

Faculti Summary

<https://faculti.net/refining-the-reasonable-apprehension-of-bias-test/>

This video video discusses research by authors EULA Hughes and their co-author into the law surrounding judicial disqualification, particularly focusing on the "reasonable apprehension of bias" test in Canada. They noticed a discrepancy in how judges understood and applied this test during educational seminars, prompting them to survey provincial and territorial judges. This video video survey revealed significant variability in judges' interpretations of the test in marginal situations.

The authors propose a new approach to applying the bias test by suggesting that judges balance the specific circumstances that raise concerns of bias with the implications of their recusal on the reputation and effective administration of justice. They argue that judges should disqualify themselves more readily in high-stakes situations where recusal has minimal impact on judicial efficiency, while being more reluctant in lower-stakes cases or when disqualification seems strategically advantageous to one party.

The authors call for judges to explicitly discuss these considerations when making disqualification decisions, contributing to greater understanding among litigants, counsel, and judges about the reasoning behind judicial outcomes related to bias and impartiality.