Cassels

Ontario Court of Appeal Delivers Important Warning for Employers on RSUs and Termination Clauses

Kshemani Constantinescu

August 13, 2026

A recent Ontario Court of Appeal decision has significantly increased the risk that Restricted Stock Unit (RSU) forfeiture provisions may be unenforceable where they conflict with minimum standards under the *Employment Standards Act, 2000* (ESA). In *Wigdor v. Facebook Canada Ltd.*, 2026 ONCA 572 (*Wigdor*), the Court held that an employee was entitled to millions of dollars in additional compensation because RSUs that would have vested during the notice period could not be forfeited. Employers that use RSUs or other equity-based compensation plans should carefully review both their compensation plans and employment agreements.

The Decision at a Glance

Dr. Daniel Wigdor joined Facebook Canada (now Meta) following Meta's acquisition of his technology business. His compensation package included substantial RSU grants that vested over time and formed a significant part of his overall remuneration. When his employment was terminated without cause in December 2023, Meta took the position that all unvested RSUs were forfeited immediately under the applicable RSU agreements.

The Court of Appeal ultimately held that:

- The termination provisions in the employment agreement violated the ESA and were unenforceable.
- The RSU plans also violated ESA minimum standards because they purported to eliminate vesting during the ESA notice period.
- As a result, the employee remained entitled to the value of RSUs that would have vested during his 10-month common law reasonable notice period.
- The damages award increased by approximately US$4.7 million.

Why Employers Should Pay Attention

A noteworthy aspect of the decision is the Court of Appeal's detailed analysis of sections 60 and 61 of the ESA. Historically, many employers have viewed section 60 as applying only where working notice is provided and section 61 as governing situations where pay in lieu of notice is given. The Court rejected that distinction. It held that the two provisions must be read together and as part of a single statutory scheme.

Section 60 prohibits employers from reducing wages or altering any other term or condition of employment during the statutory notice period. Section 61 permits an employer to terminate employment without working notice, provided it pays a lump sum equal to what the employee would have received had working notice been provided. The Court emphasized the language in section 61 requiring payment of an amount “equal to” what the employee would have been entitled to receive under section 60 and concluded that this necessarily incorporates the protections contained in section 60, including the prohibition against altering terms and conditions of employment.

The practical result is significant. According to the Court, employees should be placed in the same financial position whether they receive working notice or pay in lieu of notice. An employer therefore cannot rely on a contractual provision that removes a compensation-related entitlement during the statutory notice period simply because the employee receives pay in lieu rather than working notice.

ESA compliance analysis cannot focus solely on wages and benefits. Any aspect of compensation that may constitute a “term or condition of employment” could be scrutinized through the lens of sections 60 and 61. The Court’s interpretation may therefore have implications extending beyond RSUs to other forms of incentive compensation, including stock options, deferred share units, long-term incentive plans and similar arrangements.

Key Employer Takeaways

1. Review Existing Equity Compensation Plans

Many Canadian employers use plan language that provides for the automatic forfeiture of unvested awards upon termination of employment.

Following *Wigdor*, employers should carefully assess whether those provisions could be viewed as removing a term or condition of employment during the ESA notice period. Plan language that has historically been considered enforceable may now face greater scrutiny, particularly in Ontario.

2. Do Not Assume Saving Clauses Will Provide Adequate Protection

The RSU agreements in this case contained language stating that forfeiture would apply unless otherwise required by applicable legislation.

The Court nevertheless found the provisions unenforceable because the ESA does not expressly address RSU vesting. The decision suggests that generic ESA-saving language may not be sufficient where the substantive effect of the provision violates minimum employment standards.

3. Do Not Review Compensation Plans in Isolation

One of the Court's key findings was that the RSU agreements formed part of the employee's overall compensation arrangement and were incorporated into the employment relationship. Employers should therefore avoid treating equity plans as entirely separate from employment entitlements when assessing ESA compliance.

4. Conduct Termination Clause Audits

The employer was also unsuccessful in defending the employment agreement's termination provision. The Court reaffirmed that even sophisticated employees who negotiate employment terms with legal counsel remain entitled to ESA-compliant agreements. Courts will continue to closely scrutinize termination language and resolve ambiguity in favour of employees.

Looking Ahead

The Court of Appeal's decision in *Wigdor* represents a potentially significant shift in how courts assess equity compensation during statutory and common law notice periods. While the full scope of the decision remains to be seen, Ontario employers should assume that compensation plans will be examined alongside employment agreements when determining ESA compliance.

Organizations that rely on RSUs, stock options, deferred share units, or other long-term incentive arrangements should consider conducting a comprehensive review of their plan documentation and termination provisions to ensure they align with current employment standards requirements and evolving judicial guidance.
