

10. Bias and Conflict of Interest

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with situations where a party to an arbitration alleges that the arbitrator is in a conflict of interest or is biased.

An arbitrator will refuse to conduct a hearing if he or she is satisfied that there is a reasonable apprehension of bias. A reasonable apprehension of bias exists when an arbitrator is satisfied that a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator.

A reasonable apprehension of bias may exist where the arbitrator has a personal or financial interest in the case which he or she is to hear.

Examples of interests or relationships which give rise to claims of bias

- A financial interest may exist in any situation where the arbitrator has a financial stake in one of the parties which is appearing before him or her. If a hearing involves a company in which the arbitrator holds shares, this could indicate a financial interest of the arbitrator in the outcome of the hearing.
- The fact that the arbitrator and one of the parties previously had a landlord and tenant relationship may be raised as grounds to support a bias claim. The passage of time may make this claim less significant, depending on the nature of the relationship. For example, where the arbitrator was the tenant of a large corporate landlord and had little or no contact with the officers or directors of that corporation, any claim of bias would usually end when the landlord/tenant relationship ends. On the other hand, if the arbitrator had direct personal contact with the other party, either as a landlord or tenant, bias may continue to be an issue for a longer period of time.
- Membership of a party in a large organization to which the arbitrator also belongs is not sufficient to support the suggestion of bias or an appearance of bias.
- A family relationship may be sufficient to support an allegation of bias. An arbitrator should not hear a case involving a member of his or her immediate or extended family.
- A personal friendship may be sufficient to support an allegation of bias. An arbitrator should not hear a case involving a close personal friend.
- Relationships of the same kind and degree with an agent or lawyer appearing on behalf of a party may support a claim of apprehension of bias. A relationship of the same kind or degree with a material witness of one of the parties may also support a claim of apprehension of bias.

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What bias is not

The fact that one or both of the parties may have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.

Procedure for party to follow if allegation of bias is made

(a) Prior to application for arbitration

If a party to an arbitration hearing is related to or knows one of the arbitrators, in his or her region, personally, the party should advise the Residential Tenancy Office as soon as possible. If appropriate, the Office will ensure that another arbitrator is appointed to conduct the hearing.

(b) At the arbitration hearing

If a party discovers at an arbitration hearing that the arbitrator is known to him or her or to the other party, the party should, as soon as possible, advise the arbitrator of the relationship. If a party discovers that the arbitrator has a financial or other personal interest in a matter which is about to be heard by the arbitrator, the party should advise the arbitrator of this as soon as possible.

The arbitrator will make a decision whether he or she can proceed to conduct the hearing. If a party waives any right to object to the arbitrator hearing the case, the arbitrator will proceed to hear the case and will note this in his or her decision. If a party waives any right to object to the arbitrator hearing the case, the arbitrator will proceed to hear the case and will note this in his or her decision. If the right to object is waived at the arbitration hearing, the party is unlikely to succeed on the ground of bias on judicial review.

If an allegation of bias or conflict of interest is raised at the hearing, the arbitrator will decide whether or not there is any basis to support the allegation and if he or she so concludes, will withdraw and forward the file to the Director for the assignment of another arbitrator.

In appropriate circumstances the arbitrator may reserve his or her decision and if necessary obtain further information relevant to the issue. For example, if the allegation is that the arbitrator previously had a professional relationship with one of the parties, the arbitrator may wish to consult his or her files to confirm whether or not he or she has ever dealt with the party in question. Any information obtained by the arbitrator will be disclosed to both parties.

If the arbitrator concludes that there is no reasonable apprehension of bias then the hearing will proceed and this will be noted in the arbitrator's decision.