Federal Court of Australia

DJL19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 451

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| Appeal from: |  |
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| File number: |  |
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| Judgment of: | **ANASTASSIOU J** |
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| Date of judgment: | 29 April 2022 |
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| Catchwords: | **MIGRATION –** appeal from Federal Circuit Court of Australia – application for protection visa – whether Administrative Appeals **Tribunal** erred by making findings not open to it **–** whether Tribunal fell into jurisdictional error by acting legally unreasonably or illogically by failing to take into account relevant parts of country information – whether Tribunal fell into jurisdictional error by acting unreasonably in making finding that appellant had fabricated his claim – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth), ss 36(2)(a), 36(2)(aa), 65 |
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| Cases cited: | *Browne v Dunn* (1893) 6 R 67  *DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC 2; 258 FCR 175  *DGB18 v Minister for Home Affairs* [2019] FCA 1034  *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114; 230 FCR 431  *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; 240 CLR 611  *Minister for Immigration and Multicultural Affairs v Yusuf* [200l] HCA 30; 206 CLR 323 |
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| Registry: |  |
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| National Practice Area: |  |
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| Number of paragraphs: | 78 |
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| Date of hearing: | 8 June 2021 |
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| Counsel for the Appellant: | Mr A. Silva |
|  |  |
| Counsel for the First Respondent: | Ms S. Thompson |
|  |  |
| Counsel for the Second Respondent | The Second Respondent filed a submitting notice save as to costs |
|  |  |
| Solicitor for the Respondents: | HWL Ebsworth Lawyers |

ORDERS

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|  | | NSD 890 of 2020 |
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| BETWEEN: | DJL19  Appellant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | ANASTASSIOU J |
| DATE OF ORDER: | 29 APRIL 2022 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The Appellant is to pay the First Respondent’s costs of and incidental to the appeal, to be agreed or assessed failing agreement.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

ANASTASSIOU J:

1. The Appellant has appealed from a decision of the Federal Circuit Court of Australia (**FCCA**) (now the Federal Circuit and Family Court of Australia): *DJL19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCCA 2102. In that decision, the primary judge dismissed an application for judicial review of a decision of the Second Respondent, the Administrative Appeals **Tribunal**. The Tribunal had affirmed a decision of the delegate of the First Respondent, the **Minister** for Immigration, Citizenship, Migrant Services and Multicultural Affairs, not to grant the Appellant a **Protection** (Class XA) **visa** under s 65 of the ***Migration Act*** *1958* (Cth).
2. The Appellant relies upon the affidavit of Sylvia Nicola Silva affirmed 18 March 2021, written submissions dated 5 May 2021 and oral submissions made during the hearing of the appeal by counsel of his behalf. The First Respondent relies on written submissions dated 25 May 2021 and oral submissions made during the hearing of the appeal by counsel on his behalf.
3. The Appellant filed an affidavit of Anthony Nicholas Silva affirmed 29 September 2021, in support in support of an application for costs to be determined on a party-party basis, in the event that the appeal succeeds. As I have concluded that the appeal should be dismissed, that affidavit need not be considered.

# Background

1. The Appellant is a citizen of Fiji. On 9 April 2014, he arrived in Australia on a Tourist (class FA) (subclass 600) visa. On 22 December 2015, he lodged an application for a Protection visa. In the time between arriving in Australia and applying for a Protection visa, the Appellant held a further Tourist Visa and Bridging Visas. Prior to making his application for a Protection visa, the Appellant had applied for a Sport Nomination (class GB) (subclass 401) visa and a Temporary Work (Long Stay Activity) (class GB) (subclass 401) visa. Those applications were unsuccessful.
2. In his application for a Protection visa, the Appellant claimed to fear harm because he had made critical comments on internet blogs about the government of Fiji. The Appellant claimed that he should be granted a Protection visa because, as a consequence of his criticisms of the government of Fiji, he feared for his safety if he returned home. He claimed that he would be harmed or mistreated by soldiers if he were to return to Fiji. He also claimed that there was nowhere safe for him in Fiji. A letter dated 18 February 2016 from P&N Lawyers in Suva, Fiji was provided with his application.
3. On 16 February 2016, the Appellant was invited to attend an interview with a delegate of the Minister to discuss his application for a Protection visa. On 29 February 2016, the Appellant attended the Department interview and was represented by a migration agent. At the interview, the Appellant said that his online activity involved commenting on anti-government posts and articles published by his friends on Facebook and on “many” other websites. The Appellant also raised a claim, that he had not previously made; namely, that as a result of one of his online comments, he had been taken to military barracks by five army military officers and interrogated for around half an hour. The Appellant was told that if he made similar comments again, he would “get it” (**detention claim**).
4. On 8 March 2016, the delegate of the Minister refused the Appellant’s application for a Protection visa. The delegate accepted that the Appellant had posted comments on blogs and Facebook but found it was not credible that he had made several comments per week on “many” websites. Moreover, the delegate rejected the alleged detention claim.
5. On 13 April 2016, the Appellant sought review of the delegate’s decision by the Tribunal. In his written submissions, the Appellant reiterated his fear of returning to Fiji because of the critical comments he made on blogs regarding the Fijian government. The Appellant submitted that these comments were made after he was allegedly unfairly denied the opportunity to represent Fiji in Rugby, as he claimed selection was based on political connections rather than on merit. On 14 August 2019, the Tribunal affirmed the delegate’s decision not to grant a Protection visa, finding that the Appellant did not meet the criteria in ss 36(2)(a) and 36(2)(aa) of the Migration Act.

