

Citation: 2025 NBKB 207

Docket: FC-328-2023

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

RICHARD SCHICK (Plaintiff)

– and –

The University of New Brunswick (Defendant)

Date of Trial: August 12, 2025

Date of Decision: September 19, 2025

Subject Matter: *Rule 79 - Wrongful dismissal*

Before: Justice E. Thomas Christie

At: Burton, New Brunswick

Appearances: Jessica Bungay, for the Plaintiff  
John Morse and Clarence L. Bennett, K.C., for the Defendant

*Christie, J.*

[1] The Plaintiff, Richard Schick, was hired by the Defendant, the University of New Brunswick, on May 3, 2021, to be head coach of the University's Women's Volleyball team. It was a three-year fixed term contract. Prior to the end of the term of the contract, UNB terminated Mr. Schick for what it considered just cause. His termination occurred on October 31, 2023. In summary, concerns had arisen over the course of his tenure with respect to his behaviour as a coach. In May 2023, six complaints against Mr. Schick were filed with the University's Human Rights & Positive Environment Office by five team members and a team therapist. In response to the complaints, UNB engaged an independent investigator to inquire into the complaints and report and, it placed Mr. Schick on paid leave.

[2] I wish to point out that there is a temptation to view this case, in part at least, as if it is an examination of coaching 'style'. Mr. Schick's manner of coaching was interpreted, by some of the players, as being overly aggressive. UNB had been aware (to some degree) of this dimension of Mr. Schick's coaching duties. However, in this trial, the concern is about the necessity of the parties to live up to the terms (implied and expressed) of the employment contract.

[3] As noted, Mr. Schick began his employment as head Women's Volleyball coach in time to prepare for the 2021-2022 season. Following that season, evaluations were provided to the players. Those evaluations contained certain concerns in relation to Mr. Schick's coaching. On the 2021-2022 end-of-season athlete survey one of the questions or statements posed, to which the player would provide feedback, was the following: "*The head coach on my team communicates effectively, including individual and team expectations, and individual roles with the team. She/he is able to motivate student-athletes*". One reply to that statement read:

He has a one-size fits all approach to motivation and communication with athletes. For some the harsher motivation tactics works however, for some, the communication style significantly impacts performance. [emphasis added]

[4] This answer is reflective of the concerns of some players that existed then and continued to evolve. Being a *Rule 79* Proceeding, certain of the evidence was provided by way of affidavits. This included affidavits from several of the players who were later to file complaints against Mr. Schick. At Tab 1, page 1 of the Record on affidavits at para. 3, team member Paige Lehto deposed that:

During these two seasons [2021-2022, 2022-2023] I was consistently subjected to bullying and harassment by the Plaintiff which led me to seek counselling as I was experiences (*sic*) extreme sadness and loss of motivation that was impacting my performance as an athlete, as well as negatively impacting other areas of my life.

[5] Ms. Lehto concludes her affidavit at para. 16 by noting that:

On May 9, 2023, myself and five of my teammates filed complaints with the University Human Rights and Positive Environment Office as a result of the bullying and harassment myself and my teammates suffered from the Plaintiff.

[6] The team's athletic therapist, Andrea Gabourie, also filed an affidavit. She worked with the team during the 2021-2022 season. She deposes at Tab 2 of the Record, p. 10, para. 4:

Over the course of the 2021-2022 season, I witnessed the Plaintiff shouting at the athletes using profanities during both practices and games. I observed noticeable decline in the athletes' demeanour and wellbeing both on and off the court as a result of how they were being treated by the Plaintiff.

[7] Ms. Gabourie also noted how Mr. Schick would belittle her and detailed the impact it had on her personally.

[8] Other players provided affidavits that reflected similar concerns. Those players were Emma Burns, Madeline Mills, Lorren Benko and Heather Benko. All recounted certain examples

of Mr. Schick's behaviour that led them to feel undermined as players and the impact his behaviour had on them off the court as well. In general terms, the concerns were around Mr. Schick's use of profanity, belittling of athletes in front of others, and an overly aggressive approach to practice sessions and during games.

