

NOVA SCOTIA COURT OF APPEAL
Citation: Malik v. Islam, 2004 NSCA 148

Date: 20041209
Docket: C.A. 225873
Registry: Halifax

Between:

Qamar Malik

Appellant

v.

Rafiqul Islam

Respondent

Judge: The Honourable Justice Elizabeth Roscoe

Appeal Heard: December 7, 2004

Subject: practice, setting aside default judgement

Summary: In an affidavit filed on the application to set aside the default judgment, the defendant set out in detail the attempts he made to obtain counsel, swore that “I believe I have a good and arguable defence in this matter” and attached a copy of his intended defence. The Chambers judge set aside default judgment. On appeal the plaintiff argued that the defendant had not shown by affidavit facts which would indicate that he had a good defence, because the facts were not set out within the body of the affidavit.

Issues: Did the Chambers judge err?

Result: Appeal dismissed. No application of wrong principles of law or patent injustice. By swearing that he believed he had a good defence as set out in the defence attached to his affidavit, the defendant satisfied the second part of the **Ives v. Dewar** ((1948) 23 M.P.R. 218, (1949) 2 D.L.R. 204) test. The specifics of the defence were incorporated by reference into the affidavit. The first part of the test, that there was a reasonable excuse for not filing the defence on time, was not in issue.

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 3 pages.