

**CITATION:** Adelman v. IBM Canada Limited, 2026 ONSC 2714  
**COURT FILE NO.:** CV-23-00693572-0000  
**DATE:** 20260506

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** JASON ADELMAN, Plaintiff

**AND:**

IBM CANADA LIMITED, Defendant

**BEFORE:** Parghi J.

**COUNSEL:** *Chris Foulon and Behzad Hassibi*, for the Plaintiff

*Aislinn E. Reid and Lauren Harper*, for the Defendant

**HEARD:** May 5, 2026 (in writing)

**COSTS ENDORSEMENT**

[1] This was a wrongful dismissal trial. By Reasons for Judgment dated January 27, 2026, I found in Mr. Adelman’s favour and awarded him damages of \$682,151.18. I held that he was entitled to 24 months of reasonable notice, a bonus payment for his last year of employment, and damages in relation to restricted stock units (“RSUs”) and stock options that would have vested during the notice period. I denied his requests for a bonus during his notice period and for aggravated, moral, or punitive damages in relation to IBM’s cancellation of his RSUs and stock options. I instructed the parties to work together to resolve costs. They were unable to do so. Accordingly, I requested costs submissions from the parties, which I have reviewed.

[2] For the reasons below, I grant Mr. Adelman his costs in the amount of \$215,000 (inclusive of legal fees, disbursements and HST). These costs are awarded on a substantial indemnity basis, as a result of IBM’s conduct in the litigation.

[3] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the conduct by any party that tended to unnecessarily lengthen the duration of the proceeding, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[4] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal for Ontario restated the general principles to be applied when courts exercise their discretion to

award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”.

[5] Applying these factors here, I note at the outset that Mr. Adelman was successful in the action and is therefore presumptively entitled to costs. IBM suggests that he did not succeed on all issues. That is true. It does not take away from the fact that he was very clearly successful overall. I reject IBM’s claim that this is a case involving divided success.

[6] Further, I am of the view that substantial indemnity costs are appropriate because IBM took entrenched, legally incorrect, positions on key issues and abandoned them only late in the day.

[7] IBM’s pleaded position was that it did not wrongfully dismiss Mr. Adelman. At trial, in its opening arguments, IBM acknowledged for the first time that he was owed reasonable notice. In its closing argument, IBM proposed for the first time a notice period of 20-22 months. In my Reasons, I awarded Mr. Adelman 24 months of notice. IBM did not at any time amend its pleading to reflect its late-in-the-day position that Mr. Adelman was owed notice. In fact, IBM did amend its pleading in October 2025, mere weeks before the start of trial, but its amended pleading maintained the position that Mr. Adelman was not owed notice.

[8] Moreover, until mere weeks before trial, IBM asserted, contrary to law, that Mr. Adelman was not entitled to damages flowing from IBM’s cancellation of his RSUs and stock options. IBM maintained this position even though it knew the position was wrong at 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 this court considered in *Milwid v. IBM Canada Ltd.*, 2023 ONSC 490, 85 C.C.E.L. (4th) 243. In *Milwid*, the court found that those termination-related provisions did not unambiguously extinguish an employee’s common law right to RSUs vesting during the notice period. This finding was upheld on appeal (2023 ONCA 702, 487 D.L.R. (4th) 312). Simply put, *Milwid* is binding appellate authority that runs contrary to IBM’s long-maintained position on a central issue in this action: the amount awarded under this head of damages forms 40% of the total damages award.

[9] *Milwid* had not been handed down at the time IBM first defended this action. But the trial and appeal decisions in *Milwid* were handed down in June 2023 and October 2023 respectively, well before examinations for discovery in this matter (March 2024) and the start of trial (November 2025). IBM, as the losing party in *Milwid*, was surely aware of the courts’ findings in *Milwid*: IBM was the defendant in *Milwid*, as it is here, and IBM’s counsel was the same in both cases. At discovery, Mr. Adelman’s counsel expressly raised the issue of *Milwid*, asking IBM by way of undertaking “[t]o advise of any differences in the award grant terms granted to [Mr. Adelman] versus those applicable in the *Milwid* case”. IBM’s response to the undertaking, delivered 15 months later and after eight follow-ups from plaintiff’s counsel, was, “[n]o differences noted at this time.” I am unable to understand what “at this time” means in this context. The only reasonable interpretation of IBM’s response was that it was acknowledging that the contractual language at

issue in this matter was identical to the language in *Milwid*. That language did not support IBM's position either in *Milwid* or in this case.

