

Silence Isn't Golden: Employers Must Clearly Communicate Contractual Changes

February 26, 2026

In *Comeau v. Valcom Consulting Ltd.*, 2025 NBKB 253, the Court of King's Bench of New Brunswick held that an employer's attempt to unilaterally introduce new, more restrictive terms of employment in relation to a long-term employee who had worked under a series of fixed-term employment agreements constituted a constructive dismissal.

Although the employee's most recent fixed-term agreement had expired, the Court nevertheless awarded him damages based on a 10-month reasonable notice period. This decision serves as a critical reminder to employers to tread carefully when attempting to renegotiate or modify the terms of employment applicable to existing employees, including employees who have been engaged under successive fixed-term contracts.

Background

The plaintiff, Timothy Comeau, was engaged by Valcom Consulting Ltd. (Valcom) as a Senior Project Manager, initially as an independent contractor, then later as an employee, pursuant to a series of fixed-term contracts. He worked continuously and exclusively with Valcom from 2009 until March 2024.

The termination provision in Mr. Comeau's last employment contract stated that Valcom could end the employment relationship at any time, without cause, by providing him with the greater of 10 working days of notice, or the minimum notice (or pay in lieu of notice) required by the "prescribed statute" (in this case, the *New Brunswick Employment Standards Act*).

At the end of March 2024, when Mr. Comeau's latest employment contract was about to expire, Valcom offered him a new agreement. This new agreement provided Mr. Comeau with a 3% increase in annual salary. Mr. Comeau, however, was expecting a 5% increase in his salary based on prior discussions with his supervisor. Upon raising this matter with his supervisor, Valcom presented Mr. Comeau with a revised version of the employment agreement which introduced a number of new terms, including an indefinite duration, a termination provision limiting Mr. Comeau to only his statutory minimum entitlements upon termination, as well as temporary layoff and suspension provisions. The revised agreement contained the same 3% annual salary increase as had been originally presented to Mr. Comeau. Mr. Comeau did not sign the revised agreement as it did not provide for the promised 5% salary increase and Valcom did not follow up with Mr. Comeau, effectively marking the end of the employment relationship. Mr. Comeau did not, at that time, raise any concern regarding the terms of the revised employment agreement other than with

respect to the salary increase.

Mr. Comeau then sued Valcom, alleging that the unilateral changes to his employment agreement constituted a constructive dismissal.

Court Finds New Contract Triggered Constructive Dismissal

At a Binding Judicial Resolution Conference (similar to a summary judgment motion in Ontario), Valcom argued that since the old agreement had expired, the parties were simply in negotiations that failed to produce a new deal and that Mr. Comeau's failure to respond to the revised agreement meant he had abandoned his employment. The Court disagreed with Valcom, finding instead that Valcom's attempt to displace Mr. Comeau's existing entitlements with new, adverse terms, without notice, consideration or consultation, constituted a "material change" to the employment relationship. More specifically, the Court found:

- The newly introduced terms of employment surrounding layoff, suspension and termination were not just "fine print" but, rather, were essential terms of the employment agreement.
- Comeau's initial silence regarding the newly-introduced layoff, suspension and termination provisions did not disentitle him from raising those issues in litigation as he would not have understood the significance of those new terms before consulting with a lawyer. Notably, there was no evidence before the Court suggesting that Valcom had highlighted those changes when it presented Mr. Comeau with the new employment agreement.
- The fact that the fixed-term employment relationship came to an end did not mean that the history of the parties' employment relationship disappeared. The reality was that Mr. Comeau had 15 years of continuous service with Valcom before his final fixed-term employment agreement expired. By offering him "new" employment on considerably worse terms than in the immediately prior contract (for the same role), Valcom fundamentally changed the essence of the employment contract.

The Court then turned to the question of mitigation. Valcom argued that Mr. Comeau could have fully mitigated his damages by accepting the terms of the revised employment agreement that Valcom presented to him. The Court rejected this position, finding that Valcom never made it known to Mr. Comeau that his role remained open and available to him after their negotiations stalled. At the same time, the Court noted Mr. Comeau's lackluster efforts in reviving the stalled negotiations with Valcom, concluding that both parties were content to let the relationship come to an end. In the result, the Court determined that the reasonable notice period was 10 months, rather than the 17-28 months requested by Mr. Comeau, and that Mr. Comeau was therefore entitled to 10 months' salary and benefits in lieu of reasonable notice.

Takeaways for Employers

This decision reinforces a number of key principles for employers and human resources teams:

1. **Unilaterally introducing new or modified contractual terms can be high-risk:** It is trite law that a unilateral, substantial change to a fundamental term or condition of employment without notice or consent may trigger a constructive dismissal. Employers are advised to seek legal advice before implementing such changes.
2. **An expiring fixed-term contract does not necessarily give an employer free rein to unilaterally modify the terms of employment:** Where an employee is employed pursuant to successive fixed-term contracts, with no material break in service, Canadian courts will often treat that employee as having been continuously employed over the duration of their successive fixed terms. Accordingly, constructive dismissal concerns may apply in contract renegotiations with employees on expiring fixed-term contracts.
3. **Transparency and communication matter:** Radio silence from employers during contract renewals or renegotiations can be interpreted as an intention no longer to be bound by existing terms of employment. Clear and proactive communication is essential, particularly where an employer is proposing material changes to the terms of employment.
4. **Employers bear the burden of proving that an employee failed to mitigate their damages:** Where an employer asserts that an employee failed to mitigate their damages by declining to remain employed with the employer, it must be prepared to show that it communicated to the employee that their job remained available to them and that re-employment was a genuine and viable option.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.