

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
DIANA McAVOY	- and -	CREDIT UNION ATLANTIC LIMITED
(Appellant)		(Respondent)
CA 181981	Halifax, N.S.	CROMWELL, J.A.

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[Cite as: *Credit Union Atlantic Ltd. v. McAvoy*, 2002 NSCA 145]

**APPEAL HEARD:** November 15, 2002

**JUDGMENT DELIVERED:** November 26, 2002

**SUBJECT:** Default judgment – setting aside – “reasonable excuse for failure to file defence”

**SUMMARY:** McAvoy was sued for \$50,000 allegedly converted to her own use by forgery while employed by the Credit Union. She sought legal advice and was advised that the costs of defending the action were far in excess of what she could afford. She did not understand that she could file a defence on her own behalf. She advised counsel for the Credit Union that she would not be filing a defence. Judgment was entered and garnishment commenced shortly after. McAvoy sought new legal counsel who agreed to defend on terms which she could afford and moved promptly to set aside the judgment. The application was dismissed and McAvoy appealed.

**ISSUES:** Did the judge err in principle or did his order give rise to a patent injustice?

**RESULT:** Appeal allowed and default judgment set aside on terms. The judge erred in principle by focusing on whether McAvoy had decided not to defend rather than on the real question of whether she had a reasonable excuse for doing so. He did not consider McAvoy’s evidence that, on the basis of advice she had received, she believed that she had no means to defend and did not know she could file a defence on her own. The judgment was set aside on terms including that the funds realized from garnishment would be paid into Court to the credit of the action.

<p>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 4 pages.</p>
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