FEDERAL COURT OF AUSTRALIA

SZEOP v Minister for Immigration and Citizenship

[2007] FCA 807

SZEOP v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND ANOR
NSD 2531 OF 2006

RARES J
11 MAY 2007
SYDNEY

NO QUESTION OF PRINCIPLE

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 2531 OF 2006**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN: **SZEOP**
Appellant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

JUDGE: **RARES J**
DATE OF ORDER: **11 MAY 2007**
WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. The name of the first respondent be changed to 'Minister for Immigration and Citizenship'.

2. The appeal be allowed with costs.

3. The orders made by the Federal Magistrates Court on 7 December 2006 be set aside and in lieu thereof it be ordered that:

   (a) a writ of certiorari in the first instance issue to quash the decision of the Refugee Review Tribunal made on 2 July 2006 and communicated to the appellant in a letter of 3 July 2006;

   (b) a writ of mandamus in the first instance issue to the second respondent requiring it to determine the applicant's application for a review of the decision to refuse to grant him a protection visa according to law;

   (c) the first respondent pay the applicant's costs.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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BETWEEN:	**SZEOP** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**
JUDGE:	**RARES J**
DATE:	**11 MAY 2007**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

(REVISED FROM THE TRANSCRIPT)

1 This is an appeal from a decision of the Federal Magistrates Court: *SZEOP v Minister for Immigration* [2006] FMCA 1707. It involves yet another question of construction arising out of the provisions of s 424A of the *Migration Act 1958* (Cth).

2 The appellant is a citizen of Bangladesh who arrived in Australia on a student visa in January 2001. That visa was cancelled and the appellant was told by the Department of Immigration to make arrangements to depart from Australia in around October 2002. He did not do so and was detained in immigration detention in November 2002 until released as a result of a decision by the Migration Review Tribunal in January 2003. However, the appellant did not pursue a challenge to the cancellation of his student visa and by March 2003 he became aware that a bridging visa that had been granted to him as a result of the decision of the Migration Review Tribunal had been cancelled. From then he was aware of his unlawful status in Australia until he was detained again later in 2004.

3 His application for a protection visa was first lodged in August 2004. It was rejected by a delegate of the Minister and the Refugee Review Tribunal affirmed that rejection in late September 2004. The appellant then sought judicial review of that decision and ultimately succeeded in having it quashed as one of the cases considered by the Full Court in the decision reported as *SZEEU v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 150 FCR 214. The matter was again remitted to the Refugee Review Tribunal.

4 The tribunal was constituted differently on the second occasion. The tribunal invited the appellant to a hearing on 5 June 2006 which he attended. During the course of the second hearing the tribunal member questioned him extensively about his claims, as had the first tribunal member on the initial review.

5 In essence, the appellant had made a number of claims for protection in his initial application in August 2004. They were as follows:

(1) he became an active member of a progressive political party called the Bangladesh Awami League. He expressed his opinions in a speech made in October 1995 at a student gathering and demonstration which supported Western world political activities, society and politics. In the speech he asked everyone to stop corrupt politics and the use of what he described as 'muscle power' in other different religious beliefs, and advocated the legalisation of some banned practices such as prostitution and gay marriage. He said that he specifically wanted to talk loudly about the gay community and that, he said, made some people furious with him;

(2) he said that after he had associated with foreign students in Dhaka he realised that he was attracted to men and began to feel attraction to them which he said was not a lifestyle or sexuality that was acceptable in Bangladeshi society;

(3) he claimed to have been persecuted because of being a member of a particular social group, namely, that he was a homosexual male in Bangladesh;

(4) he also claimed that whenever he got the chance to speak at a student gathering at university he talked openly of gay relationships and other human

rights and that although he tried to obtain political backing, no political or social organisation accepted his views and he began to become ostracised as a result;

(5) he claimed that he had been later threatened by members of fundamentalist Muslim groups who called him an agent of open-minded Western people and threatened his life. He says he had to then leave Dhaka University and return to his home city of Chittagong without telling anyone. He says that he lived in Chittagong with his family hiding from the fundamentalists and stopped studying. After a year of living in that way he tried to get a job and started working in an electronics company;

