

CASE NO.

VOL. NO.

PAGE

BRIAN A. MacLEAN

- and -

BRIAN STEARS

(Appellant)

(Respondent)

CA172665

Halifax, N.S.

**HAMILTON, J.A.
(Orally)**

[Cite as: *Stears v. MacLean*, 2001 NSCA 177]

APPEAL HEARD:

November 30, 2001

JUDGMENT DELIVERED:

November 30, 2001

WRITTEN RELEASE OF ORAL:

December 5, 2001

SUBJECT: **Civil Procedure Rule 12:06**

SUMMARY:

This was an appeal from a decision of a chambers judge refusing to set aside a default judgment when personal service of the originating notice and statement of claim was disputed. The only evidence before the chambers judge was conflicting unchallenged affidavits filed by both parties.

ISSUES:

Did the chambers judge err in failing to consider all of the evidence, or fail to give the appropriate weight to the evidence, surrounding the issue as to whether or not the appellant had service of the originating notice and statement of claim effected upon him.

RESULT:

The court was not persuaded that the chambers judge, on the record before him, committed any reviewable error in concluding that personal service had been effected on the appellant.

Appeal dismissed with costs of \$750.00, inclusive of disbursements, payable by the appellant.

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 1 page.