## Tribunal Reasons

1. In its Statement of Decision and **Reasons**, the Tribunal first considered whether the Appellant had been detained in Fiji on account of his political opinion.
2. The Tribunal, at [24]–[25] of its Reasons, ultimately rejected the Appellant’s evidence for the following reasons: (1) the Appellant had not raised the claim concerning his detention by the military in his application for a Protection visa; and (2) he provided inconsistent evidence as to when he was detained. In particular, the Tribunal stated that:

24. The Tribunal had **significant concerns about this evidence**. Firstly, it had not been raised in the applicant’s written application for a protection visa. He **specifically wrote that he had not experienced harm in that country**, and made no reference to his detention and the reason for that detention in his written protection visa application. Secondly, in the delegate interview, the **applicant had provided inconsistent evidence about the dates of this detentio**n. He told the delegate that the detention occurred in 2011 and then narrowed the detention down to September 2011. He then told the delegate that the detention occurred in September 2010 and not 2011, before telling the delegate that the detention happened in 2010. The Tribunal adopted the procedure under s.424AA of the Act given that the applicant had provided oral evidence to the delegate about the dates of his detention. In response the applicant told the Tribunal was that it had been a long time since he had been detained and he was not really clear about the exact date because he had been intoxicated at the time of his detention (noting his Tribunal evidence that he had left the gymnasium and proceeded to drink at a club before returning to his home and being waken, hungover, by the attendance of the soldiers the following morning). In regards to his failure to detail the incident with the Chairman which lead to the detention in the written protection visa application, the applicant told the Tribunal that this was an error on his part because he did not remember that part.

25. The Tribunal has considered the applicant’s response but is not persuaded by his explanation. To the Tribunal’s way of thinking, it is incredulous that the applicant would not specifically claim in his written protection application that he had been harmed in Fiji and not detail his only period of detention (at the hands of someone seemingly very powerful in Fiji) if this claim was true. Further, the idea that the applicant would be unable to provide consistent months and dates regarding his sole instance of detention is not persuasive. The Tribunal does not accept that the applicant’s memory about the specific date of his detention would improve over time. While the Tribunal acknowledges that the applicant provided a detailed account of his detention to the Tribunal, the fundamental concern of that account not being earlier provided, and previous detail being provided that was inconsistent between the delegate and the Tribunal hearing, leave the Tribunal satisfied, in combination with the other concerns that the Tribunal has about the credibility of the applicant as discussed in this decision, that this incident of harm was fabricated by the applicant to strengthen his claim for protection. The Tribunal is not satisfied that the applicant was detained by the authorities as claimed by him, nor that he was the subject of threats by the Chairman as claimed.

[Emphasis added]

1. The Tribunal also considered the Appellant’s delay in applying for a Protection visa. It did not accept the Appellant’s explanation for the delay: Tribunal Reasons at [26]–[30]. Specifically, the Tribunal stated at [28] that:

28. … The fact that the applicant waited until he had no further options related to his Temporary Work (Long Stay Activity) Sport Stream visa application (noting that his second application was invalidated on 2 December 2012) suggests to the Tribunal that the applicant only lodged a protection visa application as a means to secure a migration outcome to remain in Australia, not because he had any fear of harm returning to Fiji.

1. The Tribunal reasoned that “if the [Appellant] was genuinely fearful of harm on return to Fiji, he would have raised those concerns at the Tribunal hearing. The Appellant did not do so, which the Tribunal found was because “he did not hold any such fears”: Tribunal Reasons at [30].
2. The Tribunal then turned to the question of the Appellant’s blogging. Before setting out in chronological order the internet blogs provided by the Appellant, the Tribunal at [32] noted its concerns in relation to inconsistency in the Appellant’s evidence:

32. Noting the applicant provided oral evidence to the delegate that he did not engage in internet blogging while overseas for fear of what would happen when he returned to Fiji at the end of the playing season, which was different from his oral evidence to the Tribunal, the Tribunal utilised s.424AA of the Act and put its concerns to the applicant about this inconsistent evidence. To the Tribunal’s way of thinking, **this inconsistency demonstrated that the applicant had a flexible approach to the truth and was willing to change his evidence if he thought different evidence could be more persuasive**. The applicant’s response was to reiterate what he previously told the Tribunal about his internet blogs while overseas playing rugby being carefully worded, and that he could not place the chronology of his internet blogging when he made his comments to the delegate. The Tribunal does not find the applicant’s response satisfactory. He was clear when he told the delegate that he did not post while overseas and the reasons for doing so. **In the Tribunal’s assessment, the applicant told the delegate he did not post internet blogs while overseas because he thought that telling the delegate he had done so and returned to Fiji without any harm occurring to the applicant would undermine his claims for protection. At the Tribunal stage, the applicant sought to persuade the Tribunal he was a persistent internet blogger to address any concern that the Tribunal may have that the applicant was only blogging to increase the likelihood of success for his protection claims**. This puts the Tribunal in a position where it has real doubts about the truthful of the evidence that the applicant has provided in the course of his protection visa application.

[Emphasis added]

1. The Tribunal made the following findings in relation to the Appellant’s blogging activities Having regard to the country information provided by the Department of Foreign Affairs and Trade in 2015 and 2017 (**DFAT Reports**):

77. Having considered the numerous internet blogs produced by the applicant, the Tribunal is prepared to give him the benefit of the doubt, despite its concerns about the applicant’s credibility regarding his evidence of previous harm in Fiji and the other concerns expressed in this decision that he has continuously posted internet blogs to date, in the same tone as those before the Tribunal.

…

However, as discussed previously, the Tribunal does not accept that the applicant has any fear in expressing his political opinion through his internet blogs, noting his delay in a applying (sic) for his protection visa, and the inconsistent evidence provided about whether he blogged while overseas with his rugby employment. The Tribunal is satisfied that the applicant blogged as outlined by him because he felt free to do so and was not fearful of any harm resulting from this activity.

78. … As the Tribunal is satisfied that the applicant holds a genuine political opinion which he has expressed online for a significant period of time in Fiji, at overseas placements with his rugby employment, and in Australia, the Tribunal is satisfied that if the applicant were to return to Fiji, he would continue to post internet blogs that are critical of the Fijian Government, the Prime Minister and the Attorney-General. …

1. The Tribunal also made note of the materials provided by the Appellant at [81] in support of his claim:

81. … The Tribunal notes the media articles which have been provided by the applicant to support his claim that he will be subject to harm for his criticism of the Fijian Government, the Prime Minister and the Attorney-General, and further notes that the applicant provided copies of emails from his second cousin who works as a journalist in Fiji which suggested that unknown people had threatened the second cousin’s partner and two daughters, but **the Tribunal needs to consider the particular circumstances of this applican**t. The applicant also provided the Tribunal with a copy of the Fijian Online Safety Bill 2018 which he claimed will be used to target internet bloggers express criticism of the Fijian Government and its leaders. The Tribunal understands that that Bill has subsequently become an Act but has not yet been Gazetted. …

[Emphasis added].

