



LLA 1650 Workbook –Recusal applications

LEARNER WORKBOOK

Outcomes

What will a student doing this course learn and be able to do?

On completion of this module and the assessment questions you will be able to-

- ✓ Understand what recusal means.
- ✓ Distinguish between when an arbitrator is required to recuse herself and when not.
- ✓ Identify the roles of each party in a recusal application.
- ✓ Explain the reasons why an arbitrator may be asked to recuse himself.
- ✓ Demonstrate an ability to make a recusal application.
- ✓ Evaluate an application for recusal.

1. Introduction

A recusal application is an application for the _____ of an arbitrator or chairperson with a view to their _____ by another.

While in arbitrations in terms of the LRA the CCMA appoints the arbitrator, the parties may apply for the arbitrator to recuse himself. Such applications are almost always made _____ at the commencement or during the hearing or arbitration. This makes it vital for Practitioners to know how to make and how to respond to such applications off the cuff.

2. The test for recusal

'The question is whether a _____ person would on the correct facts reasonably apprehend that the judge has not or will not bring an _____ to bear on the adjudication of the case, that is _____ and the submissions of counsel.

An impartial Judge is a _____ for a fair trial and a judicial officer should not hesitate to _____ if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.

3. Unpacking the test

Even though the test may be pitched at different levels in the hierarchy of the dispute-resolution system it remains the same in the sense that an application will always _____, in essence, a _____ on the part of a party to the proceedings.

4. Bias and the arbitrator's style

A commissioner must conduct the proceedings before him in a _____. This means that he must not assist, or be seen to assist, one party to the detriment of the other. Therefore, even though a commissioner has the power to conduct arbitration proceedings in a manner that the commissioner considers appropriate

in order to determine the dispute fairly and quickly under the provisions of s 138(1) of the Act, this does not give him the power to depart from the principles of_____.

Where an arbitrator adopts an inquisitorial approach to the arbitration, she cannot abandon the well established rules of_____; on the contrary, she must be especially careful to _____in the breasts of litigants who will have little, if any, experience of a process so foreign to our system of adjudication.

5. How to make an application for recusal

The_____ ¹ must make an application to the _____ ² and: -

- _____which the Applicant relies on to support the application that the arbitrator should recuse herself; and
- _____that, because of the above facts, the arbitrator will not bring an impartial mind to bear on the arbitration of the case, that is a mind open to persuasion by the evidence and arguments of the parties and their representatives.

The _____must then be _____by the arbitrator to respond. When doing so, the Respondent can either _____the application, remain neutral or _____the application.

The _____is then given an opportunity to _____to the Respondent's argument.

6. Rulings

The arbitrator must make a ruling _____the application.

Possible rulings: -

- ✓ _____the application
- ✓ _____the application and give_____.

¹ This 'Applicant' is the party making the application, which could be either the employee party or the employer party in any arbitration.

² These applications are made to the arbitrator who the Applicant party wants removed as arbitrator during the arbitration, not to the CCMA or bargaining council administrators or any other person. This can be quite awkward!

✓ _____ the application and _____.

7. How not to deal with a recusal application

'I'm going to interrupt you, I'm not going to recuse myself, I don't believe you have any grounds to ask me to recuse myself.'

8. How the test is applied

'It is the right of the public to have their cases decided by persons who are _____. In the end the only guarantee of impartiality on the part of the courts is _____.

The arbitrator had a _____ to [the employee party] that he was involved in another private business with the municipality's management. There can be no doubt that such engagement could readily and ordinarily create a _____ and apprehension in everybody's mind (who was in employee's position) that there was, indeed, a _____, at the least, on the part of the arbitrator.

9. How applications for recusal should be dealt with.

State the issue : eg Application for recusal: whether I should recuse myself.	ISSUE
State the facts the Applicant is relying on in this matter.	FACTS
Restate the Law by	LAW
1. _____ the test, and	
2. Note that the _____ and	
3. That the _____ rests on the Applicant	
4. Deal with the facts of the _____.	
5. Give _____ for ruling.	APPLICATION