a brief period between 2001 and 2003, Warren has worked exclusively in metals and mining since 1993, even before he joined Canaccord. This significant experience in a specialized role also favours a longer notice period.

[16] Length of service and age have been recognized as important factors in determining the period of reasonable notice: *Panimondo v. Shorewood Packaging Corporation* (2009), 73 C.C.E.L. (3d) 99 (Ont. S.C.), at paras. 34-35. At the date of his termination in 2019, Warren was the longest serving investment banker at Canaccord. He was 52 years old. Further, as Warren testified, while experience can be an asset, investment banking is seen as a “young man’s game.” This also supports a longer notice period.

[17] Warren had built his career at Canaccord, a pre-eminent investment banking firm with a particular reputation for mining expertise. His work was highly specialized and not readily transferable to other industries. While Warren acknowledged that there was a “reasonably large group” of independent investment dealers with whom he could have sought alternate employment, I heard uncontradicted evidence from Warren about the challenges of finding comparable employment in his particular field of expertise with a firm that would have a comparable platform for his work and the ability to attract new work. As has been observed in other cases, “[s]imilar or

comparable employment does not mean any employment; rather, it is usually interpreted as employment comparable to the dismissed employee's employment with their former employer in status, hours and remuneration": *Ratz-Cheung v. BMO Nesbitt Burns Inc.*, 2024 ONSC 161 at para. 124.

[18] Warren would also have to build up a new book of business with a new firm, as it could not be expected that all clients he worked for at Canaccord would follow him to a new firm, if and when he found new employment. The nature of the firm, and the support it could provide to Warren to attract work, is also relevant. These points also favour a longer notice period.

[19] As Strathy J. (as he then was) noted in *Panimondo* at para. 33: "It is presumed that there are fewer employment opportunities available for those whose specialized knowledge and skills demand higher managerial positions with comparable salaries and benefits". This was quoted with approval by D.A. Wilson J. (as she then was) in *Bain*, which also dealt with an investment banker. Wilson J. found that the reasonable notice period for the plaintiff should be 18 months for a 46-year old who had worked for his employer for 14 years.

[20] Plaintiff's counsel provided me with a helpful summary of notice periods in other somewhat similar cases which suggest a range of between 18 and 26 months. While the defendant cited two cases which found 16 months notice was appropriate for employees in a similar age range, each case turns on its own facts and I do not find the defendant's cases to be apt here.

[21] Taking all the *Bardal* factors into account, including the characteristics of Warren's employment at Canaccord, his length of service and specialized experience, his age and the availability of similar employment, and having regard to other decided cases, a longer notice period than 16 months is required here. In my view, the reasonable period of notice for Warren is 21 months.

### **Compensation for the notice period**

#### ***Legal framework and the appropriate approach***

[22] Wrongful dismissal cases are breach of contract cases. Where the employee is terminated without cause and without notice, the "breach" arises from the failure of the employer to provide reasonable notice or pay in lieu of reasonable notice. The damages represent what the employee would have earned during the notice period, in order to "place the employee in the position that he or she would have been in had the contract been performed": *Wallace*, at para. 115.

[23] This requires the court to do its best to determine what Warren would have earned, in salary, bonuses and other compensation, had he remained at Canaccord for the 21-month notice period: *Matthews*, at paras. 49 - 54. In most employment cases, employees earn a salary and it is relatively straightforward to apply the salary, perhaps with adjustments, to the notice period. However, that is not this case.

[24] Here, Warren's remuneration was set out in an employment agreement dated May 10, 2010. It provided:

Your remuneration will be comprised of an annual base pool draw of \$150,000 plus a discretionary bonus. This discretionary bonus allocation will be determined by our Compensation Committee. The dollar amount of your bonus will depend on: (i) the total size of the pool,<sup>1</sup> which in turn primarily reflects the success of our business; combined with (ii) an assessment of your individual performance. The criteria used to calculate this discretionary bonus may change from time to time. You must be employed at the time of the payment to be eligible for this discretionary bonus.