(6) in 2000 some members of the fundamentalist groups found and recognised him in Chittagong and gave him an ultimatum to leave the country in three months because his beliefs had not changed. His family was threatened since they were supporting him. He then sought admission to an Australian university to continue his studies and was successful;

(7) he claimed that if he ever went back to Bangladesh his life would be in severe danger because he was known as a non-believer and according to mullahs he was committing a big sin against them and their religious beliefs. He claimed that when he returned to Bangladesh anyone would recognise him as a person with a Western attitude for his everyday lifestyle and he would be found out more easily than previously by religious extremists and terrorist-minded people who object to his sexuality and beliefs;

(8) his family told him if he came back to Bangladesh he would have to be on his own because they would not accept responsibility for his behaviour. He noted that s 377 of the Bangladesh Penal Code prohibited homosexual intercourse as a crime.

6 The first tribunal rejected the appellant's claims. The Full Court found that the first tribunal had erred in substance because it used information in the appellant's protection visa application, in particular the date upon which it was made, as part of the reason for affirming

the decision under review. No notice in writing had been given to the appellant that that information would be the reason or part of the reason for affirming the decision within the meaning of s 424A(1) of the Act. There was also some discussion in the judgments as to another matter which is not of present relevance.

7 The appellant put to the second tribunal evidence from Ms May-Welby, who was a member of Sex and Gender Education Australia and its media spokesperson. She said in a letter she had been visiting the Villawood Detention Centre at which the appellant had been detained for the past 12 months, seeing him fortnightly. She said that she could not help but notice the appellant's 'obvious gayness'. Ms May-Welby said she based that belief on her experience as a member of the gay community during all her adult life, which was at least 26 years. She then referred to conditions in Bangladesh for homosexual males.

8 The tribunal questioned the appellant at hearing on 5 June 2006 and covered, among others of his claims, his claim to be a homosexual. It is not necessary to go into the detail of that hearing for present purposes.

9 On 8 June 2006, following the hearing, the tribunal for the first time wrote a letter to the appellant pursuant to s 424A of the Act. The letter was headed, 'Invitation to Comment on Information', and was faxed to the appellant at the Villawood Detention Centre. It commenced by telling him that the tribunal had information that would, subject to any comments he made, be the reason or part of the reason for deciding that the appellant was not entitled to a protection visa. It then set out in five paragraphs what the information was before inviting the appellant to comment on it.

10 The letter identified the following information:

- The appellant's claim to have delivered the speech in Dhaka in 1995 was said to have caused him to go into hiding in Chittagong from then until he left Bangladesh in January 2001. But the tribunal pointed out that even though he had claimed to be in hiding he had lived at the family home and thereafter had gained employment as an assistant electronic engineer from 1997 to 2000. The tribunal said this was relevant to the application because it cast doubt on the claim that the appellant was in hiding as a result of a speech.

- The appellant had said that he had gone to a student reunion at Chittagong in October 2000 notwithstanding his claim to have been in hiding at that time. In the hearing before the first tribunal in September 2004 the appellant had said that the student union at Chittagong was dominated by a particular Islamic group. The tribunal said that this information was relevant because it cast doubt on the claim that he had been in hiding in Chittagong because of his fear of fundamentalists as a result of a speech he claimed to have delivered in Dhaka in 1995.

- The appellant's claim that five members of the Islamic student group kidnapped him and bashed him was made in circumstances where, although he claimed they had supposedly been seeking him for five years, the group nonetheless released him and gave him three months to leave the country. The tribunal commented that it was difficult to accept his version of the events and, even if it were accepted, it would cast doubt on his claim that his life would be in severe danger from fundamentalists, extremists, or terrorists were he to return to Bangladesh.

