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Court of Appeal Awards Former Facebook Employee $4.7M (USD) in Equity Compensation ~ *Wigdor v Facebook Canada Ltd.*

August 12, 2026

In *Wigdor v Facebook Canada Ltd.,*[1] the Court of Appeal for Ontario rejected Facebook's argument that the language in its equity-compensation agreements validly limited vesting of restricted stock units ("RSUs") immediately post termination, including during the *Employment Standards Act* ("ESA") and common law notice periods. The court found the language violated the ESA, which prohibits an employer from altering any term or condition of employment during the ESA notice period. The language was therefore void, entitling the employee to vesting throughout the common law period of reasonable notice (10 months), amounting to $4.7 million (USD) in RSUs.[2]

While *Wigdor* went the way of the employee, the court made a number of important statements including that, in different circumstances, an employer may still limit vesting of equity compensation during the *common law notice period*. In some cases, the door may remain open to limit vesting during the *ESA notice period.*

In light of this decision, now is the time to review equity-based agreements to ensure they achieve both legal compliance and operational objectives.

Key points from the Court of Appeal

Before we dive into the facts of *Wigdor*, the court confirmed and/or ruled on several key legal propositions which provide important context:

1. **The ESA is remedial legislation, intended to protect the interests of employees.** This is not a new concept. Courts have long held they will interpret the ESA in a way that encourages an employer to comply with its minimum standards, over an interpretation that does not.

2. **The validity of an employment contract must be assessed at the time the contract is entered into, not at the time of termination.** This is also not new, and it flows from the point above. It means an employer cannot remedy a void provision by complying with the ESA minimum standard at the time of termination. The provision should be valid from the start.

3. **Under the ESA (sections 60 and 61), an employer is prohibited from altering any term or condition of employment during the ESA notice period.** This applies regardless of whether an employee receives notice of termination (s. 60) or pay in *lieu* (s. 61). In other words, an

[1] 2026 ONCA 572.
[2] For more on the lower court decision, see our May 21, 2026 briefing note: Will Meta be Required to Face(book) the Music? Employers and Employees Wait for Ontario's Court of Appeal to Sound In.

employee is entitled to the same financial compensation whether their employment is terminated with working notice or pay in *lieu*.

On the facts of this case (detailed below), the court found the RSUs were *a term or condition of employment* and, as such, when Wigdor was provided pay in *lieu*, he was entitled to the compensation he would have received had he worked throughout the ESA notice period.

4. **Not all equity compensation will be subject to the ESA.** Equity compensation may fall outside the ESA if it is considered separate from the employment relationship. For example, this might be shares flowing out of a commercial transaction.

What happened in *Wigdor*?

Wigdor founded Chatham Labs, a technology consulting firm, in 2011. In 2020, Meta (the parent company of Facebook) purchased Chatham Labs under a share-purchase agreement under which Meta would employ Wigdor.

During his employment with Facebook, Wigdor received grants of RSUs under Meta's equity incentive plan and corresponding agreements. The agreements provided that if Wigdor's employment ended for any reason, all unvested RSUs would be forfeited immediately. One of the RSU agreements included an ESA "saving provision" which stated the forfeiture would occur "unless explicitly required by applicable legislation" [emphasis added].

In 2023, Facebook terminated Wigdor's employment without cause. The trial court judge held the termination provision in Wigdor's employment agreement was unenforceable,[3] and he was entitled to 10 months' pay in *lieu* of common law notice.

Given the 10-month notice period, the vesting of Wigdor's RSUs became a key issue. The trial judge found the forfeiture provision was enforceable, thus Wigdor was not entitled to any further vesting. Wigdor appealed.

Court of Appeal decision

The Court of Appeal agreed with Wigdor – the forfeiture provision was not enforceable. Wigdor was therefore entitled to vesting over the 10-month notice period amounting to approximately $4.7 million (USD) in additional equity compensation.

In summary, the Court of Appeal reasoned as follows:

- Section 60 of the ESA prohibits an employer from altering a "term or condition of employment" during the working notice period.

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[3] This was because it purported to limit Wigdor's length of service under the ESA to only his time working for Facebook and did not include his prior service with Chatham Labs. This was contrary to the ESA.

- Section 61 of the ESA allows an employer to provide a lump sum payment (pay in *lieu*), instead of working notice. When doing so, the lump sum payment must be equal to what an employee would be entitled to receive during the working notice period.

- On the facts of this case, Wigdor's entitlement to RSUs was a "term or condition of employment." The entitlement was outlined in a letter incorporated into Wigdor's employment agreement, evidence at trial described the RSUs as employee compensation, Meta's 2023 Annual Report described the relevant Equity Incentive Plan as a "share-based employee compensation plan" and the vested RSUs were treated as taxable benefits in the employer's records of payment to Wigdor. As such, Wigdor was entitled to receive payment for any RSUs which would have vested during the ESA notice period.[4]

- The "saving provision" which stated the RSUs would not vest during the ESA notice period "unless explicitly required by applicable legislation" was insufficiently clear because the ESA does not explicitly address the vesting of RSUs. The forfeiture provision therefore violated the ESA minimum standard, entitling Wigdor to his common law entitlements.[5]

Final thoughts

While this decision went in Wigdor's favour, there are important positives for employers. First, the Court of Appeal did not find equity compensation will *always* be a term or condition of employment. That is a fact specific analysis. If the compensation is not a term of employment – such as commercial compensation – an equity compensation agreement may restrict vesting during the ESA notice period. Second, it is still open to the parties to agree that vesting will not be permitted during any common law period of reasonable notice. The devil will be in the drafting details.

As always, an ounce of prevention is worth a pound of cure. Now is the time to review all equity-based compensation plans, the employment agreements of employees who participate in these plans, and to plan strategically for the future. The Sherrard Kuzz LLP team can help.

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

[4] The Court of Appeal declined to rule on whether equity compensation is "wages" for the purposes of the ESA, because it was not necessary to decide that point.

[5] In our view, this reliance on the word "explicitly" is strained, and yet another example of a court reaching for an interpretation to invalidate a termination provision.