1. The Tribunal ultimately concluded at [81] that:

81. … Assuming as the Tribunal does that this Act becomes operational in the reasonably foreseeable future, the Tribunal does not accept that, given the current country information as contained in the most recent Department of Foreign Affairs and Trade report about Fiji, the applicant would face a real risk of serious harm on account of his political opinion, or a real chance of significant harm, if he were to return to Fiji now or in the reasonably foreseeable future, noting the Tribunal’s findings that the applicant was not previously detained on account of his criticism of the brother-in-law of the Prime Minister. **In the Tribunal’s assessment, the Fijian authorities will tolerate the past criticisms made by the applicant in his political blogs and will tolerate future criticism that is made in the same terms.**

[Emphasis added].

# Appeal to Federal Circuit Court

1. By amended application dated 29 November 2019, the Appellant sought judicial review of the Tribunal’s decision in the FCCA. The Application raised five grounds of review. Ultimately, only **Ground 1** and **Ground 2** were pressed.
2. Those grounds, in summary, were as follows:
3. Ground 1 asserted that it was not open to the Tribunal, or it was unreasonable for the Tribunal to find, that the Fijian authorities would tolerate the past criticisms made by the Appellant in his political blogs as well as any future criticism made by the applicant in the same terms. The Appellant contends the Tribunal's above findings were not open to it or were unreasonable because:
   1. it ignored "critical country information" provided by the Appellant;
   2. the DFAT Reports for Fiji dated 14 April 2015 and 27 September 2017 did not support the conclusion that the authorities would tolerate the Appellant’s political blogs; and
   3. it considered the DFAT Reports without considering the Appellant’s personal circumstances.
4. Ground 2 asserted that it was not open or unreasonable for the Tribunal to find that the Appellant fabricated his detention claim.
5. In relation to Ground 1, the primary judge stated in his Honour’s reasons (**Primary Reasons**), found that “it is apparent … that the Tribunal fully appreciated the [Appellant’s] migration history and that the [Appellant] had been blogging … whilst he was still in Fiji” and that “[i]n those circumstances, there was clearly evidence to support the adverse findings made by the Tribunal in the last paragraph of 81”. The primary judge held that the Tribunal’s Reasons were therefore incapable of being characterised as “irrational, illogical or legally unreasonable”: Primary Reasons at [38].
6. The Appellant’s submitted that the Tribunal failed to properly engage with all the material before it. The primary judge held at [40]–[43] of the Primary Reasons that:
7. the Tribunal is not required to refer to every piece of information before it;
8. the Tribunal’s Reasons reflect a “real and genuine intellectual engagement with the [Appellant’s] claims and evidence, including the country information”;
9. the country information provided by the Appellant was not pertinent and contradictory material to which reference was required to be made beyond that identified in the Tribunal’s reasons;
10. it is a matter for the Tribunal to determine the weight given to the country information; and
11. there was no proper basis to infer that the Tribunal did not take into account the aforementioned country information.
12. With respect to Ground 2, the primary judge found that given the Appellant’s delay alone in the seeking of the application for protection, there was “an evident and intelligible justification for the adverse finding”. Failure to raise the claim in his application for a Protection visa provided further justification for this finding.

# Appeal to this Court

1. By Amended Notice of Appeal filed on 31 August 2020, the Appellant appealed from the decision of the primary judge. The Notice of Appeal contained two grounds which are, in substance, the same as the two grounds relied upon in the FCCA, namely:

1. The learned primary judge erred by not finding that the Tribunal made jurisdictional error in making the finding that the Fijian authorities will tolerate the past criticisms made by the applicant in his political blogs and will tolerate future criticism that is made in the same terms, on the bases (A) that finding was not open or (B) it was unreasonable.

Particulars

(a) At [38] of his decision his Honour held that the Tribunal's finding at the end of [81] (which was being challenged) is supported by the fact that the Tribunal fully appreciated that the applicant had been blogging, "as identified in the Tribunal's reasons", whilst he was still in Fiji. Nowhere in the decision record has the Tribunal identified that as a reason. His Honour engaged in merits review by attributing to the Tribunal his own reasoning as that of the Tribunal.

(b) At [39] his Honour limited the appellant's complaint to the country information provided by the applicant whereas the complaint included the DFAT reports which the Tribunal itself used to make its critical findings. Such as:

(i) In 2017 Report at 3.65

*Though such reports are implicitly critical of the government,* ***journalists remain careful not to make direct accusations****.*

(ii) At 3.68:

***In a speech at the University of the South Pacific's 2016 open day, Prime Minister Bainimarama warned students about the ‘misuse of social media by some people to cause division and upset’.***

(c) At [39] his Honour also failed to deal with the submission that even the parts of the 2017 and 2015 DFAT reports that the Tribunal referred to did not properly engage with its content in the sense that they supported the appellant's case.

(d) At [42] his Honour did not accept that the country information referred to by Mr Silva is information that can be described as significant material or important material, or that it was pertinent and contradictory material to which reference was required to be made beyond that identified in the Tribunal's reasons. This information was the following:

(i) A young woman being threatened at home very recently. And her posting appears at page 239 to 242. And this is directly relevant to the applicant because the applicant's case is that because he posted adverse comments on the internet or Facebook that his life was in danger just like that girl and the Tribunal did not accept it. In the transcript it appears at page 41, line 17 to 38.

(ii) The email from the journalist about him and his family members being threatened, that appears at page 243 to 258. The Tribunal only mentioned that there were emails from a journalist who was threatened. That is all it did, it did not consider it any further.

(iii) From page 259 to 262, information about the Prime Minister physically assaulting outside the Parliament an opposition member who criticised him in Parliament, and that is for the proposition that if you criticise the Prime Minister or the Attorney-General, you will be seriously physically harmed.

(iv) The article by Amnesty International which says that “*Fiji Beating Justice: How Fiji Security Forces Get Away with Torture*”. That appears at 282 to 283.