- The tribunal recited the appellant's Australian migration history, which I have set out above, to the point at which he was detained in 2004. It also referred to the fact that he had said that he could not afford a lawyer to continue his application to the Migration Review Tribunal and went on to say:

> *'You have said that you did not apply earlier for a protection visa, despite your claims regarding the problems you would face if you were to return to Bangladesh, because you planned to complete your studies in Australia and to apply for skilled migration. However, it is clear that by the time your bridging visa was cancelled in around March 2003, you knew that you had no prospect of completing your studies in Australia and applying for skilled migration. Nevertheless, despite your claimed problems in Bangladesh, you did not apply for a protection visa until 9 August 2004.* ***Your delay in applying for Australia's protection is relevant because it casts doubt on the genuineness, or at least the depth, of your claimed fear of being persecuted if you return to Bangladesh***. (emphasis added)

11 The tribunal invited the appellant to comment on this information within the next eight days. The appellant then sought an extension of time and a copy of the tapes of the Tribunal hearing. When the tribunal sent the tapes on 13 June 2006, it told the appellant only that the presiding member would not make a decision on the review application before 29 June 2006. He telephoned the next day and was told that although no official extension had been granted to him the tribunal's presiding member would consider any submissions given to him prior to 29 June 2006.

12 In the meantime, by 10 June 2006 Ms May-Welby wrote again to the tribunal concerning the perceived difficulties the appellant would have as a gay person were he to return to Bangladesh. Her letter was received by the tribunal on 19 June 2006. The appellant provided some country information to the tribunal on 28 June 2006 as to the situation in Bangladesh. Also on 28 June 2006 he sought a further extension of time through a letter from a friend who wished to gather further information about the conditions of homosexuals in Bangladesh.

13 On 29 June 2006, the appellant wrote a detailed letter to the tribunal seeking to identify precisely what it was that he was being asked to comment on in the letter that he had been sent under s 424A. He asked for clarification if his understanding of what was being asked about was correct. He said that he understood that the tribunal did not have any difficulty whatsoever in accepting his claims other than those mentioned directly in the tribunal's letter of 8 June 2006. He asked for clarification if he was incorrect. He asked in particular about the paragraph of that letter which I have quoted above. The appellant said it seemed to be vague and he did not understand it properly. He asked the tribunal whether by using the phrase, 'if you return to Bangladesh', it was referring only to his claim that he feared persecution in the future or was intended to relate to his past claims and if so, in what way. He complained that the tribunal had not identified how a delay in making a claim for a protection visa could cast doubt on his claims.

14 On the same day the tribunal responded by letter saying that its letter of 8 June:

> *'… is not, and does not purport to be, an exhaustive statement of all the doubts the Tribunal has in relation to your claims. The issues in the review were fully explored at the hearing on 5 June 2006.'*

15 The tribunal wrote that the appellant had been given the opportunity at the hearing to give evidence and present arguments in relation to the decision the subject of the review and said that with the exception of the information referred to in its letter of 8 June 2006, it was not obliged to give him any further opportunity to comment on information in writing. It said that the relevance of the delay in applying for a protection visa was that the Courts in Australia had stated that a person's delay in applying for refugee status is relevant to the genuineness or, at least, the depth of their claimed fear of being persecuted (this was a reference to Heerey J's decision in *Selvadurai v Minister for Immigration and Ethnic Affairs* [1994] FCA 301 partly reported at (1994) 34 ALD 347). The tribunal responded to the material which it had received the previous day as to conditions of homosexuals in Bangladesh, saying:

> *'The Member reviewing your case has asked me to advise you that he is not prepared to grant any further extension of time. The Member notes that the issue in the review is not the situation of homosexuals in Bangladesh but whether your claims are true.'*

16 On 2 July 2006 the tribunal affirmed the decision not to grant the appellant a protection visa. In coming to its conclusion that it was not satisfied that he had a well-founded fear of being persecuted for a Convention reason if he returned to Bangladesh, the tribunal concluded that all of the appellant's claims in his protection visa application were fabricated. It said that despite his claimed fear of being persecuted in Bangladesh he had not applied for a protection visa until 9 August 2004. It considered that this clearly cast doubt on whether he genuinely feared persecution for a Convention reason were he to return to Bangladesh, and continued:

> *'As discussed at the hearing before me and as further dealt with as required in the Tribunal's section 424A letter, I consider that there are further reasons for doubting that the [appellant] is telling the truth about his claimed fear of being persecuted in Bangladesh. The [appellant] claims to be homosexual but apart from his own assertions to that effect there is a surprising lack of evidence to support this claim, having regard to the length of time the [appellant] has spent in Australia.'*

17 The tribunal referred to persons named by the appellant at the previous tribunal hearing, at which time he had been legally represented. It referred to a letter from a person who said that he could 'clarify' that the appellant was homosexual. I note that when one reads the letter it does not seem to be from a person whose first language is English. But the

tribunal made no mention of that, as it was entitled to do in finding facts. The tribunal complained that the appellant had not named the author of the letter at the previous hearing and it then referred to another claim the appellant had made in the previous tribunal hearing about some photographs which do not have any present relevance.

