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financiers

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Citation: *Ontario Securities Commission v Purpose Investments Inc*, 2026 ONCMT 26  
Date: 2026-06-04  
File No. 2025-18

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION  
(Applicant)**

**- and -**

**PURPOSE INVESTMENTS INC. and SOM SEIF  
(Respondents)**

**REASONS FOR DECISION**

**Adjudicator:** Andrea Burke

**Hearing:** By videoconference, April 10, 2026

**Appearances:** Johanna Braden For the Ontario Securities Commission  
Robin McKechney  
Alvin Qian  
Emma Coffin  
David Hausman For Purpose Investments Inc.  
Jonathan Wansbrough  
Joseph Groia For Som Seif  
John Hunter

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## REASONS FOR DECISION

### 1. OVERVIEW

[1] On April 10, 2026, I heard a motion brought by the Ontario Securities Commission requesting, on grounds of reasonable apprehension of bias, that I recuse myself from acting as the chair of the panel appointed to hear the merits of this proceeding. I granted the motion<sup>1</sup> for reasons to follow.

[2] These are my reasons.

### 2. BACKGROUND

[3] In this proceeding, the Commission alleges that the respondents made untrue or misleading statements about the extent to which Purpose Investments Inc. integrated environmental, social and governance (commonly referred to as ESG) factors when making investment decisions for its managed investment funds.

[4] On March 19, 2026, at my direction, the Registrar of the Tribunal advised the parties by email that I had been appointed to the panel for the merits hearing and that I had just learned that the Commission intended to call as a witness a former employee of Purpose whom I know socially.

[5] The March 19 email advised the parties that:

- a. I had previously worked in the litigation group of a law firm with the witness's spouse between approximately 2007 and early 2010, and this is how I had met the witness;
- b. I have a social relationship with the witness and his spouse, and I attended their wedding;
- c. we infrequently have dinner together or connect at school events where our sons are in the same grade; and
- d. the witness's counsel is my former partner at my former law firm.

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<sup>1</sup> *Ontario Securities Commission v Purpose Investments Inc*, (2026) 49 OSCB 3539; [https://www.capitalmarketstribunal.ca/sites/default/files/2026-04/rad\\_20260410\\_purpose-investments.pdf](https://www.capitalmarketstribunal.ca/sites/default/files/2026-04/rad_20260410_purpose-investments.pdf)

- [6] The March 19 email asked the parties to advise whether they had any concerns about my participation as a panel member in this proceeding.
- [7] Subsequent communications from the Registrar advised the parties that, after I identified the potential conflict, I assessed the matter. I concluded, on a preliminary basis and subject to the parties' views, that the potential conflict did not preclude me from sitting on the panel for the merits hearing.
- [8] The respondents advised that they did not object to me presiding over the merits hearing. They both expressed a desire that the merits hearing dates in May and June 2026 proceed as previously scheduled.
- [9] The Commission did object.
- [10] I decided that a motion was required because the Commission's objection arose after my assignment to the panel, the parties had different positions on whether I should recuse myself, and my recusal might affect the merits hearing dates.
- [11] I scheduled the motion on a compressed timeline because the merits hearing was scheduled to begin in early May 2026.

### **3. ISSUE**

- [12] The single issue was whether my social relationship with the witness gives rise to a reasonable apprehension of bias, requiring me to recuse myself from the panel that will hear the merits of this proceeding. The Commission made it clear that it did not allege actual bias and that its objection was unrelated to the fact that the witness's counsel was my law firm partner.

