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The Chief Appeals Commissioner has a series of Practice Guidelines to help people who are involved in an appeal to the Appeals Commission. Please contact us for additional Practice Guidelines, *Appeal Rules*, or other information.

For more information, contact the Appeals Commission for Alberta Workers' Compensation at:

<p>Edmonton 1100, 10405 Jasper Avenue Edmonton, AB T5J 3N4 Tel: 780-412-8700 Fax: 780-412-8701</p>	<p>Calgary 2300, 801 – 6th Avenue SW Calgary, AB T2P 3W2 Tel: 403-508-8800 Fax: 403-508-8822</p>
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or, through our web site at www.appealscommission.ab.ca

Let us know if:

- your address or contact information changes
- you choose a representative or your representative changes
- you are no longer a representative for a party to or participant in an appeal

A. Introduction

We are committed to keeping our processes and decisions free from bias.

The Appeals Commission addresses and manages bias through all steps of the appeal process as follows:

- **Pre-hearing:** Appeals commissioner conflict of interest declarations under our Code of Conduct; and
- **During the Hearing Process:** through the process set out in this practice guideline.

Appeals commissioner conflicts of interest are managed through the Appeals Commission's Code of Conduct and through its internal processes. Appeals commissioners are expected to disclose potential bias and decline hearing assignments where there may be a reasonable apprehension of bias.

As part of this commitment to fair and impartial processes and decisions, the Appeals Commission has published this practice guideline on how hearing panels deal with allegations of bias. This practice guideline includes information on:

- What bias is
- When to raise an allegation of bias
- How we address bias concerns raised by participants

B. What is Bias?

The law says that there are two primary types of bias that will impact the fairness of a decision.

These are:

- an actual bias, and
- a reasonable apprehension of bias.

Actual bias means that the decision maker has a financial, personal, or business interest in the outcome of a hearing.

Examples:

- The decision maker is a director of a participant's company.
- The lawyer for one of the participants is the decision maker's spouse.

A reasonable apprehension of bias happens when an informed person, viewing the circumstances reasonably and practically, concludes that a decision maker might not be impartial or fair. It is possible there can be a reasonable apprehension of bias where a decision maker is not influenced improperly, but it is reasonable that an outsider would think they were biased.

Examples of circumstances that might form a reasonable apprehension of bias:

- One of the participants to the hearing is a close friend of the decision maker's spouse.
- The decision maker has a financial interest in one of the participant's businesses.
- The decision maker appears to show hostility towards one of the participants.
- The decision maker appears to favour one of the participants.

Examples of circumstances that Alberta Courts have found do not form a reasonable apprehension of bias:

- The decision maker was previously employed in the workers' compensation system.
 - The Alberta Court of Appeal has stated that there is **no** reasonable apprehension of bias where the objection is only that members of the Appeals Commission previously worked for the Workers' Compensation Board. *Gahir v. Alberta (Workers' Compensation, Appeals Commission)*, 2009 ABCA 59
- The decision maker heard multiple prior appeals of a participant or representative.
 - The Alberta Court of Appeal has stated that a member of a tribunal is not disqualified from a hearing for bias because they have previously heard or decided similar cases. *McCauley Community League v. Edmonton (City)*, 2012 ABCA 314
- The same decision maker sat on other appeals with similar issues.
 - The Alberta Court of Appeal has stated that the institutional limits of a tribunal must be considered when there is an allegation of bias because the same panel member sat on a previous hearing with a similar issue. *Beier v. Vermilion River (County) Subdivision and Development Appeal Board*, 2009 ABCA 338
 - The Court of Appeal has also stated that the test is not whether the judge or tribunal member has opinions or has previously expressed them, it is whether their mind is closed or resists persuasion, and cannot be changed by reasonable argument and evidence. *R. v. J.L.A.*, 2009 ABCA 344

C. When Should You Raise a Concern About Bias?

A participant must raise a concern about bias as soon as they become aware of it. If a participant does not raise it as soon as possible, they may lose the ability to raise it later.

The following section outlines how we address concerns about bias once they have been raised by a participant.

D. How We Address Bias Concerns Raised by a Participant

If a participant or their representative would like to know the appeals commissioners assigned to hear their appeal, they can contact the assigned appeals officer for this information three business days prior to the scheduled hearing. Please note that, due to unexpected issues which may arise, the panel composition is not guaranteed and could change up to the day of the hearing.

The assigned panel must deal with any bias concerns as soon as they are raised. The appeals commissioner who is the subject of the concern remains part of the assigned panel while the bias concern is considered.

All participants will have the chance to comment on the bias concern before the panel makes a decision on it. The appeals commissioner who is the subject of the concern may also tell the participants and the panel about the circumstances related to the concern.

After considering all of the comments, the panel will decide whether or not there is an actual bias or a reasonable apprehension of bias.

For most hearings, the panel will tell the parties its decision on bias before continuing with the hearing. For documentary hearings, the panel will decide whether there is an actual bias or a reasonable apprehension of bias before considering the merits of the appeal.

If the panel decides that there is no actual bias or reasonable apprehension of bias, the appeal hearing will continue with the appeals commissioner in question as a panel member.

If the panel decides there is an actual bias or a reasonable apprehension of bias, the appeals commissioner will remove themselves and the appeal hearing will proceed with the remaining panel members.

Participants' concerns about bias affect the credibility and integrity of the Appeals Commission as a whole. For this reason, the panel will tell the Chief Appeals Commissioner about any bias concerns as soon as the panel issues its written decision on the merits of the appeal.

As with rulings on other preliminary matters arising during a hearing, a panel's decision about bias will not be reconsidered before the panel issues its written decision on the merits of the appeal.