[9] Kim Colpitts was an assistant coach to Mr. Schick during his two-year tenure with the team. She deposes at Tab 8 of the Record, para. 4 that:

Throughout the two seasons that I was an assistant to the Plaintiff, I experienced consistent disrespect and belittling behaviour from him.

[10] Mr. Schick filed two affidavits in support of his claim. Dates of hire and termination are not disputed. He has been a professional volleyball coach since 2000. His work with UNB began in May 2021 with a six-month probationary period, which he completed satisfactorily. The yearly athlete evaluations for 2021-2022 were reviewed by Mr. Schick with UNB Athletic Director, John Richard. Mr. Schick deposes that, despite the comments noted, there were no issues of consequence raised by Mr. Richard. Nevertheless, upon personal reflection of the athlete evaluations, Mr. Schick deposed that:

While I had made some adjustments to my coaching style and communication style throughout the season, upon reviewing the survey results, I reflected that my coaching and communication style could benefit from some additional adjustments. I was receptive to this feedback and modified my coaching and communication style based on the feedback that I received.

[Record, Tab 9, para. 28]

[11] Similarly, following the 2022-2023 season, team members completed survey questionnaires which were reviewed with Mr. Schick by Mr. Richard. Mr. Schick deposes that the Athletic Director expressed no concerns. In fact, Mr. Schick, being aware that there were certain negative comments in the year-end survey, suggested that Mr. Richard meet with certain players but Mr. Richard, apparently, saw no need to do so.

[12] It was also established by the evidence that Mr. Schick was aware of the concerns of certain of the team members and had met with some of them individually and, on occasion, as a group. On such occasions it appears that Mr. Schick would recognize the issues raised and indicate his desire to work toward resolving the concerns.

[13] At the end of the 2022-2023 season, Mr. Schick had decided that there were certain team members who, although they had been with the team, would be told that their positions were not secure for the upcoming season, and that they would have to tryout if they wished to play in the upcoming season. Three of those so advised were Maddie Mills, Lorren Benko, and Emma Burns. Heather Benko (who testified at trial) was also a team member and sister of Lorren Benko. Paige Lehto was, according to Mr. Schick's affidavit (Tab 9, para. 50), a team member and "*roommate and best friend of a player that I had advised did not have a secure spot on the team*".

[14] Within approximately a week of advising certain of the veteran players that their status was uncertain for the upcoming year, Mr. Schick received notice from Dr. Wayne Albert, Dean of Kinesiology, that six harassment complaints had been made against him. Those complaints were from the five players mentioned in the above paragraph and team therapist, Andre Gabourie.

[15] In response to receipt of the complaints, UNB retained lawyer Dr. Kelly Van Buskirk, K.C., PhD, C.Arb. to investigate the complaints. He released his thorough report to UNB on or about September 5, 2023. The report details the specifics of a significant number of examples of alleged harassing behaviour by Mr. Schick. The findings of Dr. Van Buskirk were not disputed by UNB or Mr. Schick before me. It was a detailed investigation with reasoned conclusions. While keeping count of the 'yes' and 'no' findings is not a useful way to evaluate the conduct under review, it is worth noting that of the thirty incidents identified in the complaints reviewed

by Dr. Van Buskirk, nine were considered by him to be ‘founded’, and twenty-one considered to be ‘unfounded’. Of the nine considered as ‘founded’, most were substantially based on the aggressive use of profanity toward his players and the impact that left on them.

