

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Abbott and Haliburton Company v. WBLI Chartered Accountants*,  
2013 NSCA 66

**Date:** 20130524

**Docket:** CA 397520

**Registry:** Halifax

**Between:**

Abbott and Haliburton Company Limited; A.W. Allen & Son Limited; Berwick Building Supplies Limited; Bishop's Falls Building Supplies Limited; Arthur Boudreau & Fils Ltée; Brennan Contractors & Supplies Ltd.; F. J. Brideau & Fils Limitee; Cabot Building Supplies Company (1988) Limited; Robert Churchill Building Supplies Limited; CDL Holdings Limited, formerly Chester Dawe Limited; Fraser Supplies (1980 )Ltd.; R. D. Gillis Building Supplies Limited; Yvon Godin Ltd.; Truro Wood Industries Limited/Home Care Properties Limited; Hann's Hardware and Sporting Goods Limited; Harbour Breton Building Supplies Limited; Hillier's Trades Limited; Hubcraft Building Supplies Limited; Lumbermart Limited; Maple Leaf Farm Supplies Limited; S.W. Mifflin Ltd.; Nauss Brothers Limited; O'Leary Farmers' Co-operative Ass'n. Ltd.; Pellerin Building Supplies Inc.; Pleasant Supplies Incorporated; J. I. Pritchett & Sons Limited; Centre Multi-Décor De Richibucto Ltée; U. J. Robichaud & Sons Woodworkers Limited; La Quincaillerie Saint-Louis Ltée; R & J Swinamer's Supplies Limited; 508686 N.B. INC. operating as T.N.T. Insulation and Building Supplies; Taylor Lumber and Building Supplies Limited; Two by Four Lumber Sales Ltd.; Walbourne Enterprises Ltd.; Western Bay Hardware Limited; White's Construction Limited; D. J. Williams and Sons Limited; and Woodland Building Supplies Limited

Appellants

AND: White Burgess Langille Inman,  
carrying on business as WBLI Chartered Accountants

First Respondent

AND: R. Brian Burgess

Second Respondent

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**Judges:** Beveridge and Oland, J.J.A.; MacDonald, C.J.N.S. dissenting.

**Appeal Heard:** December 12, 2012

**Subject:** Evidence: Admissibility of expert opinion

**Summary:** The appellants sued for damages they say were caused by the professional negligence of the respondents. The respondents brought a motion for summary judgment on the basis that there was no evidence of a duty of care owed, or breach that caused the claimed harms. The appellants filed an affidavit from one of the parties and from an accounting expert. The respondents asked the motions judge to strike both affidavits; the affidavit from the lay witness on various grounds; and the affidavit from the accounting expert on the grounds that she lacked sufficient independence to permit her evidence to be heard. The motions judge struck the affidavit of the proposed expert on the basis that she had an apparent conflict of interest and hence could not be seen to be independent.

**Issue:** Did the motions judge articulate and apply the correct legal test in deciding admissibility of the proposed evidence?

**Result:** The majority (as per the reasons of Beveridge J.A. and Oland J.A., concurring) found the motions judge erred in the test he said he was applying, which was whether a reasonable observer would see her to be independent. The *Mohan* criteria determine admissibility of expert evidence. The proposed expert met those criteria. There is no additional stand-alone requirement to demonstrate that an expert is or appears to be independent. This is not a case of a trial judge excluding expert evidence because its probative value is outweighed by potential prejudice. Furthermore, the motions judge committed palpable and overriding error in the test he did apply. The proposed expert evidence was admissible. The motions judge made no error in striking the lay affidavit. The minority (MacDonald C.J.N.S.) would dismiss the appeal. The motions judge articulated and applied the correct legal principles when excluding this evidence. It was entirely within his discretion to do so, thereby leaving no basis for this Court to interfere.

*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 51 pages.*