

BCCAT February 2025 Roundtable Session – Cases of Interest (Bias)

CASE	CONTENT OF INTEREST
Leading cases on test for bias	
<i>Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)</i> , 2015 SCC 25	Conduct of a trial judge during hearing gave rise to a reasonable apprehension of bias. Court reiterates the test for establishing bias and the burden (paras. 20-37).
<i>Wewaykum Indian Band v. Canada</i> , 2003 SCC 45	Discussion of the meaning of “actual bias” (paras. 62-68). Issue concerned Justice Binnie’s past status as Associate Deputy Minister during the dispute between the parties.
<i>Committee for Justice and Liberty v. National Energy Board</i> , [1978] 1 S.C.R. 369	The well-established test for a reasonable apprehension of bias was first set out in this case and is as follows: . . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.] [at p. 394, per de Grandpré J. (dissenting)]
Attitudinal bias from statements	
<i>Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)</i> , [1992] 1 S.C.R. 623	Public statements made by a commissioner on the subject of a hearing indicated a reasonable apprehension of bias. The Court held the order of the Board of Commissioner of Public Utilities was void.
Attitudinal bias from decision-maker interventions	
<i>District Director, Metro Vancouver v. Environmental Appeal Board</i> , 2024 BCSC 1064 (appeal pending)	Court concluded that interventions of the EAB during a lengthy hearing gave rise to a reasonable apprehension of bias. There is a notable discussion on the principles of waiver in the context of bias (paras. 207-233).
Relational bias	
<i>North Vancouver (City) v. British Columbia (Utilities Commission)</i> , 2023 BCCA 203	Bias alleged to arise from the former employment of the decision-maker. Leave to appeal on the decision regarding bias refused (paras. 11-18 and 29-35).

<p><i>Independent School Authority v. Parent</i>, 2022 BCSC 570</p>	<p>Allegation of bias arose from former professional relationship between counsel and decision-maker. Court did not accept that a reasonable apprehension of bias was made out (paras. 25-45).</p>
<p>Institutional bias</p>	
<p><i>R. v. Lippé</i>, [1991] 2 S.C.R. 114 (see also, <i>Bell Canada v. Canadian Telephone Employees Association</i>, 2003 SCC 36)</p>	<p>The Court modified the reasonable apprehension of bias test to be framed as follows: “would a well-informed person, viewing the matter realistically and practically, have a reasonable apprehension of bias <u>in a substantial number of cases?</u>” [emphasis added]. If this question is answered in the negative, then any bias allegation must be brought on an individual, case-by-case basis (p. 144).</p>
<p><i>Sutherland v. British Columbia (Superintendent of Motor Vehicles)</i>, 2018 BCCA 65</p>	<p>Institutional bias alleged to have arisen from the organization and structure of RoadSafetyBC and alleged pressure on decision-makers (paras. 43-83).</p>
<p><i>Bui v. British Columbia (Superintendent of Motor Vehicles)</i>, 2018 BCCA 168</p>	<p>Application of the presumption of regularity where a decision-maker receives legal advice and does not disclose it (paras. 33-38)</p>
<p><i>Toor v. British Columbia (Superintendent of Motor Vehicles)</i>, 2018 BCSC 2108</p>	<p>Allegation of bias arose from the practice of RoadSafetyBC adjudicators not to provide detailed reasons for revoking a prohibition (paras. 38-39). Court concluded the prior decisions did not displace the presumption of regularity.</p>