[16] Dr. Van Buskirk’s investigative report concludes as follows:

### **Findings of Fact**

The following facts have been determined from the evidence of the witnesses:

- a. The Respondent has violated the Policy by behaving aggressively and swearing excessively during practices and competitions. This behavior was particularly evident at the outset of the 2021- 2022 season. The Respondent was advised during and after the 2021-2022 preseason tournament that his language and behavior was inappropriate, and he acknowledged the same. Multiple witnesses confirmed the Respondent’s behavior with respect to same. According to several witness accounts, the Respondent has improved his behavior in this regard.
- b. The Respondent also violated the Policy by slamming a ball into the floor in an aggressive manner while shouting loudly. Again, multiple witnesses observed this behaviour, which was admitted by the Respondent.
- c. A significant incident occurred in the fall of 2022 when the Respondent put a player in “timeout” by sending her to a corner of the gym. The Respondent acknowledges that this was inappropriate.
- d. The evidence does not support allegations that the Respondent jeopardized the physical safety of players on the team. Instead, it was acknowledged that the Respondent involved a number of team staff and administrators regarding the activities of the team, all of whom were interested in and attentive to the physical safety of the athletes.

### **Mitigating Factors**

The Respondent did, beginning in the first part of the 2021-2022 season, seek guidance, input and assistance from UNB athletics regarding his relationship with his team members, and he appears to have followed that guidance when it was provided. Further, the Respondent was self-reflective regarding his conduct at various

times and often accepted feedback from players and team staff when it was provided. He has also acknowledged and apologized for his conduct at certain points during his tenure.

It has been confirmed by several witnesses that no complaints about the Respondent were formally advanced against the Respondent until the end of the 2022-2023 season. The timing of formal complaints coincides with the Respondent's confirmation that players on the team would have to try out in the 2023-2024 season. In that regard, it should be observed that the Respondent had essentially inherited a roster of players in 2021-2022 and has now taken steps to create a more competitive environment for players. Some Complainants referenced this new circumstance as a concern to them.

The Respondent has suffered professionally and personally in respect of this matter. It is clear that the conflicts he has experienced with team members have caused him stress, as has the complaints investigation process. Further, the respondent has reported that coaching at UNB has caused strain in his personal life, as his family has been located in British Columbia.

[Emphasis added]

[17] Dr. Van Buskirk submitted his report to UNB on September 5, 2023. Dr. Kathy Wilson Vice-Provost, Learning and Student Experience for UNB, was responsible for taking any required action and took certain steps in response. This included meeting with Mr. Schick and also meeting with the Complainants. In the end, it was her decision to terminate Mr. Schick. Her affidavit, at Tab 7 of the Record, contains the following at para. 16:

After consideration of the Report, and my discussion with both the Plaintiff and the complainants, I accepted the finding contained in the Report that the Plaintiff violated the Policy, and that his continued employment with UNB was no longer possible.

[18] In argument, Mr. Schick noted that he was receptive to comments about his coaching style and adjusted accordingly. In other words, when confronted with his behaviour, he was known to apologize and commit to improvement. Considering the nature and extent of the

misconduct, the surrounding circumstances, and the need for an appropriate but proportionate response, Mr. Schick argued that UNB's response of dismissal was too severe.

[19] UNB argued that it had a duty to the players and the institution to respond as it did. The circumstances, when looked at as a whole, left the University with no choice. The complaints of harassment were significant, and some of the allegations were found by an independent investigation to be valid. As UNB argued in its pre-trial brief at para. 52, "*Once UNB understood the severity of the Plaintiff's behaviour and impact on players it was clear he could not continue as Head Coach of the Team.*"

[20] UNB was of the view that the behaviour of Mr. Schick, as found by Dr. Van Buskirk, represented violations of the essential terms and conditions of his employment and was inconsistent with Mr. Schick's fundamental duties. Mr. Schick's behaviour created a poisoned work environment, so to speak, which could not be remedied under his continued leadership. UNB argued that it acted appropriately in the manner in which it considered and investigated the complaints, that it was fair to Mr. Schick in all respect and, was left with no other choice. Progressive discipline was not an option, UNB believed, given the impact Mr. Schick's conduct had on the team. The players were in a vulnerable position.

## ANALYSIS

[21] In its pleadings, and in its pre-trial brief, UNB asserted that Mr. Schick was employed by UNB at its pleasure, pursuant to s. 36(j) of the *University of New Brunswick Act*, SNB 1984, c. 40. It did not pursue that line of argument at trial. The letter of hire did not say that employment was at the University's pleasure. In fact, it said the opposite – that it was for a fixed term.