18 The tribunal said:

> *'I accept that Ms Norrie May-Welby who gave evidence at the hearing before me is sincere in her belief that the [appellant] is homosexual but as I have said I consider that the [appellant's] delay in seeking Australia's protection casts doubt on that claim.'*

19 The tribunal reviewed a number of the matters that were referred to in the s 424A letter, and then began to express, in strong terms, its reasons for forming the view that the appellant's claims were not credible. It did not accept that he was homosexual as he claimed, or had delivered a speech to the student gathering in Dhaka in 1995, or was in hiding from fundamentalists who wished to kill him when he was living in his family home in Chittagong from 1995 until he left Bangladesh in 2001. The tribunal then said it did not accept that he was kidnapped by five members of the Islamic group when he attended the student reunion of his old college in Chittagong in October 2000, nor that his kidnappers gave him three months in which to leave the country. It did not accept that he genuinely feared he would be persecuted if he returned to Bangladesh because he was a homosexual, or because he was known to the mullahs as a non-believer who had worked against them and their beliefs, or as an atheist who did not pray, or because he would be recognised as a 'western attitude' person. It then continued:

> *'As indicated above, I do not accept that the [appellant] would have delayed for so long in making an application for a protection visa if he had genuinely feared being persecuted for any or all of these reasons if he returned to Bangladesh. I consider that the claims which the [appellant] made in support of his application for a protection visa are a fabrication.'*

20 The tribunal made further findings about these claims being fabrications before coming to its ultimate conclusion, non-satisfaction of a well-founded fear on the appellant's part of persecution for a Convention reason when he returned to Bangladesh.

THE S 424A ISSUE

21 The critical issue the case presents is whether in writing the letter under s 424A on 8 June 2006 the tribunal was obliged to state that it was relevant to the review that the appellant's identified delay in making his claim for a protection visa would be a reason for concluding that he had fabricated a claim to being homosexual.

22 The letter is silent about that claim. The passage which I have quoted with emphasis from the letter deals with what is, of course, the critical question in any claim for a protection visa, namely, whether the applicant for review has a genuine fear of being persecuted if the person returns to his or her country. But that is not the only issue that the decision-maker must consider. The fear must be well-founded and the foundation must be based on some actual or perceived attribute of the applicant for review which amounts to a reason recognised in the Refugee Convention.

23 The letter initially had set out three different factual incidents and explained the way in which the information contained in the protection visa application, and previous hearing before the tribunal concerning those incidents, might be relevant to determining adversely the appellant's entitlement to a protection visa based on those claims. The way in which the letter was phrased suggested that the fear of persecution alone and not the underlying facts, in particular his homosexuality, was the question upon which he was being asked to comment.

24 A finding that someone has fabricated a claim is, of course, quite different in quality to a finding that the applicant for a protection visa has not satisfied the decision-maker that the claim is established. In *SZGGT v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] FCA 435 at [60]-[64] I explained why, in my view, a conclusion of fabrication of a claim has this substantive difference. To conclude that someone has fabricated a claim, the tribunal must use information, as it did here, so as to justify the conclusion. The way in which the tribunal reasoned was expressly to say that the identified delay in seeking a protection visa, first, 'cast doubt on the [appellant's] claim' and, secondly, showed that he had fabricated the claim itself. That was a leap to the conclusion.

25 No doubt the tribunal, in coming to that view, took into account the first three identified bases in the s 424A letter, as it did the delay. But in coming to the conclusion that

the claim that he was a homosexual had been fabricated, the tribunal used the delay as the reason. Indeed, it said, it accepted the genuineness of the evidence of Ms May-Welby, that she believed the appellant was homosexual, but considered that the delay in effect, coupled with the other matters, meant that he had fabricated his claim. At no point did the tribunal explain how, for example, Ms May-Welby was being deceived by whatever she was saying in her fortnightly communications with the appellant. Rather the tribunal focused in rejecting a fundamental part of his claim entirely on the assertion that he delayed in making it.

