

DATE: 20040712
DOCKET: C39115

COURT OF APPEAL FOR ONTARIO

RE: **MERCELIN MITCHELL, KAREEM MITCHELL, VINCENT MITCHELL by their litigation guardian, MERCELIN MITCHELL, CARLINGTON GRAHAM and OMAR GRAHAM (Plaintiffs (Appellants) – and – THE ESTATE OF HARRY TRUSWELL MASON (Deceased) (Defendant/Respondent)**

AND BETWEEN: **MERCELIN MITCHELL (Plaintiff/Appellant) – and – WAWANESA MUTUAL INSURANCE COMPANY (Defendant/Respondent)**

BEFORE: **ABELLA, MOLDAVER and GOUDGE JJ.A.**

COUNSEL: **Mercelin Mitchell
in person
for the appellants**

**Andrew K. Lee
for Wawanesa Mutual Insurance**

HEARD **July 8, 2004**

ENDORSED: **July 9, 2004**

On appeal from the Reasons of Justice Donald R. Cameron of the Superior Court of Justice dated October 21, 2002.

A P P E A L B O O K E N D O R S E M E N T

[1] Despite her effective submissions, we are not persuaded that there is any basis for interfering with Cameron J.'s decision. There was ample evidence on which he could base his finding of liability, and it is not open to us to retry that finding.

[2] While we considered the fresh evidence, we cannot say that it would have altered his findings.

- [3] It was open to the trial judge, based on the submissions, to strike the jury notice.
- [4] The appeal is dismissed but, in the circumstances, without costs.