Termination risk at the executive level: Lessons from Adelman v. IBM Canada Limited

March 16, 2026

Employers in Ontario are increasingly operating in a termination landscape that feels uncertain. A recent Ontario Superior Court (the Court) decision, *Adelman v. IBM Canada Limited* (*Adelman*), illustrates how common-law notice exposure, discretionary compensation, and equity-based incentives can intersect to produce significant liability where contractual protections are absent or unclear.

While the case involved a senior executive at a large organization, the Court's reasoning has broader implications for employers managing terminations of long-service employees, particularly where bonuses and equity awards form part of the compensation framework. The decision highlights the importance of disciplined processes, clear documentation, and careful reliance on discretion when employment relationships come to an end.

Background

- In *Adelman*, the Court considered the wrongful dismissal claims of a long-service IBM executive terminated without cause in January 2023.
- Mr. Adelman had approximately 18.5 years of service, held an executive-level role at the time of dismissal, and was 59 years old.
- His employment agreement did not contain any termination provisions.
- The dispute raised issues concerning the appropriate reasonable notice period, entitlement to bonus compensation, and damages for restricted stock units (RSUs) and stock options cancelled on termination.

Reasonable notice and the use of comparator case law

The Court determined that Mr. Adelman was entitled to 24 months' reasonable notice, applying the *Bardal* factors. In doing so, the Court relied on and distinguished *Nagpal v. IBM Canada Ltd*., in which a non-executive IBM employee with longer service but who was significantly younger had been awarded 22 months' notice. The Court concluded that Mr. Adelman's executive status and age justified a longer notice period, notwithstanding his slightly shorter tenure. This analysis reinforces that length of service

is but one factor to consider, and that age, position and employability are also important factors.

Bonus entitlement during the notice period: Applying *Matthews* and *Dawe*

The Court rejected Mr. Adelman's claim for bonus compensation during the notice period, applying the two-part framework articulated by the Supreme Court of Canada in *Matthews v. Ocean Nutrition Canada Ltd*.

At the first stage of the analysis, the Court had to determine whether Mr. Adelman's bonus was an integral part of his compensation. In making its finding, the Court considered, among other factors, how often Mr. Adelman received a bonus, if bonuses were required for IBM to remain competitive, and whether bonuses were historically awarded.

The Court found that Mr. Adelman's bonus was not an integral component of his compensation. The evidence demonstrated inconsistent bonus payments (Mr. Adelman did not receive a bonus at all in some years), frequent zero-bonus outcomes within IBM's executive ranks, and the absence of any role for bonuses in maintaining market competitiveness. Having found no common-law entitlement, the Court did not proceed to consider whether the bonus plan language displaced such rights.

Discretionary bonuses and fairness

The Court reached a different conclusion with respect to Mr. Adelman's 2022 bonus (*i.e.* the bonus in the final year of his employment). Relying on the Ontario Court of Appeal's decision in *Bowen v. JC Clark Ltd*., the Court emphasized that discretionary bonuses are subject to an implied obligation that discretion be exercised fairly and reasonably. In such cases, the court must analyze the evidence (*e.g.* employer policies and language of bonus compensation plans) in the applicable case and determine whether the process followed by an employer was fair and reasonable.

The Court rejected IBM's position that the zero bonus reflected performance-based considerations, relying instead on contemporaneous internal documents and testimony on cross-examination indicating that the bonus was denied primarily because Mr. Adelman had separated before the payout date. In awarding a bonus for the 2022 year based on the average of Mr. Adelman's last two years, the Court confirmed that where discretion is exercised unfairly, courts may substitute a reasonable proxy grounded in historical practice.

Equity compensation

With respect to RSUs and stock options cancelled on termination, the Court applied the reasoning in *Milwid v. IBM Canada Ltd*., in which nearly identical IBM equity plan language was held insufficient to clearly displace common-law vesting rights during the notice period. IBM ultimately conceded entitlement, leaving valuation as the central issue.

In valuing damages, the Court accepted Mr. Adelman's evidence of his actual investment behaviour and valued the equity based on implied future sale dates, resulting in damages exceeding $269,000. The decision underscores that equity damages will be grounded in evidence of how an employee has actually treated prior awards, rather than assumed or hypothetical conduct.

Punitive damages

Lastly, although the Court was critical of IBM's handling of the bonus and equity issues, it declined to award aggravated or punitive damages. The Court held that the evidence did not establish distress beyond the normal consequences of termination or conduct rising to the exceptional threshold required for punitive damages.

Takeaways for employers

Adelman illustrates the continued willingness of Ontario courts to award the upper range of reasonable notice in appropriate cases, and to scrutinize the exercise of discretion in bonus decisions. For employers, the decision reinforces that contractual clarity and defensible decision-making processes remain critical tools in managing termination risk, particularly for senior employees with incentive-based compensation.

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