26 The tribunal had written on 8 June 2006 to the appellant in conformity with its obligation under s 424A(1)(b) to:

> *'… ensure, so far as reasonably practicable, that the applicant understands why it [the information referred to in s 424A(1)(a)] is relevant to the review.'*

The question is whether the tribunal was obliged to point out to the appellant that his delay (based on the information about delay in the 8 June 2006 letter) could be used to suggest not only that he should not have any fear of being persecuted were he to return to Bangladesh, but that he was being untruthful about being homosexual.

27 In *Minister for Immigration and Multicultural Affairs v SZGMF* [2006] FCAFC 138 the tribunal had written a letter under s 424A informing the applicant for review that two particular matters might undermine his general credibility and this could cause two documents he had given to the tribunal to support his case to be undermined. Branson, Finn and Bennett JJ said that the obligation imposed on the tribunal by s 424A relevantly had two aspects: first, to give an applicant for review particulars of any information the tribunal considered would be the reason or part of the reason for affirming the decision under review, and secondly, to ensure that as far as reasonably practicable he or she understood why the information was relevant to the review.

28 They pointed out that in that case the particulars given in the letter made no reference to another piece of information that the tribunal had received and upon which it later acted. They pointed out that the obligation under s 424A(1)(b) required that an applicant for review should be informed by the letter sent by the tribunal as to how or why the information set out in the letter was relevant to the review. Their Honours said that no practical or other difficulty had stood in the way of the tribunal there telling the applicant for review that the

information it had received about the letters on which he was relying and to which the s 424A letter had been directed caused it to disbelieve or doubt the content of the letters relied on by the applicant.

29 Their Honours said that the s 424A letter did not explicitly tell the applicant for review that the relevance to the review of the information which it had received about his letters of support was that other information indicated that the content of those letters was false. They referred to the opaque nature of the particulars and information provided in the s 424A letter and said that the use that the tribunal would make of the information as particularised was not self-evident.

30 The requirements of s 424A(1) are matters which have to be satisfied objectively. The decision of the High Court in *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 215 ALR 162 makes clear that unless the tribunal strictly complies with the requirements of s 424A, when it is engaged, it commits a jurisdictional error which will entitle the applicant for review to constitutional writ relief absent some disentitling conduct.

31 If the matter had been simply a question arising under the common law of procedural fairness, I do not have any doubt that the tribunal had raised sufficiently with the appellant during the course of the hearing difficulties it had with his claims, including his claim to be homosexual. But the tribunal itself considered, following the hearing and, no doubt, its own deliberation upon what would be at that time the reason or part of the reason for affirming the decision under review, the other information that I have identified in the letter it sent under s 424A. There was no reason apparent on the face of the letter, or in the statement made by the tribunal of its findings of fact and reasons for decision under s 430, as to why the delay in making the claim for a protection visa impacted on the genuineness of the appellant's claim to have been homosexual. The letter which the tribunal sent addressed only, in that respect, the relevance of delay in relation to his fear of being persecuted. This was in contrast to the three specific instances of doubt which the tribunal explained in pellucid detail concerning other claims he had made in his protection visa application.

32 The tribunal not only came to the view that it did not accept the appellant's evidence that he was homosexual or that of his supporting witnesses, and in particular Ms May-

Welby's evidence. It also found that the appellant had fabricated his claim to be a homosexual, notwithstanding a belief in the sincerity of the evidence of Ms May-Welby who had observed him. The proof of a person's sexuality is necessarily, in the ordinary course, somewhat difficult. People normally engage in sexual activity in the privacy of their own bedrooms. They do not normally get filmed engaging in these activities or necessarily have other people who will come forward and discuss them, unless they have a particular relationship with those persons. So, the credibility of such a claim can be difficult to establish or negate.