(v) An article that starts at page 141, and it appears to be written by CNN, and at pages 149 and 150, expresses concerns. Firstly, at page 149 it says:

In his submission to .Parliament, the office of the UN High Commissioner for Human Rights warned the Jaw *“fails to provide for any measure to protect true communications, public interest, news reports, artistic expressions (or) expressions of honest opinions based on fact.*

And then on the same page, 149, it refers to the Fijian government person of authority administering that legislation saying:

*If you have nothing to say, don't say anything at all.*

(e) At [43] his Honour dealt with the wrong issue by stating that “It was a matter for the Tribunal to determine what weight to give to the country information”, which responded to a submission based on *MZYTS* that the weighing process must be apparent to show that certain matters were taken into account and it was not about the amount of weight given to each item.

(f) His honour failed to deal with the submissions that the Tribunal ignored critical country information, that is parts of the DFAT reports which suggest that personal criticism of Mr. Bainimarama and Mr. Khaiyum would result in harm.

2. The learned primary judge erred by failing to find that the Tribunal made jurisdictional error in that it was not open or it was unreasonable for the Tribunal to make a finding that the applicant fabricated the claim about his detention.

Particulars

(a) His Honour failed to engage with any of the appellant's submissions with following critical arguments:

(i) At CB343[31] the Tribunal made a finding that the applicant fabricated his claim of detention in Fiji. However, the Tribunal also had stated that it was clear that his protection claims as detailed in his protection claims were based on his blogging activity in Australia. Therefore, the fact the applicant did not mention his short detention in Fiji in his PVA where he was not physically harmed, could not affect his credibility in any significant manner.

(ii) Further there is no justification for the suggestion that the applicant would fabricate the claim of detention in Fiji. If the applicant has fabricated his claim for detention then (a) it would have been fabricated by him to bolster his protection claims and thus to show that he was subject to serious harm in detention and (b) that it would have been brought up in his claim for protection at the first available opportunity. Especially the fact that he claimed that he was not physically harmed goes very much against the allegation that he was fabricating the incident.

(iii) The Tribunal questioned the applicant on the incident and in-depth details were given to the Tribunal and the Tribunal could not find fault with that.

(iv) The nature of the event is such that a person who had not experienced could not have given such details and withstand questioning from the Tribunal without making serious mistakes.

(v) It would be unreasonable to hold some to account about the actual date of the event that happened many years ago where the applicant was able to point out the relevant time period when it took place and it was not a memory test.

(vi) The protection visa application was prepared without professional help and the issue of detention was only discussed at the Delegate's interview.

(b) His Honour erred by finding that delay alone in the seeking of the application, there is an evident and intelligible justification for the finding of fabrication. The delay was only short, and the applicant's position was quite complex.

[Emphasis in original]

## Appellant’s Submissions

1. In relation to Ground 1, the Appellant submitted that the primary judge erred in not finding that the Tribunal made a jurisdictional error by acting irrationally, illogically or unreasonably.

### Particular (a)

1. The Appellant submitted that the primary judge erred in finding that the Tribunal fully appreciated that the Appellant had been blogging while still in Fiji and that there was clear evidence in support of the adverse findings made by the Tribunal: Primary Reasons at [38]. The Appellant submitted that there was nothing in the Tribunal’s Reasons that supported this finding. The Appellant contended that though the Tribunal accepted that the Appellant had engaged in blogging activities, it did not make any further finding in relation to the Appellant’s blogging activities, despite having a number of opportunities to do so: Tribunal’s Reasons at [31], [32], [77] and [81]. The Appellant submitted that the primary Judge had in effect impermissibly undertaken a de facto merits review. The Appellant contended that the primary judge did so by wrongly attributing his own views or analysis to the Tribunal, when in fact the reasoning was his Honour’s, not the Tribunal’s.
2. The Appellant submitted that the Tribunal’s finding at [77] that it was “satisfied that the applicant blogged as outlined by him because he felt free to do so and was not fearful of any harm resulting from this activity” was flawed because it failed to consider the question of whether there was a genuine fear of harm having regard to the relevant circumstances, namely if the Appellant was to be returned to Fiji. The Appellant contended it was clear that there was no real and present danger to the Appellant while he was residing in Australia, so he felt safe to continue blogging. He says that the primary judge, at [38], therefore misconstrued the Tribunal’s reasoning by concluding, incorrectly, that the Tribunal considered the fact the Appellant blogged in Fiji as an inconsistency which the Tribunal had not relied upon in assessing the Appellant’s credit.
3. Two submissions were advanced to support this argument. First, the Tribunal did not make such a finding. Second, even if the Tribunal made that finding, the primary judge’s finding at [38] is “at such a high level of generality that the basis for the conclusion [was] not exposed”: see ***DGB18*** *v Minister for Home Affairs* [2019] FCA 1034 at [96] (Wigney J) citing *DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC 2; 258 FCR 175at [48] (Kenny, Kerr and Perry JJ). In this regard, the Appellant submitted that the primary judge failed to “engage in an ‘active intellectual process’” directed at the Appellant’s evidence and arguments such that the primary judge “constructively failed to exercise jurisdiction”: *DGB18* at [95].

### Particulars (b), (c) and (f)

1. The Appellant also submitted that the primary judge limited the Appellant’s complaint to the country information provided by the Appellant and did not refer to, or assess, the Tribunal’s lack of genuine intellectual engagement with the DFAT Reports. The Appellant relied on the affidavit of Sylvia Nicola Silva affirmed 18 March 2021 and, in particular, Annexure A of that affidavit, which set out the final submissions of the Appellant to the FCCA that expressed this claim. The Appellant contended that this was a matter that should have been addressed by the primary judge but was not.
2. In respect of ground 1(c), the Appellant submitted that the primary judge also failed to consider the submission that the Tribunal did not properly engage with the parts of the DFAT Reports that supported the Appellant’s case. Specifically, the Appellant contended that, while the Tribunal did engage with parts of the DFAT Reports generally, it failed to link them to the Appellant’s case specifically.
3. In relation to the 2015 DFAT Report, the Appellant submitted that the Tribunal referred to, but did not engage with, the following parts of the report at [79] of its Reasons:

The 2015 report notes that the environment for public expression of political opinion in late 2014 was more open than previous years, and that political gatherings including **robust political criticism of Fiji First (the governing party) and the Government, although most commentators are circumspect in any public criticism of the Prime Minister of the Attorney-General**. The report noted that uncertainty remained about the permissible limits on public commentary, with **broad powers and harsh penalties** being available under relevant decrees, and a relatively recent history of prosecutions meaning that **public figures continued to tread carefully in their expression of public opinion**.