[25] Canaccord initially pleaded that this final sentence made Warren ineligible for a bonus in his final year, but appropriately abandoned that position at trial.

[26] Warren effectively received a salary during the year of \$150,000; however, the major part of Warren's income was his discretionary bonus, which was paid in April each year following Canaccord's year-end of March 31. It is well-accepted, and not disputed in this case, that Warren's payment in lieu of notice had to take into account the bonuses he would have been paid for the notice period. As Code J. stated in *Mathieson v. Scotia Capital Inc.* (2009), 78 C.C.E.L. (3d) 76 (Ont. S.C.), at para. 3, "[i]n the field of investment banking, the year end bonus is a central measure of an employee's success and it constitutes the greatest part of an employee's compensation."

[27] The defendant submits that the appropriate approach to calculating damages is to take an average of Warren's bonuses during his last three full years and award the average as a reasonable proxy for what he would have earned in the notice period. Warren's counsel, on the other hand, submits that I should use a comparator approach, awarding Warren a bonus based on bonuses awarded to comparable employees during the notice period.

[28] Both approaches have merit and have been adopted in other cases. As the Court of Appeal stated in *Celestini v. Shoplogix Inc.*, 2023 ONCA 131, 166 O.R. (3d) 368 at para. 59, "[t]here is no one particular way of calculating an employee's damages related to the lost opportunity to earn a bonus." In that case, the Court upheld a trial judge's use of the average bonus over the previous three years but noted it could not have been calculated differently in that case as, among other things, the parties had not adduced evidence of the performance of the business during the notice period.

[29] This was also the situation in *Mathieson*, where there was "almost no evidence" on which to consider a comparative approach: para. 72.

[30] In other cases, particularly where bonuses fluctuate significantly from year to year, and where evidence permits, courts have taken a comparative approach to determine what a dismissed employee would have received as a bonus having regard to the criteria applied by the employer. In *Chann v. RBC Dominion Securities Inc.* (2004), 34 C.C.E.L. (3d) 244 (Ont. S.C.), for example, Wilton-Siegel J. observed at para. 85 that while an averaging of past bonuses "may be appropriate in circumstances where bonuses fluctuate only moderately. However, it is not appropriate for the

---

<sup>1</sup> This refers to the "Canadian Capital Markets Pool."

investment banking business in which significant fluctuations occur from year to year.” As Wilton Siegel J. continued: “In this industry, bonuses are adjusted yearly for all employees to address results within the most recent fiscal year and performance in prior years is discounted quickly.”

[31] In *Bain*, Wilson J. discussed the competing approaches. She identified at para. 134 that the objective, “when fixing the amount of the Plaintiff’s bonus is to, as closely as possible, find the amount of the bonus [the employee] would have been awarded had he remained working for [the employer].” She stated that “the fairest approach is to begin by examining the bonuses of the comparators”: para. 133. However, she recognized the challenge of having limited information about comparators. Nevertheless, after examining Bain’s “historical bonuses, as well as the bonuses of the comparators, as well as other factors”, Wilson J. adopted a comparison approach, taking the average of two of the comparators: *Bain* at paras. 131 – 135.

[32] In my view, the comparator approach should be used in this case, for several reasons.

[33] First, Warren’s bonus fluctuated significantly. Between 2010 and 2019, his bonus ranged from a low of \$240,000 in FY2015 to a high of \$3,025,000 in FY2011.<sup>2</sup> As was explained, the highs and lows reflect the highly cyclical nature of the mining market.

[34] In his last three years at Canaccord, Warren’s bonus was \$665,000 in FY2017, \$810,000 in FY2018 and \$540,000 in FY2019. I say more about Warren’s bonuses in these years below; however, the fluctuation in the size of the bonus in these years correlates somewhat to the fluctuations in income of the mining group, which was approximately \$12 million in 2017, \$23 million in 2018 and almost \$14 million in 2019.

