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Weekly International Law Review

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Executive Summary (One Minute Read)

Aquino v Bondfield Construction Co (SCC) - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

International Air Transport Association v Canada Transportation Authority (SCC) - Canadian agency regulations that require airlines to pay compensation for flight disruptions are not superseded by the Montreal Convention which limits damages claims by international air passengers

HABEAS CANEM

Peace



Summaries With Link (Five Minute Read)

Aquino v Bondfield Construction Co 2024 SCC 31

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)

[From Benchmark Friday, 18 October 2024]

International Air Transport Association v Canada Transportation Authority 2024 SCC 30

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin, & Moreau JJ

The International Air Transport Association (IATA) challenged regulations issued by the Canadian Transportation Agency that provided for compensation in the event of international flight delays, cancellations, and denial of boarding. IATA contended that the Canadian regulations were invalid as being inconsistent with the Montreal Convention, to which Canada acceded in 2001. The Montreal Convention, formally known as the Convention for the Unification of Certain Rules for International Carriage by Air, is part of Canadian domestic law. The Montreal Convention limits claims made against airlines for damages in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. Article 29 of the Montreal Convention states that any action for damages within the scope of the Convention is subject to the Convention's limits and conditions. The Federal Court of Appeal dismissed the claims brought by IATA with respect to compensation for flight delays and disruptions. The Supreme Court (Rowe J, joined by Wagner CJ, Karakatsanis, Côté, Martin, Kasirer, Jamal, O'Bonsawin, & Morreau JJ) dismissed IATA's appeal on the ground that the Canadian regulations did not relate to an action for damages. The Supreme Court held that,

while the Montreal Convention provides the exclusive remedy for matters it addresses, the Convention did not deal comprehensively with all aspects of international air travel. The Court found that the Canadian regulations did not provide for an action for damages because the compensation provided was not individualised. The Court found that the regulations operated in parallel with the Montreal Convention and were outside the parameters of the Convention's exclusivity.

[International Air Transport Association](#)

[From Benchmark Friday, 18 October 2024]



Poem for Friday

In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art
Exercised in the still night
When only the moon rages
And the lovers lie abed
With all their griefs in their arms,
I labour by singing light
Not for ambition or bread
Or the strut and trade of charms
On the ivory stages
But for the common wages
Of their most secret heart.
Not for the proud man apart
From the raging moon I write
On these spindrift pages
Nor for the towering dead
With their nightingales and psalms
But for the lovers, their arms
Round the griefs of the ages,
Who pay no praise or wages
Nor heed my craft or art.

Dylan Marlais Thomas, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

Dylan Thomas reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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