

CASE NO.
SANDRA J. HOWLETT
(Appellant)

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- and -

PAGE
DIANNE MARGARET BURTON
(Respondent)

CA164674

Halifax, N.S.

SAUNDERS, J.A.

[Cite as: *Burton v. Howlett*, 2001 NSCA 35]

APPEAL HEARD: January 25, 2001
JUDGMENT DELIVERED: February 14, 2001

SUBJECT: Nannies and corsets. Master and servant. Breach of contract. Hearsay. Proper use of discovery evidence at trial. Standard of appellate review for liability and quantum. Mitigation. Common law “rule” regarding “domestic servants employed by the master”. *Nicholl v. Greaves*, (1864) 17 Common Bench Reports (New Series) 26.

SUMMARY: The appellant appealed the trial judge’s decision ordering her to pay \$31,000 (less a credit for rent to be calculated) plus costs and disbursements for breach of contract after she summarily dismissed a nanny she had engaged to look after her home and four young children. She complained that the judge erred in law by refusing to permit her to introduce as evidence at trial the entire discovery transcript of the respondent, contrary to the provisions of **Rule 18.14(1)(b)**. She alleged other errors, including the trial judge’s treatment of a statement made during the appellant’s 13-year-old daughter’s testimony; giving insufficient weight to the respondent’s failure to mitigate; and refusing to apply the Common Law “rule” applicable to domestic servants whereby the “master” was entitled to terminate at any time upon a month’s notice.

HELD: Appeal dismissed. While technically the trial judge erred in refusing to admit the entire discovery transcript of the respondent - given the very broad language found in **Rule 18.14** - the error was not critical to his ultimate findings or conclusion. He did not err in his treatment of Nicole’s evidence at trial. Sufficient evidence to support his findings and conclusion with respect to both breach of contract and quantum of damage. No error in his sizeable reduction of the respondent’s damage award on account of her failure to mitigate. Assuming, without deciding, there ever was a “rule” for terminating domestic servants, it had no application here, given the parties’ clear intention to execute a binding written contract for a fixed term.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.