

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Weller v. Hailey's Auto Sales*, 2015 NSSC 120

**Date:** 2015-04-21

**Docket:** Halifax No. 431858A

**Registry:** Halifax

**Between:**

Anthony Weller

Appellant

v.

Bryan Moser,  
carrying on business as Hailey's Auto Sales

Respondent

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**LIBRARY HEADING**

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- Judge:** The Honourable Justice Peter P. Rosinski
- Heard:** March 31, 2015, in Halifax, Nova Scotia
- Subject:** Appeal from a judgment of the Small Claims Court – Section 32 *Small Claims Court Act*
- Summary:** The adjudicator [whose law firm in the past had represented Mr. Weller] determined that Mr. Moser was negligent in his repair of Mr. Weller's car, resulting in damages and the need for repairs to the car. After the hearing, the adjudicator found in favour of Mr. Weller, but not for the full amount of damages claimed. Mr. Weller retained the mechanic who restored his car to working condition as an expert witness, which witness attended the hearing, testified, and whose evidence was accepted by the adjudicator. The adjudicator declined to award any amount for expert witness fees for that witness. Mr. Weller is appealing.
- Issues:**
- (1) Actual or perceived bias of the adjudicator?
  - (2) Refusal to permit a claim for expert witness fees?
- Result:** In the context of the Small Claims Court proceeding in issue here, there was no demonstrated actual bias by the

adjudicator, nor was there a perception of bias to the extent that the adjudicator should have recused himself. While the adjudicator, in the exercise of his discretion to award such costs, was properly concerned with the disproportionate amount of expert fees sought by Mr. Weller in relation to the value of the claim, his decision to award no reimbursement for expert witness fees, in this case was tantamount to exercising his discretion in a manner that would render an injustice. Therefore the court permitted the appeal to the extent that an amount that is reasonable, and was necessary to prosecute the claim should be awarded as reimbursement for expert witness fees under Regulation 15(g) of the Small Claims Court Forms and Procedures Regulations – “out-of-pocket expenses”.

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