### **4. LEGAL PRINCIPLES: REASONABLE APPREHENSION OF BIAS**

- [13] It is imperative that justice be seen to be administered impartially.<sup>2</sup> A decision maker must carefully consider any claim that they disqualify themselves, and should step aside where there is an air of reality to the claim of bias, whether the claim is based on alleged actual bias or a reasonable apprehension of bias.<sup>3</sup>
- [14] The test for finding a reasonable apprehension of bias is well-established and not controversial. The relevant inquiry is whether a reasonable, right-minded and

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<sup>2</sup> *R v MV*, 2018 ONSC 6501 (**MV**) at para 90

<sup>3</sup> *MV* at para 90

informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide fairly.<sup>4</sup>

- [15] The test is not what the decision maker themselves thinks about their own capacity for impartiality, but how a reasonable person would view the situation. The test is objective and there is no need to prove actual bias.<sup>5</sup>
- [16] The person alleging a reasonable apprehension of bias bears the onus of establishing it.<sup>6</sup> While the burden on the moving party is often described as “high”,<sup>7</sup> the standard of proof is on a balance of probabilities.
- [17] There is a strong presumption in favour of judicial impartiality, which is necessarily factored into the assessment of the relevant circumstances.<sup>8</sup> This presumption of impartiality also applies to members of regulatory tribunals, including adjudicators of this Tribunal.<sup>9</sup>

## 5. ANALYSIS

### 5.1 The parties’ submissions

- [18] The Commission submitted that my social relationship with the witness gives rise to a reasonable apprehension of bias, requiring my recusal. The Commission submitted that this witness’s evidence is fundamental to its case, and the witness’s credibility is expected to be central to deciding the merits. The Commission further submitted that a reasonable member of the public would conclude that a decision maker in my position would not be able to evaluate the witness’s credibility without relying (even if subconsciously) on information about the witness learned through the social relationship, or without being influenced

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<sup>4</sup> *MV* at para 88 citing *R v S (RD)*, 1997 CanLII 324 (SCC) at paras 31 and 32 citing *Committee for Justice and Liberty v Canada (National Energy Board)*, 1976 CanLII 2 (SCC) (**Committee for Justice and Liberty**) at p 394; *Wewaykum Indian Band v Canada*, 2003 SCC 45 at para 60, citing *Committee for Justice and Liberty* at p 394

<sup>5</sup> *Vento Motorcycles, Inc v Mexico*, 2025 ONCA 82 (**Vento Motorcycles**) at para 26

<sup>6</sup> *R v S (RD)* at para 114

<sup>7</sup> *MV* at para 87

<sup>8</sup> *MV* at para 89; *R v S (RD)* at para 111 citing *R v Elrick*, [1983] OJ No. 515 (HC) at para 14

<sup>9</sup> *EA Manning Ltd v Ontario (Securities Commission)*, 1995 CanLII 1706 (ON CA), 1995 CarswellOnt 1057 (ON CA) at para 28

(even if subconsciously) by the ongoing social relationship with the witness and his spouse.

- [19] The Commission advised that there are no decisions of this Tribunal that offer any guidance, as this Tribunal has never heard a bias motion brought by any party based on analogous facts.
- [20] The Commission submitted that there are few bias decisions that consider the impact of personal connections between decision makers and witnesses, and each case turns on its particular facts. The Commission cited five cases where a recusal motion was successful or where an appeal was successful (on the basis that the judge had not recused themselves). These cases were all decided based on personal or professional connections between the judge and a witness, or between a judge and a person involved in the underlying matters of the case.<sup>10</sup> Although the facts of these cases are not close to the facts present here, the cases show that any of a broad range of relationships between a decision maker and witness can raise a reasonable apprehension of bias, and the need for credibility assessments and findings heighten the concerns.
- [21] The respondents submitted that the factual context of this case does not come close to satisfying the test for a reasonable apprehension of bias, and the Commission's position is just the latest example of the Commission's efforts to delay the merits hearing.
- [22] The respondents submitted that the cases cited by the Commission are distinguishable, anomalous, and of limited practical utility in assessing whether there is a reasonable apprehension of bias in these circumstances. The respondents cited two cases,<sup>11</sup> including one case, *Boardwalk Reit*, that summarizes examples where judges have been able to sit on hearings despite having professional or social connections with a witness prior to or at the time of the hearing.<sup>12</sup>

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<sup>10</sup> *Morrison v AWG Group Limited*, [2006] EWCA Civ 6 (**Morrison**) at paras 3, 28 and 30; *R v Windebank*, 2014 ONSC 5135 (SCJ) at paras 2-3 and 8; *AE Hospitality v George*, 2016 ONSC 2513 at paras 7-8; *MV* at paras 5-9 and 109-110; *R v Berry*, 2018 BCSC 2550 at paras 1-2, and 7-11

