

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Linden v. CUMIS Life Insurance Company*, 2015 NSCA 20

**Date:** 20150303

**Docket:** CA 427262

**Registry:** Halifax

**Between:**

Wanda Linden, as personal representative of  
Patrick Linden (deceased)

Appellant

v.

CUMIS Life Insurance Company

Respondent

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**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** February 3, 2015, in Halifax, Nova Scotia

**Subject:** Insurance – material misrepresentation

**Summary:** Mr. Linden applied for life and disability insurance. The application included a supplementary health questionnaire (“SHQ”) over the telephone. The SHQ included questions about Mr. Linden’s medical history. After Mr. Linden’s death, his widow applied for life insurance benefits. The insurer denied the benefits. Ms. Linden sued the insurer. The judge of the Supreme Court of Nova Scotia dismissed her claim. The judge found that Mr. Linden’s SHQ materially misrepresented his medical history in several respects, particularly his past hospitalizations and abuse of prescription drugs, and this permitted the insurer to avoid the policy. Ms. Linden appealed to the Court of Appeal.

**Issues:** Did the judge err in her ruling that there was a material misrepresentation? Did she err by refusing to accept Ms. Linden's affidavit tendered on the day of hearing?

**Result:** The Court of Appeal dismissed the appeal. The judge made no error in her ruling that there was a material misrepresentation. The judge's refusal to accept the late affidavit neither erred in law nor led to a patent injustice. The affidavit would not have advanced Ms. Linden's case.

*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 18 pages.*