[Emphasis added]

1. In relation to the 2017 DFAT Report, the Appellant submitted that the following parts were not referred to by the Tribunal despite being directly supportive of the Appellant’s claim:

3.41 … public figures continue to tread carefully in their expression of public opinion

…

3.65 … journalists remain careful not to make direct accusations

…

3.68 … Prime Minister Bainimarama warned students about the ‘misuse of social media by some people

1. As to ground 1(f), the Appellant submitted that the primary judge did not address the submission that the Tribunal ignored critical country information, namely specific parts of the DFAT Reports that suggested that personal criticism of government figures, in particular the Prime Minister Mr. Bainimarama and Attorney General Mr. Khaiyum, would result in harm.
2. The Appellant submitted that these statements were important as they highlighted that it was likely that personal criticism of government figures would result in harm to the person making those criticisms. The Appellant submitted that these statements directly supported the Appellant’s claim that he was fearful of returning to Fiji due to past criticisms he had made in relation to Fijian government leaders and that they should have been considered by the primary judge in making his assessment.

### Particulars (d) and (e)

1. The Appellant submitted that the primary judge erred by rejecting the submission that “country information referred to by [the Appellant] was significant material…or that it was pertinent and contradictory material by which reference was required to be made beyond that identified in the Tribunal’s Reasons”.
2. The Appellant contended that this information was directly relevant to him but was not considered by the Tribunal, or if the Tribunal did refer to this information, it merely mentioned it but did not engage with it any further. Accordingly, the Tribunal fell into jurisdictional error by ignoring relevant material in a way that affected the exercise of its power: see *Minister for Immigration and Multicultural Affairs v* ***Yusuf***[2001] HCA 30; 206 CLR 323 at [82]–[84] (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ).
3. Further, in relation to particular (e), the Appellant submitted that the primary judge erred in finding at [43] that the Tribunal could determine the weight to give to the country information. The Appellant accepted that the weight to be given to the evidence was a matter for the Tribunal to determine, but submitted that the Tribunal erred in failing to disclose its process of reasoning in relation to the weighing of evidence and its conclusions as to what evidence should be preferred, as it was required to do: see *Minister for Immigration and Border Protection v* ***MZYTS***[2013] FCAFC 114; 230 FCR 431 at [50] (Kenny, Griffiths and Mortimer JJ). The Appellant relied on *MZYTS* in further support of this claim:
4. First, the Tribunal has an obligation to set out the “findings of fact [it] considered material to its decision, and… reciting the evidence and other material which the Tribunal itself considered relevant to the findings it made” see *MZYTS* at [49] citing *Yusuf* at [10], [34], [68]. This ensures that any applicant “who is dissatisfied … can identify with certainty what reasons the Tribunal had for reaching its conclusion and what facts it considered material to that conclusion”: see *Yusuf* at [69]. On the present facts, the Appellant contended that the Tribunal failed to reference two “critical” pieces of country information and made bare mention of three other “critical” pieces, and therefore, fell into error.
5. Second, the Full Court in *MZYTS* at [50] held that “an expression of a preference for some evidence over other evidence generally requires an articulation of the different effects of the evidence concerned, and then some indication as to why preference is given”. The Appellant submitted that the Tribunal also erred in relying on the DFAT Reports in preference to the country information provided by the Appellant, because the Tribunal did not give reasons for preferencing one set of information over another.
6. Third, the Tribunal failed to perform the task it was required to do as it did not consciously engage with and consider the “the submissions, evidence and material advanced” by the Appellant most likely to give “an accurate picture of the ongoing circumstances”: see *MZYTS* at [38].

### Ground 2

1. In relation to Ground 2, the Appellant contended that the primary judge erred in affirming the Tribunal’s finding that the Appellant had fabricated his detention claim.
2. At [46] of the Primary Reasons, the primary judge stated:

Given the delay alone in the seeking of the application for protection, there is an evident and intelligible justification for the adverse finding. In addition, the omission to raise the claim in his Protection visa application provides a further evident and intelligible justification. The Tribunal’s adverse findings in respect of the applicant’s detention claim were logical, rational and open for the reasons given by the Tribunal in paras 24 and 25.

1. The Appellant criticised [46] of the Primary Reasons for two reasons: (1) the primary judge engaged in merits review; and (2) the primary judge did not deal with the substantial submissions in relation to this issue.
2. First, the Appellant contended that the primary judge had in effect engaged in merits review reasoning that “delay alone” was an intelligible justification for the Tribunal’s finding that the Appellant fabricated his claim. In particular, it said that because the Tribunal considered a number of factors in making its finding, “delay alone” could not have been the basis of the Tribunal’s reasoning. Accordingly, the primary judge erred in “attributing to the Tribunal his own reasoning”. Further, the Appellant contended that the alleged delay, which was only two months, was not sufficient justification to make a particular finding or to refuse to grant a visa and in any event, delay alone was not sufficient to make a finding of fabrication or to refuse a visa application.
3. Second, the Appellant submitted that the primary judge failed to engage with submissions addressing reasons for the delay that were critical to the Appellant’s claim. The Appellant submitted that the following submissions were made on behalf of the Appellant but not considered by the primary judge:

Firstly, the Tribunal found that it was clear that his protection claims as detailed in his protection visa application (PVA) were based on his blogging activity in Australia, so it is submitted that his activity in Fiji was not important to his application. Secondly the fact the appellant did not mention in his PV A, his short detention in Fiji which took place the day after his verbal and physical confrontation with the President of Fiji Rugby about National Fijian rugby team selection, was not much relevant either to the appellant's case which is about his blogging in Australia. Thirdly he was not physically harmed.

Fourthly, if the appellant had fabricated his claim for detention then (a) it would have been done to bolster his protection claims to show that he was subject to serious harm in detention and (b) it would have been brought up at the first available opportunity and in writing and not casually or verbally later. Fifthly it would have portrayed the appellant in a positive (or at least in a neutral) light, but what the appellant said portrays him as a heavy alcoholic and a person prone to violence, because he said he wanted to assault Mr Kean and he was prevented, and he was still affected by alcohol when he was woken by his mother in law in the early morning when the soldiers came knocking to be taken to the military barracks.