<sup>11</sup> *Heffel v Registered Nurses Association*, 2015 NWTSC 16 at para 99; *Boardwalk Reit LLP v Edmonton (City)*, 2008 ABCA 176 (**Boardwalk Reit**) at para 45

<sup>12</sup> *Boardwalk Reit* at para 45

[23] The respondents submitted that a connection between a decision maker and a witness is treated differently than a connection between a decision maker and a party to the proceeding, as the animating concern behind a reasonable apprehension of bias is that the decision maker has a relationship that might cause the decision maker to favour one side over the other.

[24] The respondents emphasized the strong presumption of impartiality and submitted that the entire context does not rebut that presumption in this case. The context here includes:

- a. the witness is not a party to the proceeding and has no stake in the outcome;
- b. any further delay in the merits hearing that might result from my recusal would exacerbate the ongoing reputational impacts on the respondents resulting from pending unresolved enforcement proceedings;
- c. the capital markets community in Canada and also in Toronto is small (i.e., a "village") and the Tribunal adjudicators, lawyers, compliance personnel and businesspeople involved in the capital markets community more frequently than not know one another, such that an overly scrupulous standard for recusal would make it difficult for the Tribunal to function;
- d. the members of the capital markets community in Canada understand that connections such as my connection with the witness naturally arise, and the situation should be assessed from that perspective and understanding;
- e. the nature of my social relationship with the witness is limited, infrequent and indirect (as it was formed through my relationship with the witness's spouse); and
- f. the Commission has exaggerated the importance of the Tribunal's assessment of the witness's credibility, given that none of the allegations call into question the witness's honesty and there are no allegations of fraud or client harm.

## **5.2 My consideration of the parties' submissions**

- [25] I accepted the Commission's submission that I must weigh the parties' submissions carefully and contextually and consider all relevant circumstances.<sup>13</sup>
- [26] I agreed with the Commission's submission that the relevant circumstances do give rise to a reasonable apprehension of bias.
- [27] In arriving at this conclusion, I rejected the respondents' submission that the Commission's bias motion was improperly motivated by a desire to delay the start of the merits hearing. I also rejected the resulting implication that I should be skeptical of the Commission's submissions. There was no evidence of any improper motive. Although the Commission and the respondents disagreed on the timetable for this proceeding at the first case management hearing, I accept the Commission's submissions that it has respected the accelerated timetable that was ordered at the respondents' request and is prepared to start the merits hearing as scheduled.
- [28] I agreed with the Commission's submission that the concept of a reasonable apprehension of bias is broader in focus than the narrower "animating concern" submitted by the respondents. Deciding whether there is a reasonable apprehension of bias is not merely about determining whether a decision maker is likely to be partial to, and favour, one party over another and, if so, which side would benefit. Instead, a reasonable apprehension of bias will arise where the context means that a reasonable observer would reasonably conclude that a decision maker is likely to decide the case on some basis other than the evidence and the law.<sup>14</sup> Put bluntly, whether my connection to the witness would be expected to advantage or disadvantage the Commission that is calling the witness and is also seeking my recusal is not the correct focus of the inquiry, and not the question to be answered. Based on the cases cited to me, a social or professional relationship between a decision maker and a witness, even where a witness is not a party to the proceeding and does not have a stake in the proceeding, can (depending on the relevant facts and circumstances) give rise to

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<sup>13</sup> *Bailey v Barbour*, 2012 ONCA 325 at para 25

<sup>14</sup> *Kivisto v Law Society of Ontario*, 2021 ONSC 6394 (Div Ct) at para 5

a reasonable apprehension of bias, particularly where an assessment of credibility may be required.

