



Friday, 1 November 2024

## Weekly Defamation Law

### A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Defamation Law

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#### Executive Summary (One Minute Read)

**M1 v R1** (NSWCA) - extension of time refused to seek judicial review of primary judge's decision to grant summary dismissal of defamation proceedings and to make a gross sum costs order

## HABEAS CANEM

### Pig, Dog and Bougainvillea



# Benchmark

## Summaries With Link (Five Minute Read)

### **M1 v R1 [2024] NSWCA 256**

Court of Appeal of New South Wales

Leeming & Mitchelmore JA, & Price AJA

Civil procedure - the applicant sued his former wife and his former wife's solicitor in defamation in respect of four publications allegedly made in the context of family law proceedings - the primary judge granted summary dismissal on the application of the wife and her solicitor - the primary judge declined to recuse herself from dealing the costs, and made a gross sum costs order against the applicant - the applicant sought an extension of time to apply for judicial review of both the primary judgment and the costs judgment, pursuant to s69 of the *Supreme Court Act 1970* (NSW), on the basis that he was denied procedural fairness, the primary judge was affected by apprehended bias, the quantum of the gross sum costs order was unreasonable, the primary judge's reasons were inadequate, and the primary judge had failed to respond to all of his allegations and considered irrelevant material - held: UCPR r59.10(3) provides that in considering whether to extend time for applications for judicial review, the court should take account of such factors as are relevant in the circumstances of the particular case, including (a) any particular interest of the plaintiff in challenging the decision; (b) possible prejudice to other persons caused by the passage of time, if the relief were to be granted, including but not limited to prejudice to the parties to the proceedings; (c) the time at which the plaintiff became or, by exercising reasonable diligence, should have become aware of the decision; and (d) any relevant public interest - the argument that, because a judge in the Court below had ordered proceedings should continue on the pleadings, the primary judge did not have jurisdiction to dismiss the summons, had no merit - the primary judge had not denied the applicant procedural fairness - the applicant's submission that the primary judge had no jurisdiction to find that he had breached the implied undertaking concerning material produced on subpoena in the family law litigation misunderstood the primary judge's decision that the defamation proceedings were an abuse of process because the publications derived from the material that the applicant could only have obtained because it was produced on subpoena in the family law proceedings - the applicant had not established any reviewable error in the primary judgment or the cost judgment - having regard to the passage of time since the primary decision was made, the absence of any satisfactory explanation for the delay, and the lack of merit or public interest in his grounds of review, extension of time refused.

[View Decision](#)

[From Benchmark Friday, 1 November 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Case of Kobaliya v Russia (EUHRTS)** - European Court of Justice found that, in its overly broad definition of 'foreign agents', Russia committed multiple violations of the *European Convention on Human Rights*

### Summaries With Link (Five Minute Read)

**Case of Kobaliya v Russia, No 39446/16**

European Court of Human Rights

Pastor Vilanova P, Schukking, Serghides, Roosma, Ktistakis, Mjöll Arnardóttir, & Kovatcheva JJ

Prior to its exclusion from the Council of Europe in 2022, Russia was bound by the *European Convention on Human Rights* and subject to the jurisdiction of the European Court of Human Rights. Here the activity in question occurred between 2012 and 2022 and related to fundamental rights to freedom of expression and assembly as guaranteed by the Convention. Under Russian law, non-governmental organisations (NGOs), media organisations, and individuals who received any foreign support were required to register as 'foreign agents' and conform to restrictions placed on persons so designated. The complainants alleged that the statutory definition was so overly broad as to impinge on rights to freedom of expression and freedom of assembly guaranteed by Articles 10 and 11 of the *European Convention*. The European Court found that the Russian legislation was unlawful because it was overly broad and employed the stigmatising term 'foreign agent' to a very wide universe of parties that could not all be lumped together as 'foreign agents'. Under Russian law, once designated as a foreign agent, substantial regulatory legislation attached curtailing the political rights of the parties so classified. By casting such a wide net, the term 'foreign agent' was used to circumvent basic *European Convention* rights.

[Case of Kobaliya](#)





## Poem for Friday

### Echo

By Christina Rossetti (1830-1894)

Come to me in the silence of the night;  
Come in the speaking silence of a dream;  
Come with soft rounded cheeks and eyes as bright  
As sunlight on a stream;  
Come back in tears,  
O memory, hope, love of finished years.

Oh dream how sweet, too sweet, too bitter sweet,  
Whose waking should have been in Paradise,  
Where souls brimfull of love abide and meet;  
Where thirsting longing eyes  
Watch the slow door  
That opening, letting in, lets out no more.

Yet come to me in dreams, that I may live  
My very life again tho' cold in death:  
Come back to me in dreams, that I may give  
Pulse for pulse, breath for breath:  
Speak low, lean low,  
As long ago, my love, how long ago.

**Christina Georgina Rossetti**, born on 5 December, 1830, was one of the foremost poets of her era. Her father, Gabrielle, was an Italian Poet, and later chair of Italian at King's College, in London. Her mother Frances Polidor, an Anglo-Italian, home schooled her children in a climate of intellectual excellence. From 1845 Christina, by then a prolific poet, suffered an illness, that some consider was at least influenced by mental illness. She continued to have bouts of serious illness throughout her life. Rossetti's poetry, included the collections *Goblin Market and other Poems* (1862), *The Prince's Progress* (1866), *A Pageant* (1881), and *The Face of the Deep* (1882). Christina Rossetti died on 29 December, 1894.

**Stanford Chamber Chorale**, conductor, Stephen M Sano, with Laura Dahl, pianist, sing Norman Dello Joio's **Come to Me, My Love**, a setting of Christina Rossetti's "Echo"

<https://www.youtube.com/watch?v=NyJs5oqyygs>

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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