

ADMINISTRATIVE BIAS IN SOUTH AFRICA

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Summary

This article reviews the interpretation of section 6(2)(a)ii of the Promotion of Administrative Justice Act which makes an administrator “biased or reasonably suspected of bias” a ground of judicial review. In this regard, the paper reviews the determination of administrative bias in South Africa especially highlighting the concept of institutional bias. The paper notes that in spite of the formulation of the bias ground of review the test for administrative bias is the reasonable apprehension test laid down in the case of *President of South Africa v South African Rugby Football Union(2)* which on close examination is not the same thing. Accordingly the paper urges an alternative interpretation that is based on the reasonable suspicion test enunciated in *BTR Industries South Africa (Pty) Ltd v Metal and Allied Workers Union* and *R v Roberts*. Within this context, the paper constructs a model for interpreting the bias ground of review that combines the reasonable suspicion test as interpreted in *BTR Industries and R v Roberts*, the possibility of the waiver of administrative bias, the curative mechanism of administrative appeal as well as some level of judicial review exemplified by the jurisprudence of article 6(1) of the European Convention of Human Rights, especially in the light of the contemplation of the South African Magistrate Court as a jurisdictional route of judicial review.