[35] Second, there is much evidence before me of bonuses of comparators. The relative contributions and bonuses earned by others in Canaccord’s mining group, both before and after Warren’s termination, received considerable attention at the trial. Evidence was led about the bonuses provided to Directors and Managing Directors in the years leading up to Warren’s termination, and of the remuneration, including bonuses, of the members of the mining group after Warren left. This included the remuneration of the head of the mining group, Tom Jakubowski, who joined Canaccord as a Managing Director and Global Head of Mining on the same day that Warren was terminated – September 6, 2019, and David Sadowski, who joined as a Managing Director in the Toronto mining group on November 11, 2019, two months after Warren’s departure.

[36] Jakubowski came into a more senior role than was held by Warren and instituted changes to the mining group during the notice period from which Warren would have benefitted. Jakubowski attracted deals that may not have come to Canaccord without him, but Jakubowski also worked on deals and assumed coverage for many entities that Warren had previously serviced. Sadowski came to Canaccord with less experience than Warren, and although Sadowski also

---

<sup>2</sup> “FY” refers to the fiscal year ending March 31.

attracted new work, he also supported Jakubowski and existing clients which Warren would likely have done had he remained at Canaccord during the notice period.

[37] This comparator information helps address the fact that there is no evidence of Warren's performance at Canaccord during the notice period, which is one of the enumerated factors in determining his bonus. Leaving aside that this will always be the case when the employee is not allowed to work through their notice period, the evidence of the performances of Jakubowski and Sadowski provides a reasonable footing on which to conclude that Warren's performance would have been at least as strong as Sadowski's during the notice period.

[38] Third, applying the bonuses of comparators awarded during the notice period reflects the other stated criteria in the employment agreement which requires consideration of "the total size of the pool, which in turn primarily reflects the success of" Canaccord's business. This is especially important in this case where the size of the Canadian Capital Markets Pool boomed in fiscal year 2021, going from about \$57 million in FY2020 to almost \$140 million. That year was described as a once-in-a-decade bull market, and Canaccord's best year ever. It was followed in FY2022 with another very strong year with a pool of about \$128 million. In 2019, by contrast, the pool was about \$82 million.

[39] Conversely, the averaging approach asserted by Canaccord would not reflect the financial performance of Canaccord in the notice period at all. As damages for wrongful dismissal must reflect what the employee would have earned during the notice period, economic conditions during the notice period are relevant and appropriate to consider in cases where a factor in setting bonuses is economic performance. Indeed, in *Mathieson*, economic conditions worked to the plaintiff's detriment as the notice period included the financial crisis in 2007 and 2008. As Code J. noted in *Mathieson* at para. 76, taking a prior three-year average would have been "too favourable" to the dismissed employee: see also *Ryshpan v Burns Fry Ltd.* (1995), 10 C.C.E.L. (2d) 235 (Ont. Ct. (Gen. Div.)) at paras. 17-19, aff'd on consent 20 C.C.E.L. (2d) 104 (Ont. C.A.); *Tool v. Northern Blizzard Resources Inc.*, 2017 ABQB 760, 43 C.C.E.L. (4th) 289 at para. 41.

[40] Canaccord also argues that the comparator approach should not be used because, unlike in *Bain* for example, there is evidence of Warren's performance during the notice period. This is based on Warren's work at Cantor Fitzgerald where he was employed beginning in February 2020. As Warren's revenue at Cantor Fitzgerald was well below that earned by Jakubowski and Sadowski, it is argued that this supports a much lower bonus. I disagree. Although Cantor Fitzgerald is a large American investment bank, its Toronto office is small and did not provide Warren with a comparable platform or stable of issuers for whom he could work. Although some work followed Warren, in some ways Warren was starting over when he joined Cantor Fitzgerald, which lacked the platform, connections, and supports he had at Canaccord.

