

## Wigdor: The final say on RSU forfeiture at termination ... or is it?

By **Frank Portman**

Law360 Canada (October 2, 2025, 9:10 AM EDT) -- A recent Ontario Superior Court decision is being widely regarded as the last word on whether restricted stock units (RSUs) continue to vest after termination when the equity contract cuts them off. The court's answer is no — executive employment lawyers take note. But does that extend to working notice?

In finding the RSU agreements “valid and enforceable” in *Wigdor v. Facebook Canada Ltd.*, 2025 ONSC 4861 (Meta's Canadian subsidiary), Justice Janet Leiper held that RSUs do not continue to vest once employment ends where the employer provides lump-sum pay under s. 61 of the *Employment Standards Act, 2000* (ESA) and the equity plan wording ends vesting immediately.



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### Overview of *Wigdor v. Facebook Canada Ltd.*

The facts of *Wigdor* illustrate the stakes. Daniel Wigdor became an employee of Facebook Canada in September 2020 as director of research science. His employment was terminated in December 2023, after just over three years of direct service.

For ESA purposes, however, his service was treated as continuous from July 2011 when he began providing services to Facebook through Chatham Labs, the company he founded and which Meta later acquired in 2020.

At termination, Wigdor faced the loss of millions of dollars in unvested RSUs. He argued they should continue to



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vest during his notice period. Justice Leiper held otherwise, ruling that vesting ended immediately on the termination date itself.

She found that s. 61 of the ESA requires only wages and benefit contributions to be maintained when an employer provides pay in lieu of notice, and that RSUs fall into neither category. As she put it, "RSUs, like stock options, are not wages."

Because the plan wording expressly halted vesting on termination, his claim failed.

### **At issue: Pay in lieu of notice vs. working notice**

*Wigdor* is a careful application of orthodox ESA and common law principles, interpreting s. 61 in the context of termination by pay in lieu of notice.

In essence, the decision holds that an RSU plan that stops vesting immediately on termination does not undercompensate an employee who is given their statutory entitlements by way of a lump-sum payment. This is because, in the event of a termination, the ESA only guarantees that an employee's notice entitlement will include all wages they would have earned over the notice period, which is a defined term that excludes stock options and other equity. This is an important point that all executive employment lawyers must pay attention to.

That conclusion is legally sound: the statute has long distinguished between guaranteed wages and discretionary or contingent benefits.

But the analysis potentially changes where the clause is assessed in a hypothetical situation where the employee is given working notice. Section 60(1) of the ESA governs entitlements when working notice is given and protects not just wages but also "terms and conditions of employment," which is a broader term that could reasonably be read as including participation in a stock option plan, particularly where participation in the stock option plan formed a key component of the employee's hiring or their written employment agreement.

This analysis may have broader implications than just a hypothetical law-school exercise. In *Rossmann v. Canadian Solar Inc.*, 2019 ONCA 992, the Court of Appeal confirmed the now well-accepted principle that a termination provision that has the potential to breach the ESA is unenforceable, even if that clause satisfies the requirements of the ESA in the specific circumstances of an employee's termination. This means that a termination provision that complies with the ESA if the employee is paid in lieu of notice, but that does not if the employee is given working notice, ought to be

unenforceable in both instances.

Unfortunately, the *Wigdor* decision does not address this important point, leaving open the question of whether stock option plans may need to continue through a working notice period or risk invalidation.

### **Implications of *Wigdor v. Facebook Canada Ltd.* on attracting, retaining senior executives**

The policy implications are significant.

RSUs and stock options are central to how many companies attract and retain talent, particularly at senior levels. If equity can be forfeited immediately upon dismissal whenever an employer elects to provide pay in lieu of notice, the value of those incentives is undermined, note many executive employment lawyers.

Conversely, few stock option plans provide for continued participation and vesting through a working notice period. If courts confirm that the ESA requires maintaining such participation, employees may gain access to substantial awards during the notice period, even if they never set foot in the office again. The potential liability for employers is enormous.

### **Court also commented on the executive employment contract itself**

Meanwhile, the court also addressed the executive employment contract itself. Facebook initially offered Wigdor eight weeks' termination pay, and 12.5 weeks' severance pay under the ESA, together with additional contractual compensation if he signed a broad release that included giving up any claim to RSUs. He refused, and the company withheld even his statutory entitlements until after he commenced proceedings.

Justice Leiper found the termination clause unenforceable for ESA non-compliance and awarded 10 months' common law notice. This aspect of the decision reflects a straightforward application of *Bardal v. Globe & Mail Ltd.*, [1960] O.J. No. 149, with factors such as age, position and length of service informing the notice period.

Wigdor also sought punitive damages, arguing that Facebook's 10-month delay in paying his ESA minimums and its premature termination of benefits coverage amounted to egregious conduct.

Justice Leiper agreed the company's handling of his entitlements was "inadequate" and "dilatatory," but stopped short of finding it harsh or malicious. The court characterized the delay as "inadequate and vague," but concluded the behaviour did not cross the high threshold required for punitive damages.

### **What *Wigdor* means for executive employment contracts**

Ultimately, it is the ruling on RSUs and the unanswered question of how equity plans interact with working notice under s. 60 (1) of the ESA that makes *Wigdor* important beyond its facts.

For employers, the decision underscores the need to draft equity plans with precision and consider the risk/reward of attempting to stop employee participation during the statutory notice.

For employees and their executive employment lawyers, it leaves open a powerful line of argument that could reshape how courts treat stock-based compensation on termination. Far from being the last word, *Wigdor* may prove to be only the beginning of a deeper debate about how stock option plans may be assessed under the ESA.

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