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Friday, 15 November 2024

Weekly Government Review

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering government

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Executive Summary (One Minute Read)

Willmot v Queensland (HCA) - High Court decided the law regarding permanent stays of proceedings for abuse of process in the context of child sexual abuse cases brought many years later as is now permitted under legislation passed after the institutional child abuse Royal Commission

Bird v DP (a pseudonym) (HCA) - majority of High Court held that distinction between vicarious liability in three areas of law, and the requirement that vicarious liability in the one relevant area of law required an employment relationship, should both be maintained as part of the common law of Australia

RC v The Salvation Army (Western Australia) Property Trust (HCA) - High Court applied the principles it had set out in *Willmot* (above) and held that a historical sexual abuse claim against the Salvation Army should have been permanently stayed

Alumina and Bauxite Company Ltd v Queensland Alumina Ltd (FCAFC) - Full Court upheld judgment that to allow subsidiaries of a Russian company to participate in an alumina joint venture would violate Commonwealth sanctions against Russia imposed after the invasion of Ukraine

Seadragon Offshore Wind Pty Ltd v Minister for Climate Change and Energy (FCA) –the *Offshore Electricity Infrastructure Act 2021* (Cth) empowers the Minister to grant a feasibility licence over a smaller area than the area applied for

Commissioner of Police v Coglin (NSWSC) - Court prohibited public assemblies on

Newcastle Harbour and on an adjoining beach and parkland under s25 of the *Summary Offences Act 1988* (NSW)

Seek Justice Pty Ltd v State of New South Wales (No 2) (NSWSC) - company claiming to be acting in the public interest in bringing judicial review proceedings alleging invalidity of certain primary and delegated environmental legislation had no special interest in the relief sought, and therefore no standing to bring the claim

AVC Operations Pty Ltd v Maribyrnong City Council & Ors (VSC) - leave to appeal against the Tribunal's refusal to amend a planning permit to allow a tavern to expand its beer garden refused

EA v Northern Territory of Australia (NTSC) - application for preliminary discovery from a prospective respondent dismissed, as the applicant had not led evidence to support his claimed belief that he may be entitled to relief on recognised legal grounds

HABEAS CANEM

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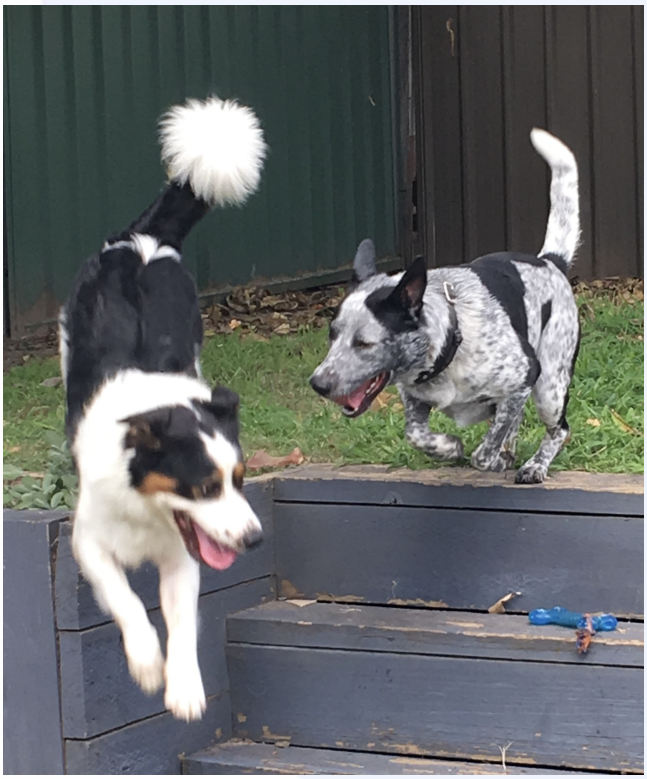

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Summaries With Link (Five Minute Read)

