



BIAS, BIAS!



Only YOU can prevent successful
allegations of bias.

Intro



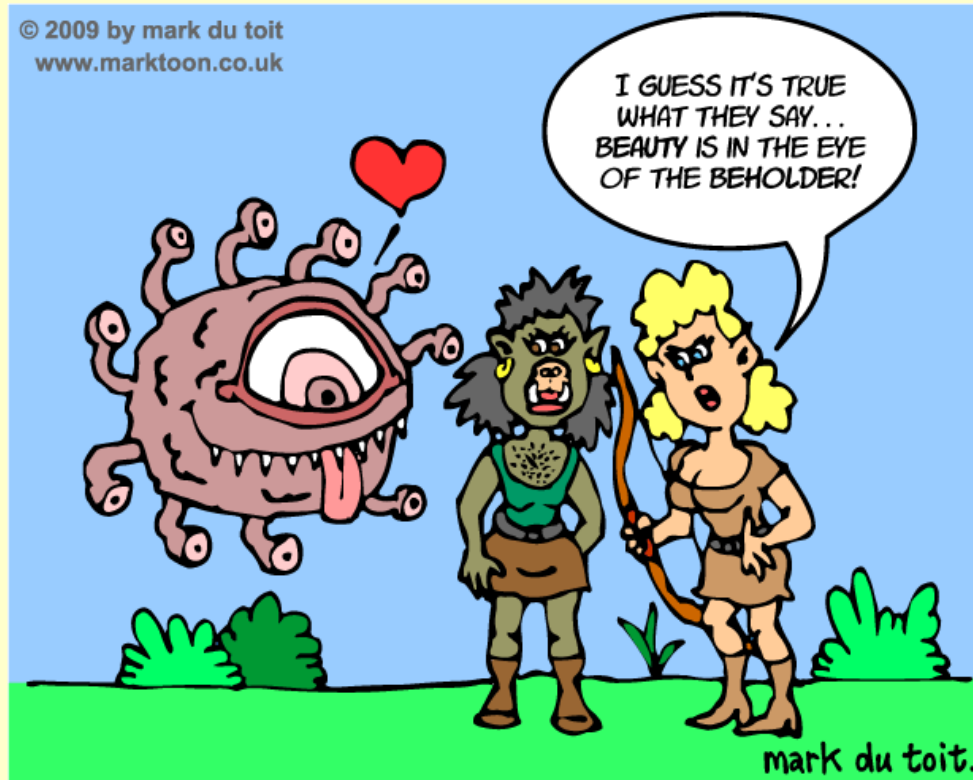
Basic principles:

- impartiality is part of admin justice
- parties are entitled to impartiality
- burden of proof is on the party making the allegation
- if there is bias (actual or apprehended) the entire process is tainted

d&dtoon

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Don't worry.....

- the test hasn't changed!
- beauty may be in the eye of the beholder but bias is in the eye of the reasonable and informed person.





- watch for “institutional bias” or “relational bias”
- some parties have difficulty accepting that decision-makers can achieve impartiality in the face of previous experience
- it is helpful to tribunals to hire people who understand some aspect of their business
- look to your statutory provisions – do they contemplate “experience”?

Five Rules

Rule 1

Only you can prevent successful allegations of bias

- tribunals have no control over a party's choice to allege bias
- an ounce of prevention is worth a pound of cure
- ultimately the responsibility rests with each individual decision-maker



Five Rules

Rule 2

Handle preparation for the hearing carefully.

- review the file with a view to any prior involvement with the particular issue or the parties involved
- consult applicable guidelines (i.e. *Code* or protocol)
- when in doubt, consult with counsel, colleagues or chief



Five Rules

Rule 3

Treat every allegation seriously.

- parties must raise the concern at the earliest opportunity
- deal with issue immediately
- hear submissions, make a decision
- If you reject the argument, proceed with the hearing and provide written reasons as a preliminary matter in the merits decision



Five Rules

Rule 4

Keep an open mind, listen to what the parties are saying.

- review the allegations carefully
- at the Appeals Commission, it is a panel decision as opposed to the individual's decision



Five Rules

Rule 5

Make sure the fire is out completely out before leaving it.

- where allegations are rejected, give written reasons
- this is often your only opportunity to put information on the record



Stand Tall

- not simply a matter of side stepping potential difficulty
- don't surrender management of the proceeding to the parties
- stepping away costs time and money





SMOKEY SAYS—

**Care will prevent
9 out of 10 forest fires!**

Don't Panic – Be prepared!

- use your *Code* and any other guidelines
- remember your training!
- disclose
- mind your manners



Stop, drop and roll

- **Stop** and hear the allegation and carefully consider the response.
- **Drop** the issue back to the party making the allegation.
- **Roll** with the case law.



Don't be afraid to seek advice

- Counsel is likely aware of examples that will help you make your decision.
- Colleagues can offer their own experience



