**Credibility Notes**

When you are considering the evidence of an important witness, you will need to consider two aspects; reliability and honesty.

**Reliability**

(a): Is the evidence of the witness reliable? Honest witnesses can be mistaken. Is the witnesses evidence accurate on the important points?

For example: It is well established that evidence of identification can be unreliable. A witness sees a crime. It can be a fearful, traumatic experience. The crime involves people they do not know. Later they are asked to identify those involved. They may identify someone they genuinely believe is involved – but they may be mistaken. It is especially important in cases that rely upon identification of the perpetrator that great care is taken.

When considering identification evidence, keep these factors in mind.

* Did the person identifying know the person identified beforehand?
* What were the circumstances of the identification e.g. distance, light, etc.?

**Honesty**

(b): Is the witness giving honest evidence; are they honestly trying to tell you as the Judge what they know about the case?

Assessing the honesty of a witness is one of the most difficult areas for a Judge, not just reaching a conclusion about which witness is telling the truth and which is not, but giving reasons for your conclusions.

* The first step is to identify what disputes there are about the alleged facts in the case before you.
* Then, does the dispute about a particular fact matter in the case before you?

For example: Does it really matter if one witness said the important events happened at 1.00pm and another witness at 2.00pm? But it may matter if one witness said 2.00pm and another 11.00pm (at night).

If whether or not a witness is telling the truth about a particular matter is vital to a resolution of the case then you will have to decide on the credibility.

Only resolve credibility issues if you need to do so to resolve the case before you.

Once you have concluded whether a witness is telling the truth is vital to the case before you, you will need to give reasons why you think a witness is accurate and/or truthful or inaccurate and/or untruthful.

Generally do not rely upon how a witness looks when giving evidence or what gestures a witness makes or whether a witness hesitates before answering questions. These have been found to be unreliable indicators as to whether a witness is or is not telling the truth.

For example: Judges in the past relied upon a witness’s failure to look them or the lawyer questioning them “in the eye”. This failure was seen as an indication of lying. As you will all know, for many Pacific Islanders it is very impolite to look a person, especially one of authority, in the eye.

When considering whether a witness’s evidence is truthful consider these factors:

* Was the witness’s evidence consistent with what the witness had previously said?
* Was the witness’s evidence consistent with other accepted evidence, e.g. another witness or importantly documentary evidence?
* When giving evidence, did the witness give straightforward answers or fail to answer questions, or give vague answers?
* Did the witness have any motive to lie?
* Did the witness’s evidence “make sense” given what has been established in the case?
* Did the witness have a record of lying or dishonesty?

**Extract from the *PJSI Judicial Decision-making Toolkit*, 2020**.

The full Toolkit is available here: <https://www.fedcourt.gov.au/pjsi/resources/toolkits>