[41] Further, Cantor Fitzgerald's methods and selections of deals on which it chose to work were quite different from Canaccord's practices and these differences put limits on the range of deals available to Warren. Warren's income at Cantor Fitzgerald is relevant to mitigation, but it is not appropriate to use as a proxy for how Warren would have done at Canaccord.

[42] Fourth, there is compelling evidence that Warren’s bonuses between 2017 and 2019 were not an accurate reflection of his performance in those years. As I have noted, after Jens Mayer left Canaccord in early 2016, the mining group was headed by Hirst and his colleague Eggertson, the other Managing Directors in the mining group. Hirst and Eggertson were based in Vancouver and worked closely together. Warren, as the only Managing Director in the Toronto mining group, became the most senior person in that location.

[43] Warren and others described the mining group as dysfunctional after Mayer left. It was even described as “massively dysfunctional” in Warren’s performance review in 2019 – a view Warren shared but had little ability to fix, despite having raised concerns with more senior people in Toronto. The Toronto and Vancouver offices operated in silos with limited communication between them. This led to embarrassing situations in which both offices pursued the same work, despite Warren having coverage responsibility. Hirst and Eggertson removed key accounts from Warren without notice or explanation. They rarely communicated with anyone in the Toronto mining group. Hirst and Eggertson also hired two staff in the Toronto office under Warren, but who reported to Vancouver, undermining Warren’s position as the senior investment banker in the Toronto mining group.

[44] The poor leadership of the mining group by Hirst and Eggertson was known to their superiors at Canaccord in Toronto. Chris Blackwell, who was the head of Canadian Investment Banking at the time, described the mining group as “dysfunctional”, agreeing with Warren that Hirst and Eggertson operated as an “island.” During his recruitment, Jakubowski was told by Blackwell and others that Hirst “was not in the group to grow the group” but to “benefit on his own”, and that Canaccord “wanted a change.”

[45] In contrast, there were no detailed discussions about Warren. Canaccord led evidence of some dissatisfaction with Warren – that his work was too narrow, he was not actively growing the business, and his work was “not where we thought we could play”. However, Warren was a consistent, strong performer. Warren obtained a very positive performance review despite the dysfunction in the group. In any event, Warren was not terminated for cause; rather, as Blackwell put it, Warren was terminated to give Jakubowski a “clean piece of paper” in his “reset” of the team.

[46] While Blackwell tried at times to minimize Hirst and Eggertson’s deficiencies, the steps he and Canaccord took in removing them from managing the mining group illustrates the concern over the level of dysfunction they caused. When Jakubowski was hired, Hirst and Eggertson were removed from any role in the broader mining group; instead, they were “ringfenced”, which meant that they were limited to working with a specific group of their own clients which would alone determine their revenue going forward, described as a “direct drive” deal. Further, coverage for other clients was moved back to Toronto.

[47] Warren, nevertheless, did his best at Canaccord from 2016 until his termination. Despite a relatively weak market, I accept Warren’s evidence that his revenue in FY2017 was \$4.95

million, which suffered from a loss of \$1.65 million on a so-called “hung deal.”<sup>3</sup> By comparison, Hirst’s revenue in this “challenging year” was \$1.136 million and Eggertson’s was far lower, at \$499,795. Canaccord’s total mining revenue in FY2017 is unclear, but was between \$12.15 million and \$17.74 million, to which Warren contributed between 30% and 40%.

[48] In FY2018 the market was more active, and the Toronto mining group produced revenue of just under \$14 million, most of which can be attributed to Warren. The total mining group revenue was about \$23 million. One deal involving a \$5 million fee was disputed by an M&A specialist who, like Warren, had a relationship with the client. However, I found the evidence of the M&A specialist to be self-serving, attempting to take most of the credit himself, in contrast to Warren who agreed that some portion of the credit could have been shared. In any event, Canaccord’s own records attributed the deal to the mining group.

