

Legal tips for athletes

One in a series from the Sport Solution, a not-for-profit program at the University of Western Ontario helping Canadian high performance athletes resolve legal conflicts. The service is available at no cost to all national team athletes who are members of Athletes CAN. To receive confidential advice contact the Sport Solution toll free at 1-888-434-8883 or email law.sportsolution@uwo.ca.

What is bias?

Bias is a lack of neutrality on the part of a decision maker with regard to the issue being decided. If a member of a tribunal is biased, the decision reached by that tribunal can be overturned upon judicial review.

There are two kinds of bias - actual bias and reasonable apprehension of bias.

Examples of actual bias include financial interest in the outcome of the decision, a close, personal connection with one of the parties. The clearest example of a bias would be where an individual sitting on a tribunal is involved in the decision that is being appealed.

Reasonable apprehension of bias is less straightforward. It is defined by S. Blake in *Administrative Law in Canada* as:

“a situation where a reasonable person, knowing the facts concerning the member of the tribunal, would suspect that the member may be influenced, albeit unintentionally, by improper considerations to favour one side in the matter he or she is to decide.”

Reasonable apprehension of bias is more of a notion that bias exists. While there may not be clear facts revealing the bias, a strong argument will support allegations of bias.

Once bias has been raised, it is up to the tribunal to determine whether or not the bias actually exists.

Who can be biased?

Anyone sitting on the tribunal may be biased.

When do you raise it?

It is best to raise the issue of bias prior to the tribunal hearing so that the biased individual can be replaced. Any allegations of bias after the fact will be ineffectual.

How do you raise it?

Contact the person or organization that has set up the tribunal hearing and informed you of it. Find out who is sitting on the tribunal and what they do. If you believe that one of these tribunal members has actual bias or you have a reasonable apprehension of bias, notify the person or organization in charge of the tribunal hearing.