Sixthly, it would be unreasonable to hold someone to account about the actual date of the event that happened many years ago where the applicant was able to point out the relevant time frame (2010 or 2011) in which it took place, and it was not a memory test.

Seventhly, the exchange between the Tribunal and the appellant was spontaneous and this appears in seven pages, and it is apparent that it was an off the cuff response from the appellant.

[Footnotes omitted]

1. The Appellant submitted that upon considering the Appellant’s circumstances, namely that he was not notified by his sporting club when his visa had expired and that he had difficulties obtaining sponsorships, the delay in applying for a Protection visa could not be regarded as an independent reason for an adverse credibility finding or for rejecting his visa application.
2. Further, the Appellant submitted that the Tribunal’s finding at [30] of its Reasons that the Appellant did not fear harm on return to Fiji cannot be an independent reason for rejecting his protection claims, given that the evidence the Tribunal relied upon was not based on earlier evidence he gave in 27 October 2015 relating to his Temporary Work Visa application.
3. Finally, the Appellant submitted that even if he was found to have fabricated the evidence regarding his detention, that fact is irrelevant to the question of whether the Tribunal correctly considered the Appellant’s fear of harm arising from his blogging, which the Appellant contended it did not.

## Minister’s Submissions

### Particular (a)

1. The Minister submitted that there is no error in the primary judge’s finding at [38] that the Tribunal “fully appreciated” that the Appellant had been blogging while in Fiji and “… [i]n those circumstances, there was clearly evidence to support the adverse findings made by the Tribunal in the last paragraph of 81”; namely, that “the Fijian authorities will tolerate the past criticisms made by the applicant in his political blogs and will tolerate future criticism that is made in the same terms”.
2. The Minister submitted that the Tribunal set out the blogs provided to it in detail and it was evident from these blogs that the Appellant was in Fiji at the time of some of his blogging activity. While the Minister accepted that there were no adverse findings in relation to the blogging in Fiji, the Minister submitted that the Tribunal made adverse findings in relation to what flowed from that blogging activity. For example, at [31] of its Reasons, the Tribunal noted its concerns about the inconsistency in evidence given by the Appellant in relation to his blogging. Further, at [77] of its Reasons, the Tribunal found that it was “…satisfied that the [Appellant] blogged as outlined by him because he felt free to do so and was not fearful of any harm resulting from this activity”.
3. The Minister submitted that in carrying out its statutory task, being to review a refusal to issue a Protection visa, the Tribunal had regard to what had happened, what had previously been tolerated by the Government in relation to the Appellant’s earlier conduct and the likelihood of what would happen in the future upon the Appellant’s hypothetical return to Fiji
4. The Minister submitted that to construe the Tribunal’s Reasons at [77] as conveying a misunderstanding of when its role is to consider the question of the Appellant’s state of mind, would be, as the Minister submitted, to conclude that the Tribunal did not understand its statutory task. The Minister submitted that it follows that the primary judge considered the above evidence as supportive of the finding made at [81], and those findings were not illogical, irrational or unreasonable.

### Particulars 1(b), (c) and (f)

1. In relation to grounds 1(b) and (c), the Minister submitted that the primary judge did not limit his consideration to country information provided by the Appellant nor did the primary judge fail to properly engage with the contents of the DFAT Reports. Instead, the Minister submitted it is necessary to look at the primary judge’s reasons from [39]–[43] cumulatively, as opposed to [39] in isolation, to appreciate that the findings were made in reference to more than just the country information provided by the Appellant. The Minister submitted that the Tribunal’s finding at [81] was made having regard to, in part, country information contained in the DFAT Reports. It follows that, the primary judge had also implicitly engaged with the parts of the DFAT Reports in ultimately finding the Tribunal did not fall into error.
2. In relation to the Tribunal’s engagement with the DFAT Reports, the Minister submitted that the Tribunal did engage with the parts referred to by the Appellant. For example, the Appellant submitted that the Tribunal did not have regard to section 3.41 of the 2017 DFAT Report stating that “… public figures continue to tread carefully in their expression of public opinion”. The Minister submitted that while this sentence may not have been specifically referenced, this part of the DFAT Report was clearly considered by the Tribunal having regard to [79] of the Tribunal’s Reasons where the Tribunal paraphrased this part of the DFAT Report:

“… DFAT assesses that high-profile public figures, including the leaders of organisations who may be seen to challenge the government’s authority or undermine its legitimacy are at risk of negative attention …”

1. Where parts of the reports were not directly referred to in the Primary Reasons, the Minister submitted that they were either not directly relevant to the Appellant’s claims, and the Tribunal was therefore not required to extract these parts, or they were referenced more generally.

### Particulars (d) and (e)

1. In relation to ground 1(d), the Minister submitted that at [42] of the Primary Reasons, the primary judge stated that the country material referred to was not significant or important to the Appellant’s claims. As noted above, it follows that the information did not have to be explicitly referred to by the Tribunal in its Reasons. Further, the Minister contended that the Tribunal clearly did have regard to the specific circumstances of the Appellant, in particular at [81] of its Reasons, when it stated “… the Tribunal needs to consider the particular circumstances of this [Appellant]”, which the Tribunal then went on to do. In the Minister’s submission, the Tribunal therefore completed the statutory task it was required to perform.
2. As to ground 1(e), the Minister submitted once again that [39]–[43] of the Primary Reasons should be read together, and that when read in this manner, the primary judge did consider the weighing up process that the Tribunal undertook in performing its statutory task. The Minister contended that the Tribunal had considered and applied the principles in *MZYTS* in making the finding that there was no “proper basis to infer that the Tribunal did not take into account the country information identified by the [A]ppellant”.
3. The Minister further contended that it was open for the Tribunal to attribute weight to the DFAT Reports as opposed to the country information provided by the Appellant and reasonable for the Tribunal to find that the DFAT Reports supported its findings, particularly in circumstances where the country information contained in the DFAT Reports was “more aligned with” the Appellant’s particular circumstances. In this respect, the Minister submitted that the primary judge did not err in his findings.

