



Friday, 25 October 2024

## Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

### Search Engine

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### Executive Summary (One Minute Read)

**Smith v Impero Pacific Group Pty Ltd t/as Impero Constructions (NSWSC)** - Court lifted a stay of judicial review proceedings of an adjudication determination under the *Building and Construction Industry Security of Payment Act 1999* (NSW) that it had previously ordered

## HABEAS CANEM

### Habeus Halloween



## Summaries With Link (Five Minute Read)

### **Smith v Impero Pacific Group Pty Ltd t/as Impero Constructions [2024] NSWSC 1316**

Supreme Court of New South Wales

Stevenson J

Security of payments - Smith entered a cost plus contract with Impero to demolish the home that then existed on her property and to construct an alternative residence - the contract value increased from \$4.4million to \$8.3million due to a large number of variations - Smith's financier exercised its "step-in" rights under a tripartite agreement between it, Smith, and Impero, and terminated the contract, took possession of the property and listed it for sale - Impero made a payment claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW), and an adjudicator determined that Smith had to pay about \$420,000 - Smith sought judicial review of the adjudicator's decision - the Court ordered that the proceedings be stayed until Smith was in a position to pay the funds into Court and thus demonstrate her ability to meet the adjudication determination if she were unsuccessful in her application to quash it (see Benchmark 3 October 2024) - Impero then served a bankruptcy notice on Smith - Smith contended that this represented a change in circumstances since the Court's earlier judgment, sufficient to warrant the orders previously made being reconsidered - held: if Smith became bankrupt, it was likely that the current proceedings for all practical purposes would be stultified, as the proceedings could only then be continued if the trustee elected to continue the proceedings - as it seemed likely that, when Smith's financier exercised its power of sale over two properties owned by her, Smith would have a significant surplus of assets over liabilities, it was hard to see why the trustee would have any interest in electing to continue the current proceedings - there had therefore been a material change in circumstances - lifting the stay would leave Impero exposed to the prospect of succeeding in the current proceedings and obtaining an order for costs but being unable to recover its costs - this was a relevant factor, but was outweighed by other circumstances - stay lifted.

[View Decision](#)

[From Benchmark Tuesday, 22 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**In the Matter of McAleenon (UKSC)** - Supreme Court held that an individual had the right to compel judicial review of a government decision relating to landfill contamination even though a private right of action against the alleged polluter may have been available

### Summaries With Link (Five Minute Read)

**In the Matter of McAleenon [2024] UKSC 31**

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, & Lady Simler

Noeleen McAleenon resided near a landfill that was operated by a private firm. Ms McAleenon maintained that the Lisburn and Castlereagh Council had regulatory authority concerning nuisances like the landfill. She sought judicial review of how the Council had dealt with complaints about the landfill. The government argued that she could not seek judicial review of the Council's actions because she had available to her a private right of action against the alleged polluter. The Court of Appeal sustained this objection and held that there were suitable alternative remedies available to Ms McAleenon and that judicial review was not available to her. The Supreme Court reversed and found that the existence of a private claim in nuisance against the alleged polluter did not constitute a suitable alternative remedy to judicial review of the Council's conduct. The Court stated that the fact that different proceedings could have been brought against another party did not mean that there existed a suitable alternative so as to preclude judicial review. The Court further stated that it is not the courts' role to say that a claimant should have sued someone other than the branch of government whose actions were being questioned.

[In the Matter of McAleenon](#)

# Benchmark

## Poem for Friday

### Life

By Charlotte Brontë (1816-1855)

LIFE, believe, is not a dream  
So dark as sages say;  
Oft a little morning rain  
Foretells a pleasant day.  
Sometimes there are clouds of gloom,  
But these are transient all;  
If the shower will make the roses bloom,  
O why lament its fall ?

Rapidly, merrily,  
Life's sunny hours flit by,  
Gratefully, cheerily,  
Enjoy them as they fly !

What though Death at times steps in  
And calls our Best away ?  
What though sorrow seems to win,  
O'er hope, a heavy sway ?  
Yet hope again elastic springs,  
Unconquered, though she fell;  
Still buoyant are her golden wings,  
Still strong to bear us well.  
Manfully, fearlessly,  
The day of trial bear,  
For gloriously, victoriously,  
Can courage quell despair !

**Charlotte Brontë** was born on 21 April 1816, in West Yorkshire, UK. She was an English poet and novelist. She was the eldest of the three Brontë sisters. Her siblings were Emily Brontë, Anne Brontë, Branwell Brontë, Elizabeth Brontë, and Maria Brontë. She had a year of formal education at Clergy Daughters' School at Cowan Bridge. Thereafter she and her siblings learned at home, from each other and their parents, and aunt Elizabeth Branwell who lived with the family. She is famous for her novel *Jane Eyre*, which she first published under the pseudonym Currer Bell in 1847. She was married to Arthur Bell Nicholls from 1854 to 1855, for the last 9 months of her life. Nicholls had been the curate

to Charlotte's father, Patrick Brontë, an Anglican clergyman. Charlotte Brontë died on 31 March 1855 in Haworth, England.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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