

**Will Meta be Required to Face(book) the Music?
*Employers and Employees Wait for Ontario's Court of Appeal to Sound In***

May 2026

A recent Ontario decision, *Wigdor v Facebook Canada Ltd.*,¹ has important implications for any employer using equity-based compensation.

In *Wigdor*, the Ontario Superior Court upheld the enforceability of a restricted stock unit (“RSU”)² forfeiture provision which precluded vesting during the common law reasonable notice period. The employee appealed and the case was recently heard by the Court of Appeal for Ontario. The appeal court’s decision has the potential to significantly impact employee entitlements under equity plans, and we will report to readers as soon as the appeal decision is released.

What happened?

Daniel Wigdor was Director of Research Science at Facebook Canada. While employed, he received awards of RSUs that vested at regular intervals. The RSU agreements (two) contained forfeiture provisions which stated that Wigdor would give up all unvested RSUs upon termination of employment, and any RSUs already granted would not continue to vest during any notice period including the statutory notice period under the Ontario *Employment Standards Act, 2000* (“ESA”), the contractual notice period, and the common law notice period.

In 2023, Facebook terminated Wigdor’s employment, without working notice. He was offered payments in excess of his minimum statutory termination and severance entitlements in exchange for a release of all claims. Wigdor refused to sign the release because it would have precluded him from challenging the forfeiture of RSUs that might otherwise have vested during the common law reasonable notice period. Instead, he commenced a wrongful dismissal lawsuit which, among other things, included a claim for vesting of the RSUs over the reasonable notice period (“RSU Claim”).³

¹ [2025 ONSC 4861](#).

² A Restricted Stock Unit is a form of share compensation sometimes provided to employees of a publicly traded corporation.

³ The claim for RSU vesting was the most significant part of the lawsuit. Another issue was whether Wigdor was entitled to common law reasonable notice; the court found he was entitled to 10 months.

The arguments

Breach of the ESA

Wigdor argued the RSU agreements violated the ESA for two key reasons:

1. ESA termination pay is calculated based on an employee's "wages" as defined in the ESA. Wigdor argued RSUs qualify as wages, therefore to the extent the RSU agreements excluded RSUs from being included in ESA termination pay, they breached the ESA.
2. The forfeiture provisions meant Facebook failed to maintain all "terms and conditions of employment" during the statutory notice period, contrary to the ESA.

In response, Facebook argued:

1. The exclusion of RSUs from wages was lawful because RSUs do not fall within the ESA definition of wages. To qualify as ESA wages, an item must be a monetary payment, and RSUs are not a monetary payment.⁴
2. The obligation to maintain terms and conditions of employment applies only to ESA *working notice*. If an employer provides termination pay in *lieu* of ESA working notice, there is no obligation to maintain terms and conditions of employment.

The distinction between working notice and pay in *lieu* flows from the language in each of sections 60 and 61 of the ESA. Section 60 applies to working notice (not Wigdor's situation), and provides that during the statutory notice period, an employer may not reduce an employee's wage rate or alter any other term or condition of employment and must maintain the employee's benefits. By contrast, section 61 of the ESA applies to pay in *lieu* of notice (Wigdor's situation) and requires an employer to pay a lump sum equal to the amount the employee would have received under section 60 of the ESA and continue to make whatever benefit plan contributions are required to maintain benefits as if the employee had continued to be employed during the period of notice.

The Superior Court agreed with Facebook, holding there was no violation of either section 60 or 61 of the ESA because RSUs (like stock options) are neither "wages" nor "benefits" under the ESA. The court noted if the legislature had intended RSUs to be considered "wages" or "benefits," it could have included that in the ESA.

RSU agreements misleading and ambiguous

Wigdor also argued the RSU agreements were "deliberately misleading" and ambiguous, essentially because they stated that unvested RSUs would be forfeited upon termination unless "applicable employment standards legislation explicitly required continued entitlement to vesting during a statutory

⁴ There are other types of non-monetary items that are capable of being "wages" under the ESA, but none of them could apply to RSUs.

notice period.” Wigdor argued that because the ESA does not explicitly require continued entitlement to vesting during the statutory notice period, the language created an ambiguity that rendered the provisions void.

The court rejected Wigdor’s argument for two key reasons:

1. The impugned language is clear and unambiguous in that it simply suggested the ESA might apply at some point in time, not that it did apply at this particular time.
2. There is a distinction between employment related entitlements and RSUs. The RSU agreements were independent of any entitlement Wigdor might have under any employment agreement, or employment standard.

What’s next for employers?

The Court of Appeal’s decision will be important for employers that use equity-based compensation, and we will report on that decision once it is released. Meanwhile, employers may want to consult with experienced employment counsel to:

- Review RSU, stock option and other incentive plan language on a regular basis (and, at the very least, before any significant grant) to assess whether post-termination vesting provisions are clear, consistent and enforceable.
- Consider whether existing plan language adequately addresses any ESA-related argument that may be raised in a termination dispute.

We will watch for the appeal court’s decision and keep our readers apprised.

For more information or for assistance, contact your Sherrard Kuzz LLP lawyer, or info@sherrardkuzz.com.

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