

Employment Update: Guidance from the Court on the Forfeiture of Equity Incentives Upon Dismissal

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For many employees, particularly those holding senior positions, equity incentives form an integral part of their remuneration. This form of compensation is often in the form of Restricted Stock Units (“**RSUs**”), which are granted pursuant to an equity incentive plan. An important consideration for employers is what happens to unvested RSUs that were granted to the employee prior to the termination of the employment relationship. The Ontario Superior Court recently provided guidance on this area of the law in [*Wigdor v. Facebook Canada Ltd.*, 2025 ONSC 4861](#).

BACKGROUND

Dr. Wigdor, a tenured professor at the University of Toronto, founded Chatham Inc. (“**Chatham**”) in 2011. In August 2016, through Chatham, Dr. Wigdor began providing services to one of Meta’s subsidiaries. Facebook Canada is Meta’s wholly owned Canadian subsidiary. In September 2020, following Meta’s purchase of the shares of Chatham, Dr. Wigdor commenced employment with Facebook Canada pursuant to a written contract of employment (the “**Contract**”).

The Contract stated that no employment with a previous employer would count toward Dr. Wigdor’s period of continuous employment with Facebook Canada, except that service with Chatham Labs Inc. and its predecessors would be recognized for the purpose of determining minimum entitlements under the *Employment Standards Act, 2000* (the “**ESA**”). Further, s. 12(a) of the Contract contained the following termination provision:

Termination without Cause. During the first three (3) months of your employment, including any prior service with Chatham Labs Inc. or its predecessors, the Company may terminate your employment at any time by providing you with two (2) weeks of advance notice or base pay in lieu of notice [the “**Termination Provision**”].

Between 2020 and 2023, Dr. Wigdor received RSU grants under two sets of RSU Agreements. Each RSU Agreement provided that all unvested RSUs are forfeited as of the termination date, regardless of any common law or statutory notice period (the “**Forfeiture Clause**”). However, the 2021–2023 RSU Agreements further stated that ‘if applicable employment standards legislation explicitly requires continued entitlement to vesting during a statutory notice period, Participant’s right to vest in the RSUs under the Plan, if any, will terminate effective as of the last day of Participant’s minimum statutory notice period.’”

THE SUPERIOR COURT’S DECISION

First, the Court determined that the Termination Provision was unenforceable. Specifically, the Court found that the Termination Provision contravened s. 9 of the *ESA*, which deems employment to be continuous subsequent to a sale of business. By virtue of the *ESA*’s sale-of-business provisions, the Court treated Dr. Wigdor’s service as continuous for *ESA* purposes and calculated his length of service as nine years. Therefore, upon the termination of his employment, the applicable statutory notice period was 8 weeks. By purporting to be able to terminate Dr. Wigdor’s employment within the first 3 months of the Contract with only 2 weeks’ notice, Facebook Canada contracted out of the applicable statutory notice period under the *ESA*. As a result, the Court awarded 10 months’ reasonable notice at common law.

Second, the Court determined that the RSU Agreements were valid and enforceable, and as a result, Dr. Wigdor was not entitled to the vesting of any granted RSUs during the notice period. The Court made two important findings in reaching this result:

1. The Court determined that, upon termination, Dr. Wigdor was entitled to the minimum statutory entitlements provided for under s. 61 of the *ESA*. This included statutory termination pay based on the wages that the employee would otherwise have earned during the statutory notice period. However, the Court found that RSUs are not “wages” or “benefits”. Accordingly, the Forfeiture Clause did not contract out of the *ESA*.
2. The Court also found that the RSU Agreements and Meta’s equity incentive plan are separate from entitlements under the *ESA*, the Contract and at common law. In reaching this conclusion, the Court relied on [*Mikelsteins v. Morrison Hershfield Limited*, 2019 ONCA 515](#). In *Mikelsteins*, Blaney’s Partners [David E. Greenwood](#) and [Christopher McClelland](#) successfully argued at the Court of Appeal that an employee’s rights upon termination under a shareholder agreement are independent of any entitlements under the *ESA* or for breach of an employment contract.

Lastly, the Court declined to award punitive damages, notwithstanding Facebook Canada’s delay in paying Dr. Wigdor’s *ESA* entitlements and the premature termination of his benefits. While the judge found the employer’s explanation for a roughly 10-month delay to be inadequate and the overall approach dilatory, the conduct did not meet the high threshold for punitive damages, which targets behaviour that is harsh, malicious, or otherwise reprehensible. In the result, the punitive damages claim was dismissed.

KEY TAKEAWAYS FOR ONTARIO EMPLOYERS

This decision serves as an important reminder for employers to regularly review and update their employment agreements to ensure they contain enforceable language and comply with the *ESA*. Termination clauses are a critical part of any employment contract and getting them right can save employers from costly disputes and significant damages awards.

With respect to equity incentives, employers should review their equity incentive plans and grant agreements to ensure that they are drafted in a way that is clear, unambiguous, and limits liability upon an employee's termination of employment.

For specifically tailored advice on your equity incentive plans, please reach out to a member of the Blaney's [Labour and Employment Group](#).

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