

CASE NO.	VOL. NO.	PAGE
<b>RONALD GASTON</b> (Appellant/Intervenor)	- and -	<b>DIANNE MARGARET BURTON</b> (Respondent)

C.A. No. <b>148490</b>	Halifax, N.S.	<b>PUGSLEY, J.A.</b>
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Cite as: Gaston v. Burton, 1998 NSCA 212

**APPEAL HEARD:** December 8, 1998

**JUDGMENT DELIVERED:** December 15, 1998

**SUBJECT:** **Practice C.P.R. 18; *audi alteram partem* doctrine**

**SUMMARY:** A non-party served with a notice for examination for discovery, at the instance of the plaintiff, failed to appear for examination as scheduled. Counsel for the plaintiff then made an application to Chambers, *ex parte*, for an order for costs against the non-party. The non-party, who was unrepresented, had no notice of the application and was not in attendance. An order requiring him to pay in excess of \$600.00 was granted. Upon retaining counsel, the non-party applied, on notice, to another Chambers judge to set aside the order for costs. The application was dismissed. The non-party appeals from the order of the first Chambers judge, and, as well, appeals from the decision of the second Chambers judge.

**RESULT:** The Court unanimously concluded that both appeals should be allowed. with costs. The first Chambers judge ignored the basic principle that no person should be condemned without having had an opportunity of being heard. The second Chambers judge erred in law when he failed to give any consideration to the reasons set forth in the non-party's affidavit for his failure to appear at the scheduled discovery examination.

It was not necessary to decide the issues of whether the second Chambers judge possessed the jurisdiction to consider an appeal from the first Chambers judge, or whether the **Civil Procedure Rules** permitted cost sanctions to be ordered against a non-party to an action.

**This information sheet does not form part of the court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 13 pages.**