

**CASE NO.**

**VOL. NO.**

**PAGE**

DANIEL LEROY GABRIEL  
and BARBARA GABRIEL

DEREK CLARENCE CAMERON

- and -

(Appellants)

(Respondent)

CA 156375

Halifax, N.S.

CROMWELL, J.A.  
(Orally)

**[Cite as: Cameron v. Gabriel, 1999 NSCA 153]**

**APPEAL HEARD:**

December 3, 1999

**JUDGMENT DELIVERED:**

December 3, 1999

**WRITTEN RELEASE OF ORAL:**

December 6, 1999

**SUBJECT:**

**Practice - Judgments and Orders - Setting Aside Judgments  
After Trial where Opposite Party does not appear**

**SUMMARY:**

The plaintiff took out default judgment for damages to be assessed against both defendants and proceeded to an assessment of damages. No one appeared on behalf of the defendants at the assessment. Proper notice of the assessment was given to the defendants and to an insurance adjuster employed by their insurer and numerous medical reports were provided to the adjuster over the months intervening between the accident and the assessment of damages. The insurer made interim payments and had made an offer of settlement in excess of \$100,000.00 which was rejected by the plaintiff. The defendants applied to the Supreme Court to set aside the judgment entered on the assessment and also appealed the assessment to the Court of Appeal. The application to the Supreme Court was dismissed.

**ISSUE:**

Should the judgment entered on the assessment of damages be set aside on appeal?

**RESULT:**

Appeal dismissed. While the Court of Appeal has jurisdiction to hear this appeal, the proper procedure for the defendants to follow in these circumstances was an application under **Rule 30.01(3)**. That having been done and the application dismissed, the Court of Appeal should

only interfere with the assessment if satisfied that failure to do so would likely result in a substantial injustice. The Court was not persuaded that there was any likelihood of a substantial injustice here and the appeal was dismissed.

**This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 2 pages.**