[29] I also agreed with the Commission that the prospect of potential delay in the merits hearing if I recuse myself is not relevant to a determination about whether there is a reasonable apprehension of bias. Even if there had been clear evidence that my recusal would result in a delay (something that was not known at the time the motion was heard), that is not a factor to be considered. I rejected the respondents' submission that the consequences to them of any delay is a competing factor to be weighed in making my decision. Although any delay that might arise as a result of my recusal would be unfortunate, and I am not unsympathetic to the concerns raised by the respondents, the paramount concern is that this proceeding must be, and must be seen to be, fair and impartial.<sup>15</sup>

[30] I rejected the respondents' submission that the test for a reasonable apprehension of bias at the Tribunal should reflect that:

- a. the nature of the small or "village-like" capital markets community in Canada has many unavoidable and necessary connections and overlapping social and professional relationships; and
- b. the "reasonable, right-minded and informed person" who is part of that community would deem such connections necessary and acceptable and not the basis for a recusal motion.

[31] The Commission characterized this submission as a floodgates-type submission. I agree with this characterization. There was no evidence filed by either side about the size of the capital markets community in Canada, or the extent of the interrelationships. Of course, it is a community of which I have been a part for many years, as both a practising lawyer and an adjudicator at the Tribunal. Based upon my experience, both as a lawyer and as an adjudicator at this Tribunal, I do not accept that the capital markets community in Canada (or even when that community is narrowed to Toronto, as the respondents submit in the alternative) is so small that this Tribunal should overlook connections between

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<sup>15</sup> *Morrison* at para 29

adjudicators and witnesses when assessing whether there is a reasonable apprehension of bias.

- [32] There is no evidence that, without there being a different standard for assessing bias, the Tribunal could not continue to properly function and empanel adjudicators free from a reasonable apprehension of bias. Separate from the issue of there being no evidence, I have no such concerns based on my experience with the Tribunal.
- [33] I also disagreed with the respondents' implicit submission that the reasonable apprehension of bias test at the Tribunal should be assessed from the perspective of a reasonable person who is a part of the Canadian (or Toronto) capital markets community, and who recognizes that there are certain unavoidable and necessary connections between members of the community and adjudicators at the Tribunal. I see no need to vary the test in the context of the Tribunal or modify the concept of who is the "reasonable person", and the respondents cited no authority for the proposition. The Tribunal serves the interests of all investors in Ontario, and broadly in Canada. These investors include persons who are not part of the narrow community described by the respondents.
- [34] I accepted the Commission's submissions that the witness's anticipated evidence is not peripheral, incidental or uncontroversial and that the merits hearing panel may well be called upon to assess the witness's credibility. A witness's credibility does not arise solely in cases where allegations of fraud or dishonesty implicate the witness. Credibility assessments are more nuanced than simply assessing whether a witness's evidence is truthful. A witness's credibility can become important in many scenarios that cannot necessarily be anticipated in advance of a hearing, including:
- a. where the witness provides testimony that is inconsistent with that of other witnesses or inconsistent with documentary evidence;
  - b. the witness resiles from evidence previously given and a party seeks to have the witness declared adverse or seeks to impeach the witness; and
  - c. the witness testifies as to deficiencies in memory.

- [35] In addition to the foregoing, I agreed with the Commission's submissions that:
- a. my connection with the witness and his spouse is social and personal and, although our social interaction is infrequent, the connection not only dates back many years, but is ongoing and expected to continue in the future;
  - b. a reasonable person would assume that I would be familiar with the witness's mannerisms, habits, speech patterns, and other factors, that I would have pre-formed a view about the witness's general character and credibility, and that this prior knowledge and pre-formed view might be difficult to disregard in assessing the witness's credibility; and
  - c. a reasonable person would conclude that adjudicative decisions about the witness's evidence or about the conduct of the hearing (for example, the need to caution, admonish or instruct the witness) might have social consequences for me, and that those consequences could, even if only subconsciously, influence my decision-making.

## **6. CONCLUSION**

[36] Having found a reasonable apprehension of bias, I agreed with the Commission's submission that the only available remedy was for me to recuse myself from the merits panel in this matter.<sup>16</sup> I therefore recused myself.

Dated at Toronto this 4th day of June, 2026

*"Andrea Burke"*

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Andrea Burke

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<sup>16</sup> *Vento Motorcycles* at para 31