[49] In FY 2019, which was a weak year for the markets, mining group revenue fell to \$13.72 million, of which Warren took responsibility for \$3.315 million. Hirst’s revenue was similar at \$3.77 million and Eggertson’s was \$4.24 million.

[50] Much of this evidence comes from Warren’s analysis and spreadsheets he prepared based on information produced in the lawsuit. Most of the evidence was not seriously challenged. Hirst and Eggertson continue to work at Canaccord, but neither one testified at the trial to take issue with Warren’s calculations of contributions or to provide any explanation for the removal of accounts from Warren, leaving Warren’s evidence of his difficulties with them uncontradicted.

[51] Warren’s strong performance and contribution to Canaccord during this period was also documented in the very positive performance review prepared in 2019 but not shown to Warren until it was produced in this lawsuit. This review undermines suggestions made by some of the defendant’s witnesses that Warren was not a strong performer.

[52] Despite Warren having good years in tough markets, he received bonuses, set by Hirst and Eggertson, which appear to be low and which were questioned by others at the time.

[53] While there was no fixed formula, bonuses were usually in the range of 15% to 25% of revenue attributed to the banker. Each year, Warren provided a list of deals for which he claimed credit, none of which were challenged or questioned by Hirst or Eggertson. The setting of bonuses was secretive and Warren was not advised of the bonuses Hirst and Eggertson awarded to themselves until they were disclosed in this litigation.

[54] For FY 2017, Warren’s bonus was \$665,000, or 13.4% of his revenue. For FY2019 he received \$540,000, or 16.3% of revenue.

[55] For FY2018, I am satisfied that Warren received an unfairly low bonus. Internal emails show that Blackwell believed Warren was entitled to a bonus of \$1.4 million, but that Eggertson “dialed” it back to \$960,000, an amount that Blackwell described as “light relative to production.”

---

<sup>3</sup> The technicalities of what constitutes a “hung deal” are not relevant to this decision beyond that it results in the firm losing money on the transaction.

Warren then split some of this bonus with his colleague John Sutherland, a Director in the Toronto mining group who worked closely with Warren and whom Warren felt was undercompensated as well. This split, which reduced Warren’s actual bonus to \$810,000, was known to Canaccord and it is an agreed fact that Warren’s bonus for 2018 was \$810,000. Whether \$960,000 or \$810,000, this was well below a bonus of between 15% and 25% of revenue.

[56] Unknown to Warren until disclosed in this case, Hirst and Eggertson received bonuses of \$1,750,000 and \$850,000 respectively for FY2018. Combined, this is about three times the amount paid to Warren, despite Warren having substantially greater revenue than Hirst and Eggertson together. Moreover, even attributing all of the balance of \$9 million in mining group revenue (i.e. the revenue not created by Warren) to Hirst and Eggertson – which would not be accurate as there were other revenue generators in the Toronto group – their bonuses totalled more than 25% of that revenue. Despite inquiries in this litigation for Hirst and Eggertson to explain why Warren’s bonus was reduced in FY2018, no response has been provided other than Eggertson asserting through Canaccord’s lawyers in March 2025 that he did not recall reducing Warren’s bonus – a statement that can be given no weight.

[57] In contrast, as the evidence shows, and Blackwell acknowledged, the bonuses paid to Jakubowski and Sadowski in FY 2021 and FY 2022 – the first two full years of their employment at Canaccord – were approximately 20% of their revenue.

[58] Finally, as in *Bain*, the comparator approach seeks to achieve what, in law, damages are meant to address, which is to determine “as closely as possible, the amount of the bonus [Warren] would have been awarded had he remained working for [Canaccord]” and been treated fairly: *Bain*, at para. 134.

***Quantification of damages: the bull market in FY2021 and FY2022***

[59] Warren’s employment was terminated without cause or notice on September 6, 2019, just over five months into FY2020. Canaccord offered Warren \$920,000 to resolve its obligations to him. This was rejected by Warren. Instead, on September 13, 2019, Canaccord paid Warren his outstanding vacation pay, as well as \$106,153.85 as pay in lieu of 8 weeks’ notice and \$240,809.27 on account of 18 weeks’ severance pay under the *Employment Standards Act*. These amounts appear to have been based on Warren’s draw of \$150,000 annually and his FY2019 bonus.

