



Friday, 25 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)

**Dragomirov & Dragomirov** (FedCFamC1A) - binding financial agreement - where the incontrovertible facts lead to the conclusion that the necessary advice prescribed by s 90G(1)(b) of the Act was not given - Error established - Where the primary judge determined in the exercise of discretion pursuant to s 90G(1A) of the Act that nevertheless it would be unjust and inequitable if the agreement were not binding - Where the wife appeals from an alternative declaration pursuant to s 90G(1B) of the Act - Where the wife contended errors - appeal dismissed - costs ordered in a fixed sum

## HABEAS CANEM

### Habeus Halloween



# Benchmark

## Summaries With Link (Five Minute Read)

### **Dragomirov & Dragomirov [2024] FedCFamC1A 187**

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

Binding financial agreements - the parties were in their mid-fifties, had commenced cohabitation in 1992, married in 1993, and separated in 2020 - in 2020, the parties negotiated a property settlement agreement - the parties attended a meeting with their solicitors present, and signed a binding financial agreement and the solicitors provided certificates pursuant to s90G of the *Family Law Act 1975* (Cth) - the intended effect of the agreement included that the husband's superannuation would be split - the husband's superannuation fund advised it could not process the agreed superannuation split due to errors in the financial agreement, and by the time of trial the superannuation had not been split - the wife sought a declaration that the agreement was not binding as it did not comply with s90G(1)(b), or that it be set aside for material non-disclosure, undue influence, or unconscionable conduct pursuant to s90K(1) - the primary judge held the agreement was binding - the wife appealed, and joined the solicitor who had acted for her and provided the s90G certificate, seeking damages for negligence in the court's accrued jurisdiction - held: there is no requirement that the terms of a financial agreement be unjust and inequitable - it is unhelpful to advise a person that a financial agreement might adversely affect his or her rights if those rights are not identified, and the advice must be real and meaningful - proper identification of a parties' rights must include identifying the property of the parties then held and a consideration of the parties contributions (financial and non-financial) to the acquisition of that property and to the welfare of the children, and any other relevant factors under s79(4), including s75(2) - the primary judge had erred in finding that the advice given by the wife's solicitor complied with s90G(1)(b) - that did not determine the appeal, however, as the primary judge had upheld the agreement on the alternate ground that it would be unjust and unreasonable if it were not binding pursuant to s90G(1A) - the term unjust and inequitable does not refer to justice and equity as identified in s79, and the merits of the bargain given effect to by the financial agreement have no relevance to the exercise of discretion under s90G(1A) - the wife chose to enter the agreement knowing that the process under s79 which had been explained to her in writing would not apply and in its place, she would have the bargain she had struck with her husband - it was within the primary judge's proper discretion to uphold the agreement under s90G(1A) - the primary judge had not erred by finding the husband had not made misrepresentations, and had not engaged in undue influence of unconscionable conduct - appeal dismissed.

[Dragomirov & Dragomirov](#)

[From Benchmark Friday, 25 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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