

NOVA SCOTIA COURT OF APPEAL  
Cite as: Big Pond Publishing & Production Ltd v. Macumber, 1998 NSCA 157

**Chipman, Pugsley and Flinn, JJ.A.**

**BETWEEN:**

BIG POND PUBLISHING AND  
PRODUCTION LIMITED

Appellant

A. Robert Sampson  
and Tony W. Mozvik  
for the Appellant

- and -

ALLAN RYAN MACUMBER

Respondent

Robert L. Barnes, Q.C.  
for the Respondent

Appeal Heard:  
September 17, 1998

Judgment Delivered:  
September 17, 1998

**THE COURT:**

The appeal is allowed in part with costs of the trial as per oral reasons for judgment of Chipman, J.A.; Pugsley and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

**CHIPMAN, J.A.:**

This is an appeal from a decision of Hamilton, J. finding that there was a wrongful termination by the appellant of a continuing commercial relationship between the parties whereby the respondent would perform as a musician for the appellant in performance. She found that the appellant terminated this relationship without notice, whereas in the circumstances reasonable notice would be 90 days, resulting in a damage award of \$19,890.00 to the respondent. The damages were calculated on the basis of the amount earned by another musician who performed for the appellant during the 90 days following the termination.

Having heard counsel and having reviewed the record we are of the opinion that it has not been shown that Hamilton, J. erred in finding the existence of the commercial relationship or in finding that it was wrongfully terminated.

We are satisfied however that the period of notice, having regard to the previous contractual relationships between the parties and the respondent's own expectations as appears from his testimony, should have been fixed at 60 days. Applying this time period to the earnings of the substitute musician, the damage award should have been \$7,830.00.

The appeal is allowed in part and the decision of Hamilton, J. is set aside and the respondent will recover from the appellant the sum of \$7,830.00, together with costs of the trial on Scale 3 of the Tariffs and disbursements.

As success was divided in this Court, there will be no costs of this appeal.

Chipman, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.