[60] Five and a half years later, on the eve of the first trial date, Canaccord unexpectedly paid Warren \$221,427.70 which appears to reflect the bonus Canaccord says he would have received for the so-called “stub period” between April 1, 2019, and September 6, 2019.

[61] These amounts do not reflect the amount that Warren would have earned in the 21 months after September 6, 2019, had he been allowed to work during the notice period.

[62] Following the arrival of Jakubowski and Sadowski, the mining group became busier. Coverage for Canaccord’s existing mining clients, many of which had been Warren’s responsibility, were transferred to Jakubowski and Sadowski. They also brought in additional work through their own contacts. Like Warren, however, they were team players who adopted a

cooperative and collaborative approach to account coverage which, of course, differed from the approach taken by Hirst and Eggertson.

[63] Further, shortly after Warren's departure, the market boomed. Beginning in about April 2020 and continuing through 2021, mining was in a bull market, or once-in-a-decade event in which the mining cycle peaked, leading to record-setting revenues. Although the Canadian Capital Markets Pool declined from about \$82 million for FY 2019 to \$57 million for FY 2020, it rose to almost \$140 million in FY2021 and was almost \$128 million in FY 2022.

[64] In FY2021 Jakubowski's revenues were over \$20 million and Sadowski's were over \$15 million. Canaccord led "blockbuster deals" and most of its revenue stemmed from "equity issuances", which was Warren's area of expertise. From September 1, 2019, to February 28, 2022, Canaccord raised more equity and led or co-led a greater number of deals than any other broker in the metals and mining sector. More broadly, as Canaccord boasted in its annual report for FY2021, Canaccord delivered its "strongest financial performance on record, with revenue of \$2.0 billion, reflecting record contributions from both [Canaccord's] capital markets and wealth management segments." This continued through FY2022.

[65] The changes to the group and the activity it experienced must be considered in determining damages, as Warren's damages must reflect what he would have earned had he remained at Canaccord during the very profitable notice period: *Matthews*, at para. 54.

[66] Based on Warren's position in the mining group and his track record of being a major contributor to revenue, Warren would have benefitted from the boom experienced by Canaccord. With Hirst and Eggertson "ringfenced", the Toronto mining group was able to thrive. As I heard from both Jakubowski and Sadowski, coverage was brought back to Toronto for many clients. Cooperative leadership from Jakubowski who, as he put it, "likes to share", allowed for a fairer and more transparent approach to client coverage. The group was able to hire more people in order to be properly supported, which helped in marketing the group and attracting new work to its strong and well-resourced platform. Warren would have been a part of all of that had he remained at Canaccord during the notice period.

[67] In reaching this conclusion I have considered and rejected the submission of Canaccord that, had Warren remained at Canaccord during the notice period he would not have shared in the benefits of the reinvigorated mining group led by Jakubowski, but would have been marginalized and limited to working with only those clients with whom he had a close connection. There is no evidence to support this self-serving submission.

[68] In short, Warren's individual performance would have improved, and he would have benefitted from the increase in the size of the Canadian Capital Markets Pool – the two explicit factors to be considered in determining his bonus.

***The appropriate comparator: Sadowski***

[69] Warren's position is that his bonuses during the notice period should be determined based on the average paid to Jakubowski and Sadowski. Warren recognizes that Jakubowski took on a more senior position than he held, but that they were comparable in terms of revenue. Jakubowski

testified that his revenue at his previous employer, BMO Capital Markets, in the three years prior to joining Canaccord averaged about \$10 million per year. This compared to about a \$7 million average by Warren; however, BMO was much larger than Canaccord and was recognized as the pre-eminent investment bank for mining in Canada.

