



Community Services  
Employment Standards & Residential Tenancies



Policy: ESRT-6040-004

## Policy and Procedure

# Bias and Conflict of Interest

This policy provides guidance to staff at the Employment Standards and Residential Tenancies Branch and the public in understanding our internal processes. This policy is not law. To the extent that this policy conflicts with any federal or territorial legislation, the legislation prevails. This policy may be amended or revised by the Director of Employment Standards and Residential Tenancies. If you have questions about the policy, please contact the Employment Standards and Residential Tenancies branch by phone at (867) 667-5944 or email at [eso@yukon.ca](mailto:eso@yukon.ca) or [rto@yukon.ca](mailto:rto@yukon.ca).

### Purpose

To describe the process for responding to allegations by a party to a proceeding at the Employment Standards and Residential Tenancies branch (the “Branch”) that their adjudicator is in a conflict of interest or is biased.

### Background

The Residential Tenancies Officers and Employment Standards Officers (“Officers”) who determine disputes and complaints under the *Residential Landlord and Tenant Act* and *Employment Standards Act* must take steps to avoid allegations of bias.

A reasonable apprehension of bias exists when a reasonable person, with knowledge of all the relevant circumstances, would conclude that there is an appearance of bias.<sup>1</sup> For example, a reasonable apprehension of bias may exist if an Officer has a personal or financial interest in the case. This could include holding shares in a company that is subject to an employment standards complaint or recently having a landlord/tenant relationship with a party to a residential tenancies dispute.

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<sup>1</sup> *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, at 636; *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369, at 394.

The fact that one or both parties to a dispute have appeared before an Officer before, does not indicate bias. Even if the party had their claim dismissed or findings made against their interest, this alone will not support a claim of bias.

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If a party to a dispute is related to or knows personally one of the Officers, the party should advise someone at the Branch as soon as possible. Similarly, the Officers will notify the Director as soon as possible if they are assigned to a file in which there may be a conflict. If a conflict of interest has been identified, another Officer will be assigned to hear that dispute.

If concerns of bias arise during an investigation or while dispute resolution is ongoing, parties should follow the following procedure:

- A. Once a party becomes aware of a real or potential conflict of interest with the assigned Officer, they should raise their concern with the Officer as soon as possible.
- B. The Officer will consider the allegation and decide whether there is any basis to support the allegation. They may invite both parties to make submissions on the topic. If they identify a basis for the allegation, the Officer will withdraw, and the file will be re-assigned to another Officer. If the Officer concludes that there is no reasonable apprehension of bias, then the matter will proceed, and the allegation and decision will be noted in the Officer's ultimate decision.

## **Additional information**

Allegations of bias are typically heard and decided by the decision-maker against whom bias is alleged. In considering whether there is a basis for the allegation, the law imposes a strong presumption of impartiality. The burden of proving bias rests with the party making the allegation to provide cogent evidence showing that, in all the circumstances, an informed and reasonable observer would apprehend that there was bias.<sup>2</sup>

## **Policy history**

Date	Version number	Description
June 10, 2024	1	Policy drafted

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<sup>2</sup> *R. v. S.(R.D.)*, [1997] 3 SCR 484, at paras. 111, 114.