



Friday, 26 April 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)

**Greiss v Seven Network (Operations) Limited (Costs)** (FCA) - Seven ordered to pay partially successful costs, calculated on the basis as if the proceedings had been commenced in the District Court of NSW

## HABEAS CANEM

### Country smile



# Benchmark

## Summaries With Link (Five Minute Read)

### **Greiss v Seven Network (Operations) Limited (Costs) [2024] FCA 377**

Federal Court of Australia

Katzmann J

Costs in defamation cases - Greiss attended a sentencing hearing in support of the rugby league player, Jarryd Haynes, who had been convicted of sexual assault - Seven had published an article on the 7News website and a Facebook post on the 7News Facebook account - a Seven journalist had published a tweet on her personal Twitter account - the Court had held that the defence of contextual truth succeeded in respect the news report and the tweet, and a defence of honest opinion succeeded regarding the tweet, but that Greiss succeeded with respect to the Facebook post, and the libel involved in this post was serious, and \$35,000 was appropriate to compensate him for his non-economic loss but that there should be no aggravated damages (see Weekly Defamation Benchmark 23 February 2024) - the Court now considered costs - held: s43 of the *Federal Court of Australia Act 1976* (Cth) confers a broad discretion on the Court with respect to costs, relevantly limited only by the need to act judicially and by the obligations imposed by Part VB of the Act, including the obligation imposed by s37M(3) to exercise any power conferred by the civil practice and procedure provisions of the Act and the Rules in the way that best promotes their overarching purpose - further, s40(1) of the *Defamation Act 2005* (NSW) entitles the Court to take into account the way in which the parties conducted their cases and any other matters the Court considers relevant in awarding costs - where there has been mixed success, three aspects generally assume significance (1) whether one party has enjoyed real practical success; (2) the Court is reluctant to assess costs on an issue by issue basis because the Court has an eye to the interests of justice in bringing finality to the dispute and the diminishing returns involved in expending further time and costs in identifying the extent to which costs related to particular aspects of the conduct of the proceedings; and (3) a preference for adjustments by way of percentage reductions made on a broad brush approach taking account of the degree of success and the likely extent of costs associated with that aspect of the case - the journalist should not be required to pay Greiss's costs, as she was only a respondent in relation to the tweet and she had been wholly successful - it was incorrect to say that the respondents only succeeded because of the contextual truth defence, as the facts upon which it was based were also relevant to mitigation of damages - the award of damages had been modest, but not nominal - Greis had not brought the proceedings on a knowingly false basis - there is no particular reason why the proceedings should have been filed in the Federal Court, rather than in the Federal Circuit and Family Court (Division 1) or the District Court of NSW - the most appropriate order was that Seven pay Greiss's costs on a party and party basis, to be calculated as if the proceeding had been commenced in the District Court.

[Greiss](#)

[From Benchmark Friday, 26 April 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Kirkorov v Lithuania** (Eur Ct HR) - Decision of Lithuania to deny entry to Russian entertainer on national security grounds did not amount to a violation of Article 10 (freedom of expression) of the *European Convention on Human Rights*

