



Friday, 11 October 2024

## 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)

**Costello & Langdon** (FedCFamC1A) - de facto partner moved to nursing home with dementia - trial judge had not erred in adjusting property under s90SM of the *Family Law Act 1975* (Cth) in order to provide that partner with better care



## HABEAS CANEM

Before the puppy ears finally dropped

# Benchmark

## Summaries With Link (Five Minute Read)

### **Costello & Langdon [2024] FedCFamC1A 168**

Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction

Aldridge, Austin, & Tree JJ

Property - Mr Langdon and Ms Costello were in a de facto relationship which started in the 1980s - in 2021, Langdon had dementia and was moved to a nursing home - Langdon appointed his son his enduring attorney and guardian, and the son was also appointed Langdon's litigation guardian - the son and Costello could not agree on any matters concerning Langdon - the son commenced proceedings in the Federal Circuit and Family Court of Australia (Division 2) seeking property settlement orders under s90SM of the *Family Law Act 1975* (Cth) - the primary judge ordered Costello to pay Langdon about \$758,000, failing which a property owned by Costello was to be sold - Costello appealed - held: the Court must begin consideration of whether it is just and equitable to make a property settlement order by identifying, according to ordinary common law and equitable principles, the existing legal and equitable interests of the parties in the property - the test under s79(2) and s90SM(3) is whether, having regard to those existing interests, the court is satisfied that it is just and equitable to make a property settlement order - although s79 and s90SM confer broad power on a court exercising jurisdiction under the Act to make a property settlement order, it is not a power that is to be exercised according to an unguided judicial discretion - s79(4) and s90SM(4) set out a number of factors the Court must take into account - the issue was whether the factors in s90SM(4) could be taken into account in the "just and equitable" inquiry under s90SM(3) - the answer was clearly "yes" - "just and equitable" does not admit of exhaustive definition and it is not possible to chart its metes and bounds - where the relationship has not broken down the explicit and implicit assumptions about the parties' mutual use of their property remain in place, and, ordinarily, such assumptions would include the use of the parties' income and property for each party to be provided for properly - the primary judge did not err by taking into account Langdon's unmet needs for better care when deciding it was just and equitable for there to be a division of the parties' property - other grounds of appeal also rejected - appeal dismissed.

[Costello & Langdon](#)

[From Benchmark Friday, 11 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Paki Nikora v Tamati Kruger** (NZSC) - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

### Summaries With Link (Five Minute Read)

#### **Paki Nikora v Tamati Kruger [2024] NZSC 130**

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)

## Poem for Friday

### Risk

**By** Anaïs Nin (1903-1977)

And then the day came,  
when the risk  
to remain tight  
in a bud  
was more painful  
than the risk  
it took  
to blossom.

**Anaïs Nin**, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

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.

# Benchmark



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L A W Y E R S

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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