33 The tribunal's fact finding function is quintessentially one in which it must satisfy itself or fail to be satisfied as to such claims and give reasons for so concluding. In my opinion, the tribunal in its expressed statement of reasons took the view that the information concerning what it had particularised as to delay was a reason for concluding that the appellant had fabricated his claim to be a homosexual, in addition to any consequence of that delay going to the credibility of his claim of a well-founded fear of being persecuted. Heerey J had said in *Selvadurai* [1994] FCA 301 that a delay of 20 months in lodging a claim for a protection visa was:

> *'… a legitimate factual argument and an obvious one to take into account in assessing the genuineness, or at least the depth, of the applicant's alleged fear of persecution. It is a rational consideration open on the material. Natural justice does not require every possible adverse inference from uncontested facts to be put to an applicant. A decision-maker does not have to provide an applicant with a draft of the proposed reasons for decision.'*

The last two sentences indeed anticipated what the High Court reiterated in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 231 ALR 592, esp at 603 [48].

34 However, in that decision the Court was looking at the common law of procedural fairness, not the strictures which s 422B and s 424A have engrafted in the decision-making processes of the tribunal. By relying upon the delay of the appellant in making his protection visa application as a basis for concluding that he had fabricated all his claims, including his claim to be a homosexual, the tribunal used that information in a way which went beyond what it had identified in its letter under s 424A. Of course, it might be retorted that telling an applicant for review that the delay cast doubt on the genuineness or depth of the claimed fear

of being persecuted comprehended every basis upon which that fear was sought to be established by the applicant for review. In the context of the letter that the tribunal wrote I do not think that would be a fair reading.

35 Technical and unsatisfactory as this is, it seems to me that the tribunal very clearly set out the factual matters or information upon which it wished to have comment in its letter of 8 June 2006. These did not include any suggestion that the appellant's claim to be a homosexual would be positively disbelieved as a fabrication because he had delayed in making his protection visa application.

36 When the matter was before the trial judge he took the view that it must have been apparent to the appellant, having regard to the course of the hearing and the terms of the letter, that the tribunal was contemplating a possible finding that it was not satisfied that he was a homosexual. But that approach does not deal with the strict requirements of s 424A(1)(b). It required the tribunal to ensure, as far as reasonably practical, that it identified to the appellant why he should have understood the information was relevant to the review. This is necessary to avoid an applicant for review being left to choose between uncertain inferences that might otherwise be available in the notification. The natural justice which the Parliament has said an applicant for review is entitled to receive from the tribunal in a situation such as the present includes, as far as is reasonably practical, that the applicant is told by the tribunal why the information is relevant to the review. The tribunal does not fulfil the obligation imposed by s 424A(1)(b) if it leaves it to chance that he ought to appreciate that relevance from the course of the hearing, or from other circumstances surrounding the way in which the review is being conducted.

37 Indeed, s 422B simply reinforces the fact that the Parliament intended strict compliance with the provisions of Div 4 of Pt 7 of the Act, which contains exhaustive requirements of the tribunal's obligation to accord procedural fairness to an applicant for review. So much flows from the interpretation of that section by the Full Court decisions in *Minister for Immigration and Multicultural Affairs v Lay Lat* (2006) 151 FCR 214 and also in *SZCIJ v Minister for Immigration and Multicultural Affairs* [2006] FCAFC 62. They show that the natural justice provided by Div 4 of Pt 7 has its own particular features, one of which is the necessity strictly to comply with those parts of the legislation which dictate procedure.

The consequence of those decisions is that common law cannot otherwise give a remedy to a person in the position of an applicant for review who has been accorded procedural fairness in a hearing in accordance with Div 4 of Pt 7.

38 In my opinion his Honour was in error in taking the view, that accords with common sense, that the relevance must have been apparent to the appellant even though the tribunal did not fulfil its statutory function of pointing out that relevance. That failure of the tribunal was a jurisdictional error. There is no reason why the appellant is not entitled to relief.

39 For these reasons I am of opinion that the appeal succeeds.

I certify that the preceding thirty-nine (39) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rares.

Associate:

Dated: 25 May 2007

Counsel for the Appellant:	SEJ Prince
Counsel for the Respondent:	M Allars
Solicitor for the Respondent:	Blake Dawson Waldron
Date of Hearing:	11 May 2007
Date of Judgment:	11 May 2007