### Ground 2

1. In relation to Ground 2, the Minister submitted that the primary judge’s finding that “given the delay alone … there was an evident and intelligible justification for the Tribunal’s adverse finding” does not disclose error. In particular, the Minister submitted that when [46] of the Primary Reasons is read in its entirety, it is clear that the primary judge did not intend to substitute his own findings, but rather explicitly referred to some of the reasons given by the Tribunal in concluding that the adverse credibility findings were “logical, rational and open”. The Minister contended that as the credibility finding was supported by a number of bases, it was not necessary for the primary judge to refer to every basis, particularly in circumstances where one alone provided a rational foundation for such a finding.
2. The Minister submitted that in its Reasons, the Tribunal stated that the adverse credibility findings were not purely based on the fabrication of the detention claim, but were made on various bases. This was made clear at [31] of its Reasons:

… the applicant’s evidence about his blogging activity is inconsistent and, in the Tribunal’s view, undermines the applicant’s credibility. The Tribunal has considered the following evidence and **has considered this in combination** with the concerns that the Tribunal has about whether the applicant was detained in Fiji as he claimed, and the reasons provided for his delay in his application for protection. **When considered together**, the Tribunal’s concerns lead it to the conclusion that the applicant has fabricated his claims for past harm and that the Tribunal can place no weight on the explanations he gave to the Tribunal about his reason for delaying his protection application, and his explanations for not raising his protection concerns at the earlier Tribunal hearing.

[Emphasis added]

1. The Minister contended that the Tribunal rationalised its finding in this regard as there were a number of bases which detracted from the Appellant’s credibility in relation to the claim, and accordingly, its finding would not reach the high bar needed to establish legal unreasonableness: *Minister for Immigration and Citizenship v* ***SZMDS***[2010] HCA 16; 240 CLR 611 at [130]–[131] (Crennan and Bell JJ). There was therefore no error present on the Tribunal’s part in drawing adverse credibility findings from its earlier finding that the Appellant fabricated his detention claim as a part of its reasonsfor why it did not accept the Appellant's other key claims and evidence.
2. Even in the event the credibility finding was sound and distinct from the blogging activity, which the Minster does not say it is, the Minister submitted that there was still an adequate and rational basis with which the Tribunal came to the conclusion that the Appellant did not have a well-founded fear of harm.

# Consideration

1. The authorities in this jurisdiction are festooned with pleas from courts, including of the highest authority, urging that the practice of textual deconstruction of reasons given by administrative decision makers, and judges, which seize upon the verbal formulation, or phrasing, of the reasons given by the decision maker, rather than the substantive analytical threads of the reasoning, should cease: see, eg, *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; 185 CLR 259 at 272 (Brennan CJ, Toohey, McHugh, Gummow and Kirby JJ). That practice lamentably continues, generally speaking, unabated. The present appeal is yet another example.
2. The purported critique of the reasons given by the primary judge seize upon his Honour’s verbal formulation; that is to say, the phrasing he chose in expressing his reasons for decision, rather than the substantive or forensic matters which underpin his reasons. The primary judge’s task was to consider the reasons given by the Tribunal, taking into account the grounds upon which the Appellant submitted they should be impugned for legal error. In exercising the jurisdiction of judicial review, it is invariably necessary for the judge to distil from the reasons given by the decision making body, here the Tribunal, those matters which are material to the decision in question. As the task of a judge exercising judicial review is to consider the administrative decision for the purpose of ascertaining whether there has been any legal error as contended, it is invariably necessary to summarise the reasons of the relevant tribunal or administrative decision-maker below.
3. In that intellectual task, the judge exercising the jurisdiction of judicial review must necessarily comment on the reasoning of the decision-maker below. Surely it does not need to be repeated that the judge is not required to comment, note, endorse or disagree with all that is said in the decision under review. At this level in the judicial hierarchy, that usually means that the critique of the reasons for the decision below is concerned with the adequacy of the critique that judge undertook of the reasons given by the administrative decision-maker and/or the tribunal with power to review the decision on its merits. Thus, usually by the stage that an appeal comes before this Court, there is an earlier critique, so that the decision of this Court entails a ‘critique of the critique’. Where the opportunity for further such critiques and analyses should cease, involving, as I have said, a critique of preceding critique, is for the legislature to determine. But the meaning of, and analytical approach to, the principles that have been developed by courts of competent jurisdiction concerning what is meant by legal or jurisdictional error, and any other doctrine or principle to guide judges when undertaking judicial review, is a matter for the courts.
4. The authorities could not be clearer when it comes to the analytical method to be used in considering the ‘critique of the critique’. It is not enough, indeed it is quite wrong, to put a monocle in one eye and while squinting to hold it in place, detect a word, or a phrase, or the absence of some word or phrase, or some other perceived lacuna in the reasons given below. The unwisdom of this approach to analysis is, of course, that it cannot withstand analysis; for when scrutinised, it evaporates as if a chimera. It is not sufficient to establish legal or jurisdictional error in the first mentioned critique, to claim that the judge did not say everything he or she might have said about what could have been said by the first decision-maker in his or her reasons. And yet the captious critiquing of the first mentioned critique continues as if it were an end in itself, in search for arguments for error, rather than simply reading the reasons in question with an appreciation that the giving of reasons for a decision, in any jurisdiction, requires the decision-maker to make editorial judgments for many reasons, including importantly out of consideration for the untutored reader.
5. The detail matters, but unedited by the author, it is no more informative than the text pattern that at one time was transmitted by television networks when there was no other content available to broadcast. The duty of the decision-maker must be to state with cogency his or her reasons, and as I have said, it is the analytical threads of his or her reasons that should be clearly exposed, if for no other reason, to explain to the parties, especially the losing party, why he or she lost. This appeal is by no means the worst example of that ‘school of un-reasoning’, but it is an example. And so doing the best I can to critique the critique, I shall address the substance of the parties’ contentions, but not seriatim as if what matters in analysis is that every box have a tick when one gets to the end.

# Ground 1

1. This ground seizes upon two paragraphs of reasoning: [81] of the Tribunal’s Reasons and [38] of the Reasons for Judgment of the learned primary judge. Beginning with [38] of the primary judge’s reasons, all that is said by his Honour is:

…there was clearly evidence to support the adverse findings made by the Tribunal in the last paragraph of 81.

