



Friday, 9 May 2025

## Weekly Family Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering family law

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### Executive Summary (One Minute Read)

**Holinski & Holinski (FedCFamC1F)** - Court declined to discharge an independent children's lawyer on application by the father



## HABEAS CANEM

New puppy - 2018

# Benchmark

## Summaries With Link (Five Minute Read)

### **Holinski & Holinski [2025] FedCFamC1F 143**

Federal Circuit and Family Court of Australia (Division 1) First Instance  
Reithmuller J

Independent children's lawyers - mother sought children live with her, that she have sole decision-making responsibility for all major long-term issues, and that the children spend time with the father in accordance with their wishes - father sought that both parents and the children participate in therapy - ICL generally supported mother's position - father also sought that the ICL be relieved of her duty and replaced with another ICL - held: an incident of the power to appoint an ICL (under s68L(2) of the *Family Law Act 1975* (Cth)) is the power to discharge an ICL - circumstances likely to form a basis for discharging an ICL include: (1) evidence the ICL has, in any way, acted contrary to the children's interests; (2) evidence the ICL has acted incompetently in a professional sense; (3) the ICL has demonstrated a lack of professional objectivity; or (4) the ICL continuing to act would involve a breach of a fiduciary duty or a conflict of interest - on the material available, the ICL was not acting contrary to the children's best interests by pressing for a hearing - fact that the ICL was not supportive of father's application for a change of residence was unsurprising - proposal by the ICL was reasonably open on the material currently before the Court - nothing on the material to indicate that the ICL was in any way incompetent or lacking in professional objectivity - nothing to suggest a breach of any fiduciary duty or other conflict of interest - for an ICL to properly fulfil their obligations to the children, they will necessarily come into conflict with one, if not both of the parents - impartiality referred to in s68LA must be read as a requirement the ICL form their own views on a real assessment of the material - nothing to indicate the ICL's views were informed by anything other than a careful assessment of the evidence and her meeting with the children - appropriate test for bias of a ICL is not the test for apprehended bias by decision-makers, but that for preventing a solicitor from acting in a matter, having regard to the unique position of an ICL and the terms of s 68LA - Court not persuaded that a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice required the ICL be prevented from acting - Court not persuaded that further attempt at family therapy was in children's best interests on the material before the Court.

[Holinski & Holinski](#)

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# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect (EUCJ1C)** - The practice of the French national railway SNCF of requiring online ticket purchasers to indicate their title as either Monsieur (Mr) or Madame (Ms) was in violation of the *European Union General Data Protection Regulation* (GDPR) because the collection of this information was not necessary for the performance of the contract for passenger travel and violated the principle of minimisation of data collection

### Summaries With Link (Five Minute Read)

**Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect, Case C-394/23**

European Court of Justice

Lenaerts P, von Danwitz VP, Arastey Sahún, Kumin, & Ziemele JJ

When purchasing a ticket online, patrons of the French national rail, the SNCF, were required to tick a box designating gender identity: either Monsieur or Madame. Arguing that this practice violated the *European Union General Data Protection Regulation* (GDPR), Mousse, an association, filed a complaint with the French data protection authority - the Commission Nationale de L'Informatique et des Libertes (CNIL). After the CNIL rejected the claim, Mousse brought an action before the highest administrative body in France, the Council of State, to have the CNIL determination annulled. In response, the Council of State referred the matter to the European Court of Justice for a preliminary ruling. Under the GDPR, data collection must be limited to what is necessary for the performance of a contract and the legitimate interests of the party collecting the data (the data controller). Here, the SNCF argued that it collected the data because it facilitated personal communication with ticket purchasers. The European Court disagreed with the SNCF, and stated that the collection of personal data must be objectively indispensable in order to enable the proper performance of the contract or necessary for the legitimate interests of the data collector. The Court found that personalisation of commercial communications based on gender as indicated in a purchaser's title did not appear to be objectively indispensable to enable the proper performance of rail transportation. Nor was the data strictly necessary for the legitimate interests of the SNCF. The Court found that the SNCF could instead communicate with patrons by means of generic expressions that have no correlation with gender identity. Under EU law, the matter now reverts to the French Council of State to dispose of the matter in accord with the decision made by the European Court of Justice.

[Mousse](#)







## Poem for Friday

### Warm Summer Sun

By Mark Twain (1835-1910)

Warm summer sun,  
Shine kindly here,  
Warm southern wind,  
Blow softly here.  
Green sod above,  
Lie light, lie light.  
Good night, dear heart,  
Good night, good night.

**Mark Twain**, was the pen name of American writer and essayist Samuel Langhorne Clemens. Clemens was born in Florida, Missouri, on 30 November 1835, the sixth of seven children, only four of whom survived into adulthood. His father was a lawyer. Clemens was raised in Hannibal, Missouri. His father, by then a Judge, died when Clemens was 11 years old. After leaving school at age 11 he was an apprentice typesetter to a printer, writing articles, and educating himself in the evening in the public libraries in the cities he lived in. He was later a riverboat pilot, and then a miner for Orion in Nevada. Through his wife Olivia Langdon, Twain became friends with Frederick Douglass, Harriet Beecher Stowe, and William Dean Howells. He part-owned the Buffalo Express. He had a love of science, but lost substantial sums investing in new inventions. Mark Twain's famous novels included the *Adventures of Tom Sawyer* and the *Adventures of Huckleberry Finn*. Ernest Hemingway wrote that "*All modern American literature comes from one book by Mark Twain called Huckleberry Finn*". Mark Twain suffered a deep depression after his son Langdon died at 19 months, in 1872, and then his daughter Susy died in 1896, wife Olivia died in 1904, daughter Jean died on Christmas Eve 1909, and his good friend Henry Rogers died on 20 May 1909. Mark Twain died at the age of 74, on 21 April 1910 of a heart attack. Halley's Comet had passed the earth in the year of his birth in 1835, and passed the earth again in the year of his death in 1910. Mark Twain has been called "*The father of American Literature*".

Mark Twain's very quotable observations include:

"Only two things we'll regret on deathbed – that we are a little loved and little travelled."

"Twenty years from now you will be more disappointed by the things you didn't do than by the ones that you did do"

"Man is the only animal that blushes. Or Needs to."

"A full belly is little worth where the mind is starved."



# Benchmark

"Travel is fatal to prejudice"

"The secret of getting ahead is getting started"

"Always do right, it will gratify some people and astonish the rest,"

"Kindness is the language which the deaf can hear and the blind can see"

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