### Summaries With Link (Five Minute Read)

#### **Kirkorov v Lithuania, ECHR 096 (2024)**

European Court of Human Rights

Bårdsen P, Ilievski, Kuris, Yüksel, Schembri Orland, Krenc, & Derencinovic JJ

Kirkorov was a popular singer from Russia who had been found by the Lithuanian Migration Department to have publicly supported Vladimir Putin and supported Russia's actions in Crimea. The government of Lithuania placed Kirkorov on a list of aliens barred from entering the country. Kirkorov unsuccessfully challenged this decision in the Lithuanian courts. Kirkorov then brought proceedings before the European Court of Human Rights alleging that the actions of Lithuania violated his right to freedom of expression guaranteed by Article 10 of the *European Convention of Human Rights*. Article 10 provides that everyone has the right to freedom of expression without interference by public authority and regardless of frontiers. However, these rights may be subject to such restrictions as are prescribed by law "and are necessary in a democratic society, in the interests of national security' or public safety. The European Court found that, while the right of a foreigner to remain in a country is not a Convention right, 'immigration controls must be exercised consistently with Convention obligations'. The Court ruled that the ban on entry was materially related to the right of expression because, under Article 10, no distinction can be drawn between nationals and foreigners. As entry to Lithuania was denied on the basis of Kirkorov's past statements, the Court found that there had been an interference with his Article 10 rights. The issue came down to whether Lithuania's actions were permissible as being prescribed by law and necessary in the interests of national security. The Court found that Lithuania's actions were prescribed by law that purported to be based on national security. Nevertheless, it was for the courts to determine whether the invocation of national security had a reasonable basis or was contrary to common sense. The Court concluded that there had not been a violation of Article 10 in light of the careful scrutiny by the Lithuanian courts to the claim that Kirkorov represented a threat to national security. Further, the European Court held that the measures taken by Lithuania were not disproportionate and that the national courts had properly weighed the interests of national security against the measures taken against Kirkorov.

[Kirkorov](#)







## Poem for Friday

### The Song of a Comet

**By:** Clark Ashton Smith (1893-1961)

A plummet of the changing universe,  
Far-cast, I flare  
Through gulfs the sun's uncharted orbits bind,  
And spaces bare  
That intermediate darks immerse  
By road of sun nor world confined.  
Upon my star-undominated gyre  
I mark the systems vanish one by one;  
Among the swarming worlds I lunge,  
And sudden plunge  
Close to the zones of solar fire;  
Or 'mid the mighty wrack of stars undone,  
Flash, and with momentary rays  
Compel the dark to yield  
Their aimless forms, whose once far-potent blaze  
In ashes chill is now inurned.



A space revealed,  
I see their planets turned,  
Where holders of the heritage of breath  
Exultant rose, and sank to barren death  
Beneath the stars' unheeding eyes.  
A down contiguous skies  
I pass the thickening brume  
Of systems yet unshaped, that hang immense[67]  
Along mysterious shores of gloom;  
Or see—unimplicated in their doom—  
The final and disastrous gyre  
Of blinded suns that meet,  
And from their mingled heat,  
And battle-clouds intense,  
O'erspread the deep with fire.  
  
Through stellar labyrinths I thrid  
Mine orbit placed amid  
The multiple and irised stars, or hid,  
Unsolved and intricate,  
In many a planet-swinging sun's estate.



# Benchmark

Ofttimes I steal in solitary flight  
Along the rim of the exterior night  
That grips the universe;  
And then return,  
Past outer footholds of sidereal light,  
To where the systems gather and disperse;  
And dip again into the web of things,  
To watch it shift and burn,  
Hearted with stars. On peaceless wings  
I pierce, where deep-outstripping all surmise,  
The nether heavens drop unsunned,  
By stars and planets shunned.  
And then I rise  
Through vaulting gloom, to watch the dark  
Snatch at the flame of failing suns;  
Or mark  
The heavy-dusked and silent skies,[68]  
Strewn thick with wrecked and broken stars,  
Where many a fated orbit runs.  
An arrow sped from some eternal bow,  
Through change of firmaments and systems sent,





And finding bourn nor bars,

I flee, nor know

For what eternal mark my flight is meant.

**Clark Ashton Smith** was born on 13 January, 1893, in Long Valley, Placer County, California. Largely self-taught, he began writing at a very young age, acquiring an exceptionally large vocabulary by reading the dictionary from cover to cover. A protégé of the San Francisco poet George Sterling, Smith achieved recognition at the age of 19 for his collection of poems *The Star Treader* (1912), influenced by Baudelaire, Poe and Sterling. Smith always considered himself a poet first and foremost, however, following the Great Depression, he later turned to writing short stories for pulp magazines such as *Weird Tales* as this was a more lucrative source of income to support himself and his aging parents. He wrote more than 100 short stories between 1929 and 1934, and it is this, along with his friendship with fellow *Weird Tales* contributor H. P. Lovecraft, for which he is remembered today. Smith lived most of his life in Auburn, California, and passed away in his sleep on 14 August 1961, at the age of 68. In addition to his literary activities, he created a large number of drawings, paintings and sculptures which reflected the otherworldly atmosphere of his tales.

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