

ADMINISTRATIVE LAW IN CANADA

THIRD EDITION

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file a newspaper clipping without an affidavit from the journalist who heard the comments and wrote the article.¹²²

If the tribunal decides that one of its members is biased, that member should be required to have nothing further to do with the proceeding and should avoid all communication with the panel until after the final decision is made.¹²³ If this member's absence leaves the tribunal without a quorum, it may be required to commence the hearing again before a new panel. If the whole panel is biased, the tribunal may adjourn the hearing to be heard by another unbiased panel.

Allegations of bias should be addressed at the outset of the hearing. This is because the bias of one tribunal member can taint the whole decision, even though a majority of members were not biased. It is assumed that the biased member influenced the other members.

7. Objection and Waiver

The parties may waive bias. If a party was aware of bias during the proceeding but failed to object, it may not complain later when the decision goes against it.¹²⁴ An objection should be stated when the bias first comes to the party's attention.¹²⁵

It is unwise and unnecessary to absent oneself from proceedings after the tribunal has ruled against an objection. If the objection is clearly raised and not withdrawn, continued participation will not be interpreted as acquiescence.¹²⁶

8. Necessity

If all eligible adjudicating officers are subject to the same allegation of bias, out of necessity they will not be disqualified, because the legal requirements of the statute that they enforce must be carried out.¹²⁷ Similarly, if the disqualification of a tribunal member for bias leaves the tribunal unable to provide a quorum because there is no other person eligible to serve on the tribunal, the biased member may be permitted to serve.¹²⁸

¹²² *Cameron v. East Prince Health Authority* (1999), 176 Nfld. & P.E.I.R. 296 at 313 (P.E.I.S.C.).

¹²³ *Roberts v. College of Nurses (Ont.)* (1999), 122 O.A.C. 342 (Div. Ct.).

¹²⁴ *Syndicat canadien de la Fonction publique, section locale 1378 v. Résidences Mgr. Chiasson Inc.* (1996), 172 N.B.R. (2d) 308 (C.A.).

¹²⁵ *Wasylshen v. Law Society of Sask.* (1987), 53 Sask. R. 232 (C.A.), leave to appeal to S.C.C. refused (1987), 55 Sask. R. 240n (S.C.C.); *Human Rights Tribunal v. Atomic Energy of Canada Ltd.*, [1986] 1 F.C. 103 (C.A.), leave to appeal to S.C.C. refused (1986), 72 N.R. 77n (S.C.C.).

¹²⁶ *McGill v. Brantford (City)* (1980), 111 D.L.R. (3d) 405 at 418 (Ont. Div. Ct.).

¹²⁷ *Caccamo v. Canada (Minister of Manpower & Immigration)* (1977), 75 D.L.R. (3d) 720 at 726 (F.C.A.).

¹²⁸ *Kalina v. Directors of Chiropractic (Ont.)* (1981), 35 O.R. (2d) 626 at 628 (Div. Ct.), leave to appeal to C.A. refused (1982), 35 O.R. (2d) 626 (C.A.).