[70] As noted, in FY2021 Jakubowski generated over \$21 million in revenue. While Warren may or may not have been able to match that figure, he would likely have exceeded the just under \$14 million he had generated in tougher times in FY2018.

[71] Warren would have likely kept coverage responsibility for several “house clients” that were transferred to Jakubowski and Sadowski. A considerable amount of Sadowski’s revenue came from Canaccord’s clients with whom Warren had a relationship, often on syndicated deals. It was also no accident that one of the first things Jakubowski did after Warren left was to meet with the remaining members of the Toronto mining group to ensure they contacted all of these issuers immediately to introduce themselves and Jakubowski to them.

[72] Warren and Jakubowski were both very experienced in managing and closing large and complex deals.

[73] Sadowski, on the other hand, was only 35 years old when he joined Canaccord in 2019, and was much less experienced than Warren. Sadowski provided little information about his prior revenue generation but noted that his FY2021 revenue of \$15.1 million was his highest ever. This may be compared with Warren’s FY2018 revenue of just under \$14 million, achieved in a more difficult market.

[74] Alternatively, Warren submits that his bonus should be comparable to Sadowski’s income. Sadowski became the “second-in-command” under Jakubowski, a role Warren may well have filled if he had remained at Canaccord, and which was the role he filled under Jens Mayer until 2016. It is reasonable to conclude that Warren and Sadowski would have had similar revenue production. In FY2021 and FY2022, Sadowski’s revenue was about 25% of the total mining revenue. Sadowski and Warren both focused on equity and underwriting work rather than advisory work. Warren also notes that during the last bull market in 2011, he was awarded a bonus of \$3,025,000, which is similar to the bonuses paid to Sadowski for FY2021 and FY2022 of \$3,000,000 and \$2,850,000 respectively.

[75] Had he remained at Canaccord, Warren might have been a larger revenue producer than Sadowski during the notice period and perhaps merited a larger bonus. However, had he remained, then all three of Jakubowski, Sadowski and Warren would have shared in the work and their bonuses would have reflected that sharing, perhaps reducing the bonuses they each received as it all came from the same pool.

[76] In my view, it is appropriate to compare Warren to Sadowski. Jakubowski came into a more senior position and had a broader practice and range of clients. Sadowski, on the other hand, took on a position similar to that held by Warren and, although younger, had his own strengths that he brought to Canaccord.

### *Calculation of damages and mitigation*

[77] As a starting point, Warren is entitled to his pool draw of \$150,000 for the period of his notice. Pro-rated for 21 months, this amount is **\$262,500.00**.

[78] Warren's bonus for FY2020 is informed by Sadowski's bonus and Warren's own contribution prior to his termination. Sadowski received a signing bonus or "advance" after joining Canaccord in November 2019. He subsequently received a bonus of \$450,000, for a total bonus of \$700,000 for FY 2020, based on his approximately four months at Canaccord. Pro-rated for 12 months, Sadowski's bonus would have been \$1,812,056.

[79] However, as Warren's counsel concedes, Sadowski's bonus included a signing incentive and might not be an entirely appropriate comparator. I agree and adopt the suggestion that Warren's bonus for FY2020 may be more fairly determined based on his performance from April 1, 2019 to the date of his termination and annualizing it. Warren's revenue generation at Canaccord for the first five months of FY2020 was \$1,809,425. Annualized, this amount increases to \$4,342,260 – a reasonable figure as the bull market boom did not start until April 2020. Using Canaccord's goalposts which were applied to Jakubowski and Sadowski in subsequent years in granting them bonuses of about 20% of their revenue, it is appropriate to award Warren a bonus for FY2020 in the amount of **\$868,524.00**, reflecting about 20% of what his revenue would have been that year.

