

Friday, 21 January 2022

Special Edition Broadcast

 Follow @Benchmark Legal
Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (One Minute Read)

Novak Djokovic v Minister for Home Affairs (FCAFC) - findings of fact without relevant evidence or material - illogicality, irrationality and legal unreasonableness - content of s116(1)(e)(i) "public interest" for s133C(3)(b) - satisfaction as to the risk to the good order of the community - satisfaction as to the public interest - satisfaction as to risk to the health of the community - application dismissed

Dyer v Chrysanthou (No 2) (Injunction) / Dyer v Chrysanthou (No 3) (Costs) (FCA) - order to pay costs for substantive proceedings - application for injunction to restrain counsel from acting for Government Minister in defamation proceedings - whether there is a real and sensible possibility of the misuse of confidential information - whether the proper administration of justice requires counsel be restrained from acting - relief - application allowed - applicant successful in substantive proceedings - whether first respondent should not be ordered to pay costs - the first respondent filed a submitting notice - whether the second respondent should be ordered to pay 70% of the applicant's costs - the second respondent contended the applicant filed evidence late, which was analogous to an amendment - first and second respondents ordered to pay the applicant's costs

HABEAS CANEM

Surveying



Summaries With Link (Five Minute Read)

Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 3

Full Court of the Federal Court of Australia

Chief Justice Allsop, Justice Besanko and Justice O'Callaghan

Migration Law - application for review of decision of the Minister to cancel visa under personal power under s133C(3) of the Migration Act 1958 (Cth) - required that a ground for cancelling the visa under s116 existed, and it was in the public interest to cancel - Minister satisfied that a ground for cancelling the visa under s116 of the Migration Act existed - concluded applicant's presence in Australia may be a risk to the health of the Australian community, being one limb of s116(1)(i) - reasoned that he acted inconsistently with certain Covid-19 restrictions in the past - Minister argued applicant's presence may be risk to good order for the community, another limb of s116(1)(e)(i) - *Tien v Minister for Immigration and Multicultural Affairs* "disruptive to the proper administration or observance of the law in Australia or might create difficulties or public disruption in relation to the values, balance and equilibrium of Australian society" - applicant raised ground of jurisdiction error as satisfaction of relevant risk must be reached on a legally reasonable basis and the discretionary power exercised in accordance with legal reasonableness - "Not every lapse of logic will give rise to jurisdictional error. A Court should be slow, although not unwilling, to interfere in an appropriate case" - Minister's "satisfaction" under s133C(3)(b) of the Migration Act that it would be in the public interest to cancel the visa - application dismissed.

[Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs Federal Court Online File](#)

Dyer v Chrysanthou (No 2) (Injunction) [2021] FCA 641 / Dyer v Chrysanthou (No 3) (Costs) [2021] FCA 642

Federal Court of Australia

Thawley J

Application in May 2021 for an injunction (*Dyer v Chrysanthou (No 2) (Injunction)*) to restrain First Respondent, counsel, from continuing to act for the Second Respondent, a government minister, in defamation proceedings - applicant made application on two grounds - first, there was a real and sensible possibility the First Respondent would misuse confidential information received from the applicant whilst acting in the proceedings - second, the need to protect the integrity of the judicial process and proper administration of justice - Court determined that a lawyer-client fiduciary relationship existed as the First Respondent provided legal advice to the applicant - information was provided in a circumstance where the First Respondent was acting as the applicant's legal representative - much information given by applicant to the first respondent was not in the public domain - risk existed that the confidential information would be relevant to the defamation proceedings - risk that the applicant would be called as a witness in the defamation proceedings - parts of the information could be relevant to issues in the defamation proceedings - real risk determined that confidential information may be used if



respondent was allowed to represent in the defamation proceedings Court considered question of the administration of justice from the public's view - fair-minded member of the public, with the knowledge that a lawyer-client relationship existed where confidential information was disclosed, would conclude that the respondent should not act in the defamation proceedings given the risk of the inconsistency of competing interests of the applicant and the government minister - Court ordered injunction for respondent to be restrained from acting in the defamation proceedings - application allowed - Dyer v Chrysanthou (No 3) - addressed the question of costs consequent upon the success of the applicant in - whether first respondent should not be ordered to pay costs - the first respondent filed a submitting notice - whether the second respondent should be ordered to pay 70% of the applicant's costs - the second respondent contended the applicant filed evidence late, which was analogous to an amendment - first and second respondents ordered to pay the applicant's costs - ordered invoices be handed over and referred the matter to a court registrar for resolution - the applicant's costs pursuant to the orders made on 11 June 2021 are determined in the amount of \$430,200.

[Orders](#)

[Dyer v Chrysanthou \(No 2\) \(Injunction\) \[2021\] FCA 641](#)

Applicant's costs pursuant to orders made on 11 Jun 2021 [Dyer v Chrysanthou \(No 3\) \(Costs\) \[2021\] FCA 642](#)

[Click Here to access our Benchmark Search Engine](#)