Willmot v Queensland [2024] HCA 42
High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Abuse of process - Willmot claimed damages in negligence from the State of Queensland alleging psychiatric injury from sexual and physical abuse while the State was responsible for her care during childhood, based on failure to properly monitor and supervise her, and those into whose care she was placed - the primary judge ordered the proceedings be permanently stayed - the Queensland Court of Appeal dismissed Willmot's appeal - Willmot was granted special leave to appeal to the High Court - held (by Gageler CJ, Gordon, Jagot, & Beech-Jones JJ, with Edelman J, Steward J ,and Gleeson J reaching different conclusions regarding the particular claims in separate judgments): after the 2015 Royal Commission into institutional child abuse, new legislation in all states and territories removed all time bars in child sexual abuse cases, and such claims are sometimes now brought many years later and often involve greater impoverishment of evidence than courts are used to - mere passing of time does not justify a permanent stay for abuse of process, and a further burdensome effect must be shown that makes a fair trial not possible - the right to a fair trial is a deeply rooted common law right, which the new legislation did not change - the new legislation does not foreclose a defendant obtaining a stay by reason of the impoverishment of evidence if such impoverishment would (not might) prevent a fair trial irrespective of the range of the techniques of the common law, such as: (1) the degree of satisfaction required under the civil standard of proof may vary according to the gravity of the fact to be proved; (2) all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted; (3) a court is not bound to accept uncontradicted evidence and the facts proved must form a reasonable basis for a definite conclusion, affirmatively drawn, of the findings made; (4) courts are mindful that ordinary human experience shows human memory is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with time; and (5) where a claim is based on an interaction with a deceased person, courts will scrutinise the evidence very carefully - an application for permanent stay proceeds on the basis that the plaintiff is in a position to produce evidence to support the case pleaded and particularised, and the defendant must identify what it says would make the trial of each set of allegations raised by the plaintiff unfair - here, the issues in dispute were narrow, many of the most basic of facts were not in issue, and the State conceded it owed Willmot a non-delegable duty, so the central issue at trial would be whether each alleged category of harm occurred and amounted to a breach of the non-delegable duty - certain claims were so vague that they are incapable of meaningful response, defence, or contradiction, and should be permanently stayed - other claims were detailed and particularised and the State's investigation had not been hampered, and these should not be permanently stayed - the primary judge had erred, both on the evidence and legally, in staying another claim on the basis it would be insurmountably difficult to extract the causation flowing from that event from the causation flowing from other events - regarding another claim, the State could not investigate the foundational facts, and its

participation would be limited to cross-examination about apparent tangential inconsistencies, and this claim should be permanently stayed - appeal allowed in part.
Willmot
[From Benchmark Thursday, 14 November 2024]

Bird v DP (a pseudonym) [2024] HCA 41
High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Vicarious liability - in 1971, a Catholic priest sexually abused 5 year old DP - in 2020, DP sued, alleging the Diocese of Ballarat and its Bishop in 1971 were vicariously liable, and had been negligent - the defendant was the current Bishop, pursuant to the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic) - the primary judge upheld the various liability claim, but rejected the negligence claim (from which DP did not appeal) - the Victorian Court of Appeal unanimously dismissed the Diocese's appeal on vicarious liability - the Diocese was granted special leave to appeal to the High Court - held (by Gageler CJ, Gordon, Edelman, Steward, & Beech-Jones JJ, with Gleeson J agreeing with the result but profoundly disagreeing with the reasoning, and Jagot J in a sperate judgment agreeing for similar reasons to the majority): the areas of law where 'vicarious liability' is used are: (1) where a person does wrongful acts as agent, in the sense of being with the defendant's express, implied, or apparent authorisation, or ratification - (2) breach of a non-delegable duty; and (3) where liability is based, not on attribution of acts but on attribution of liability - only (3) was apposite here, as there was no authorisation or ratification, and DP should not be allowed to argued non delegable duty for the first time in the High Court - as to (3), the High Court had repeatedly stated an employment relationship is a necessary precursor to vicarious liability of this type - the High Court had also recently (in *CGIG Investments v Schokman* [2023] HCA 21) identified the limiting principle as being that the employee's wrongful acts must be committed in the course or scope of the employment (see Benchmark 4 August 2023) - the Court should not now expand this type of vicarious liability beyond the employment relationship - nor should it shoe-horn the three identified areas of law so as to create a single doctrine of vicarious liability, as courts in the UK and Canada had done - abandoning clear or stable principle by recognising relationships "akin to employment" would produce uncertainty and indeterminacy, as shown in the UK cases since this was done there, and by further complicating the already fraught distinction between employees and independent contractors - the courts' advancement of the common law must extend or modify accepted rules and principles, rather that distorting them by inventing legal doctrine - fundamental reform of vicarious liability should be a matter for Parliaments - Gleeson J considered this case was a missed opportunity to develop the common law in accordance with changed social conditions and with developments in other common law jurisdictions, so that the approach to vicarious liability first asks whether the tortfeasor is an employee or independent contractor, and, if not, then asking whether the relationship is akin to one of employment by focusing on the details of the relationship, and where vicarious liability would require the tortious acts be done "in the course or scope of" the relationship - the relationship between Diocese and priest was akin to employment, and so would give rise to vicarious liability in some

circumstances, but priest's acts were not done in the course or scope of that relationship, and so there was no vicarious liability in this case - Jagot J considered that the conclusion in the Courts below that vicarious liability in this case was an extension, rather than an application, of existing common law principle was correct, that that extension should not be adopted, and that DP should not now be able to raise non-delegable duty - appeal allowed, and DP's case dismissed.

