

THE PROBLEMS OF PROVING ACTUAL OR APPARENT BIAS: AN ANALYSIS OF CONTEMPORARY DEVELOPMENTS IN SOUTH AFRICA

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SUMMARY

This article takes a critical look at the divergent approaches of courts in constructing the meaning of actual and apparent bias in adjudicative contexts. It argues that while proving actual bias on the part of an adjudicator may not always be easy and parties often revert to apprehended bias, an allegation of bias in any adjudication process is a matter that courts take very seriously. This notwithstanding, the courts have failed to consistently demarcate the necessary elements and threshold of proof that complainants must overcome to secure a successful challenge of decisions based on adjudicative impartiality. Upon critical evaluation of the decisions on the subject so far rendered, this article suggests that the pattern which has seemingly emerged is that which weighs the allegations of bias against the presumption of impartiality and the requirements of the double reasonableness test.

KEYWORDS: Impartiality; actual bias; apparent bias; reasonable apprehension of bias; presumption of impartiality; double reasonableness test; fair-minded observer; bad faith

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