1. Clearly his Honour was referring in that sentence to the whole of [81] and thus his finding should be read as saying: “there was clearly evidence to support the adverse findings made by the Tribunal in the [last paragraph, [81], of its reasons].” Nothing turns on the typographical error.
2. The Appellant’s contention is that there was no evidence to support the Tribunal’s findings expressed in the last paragraph of its reasons, specifically the finding expressed in the last sentence of [81]. The primary judge found that there was evidence referred to in the Tribunal’s reasons that supported the findings made by the Tribunal at [81] and in particular the last sentence. The last sentence of [81] was a finding germane to the principal basis relied upon by the Appellant before the primary judge and on this appeal to support his claims for protection. That finding was inconsistent with the Appellant’s asserted fear of harm because the Tribunal found expressly that in its “assessment, the Fijian authorities will tolerate the past criticisms made by the applicant in his political blogs and will tolerate future criticism that is made in the same terms”. In other words, that was a conclusion which explains one of the reasons the Tribunal did not accept that the Appellant would face a real risk of serious harm if returned to Fiji on account of his political opinion.
3. In [38] of the reasons of the primary judge, his Honour merely observes that there was evidence to support the “adverse” findings made by the Tribunal in the last sentence of [81]. I take it that by “adverse”, his Honour meant adverse to the likelihood of success of the Appellant’s application for a protection visa. The gravamen of the primary judge’s reasoning in [38] is simply to observe that because the Tribunal had a foundation in the evidence for its conclusion expressed in the last sentence of [81], it could not be concluded that the finding in the last sentence of [81] is legally unreasonable.
4. The evidence in the Tribunal’s reasons, though not specifically cross referenced to the conclusion in [81] is the evidence referred to in [31] of the Tribunal’s reasons. The Tribunal’s reasons refer to the Appellant’s blogging activities at [31]. Returning to [38] of the primary judge’s reasons, his Honour says in the penultimate sentence that there was clearly evidence to support the adverse finding, adverse in the sense that it was adverse to the Appellant’s asserted basis for protection; namely, fear of harm arising from posting his political views on a blog.
5. The Appellant then argues that the error in the primary judge’s reasons was to wrongly attribute a dispositive significance to the factual observation in [31] of the Tribunal’s reasons concerning the Appellant’s blogging activities. On that basis, the Appellant asserts that the primary judge strayed into the realm of merits review, in effect by attributing a significance to the Appellant’s blogging activity that the Tribunal did not attribute to that activity.
6. I disagree. When the primary judge’s reasons are read as a whole, fairly and in context, his Honour did no such thing. He simply expressed the conclusion based on his critique of the Tribunal’s reasons that the Tribunal had evidence to support its ultimate disposition expressed in the last sentence of its discussion, before stating its conclusions at [82]-[84] and the disposition which followed, expressed in [85].
7. For these reasons, I find there was no analytical error, or intrusion into merits review in the reasons of the primary judge and accordingly I reject ground 1. The purported adumbration of the errors of reasoning in the particulars given under ground 1 do not contain any cogent critique of error in his Honour’s reasons and I therefore do not propose to address them seriatim, or any further at all.

# Ground 2

1. As to ground 2, the Appellant submitted that that the primary judge erred in failing to find that the adverse finding by the Tribunal that he fabricated the detention claim was not open or was otherwise unreasonable.
2. In particular, the Appellant submitted that: (1) the primary judge fell into error in stating that “delay alone” in applying for a protection visa was sufficient to make the adverse credibility findings; and (2) the primary judge failed to engage with critical arguments submitted by the Appellant, including reasons for the delay in making the application and reasons why it would be unjustified to conclude the Appellant fabricated his detention claim.
3. I will first address the contention that the primary judge erred in stating that “the delay alone in the seeking of the application for protection” was an “evident and intelligible justification” for the adverse finding: Primary Reasons at [46].
4. It was not disputed, and I also accept, that credit findings are open to challenge on judicial review, or review on any appeal. They are not sacrosanct or beyond review. There is no illogicality of reasoning, nor overreach in terms of inferences that may be drawn, to say, as the primary judge did, that one of the factors identified by the Tribunal would be sufficient to provide a rational foundation for the adverse credit findings.
5. It is apparent from the Tribunal’s Reasons that there were a number of factors the Tribunal took into account in making the adverse credit finding: Primary Reasons at [46]. Thus, the opinion expressed by the primary judge was a proposition that concerned the deductive process of reasoning as a matter of analysis, not a statement of the inferential basis upon which the Tribunal arrived at its decision. That reasoning could have been expressed in a variety of ways, but however expressed, the primary judge merely observed that “delay” can be an inferential basis upon which to reject evidence as lacking credibility.
6. The primary judge did not say so, but delay is rationally capable of being an objective indicator of fabrication. An inference of fabrication based upon delay is common place in the law. It is often encapsulated in the expression ‘recent invention’. It is ‘recent’ because of the delay in raising the matter. Recent invention as a factual foundation, where applicable, to an adverse credit finding is entrenched as a matter accepted of forensic analysis and judicial method. The rule in ***Browne v Dunn*** (1893) 6 R 67 is there, as much as for any other purpose, to ensure that it should not be open to suggest to the witness giving evidence for the defendant that he or she ‘delayed’ in making the allegation and his or her evidence was recently invented. Hence, the obligation to ‘put’ the evidence to be led from the defendant’s witness to the plaintiffs’ witnesses. If the rule in *Browne v Dunn* is not observed, and the defendants’ witness when cross examined about a matter not put the plaintiffs’ witness, is exposed to the allegation, and potentially an adverse credit finding that the evidence he or she gave was fabricated, and/or findings as to the fact in issue that fundamentally based on delay in saying whatever it might be that should have been put. If, on the other hand the rule in *Browne v Dunne* is complied with but notwithstanding the defendant’s witness is cross examined on the basis of recent invention, the plaintiff is then entitled to give evidence of a prior relevant or consistent statements to rebut an inference of recent invention that would otherwise be available. Thus, delay in making complaints or raising an allegation is unassailably relevant to credit.
7. I therefore reject Ground 2.

# Disposition

1. For the above reasons, the appeal should be dismissed with costs.

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| I certify that the preceding seventy-eight (78) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Anastassiou. |

Associate:

Dated: 29 April 2022