

Contents

A. What is Bias? 2

B. Our Commitment..... 2

C. Bias Before the Hearing 3

D. Bias at the Hearing..... 3

E. The Chief Appeals Commissioner Must be Informed..... 3

F. Bias Outside the Hearing Process..... 3

G. Procedures for the Chief Appeals Commissioner 4

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:

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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. What is Bias?

Actual bias occurs when factors, such as financial interest or a relationship with one of the parties or participants, improperly influence the decision-maker.

Actual bias does not happen as often as “a reasonable apprehension of bias”. A reasonable apprehension of bias happens when an informed person, viewing the circumstances realistically and practically, concludes that a decision-maker may not be impartial or fair. A reasonable apprehension of bias includes circumstances where the decision-maker is not actually improperly influenced, but it is reasonable for an outsider to perceive bias.

The test for reasonable apprehension of bias is an objective one. The test is described in Appeals Commission Decisions 2007-818 and 2009-1103.

2007-818

“The objective evidence test is whether a reasonable and informed observer would have a reasonable apprehension of bias from that objective evidence. If the objective evidence indicates that the informed observer concluded that there was a concern that the state of mind of the panel member was closed or predisposed to a particular result on the material issues and, therefore, not likely to be impartial or fair in making a decision, then a reasonable apprehension of bias would exist.”

2009-1103

“Recently, the Alberta Court of Appeal in Beier v. Vermilion River (County) Subdivision and Development Appeal Board 2009 ABCA 338 (CanLII) considered the test of apprehension of bias in the context of a quasi-judicial tribunal in Alberta. It refined the test, holding that the test to determine whether an apprehension of bias has been established is whether an informed person, viewing the matter realistically and practically, would have a reasonable apprehension of bias. In the case of administrative tribunals, the context must be taken into account, including the role and function of the tribunal, the requirements of natural justice and institutional constraints faced by the administrative tribunal.”

Circumstances potentially giving rise to a reasonable apprehension of bias include:

- an apparent interest in the outcome of the appeal
- conduct showing favour or hostility towards one of the parties or participants
- conduct demonstrating actual or reasonable appearance of predetermination or prejudgment and an unwillingness to maintain an open mind
- a prior relationship with a participant

Not every past relationship or connection gives rise to bias concerns. Only those that an informed person would reasonably conclude might interfere with the decision-maker’s impartiality are of concern (for example, a strong relationship, or a recent one).

B. Our Commitment

We are committed to keeping our decisions free from bias. To do so, we have a process of checks and balances to identify bias at the earliest opportunity. Guarding against bias—sometimes called “the rule against bias”—is an important principle of natural justice.

The rule against bias means that decision-makers must focus only on the relevant law and evidence presented in the case. The policy underlying this rule is that justice must not only be done, but must be seen to be done.

We expect Commissioners to guard against bias and to inquire into any situation that might suggest a reasonable apprehension of bias. All Commissioners must disclose potential bias situations, and we maintain a record of these disclosures in order to avoid assigning them to cases that might give rise to an apprehension of bias.

C. Bias Before the Hearing

We expect Commissioners to decline assignments that could involve a reasonable apprehension of bias. This eliminates many bias concerns before the hearing even starts.

If a Commissioner has any doubt about whether circumstances suggest a reasonable apprehension of bias, the Commissioner will consult the Chief Appeals Commissioner (or delegate). He or she will decide if it is necessary to replace the Commissioner on that appeal. If the Chief Appeals Commissioner decides the circumstances are insignificant, the Commissioner may continue with the hearing.

D. Bias at the Hearing

Participants in the appeal must raise concerns about bias at the earliest opportunity. If a participant has a bias concern, but fails to raise it immediately, the participant may have waived the right to raise it later. The panel must deal with any bias concerns immediately.

To decide if a reasonable apprehension of bias exists, the panel, including the Commissioner in question, will hear the participant's submissions on the bias allegation. The panel then adjourns to the caucus room to decide the matter. The final written decision on the merits of the appeal will include reasons for the decision on the bias allegation.

If the panel decides there is no reasonable apprehension of bias, the panel will return to the hearing room, and the Commissioner in question will continue to serve on the panel.

If the panel decides there is reasonable apprehension of bias, the Commissioner will be excused and the hearing will proceed with the remaining panel members.

E. The Chief Appeals Commissioner Must be Informed

Allegations of bias affect the credibility and integrity of the Appeals Commission as a whole. For this reason, the panel must tell the Chief Appeals Commissioner about the nature of all bias allegations as soon as the panel issues its written decision.

F. Bias Outside the Hearing Process

If a Commissioner sees a potential apprehension of bias regarding any matter before the Appeals Commission, even if it is not linked to an appeal assigned to him or her, he or she cannot discuss the matter until the Chief Appeals Commissioner decides what to do.

If a possible bias concern comes up in a meeting, the Commissioner affected must leave for that portion of the meeting. The Commissioner's absence must be noted in any minutes of the meeting, and the discussion of the bias concern will be deleted from that Commissioner's copy of the minutes.

G. Procedures for the Chief Appeals Commissioner

This process applies to the Chief Appeals Commissioner when he or she is either on the panel of an appeal or the Chief Appeals Commissioner sees potential for bias in an appeal he or she is not participating in.

In such cases, Commission staff must direct communications on that appeal to a Vice-Chair of the Appeals Commission. The Chief Appeals Commissioner will not participate in the choice of the panel members, in the scheduling or conduct of the hearing, or in the release of the panel's decision.

For more information

For information on actual bias and conflict of interest, see our Code of Conduct on our web site www.appealscommission.ab.ca. You may also obtain a copy from our offices (see page 1 of this guide for contact information).