

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
JOHN RILEY (Appellant)	- and -	TONIA TEMPLE (Respondent)
CA164600	Halifax, N.S.	SAUNDERS, J.A.

[Cite as: *Temple v. Riley*, 2001 NSCA 36]

APPEAL HEARD: January 10, 2001

JUDGMENT DELIVERED: February 14, 2001

SUBJECT: Damages. Default Judgment. Civil Procedure Rules 3, 12, 30 and 33. Alleged sharp practice and breach of professional ethics by a barrister. Error in law. Result amounting to an injustice between the parties.

SUMMARY: Appellant and respondent, both insured, involved in a motor vehicle accident. Notwithstanding acknowledgment by insurer for the respondent that she was liable, respondent went ahead and retained her own counsel to sue. Appellant's insurer denied liability throughout and instructed respondent's counsel to serve appellant personally. Through inadvertence, appellant's insurer failed to engage legal counsel. Default judgment entered on eleventh day. Never notified appellant or his insurer of default. Appellant sought to set aside default judgment and damages award immediately, upon first learning that orders existed. Chambers judge dismissed application. Appellant Riley appealed.

HELD: Appeal allowed on the basis of both errors in law and patent injustice between the parties. Criticized respondent counsel's conduct in his dealings with appellant and appellant's insurer. However, declined invitation to find counsel in violation of *Legal Ethics and Professional Conduct: A Handbook for Lawyers in Nova Scotia*. Such matters better left to Barristers' Society to determine what action, if any, required. In these unusual circumstances, special directions given on costs.

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 21 pages.