

CASE NOTES

ARBITRATORS CONDUCT

*Supreme Court of New South Wales, Unreported.
Cole J.
20 August, 1992*

Leighton Contractors Pty Limited v. N.G.I. Investments Pty. Ltd.

This decision concerned an application to the Court by one of the parties to arbitration proceedings for a declaration that the arbitrator had not mis-conducted himself within the meaning of Section 42 of the Commercial Arbitration Act. The other party brought a cross application pursuant to Section 44(a) and additionally or, alternatively, Section 44(c) that the arbitrator be removed or disqualified.

The circumstances giving rise to the application are somewhat complex and will not be canvassed in this short note.

The Court confirmed "that an arbitrator should disclose any interest or association which he might hold or have which might reasonably be thought by an informed impartial by-stander to give rise to an apprehension of bias if undisclosed". Further, the Court confirmed that the onus was upon the arbitrator to make such disclosure as was appropriate and it was not the responsibility of a party to the arbitration proceedings to be obliged to enquire whether there was any interest or association which should be disclosed.

The standard of conduct expected of arbitrators was expressed by His Honour as follows:

"It is inevitable that consultants, arbitrators, lawyers and judges meet with each other in public forums such as association meeting, annual conferences, or at educative seminars or conferences or indeed in public social gathering. The community does and must trust judicial officers and those who sit in quasi-judicial functions to adhere to a standard of conduct on such occasions which prevents discussion of matters before them. Public social intercourse thus occurs and is permitted. But such public and peripheral meetings are in a category distinct from private meetings between an arbitrator and consultants to party, even though they meet in a different capacity".

His Honour thought the application pursuant to Section 42 was inappropriate before the making of an Award and would not make the declaration sought under Section 42. His Honour did however dismiss the application to have the arbitrator removed and thereby confirmed the arbitrator's appointment.