

Ontario Civilian Police Commission

Presentation to:

SOAR's Annual Conference

Swimming With Sharks: Getting In And Out Of Trouble (Conflict Of Interest And Bias)

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Challenging Topics

- **Three difficult subjects for an adjudicator:**
 1. An unrepresented party
 2. Motions e.g. adjournment, disclosure, bias
 3. Whether or not there is a conflict of interest for a Panel Member

Conflicts of Interest

- **Conflicts of Interest:**
 1. Actual
 2. Potential
 3. Perceived
- Sometimes created by statute e.g. *Police Services Act*, membership on police services boards
- Perceived conflicts often lead to Bias Motions

Example of Bias Motion

- **Alcohol and Gaming Commission of Ontario (“AGCO”)**

- 1. Decision of AGCO Panel**

- ❖ Restaurant Innovations Inc. (Moose Winooski’s)
(Re:) 2010 CanLII 81007

- 2. Decision on Appeal to the Divisional Court**

- ❖ Dated February 13, 2012
- ❖ Moose Winooski’s v. AGCO et al 2011 ONSC 543

Example of Bias Motion (continued...)

3. Set up of AGCO and Appeals

- ❖ Registrar of AGCO issued a Notice of Proposal to suspend licensee's Liquor License for 45 days due to a specific event
- ❖ Licensee appealed the Notice of Proposal
- ❖ At the time, appeals from decisions of the Registrar were heard by the Board of the AGCO
- ❖ The Registrar and the CEO of the AGCO were the same person
- ❖ The CEO reported to the Board

Example of Bias Motion (continued...)

- The hearing regarding the Notice of Proposal appeal is on-going
- On the Bias Motion, references were made by counsel to the following leading cases:
 - ❖ Committee of Justice and Liberty v. National Energy Board [1978] 1 S.C.R. 369;
 - ❖ Brosseau v. Alberta (Securities Commission) [1989] 1 S.C.R. 301, para. 22;

Example of Bias Motion (continued...)

- ❖ 2747-3174 Quebec Inc. v. Quebec (Regie des permis d'alcool) [1996] 3 S.C.R. 919;
- ❖ Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch) [2001] 2 S.C.R. 781;
- ❖ Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour) [2003] S.C.J. No. 28 at para. 195;

Example of Bias Motion (continued...)

- ❖ Wewaykum Indian Band v. Canada [2003] 2 S.C.R. 259; and
- ❖ Sam Lévy and Associés Inc. v. Canada (Superintendent of Bankruptcy) [2005] F.C.J. No. 882, para. 131.

Case Studies