[80] In reaching this conclusion regarding FY2020, I have considered and rejected the position advanced by Canaccord that it fixed and paid a bonus to Warren of \$493,390.82 and that this should be respected. Canaccord's position is self-serving and disingenuous. It made severance payments to Warren upon termination. Those payments were not based on his performance in FY2020, nor did they follow the bonus process. It was only in March 2025, on the eve of trial, that Canaccord sent Warren a cheque for \$221,427.70 which purported to be part of a bonus for FY2020. However, there is no evidence that the bonus decisions made in early 2020 included a bonus for Warren. If that had been the case, Canaccord ought to have paid him then.

[81] Applying the 21-month notice period, Warren would have worked at Canaccord for all of FY2021. Sadowski was awarded a bonus of \$3,000,000 for FY2021 based on \$15.1 million in revenue. Using Sadowski as a comparator, Warren should also receive a bonus of **\$3,000,000.00** for FY2021. I note, in reaching this conclusion, that based on Warren's prior performance he would very likely have achieved similar, if not greater, revenue production than Sadowski had he remained at Canaccord. As has been noted, Warren generated almost \$14 million in revenue in FY2018, which was a much weaker year. Further, during the last bull market in 2011, Warren's bonus was \$3,025,000.

[82] For FY2022, Sadowski earned a bonus of \$2,850,000. However, Warren's notice period of 21 months concluded on June 6, 2022. According to counsel's calculations, applying the same bonus to Warren, this results in a pro-rated bonus to Warren for FY2022 of **\$515,342.47**.

[83] The total damages owed to Warren, then, are **\$4,646,366.47**.

[84] Canaccord, however, paid Warren \$349,963.00 upon his termination, and paid him an additional \$221,427.70 on March 6, 2025. These amounts, totalling **\$571,390.70**, should be deducted from the damages owing.

[85] Warren also mitigated his damages by obtaining new employment with Cantor Fitzgerald in February 2020. There is no issue that Warren met his obligation to act diligently in seeking and obtaining alternate employment within five months of his termination by Canaccord.

[86] In calendar year 2020, Warren earned a total of \$855,861.19 in base salary and bonus at Cantor Fitzgerald, and an additional \$344,738.63 up to the end of the notice period in June 2021.

[87] Warren also was eligible to receive deferred compensation for 2020 and 2021 from Cantor Fitzgerald; however, none of that compensation was received during the notice period nor, according to Warren, did the compensation vest during the notice period. Warren argues that this is simply potential future earnings outside the notice period and should not be deducted from his damages. I disagree.

[88] Whether it vested or not (and Warren has not produced the contract documents), the compensation was “awarded” to Warren during the notice period. Canaccord also had a deferred compensation program which applied to 20% of Warren’s bonus, but that deferral has been ignored in Warren’s claim for damages. As Warren agreed in cross-examination, the deferred compensation should be “done symmetrically.” Accordingly, Warren’s damages should be reduced by a further \$247,500 for deferred compensation earned in 2020. For 2021 Warren received deferred compensation of \$201,800; however, as the notice period ended on June 6, 2021, the amount to be deducted from the damages for that year is \$86,802.00.

[89] Accordingly, **\$1,534,901.82** should be deducted as mitigation from the damages.

### **Conclusion**

[90] In summary, I find that Warren was entitled to 21 months notice or pay in lieu of notice. Warren would have earned \$4,646,366.47 had he remained at Canaccord for 21 months following his termination on September 6, 2019. As Canaccord has paid Warren \$571,390.70, and Warren earned \$1,534,901.82 at Cantor Fitzgerald during the notice period, his damages are **\$2,540,073.95**, which I order be paid to Warren by Canaccord.

[91] The parties did not address the application of pre- and post-judgment interest; however, both were sought in the Statement of Claim and should be awarded. I leave it to counsel to work out those calculations.

[92] If costs and interest cannot be agreed upon within 30 days of the release of these Reasons, the parties may contact my assistant to arrange a case conference to discuss the procedure for determining those issues.

Paul B. Schabas J.

**Date: January 28, 2026**