[22] In addition, the letter of hire included the following sentence: “*The University reserves the right to end your term appointment at some earlier date by providing to you two (2) month’s written notice of the cessation of your employment or pay in lieu.*” However, it chose not to dismiss Mr. Schick under that provision.

[23] Mr. Schick argued that the letter of termination was deficient in the description of the details justifying the termination. I do not agree, as it was clear that the termination was motivated by the harassment complaints and the findings of the investigation that followed. Mr. Schick knew the reasons for his termination. The termination letter of October 31, 2023, states in part:

As you are aware, on October 16, 2023, we met to discuss the complaints filed under UNB’s Discrimination, Sexual Harassment and Harassment Policy (the “Policy”).

I have reviewed all of the documentation filed by the parties, the investigator’s report and finding, the University Official’s report regarding the complaints, and what we discussed at our meeting; and have concluded that your actions and behaviours have violated the Policy.

[24] In *Cumberland v. Maritime College of Forest Technology*, 2023 NBKB 65, Chief Justice DeWare wrote the following:

[68] Mr. Cumberland is a rigid individual who does not have the ability to appreciate alternate perspectives or consider with any insight differing points of view. These characteristics are apparent in reviewing the various correspondence Mr. Cumberland wrote during his employment and were evident during his trial testimony. Despite the difficulty both Mr. Marshall and Mr. Davies experienced in dealing directly with Mr. Cumberland as his immediate supervisors, they had an obligation to inform him of what was going on. Once the decision was made to terminate Mr. Cumberland’s employment, there was also a decision made to simply ride out the balance of the academic year with as little confrontation with Mr. Cumberland as possible.

[69] Justice Grant spoke of the need for progressive discipline in *Jardine v. Phoenix Petroleum Ltd.*, [2021 NBQB 94 \(CanLII\)](#) at paragraph [118](#):

[118] **The law on wrongful dismissal in Canada is clear that for an employer to satisfy its burden of proving that it has dismissed an employee for cause it must demonstrate that it has employed a system of progressive discipline leading up to the dismissal unless a single incident is so egregious that it warrants summary dismissal**: see Henry v. Foxco Ford Ltd., supra. at para.104. None of the reasons alleged as cause for dismissing Mr. Jardine would, if proven, warrant summary dismissal with the possible exception of his alleged failure to adhere to the new mileage policy. The remainder of the alleged behaviors occurred over a period of time and Phoenix, therefore, had to prove that it used progressive discipline before dismissing Mr. Jardine for those causes.

[Emphasis in original]

[25] The facts from *Cumberland* reveal certain parallels to the present matter, in the sense that the plaintiffs' behaviour, in the course of their job duties, was being examined. The present case turns on whether UNB had sufficient grounds for summary dismissal or whether it should have provided some degree of progressive discipline as a means of attempting to modify Mr. Schick's behaviour. While discipline was certainly warranted (and that can run from verbal warnings to written warnings, through to suspensions, and ultimately termination), in my view, the grounds asserted fall short of justifying summary dismissal. Mr. Schick was entitled to some degree of progressive discipline.

[26] UNB was faced with a series of harassment complaints against Mr. Schick. It retained an outside expert to investigate the complaints. It met with Mr. Schick, the complainants and took time to consider the matter, before deciding to terminate his employment. In my view, while UNB took the steps necessary to properly investigate the complaints and consider the outcome of

the investigation, it owed Mr. Schick an opportunity to reform his conduct with the knowledge that he was being disciplined. All harassment complaints must be taken seriously. UNB has properly done so. But not all violations of an institution's harassment policy require termination. Certain incidents may undoubtedly justify such a step. In this case, the investigative finding was that Mr. Schick's behaviour violated the policy in certain ways, but that some of the complaints were unfounded. In addition, Dr. Van Buskirk found that Mr. Schick had a degree of insight into his issues and the willingness to address them. These are factors which, in my view, support the application of progressive discipline.