[10] Despite all this, IBM clung to its position that its award grant terms extinguished Mr. Adelman's claim. IBM did not ever suggest that *Milwid* was distinguishable on its facts or otherwise did not bind IBM. It offered no substantive explanation at all. It simply forged ahead with a position that it must have known it would be unable to defend at trial

[11] It was only after Mr. Adelman sought consent to amend his pleading to seek punitive damages in relation to IBM's cancellation of his equity that IBM formally changed its legal position on the issue by amending its pleading. That was in October 2025, just weeks before the start of trial. IBM amended its defence to acknowledge Mr. Adelman's "entitlement to damages for the value of unvested Equity Awards during a common law reasonable notice period" and to plead that "[i]f the Plaintiff is entitled to common law reasonable notice," then based on *Milwid*, he was entitled to damages in respect of the cancelled equity. Notably, IBM maintained in its amended defence that Mr. Adelman was not entitled to common law notice.

[12] In my view, the practical import of IBM's concession was minimal. IBM only changed its position conditionally on Mr. Adelman being entitled to reasonable notice, and it expressly maintained its position – not just in its amended defence but all the way until the start of trial – that Mr. Adelman was not entitled to notice. Moreover, the concession came fairly late in the day – a full two years after the Court of Appeal's decision in *Milwid* and mere weeks before the start of trial – with the result that Mr. Adelman still had to litigate his claim for damages for the cancelled equity from the time he commenced the action until shortly before trial. Had IBM acknowledged that, in the face of *Milwid*, its position on this issue was legally untenable, Mr. Adelman would have been spared the costs of those efforts.

[13] Had Mr. Adelman not sought punitive damages, IBM would presumably have maintained its position that he was not entitled to damages in respect of the unvested equity awards.

[14] IBM suggests that Mr. Adelman somehow fell short by not demanding that IBM comply with *Milwid*. I am perplexed by this suggestion. The law is the law. Binding appellate authority is just that. IBM was aware that its position was on the wrong side of the law. Mr. Adelman's counsel squarely raised the court's finding in *Milwid* with IBM at examinations for discovery. I am not sure what more Mr. Adelman needed to do. IBM had a duty to comply with the law with or without a "demand" from anyone else. IBM appears to be saying that Mr. Adelman, the victim of IBM's conduct, ought to have protested more loudly. I reject this claim.

[15] In my assessment, IBM's conduct warrants substantial indemnity costs, for three reasons.

[16] First, IBM's conduct resulted in increased costs to Mr. Adelman, as discussed above. The costs principles are clear that in deciding costs I may consider conduct of the parties that had the effect of increasing litigation costs. Such conduct may include the decision by a litigant to pursue a legally untenable position, resulting in higher costs for the opposing party (see, for example, *Carroll v. Oracle Canada ULC*, 2025 ONSC 4889, and the associated unreported costs endorsement (January 19, 2026), Toronto, CV-23-00704741-0000, at para. 25).

[17] Second, IBM's conduct, in maintaining a position that runs contrary to clear jurisprudential authority, has an aura of lawlessness about it. One can understand that strong positions may be taken and zealously advanced in litigation. But when a position turns out to be utterly at odds with the law, the litigant advancing the position ought to have pause for thought. So should its counsel.

[18] Third, it is difficult for me to see how IBM's strategy of insisting until the 11<sup>th</sup> hour that Mr. Adelman had no entitlement in respect of the equity, and then softening that position only in the face of the punitive damages claim, and only weeks before trial, could have been rooted in anything other than a desire to pressure Mr. Adelman to accept a settlement for something less than what he was entitled to at law. This concern, too, may ground an award of substantial indemnity costs (see, for example, *Carroll* costs endorsement, at para. 28).

[19] Having regard to the second and third considerations outlined above, a court may award substantial indemnity costs "when [it] wishes to express its disapproval of the conduct of a party to the litigation" (*Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, 140 O.R. (3d) 77, at para. 8; see also *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 771, 128 O.R. (3d) 64, at para. 31). I do so here.

[20] Finally, the amounts claimed in costs are reasonable and would have been within the reasonable expectations of IBM. There were several issues that Mr. Adelman had to work up and litigate. Mr. Adelman's overall costs, in terms of hourly rates and time spent, are reasonable. His disbursements are reasonable and appropriately incurred. He did not engage in any conduct that needlessly lengthened the proceedings. IBM suggests Mr. Adelman improperly brought a production motion that he then abandoned, and that he ought not to recover those costs. I do not agree. At trial, IBM sought to rely on the same documentation that formed the subject matter of Mr. Adelman's motion. This strongly suggests that the production motion was not unreasonable.

[21] I therefore find that it is appropriate to award Mr. Adelman his substantial indemnity costs in the amount of \$215,000, inclusive of legal fees, disbursements, and HST. In my view, this award is fair and reasonable in all the circumstances. This amount is to be paid within 30 days.

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Parghi J.

Date: May 6, 2026