

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Owen v. Armstrong*, 2015 NSSC 306

**Date:** 20150603

**Docket:** *Ken* No. 436936A (SCK434370)

**Registry:** Kentville

**Between:**

Derrick Owen

*Appellant*

v.

Ian Armstrong, Suzanne Handley

*Respondents*

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** May 21, 2015, in Kentville, Nova Scotia

**Written Decision:** October 26, 2015  
*{Oral decision rendered June 3, 2015.}*

**Subject:** Small Claims Court Appeal; Setting Aside Default Judgment

**Summary:** The appellant (defendant) received the standard Notice of Claim form from Small Claims Court. The hearing date blank was completed and the form signed by the court clerk below the hearing date in the middle of the page. Underneath that signature was a box containing a notice addressed TO THE DEFENDANT(S) requiring the filing of a Defence within 20 days. The notice address was partly overwritten by a colored stamp. The appellant noted the hearing date and planned to attend to contest the claim, but did not read the NOTICE TO DEFENDANT(S) or file a Defence. The respondent obtained a quick judgment before the hearing date; the appellant appeals the adjudicator's dismissal of his motion to set aside

the quick judgment.

**Issues:** Did the Adjudicator err in law by finding that the appellant did not have a reasonable excuse for failure to file a defence?

**Result:** Appeal allowed. The Adjudicator erred in finding that there was a “clear” direction to the defendant when the documentary evidence showed the writing addressing that direction was significantly compromised/obliterated. The misapplication of the evidence in a material respect produced an unjust result. The appellant had a reasonable excuse and was given 10 days to file a defence, to be followed by hearing on the merits by different adjudicator.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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