[27] Dr. Van Buskirk also noted the coincidence that the originating complaints were filed shortly after certain of the complainants had been told their spot on the team was not secure for the upcoming season. The implication raised by Mr. Schick was that the complainants were motivated (at least in part) by the news that they were not secure on the team. With that said, the coincidence (or any mixed motive) does not make 'right', conduct that was 'wrong'.

[28] UNB has the right to set clear expectations for the behaviour of the coaches it employs. For example (and because it was one of the issues raised and considered in the complaints) if UNB does not want its coaches using profanity in the course of their employment, it could be clear on that point. Moreover, it goes without question that one of those expectations would be that a coach should never harass a player under their charge. The player is entitled to no less. It appears that certain players on the women's volleyball team did not respond well to Mr. Schick's coaching style. Perhaps others did. But for those who found his style to be excessively abrasive and harassing, and suffered emotionally because of it, the scars will remain.

[29] With UNB not having imposed any progressive discipline when it was warranted in the present circumstances, I find Mr. Schick is entitled to the remaining pay on the balance of the three-year term. Both parties accept, in the present circumstances, that to be the applicable basis for damages. UNB in its brief writes at para. 71:

First and foremost, the Plaintiff is not entitled to reasonable notice of termination as his employment was for a fixed-term and his damages are limited to the balance of his contract.

[30] Mr. Schick, in his brief at para. 67, and relying on *Marie Humphrey Schram v. The Government of Nunavut*, 2017 NBQB 143, wrote:

This Court confirmed that where a fixed-term contract is terminated early, the employee is entitled to wages they would have earned during the balance of the fixed term.

[31] The amount of Mr. Schick's unpaid salary for the balance of the term was calculated as being \$43,910.05. I find Mr Schick is entitled to that amount.

[32] He also claims entitlement to the following:

- Loss of group benefit coverage for the remainder of the Employment Agreement in the amount of \$1,858.22;
- Loss of employer pension plan contributions for the remainder of the term of the Employment Agreement in the amount of \$5,269.16;
- Loss of vacation entitlement for the remainder of the term of the Employment Agreement;
- Loss of CPP contributions for the remainder of the term of the Employment Agreement in the amount of \$1,741.77;
- Moving expenses of approximately \$6,500.00;
- Aggravated (moral) damages;
- Pre-and-post judgement interest;
- Costs/Disbursements.

[33] I am not convinced moving expenses associated with a return to Mr. Schick's home in British Columbia are recoverable since return moving expenses do not appear to have been part of the employment agreement to begin with.

[34] I find that there are no aggravated (moral) or punitive damages as UNB acted reasonably, in most respects, in the manner in which it handled the matter once the complainants came forward.

[35] I am satisfied that Mr. Schick is entitled to the Employer's CPP contributions that would have been paid during the balance of the contract which has been calculated at \$1,741.77.

[36] I am unclear as to the value of the vacation entitlement and, since he is entitled in any event to the balance of his full salary for the remainder of the term, I am not prepared to consider something additional for vacation.

[37] As for the claim for loss of group benefit coverage, I will not allow it on the same basis as it was denied in *Schram* at paras. 37-39.

[38] I am prepared to order compensation for loss of UNB's pension plan contributions in the amount of \$5,269.16.

[39] I order interest on the total of all calculated damages from the date on which the originating claim was filed, through to the date the judgement is paid, in the annually calculated amount of 5% (see *Schram*). The parties are to confer and confirm this amount.

[40] Mr. Schick is entitled to costs which I set at \$3,500.00 plus HST and disbursements. I am satisfied that the interests of justice support a deviation from the costs typically associated with a *Rule 79* procedure.

[41] In the result, Mr. Schick is entitled to judgement in the total amount of \$50,920.98 plus costs and interest to be calculated as noted above.

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Justice E. Thomas Christie  
Court of King's Bench of  
New Brunswick, Trial  
Division