Bird

[From Benchmark Thursday, 14 November 2024]

RC v The Salvation Army (Western Australia) Property Trust [2024] HCA 43

High Court of Australia

Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ

Abuse of process - RC sued the Salvation army for sexual abuse in 1959 and 1960 when he was 12 and 13 years old in the care of a boys' home the Salvation Army ran, by an officer of the Salvation Army - his claims were for breach of non-delegable duty, breach of statutory duty, and vicarious liability - the primary judge ordered the proceedings be permanently stayed - the Western Australian Court of Appeal dismissed RC's appeal - RC was granted special leave to appeal to the High Court, which heard the appeal immediately after the appeal in *Willmot v Queensland* (above) - the removal of any limitation period in Western Australia following the 2015 Royal Commission into institutional child abuse was similar to that in Queensland discussed in *Wilmott* - the Court referred to the principles it had set out in Willmot, and applied those principles to the facts of this case - held: (by Gageler CJ, Gordon, Jagot, & Beech-Jones JJ, with Edelman J and Steward J agreeing with the orders proposed for different reasons, and Gleeson J proposing different orders): regarding the main claims RC made, the Salvation Army had failed to demonstrate it had realistically lost valuable witnesses who might be called at any trial of certain allegations - the officer who had allegedly committed the assaults had died, but all the Salvation Army had lost was the possibility of a bare denial by this officer, on the basis of evidence at the Royal Commission that Salvation Army officers almost always simply denied the alleged abuse - the Salvation Army was not in the dark about the precise nature of RC's allegations, and RC's affidavit was detailed and specific - the absence of records was not very meaningful, as they were required to show absence of complaint, and it was not clear what absence of complaint would add to the trial - the Salvation Army does not dispute that the five common law techniques referred to in *Willmot* were available to alleviate unfairness at trial - the availably to RC of evidence that the Salvation Army had made acknowledgment by way of apologies regarding other claims of sexual abuse by the same officer diminishes the significance of that officer's unavailability as a witness at trial regarding RC's claim for breach of non-delegable duty - RC's main claims should not be permanently stayed - RC's other claims should also not be permanently stayed - both Steward J and Gleeson J disagreed with the majority that the Salvation Army had lost no more than the possibility of a bare denial by the alleged perpetrator's death, as pure speculation not justified by the evidence at the Royal Commission (by Steward J) and because that officer may have been able to give other evidence, for example whether he and RC were at the home at the same time - Gleeson J

would have maintained the permanent stay in respect of the claim for breach of non-delegable duty - appeal allowed.
RC
[From Benchmark Thursday, 14 November 2024]

Alumina and Bauxite Company Ltd v Queensland Alumina Ltd [2024] FCAFC 142
Full Court of the Federal Court of Australia
Moshinsky, Stewart, & Button JJ
Contracts - in response to the Russian invasion of Ukraine, the Commonwealth imposed sanctions against Russia and certain Russian business people under the *Autonomous Sanctions Regulations 2011* (Cth) made under the *Autonomous Sanctions Act 2011* (Cth) - these included prohibitions against supplying, selling, or transferring alumina directly or indirectly to Russia, for use in Russia, or for the benefit of Russia; or directly or indirectly making an asset available to or for the benefit of two Russian businessmen: Deripaska and Vekselberg - there was a joint venture under which Queensland Alumina would supply a percentage of the capacity of its Gladstone alumina refinery to three subsidiaries of a Russian company and five subsidiaries in the Rio Tinto group, and under which the Rio subsidiaries would supply bauxite to the Russian subsidiaries - in reliance on the sanctions, Queensland Alumina and the Rio subsidiaries excluded the Russian subsidiaries from the joint venture - the Russian subsidiaries sued Queensland Alumina and the Rio subsidiaries seeking declaratory and injunctive relief and damages, claiming that carrying out the joint venture obligations would not violate the sanctions - the primary judge held that the sanctions regime applied and the contractual defences of Queensland Alumina and the Rio subsidiaries therefore succeeded (see Benchmark 2 February 2024) - the Russian subsidiaries appealed - held: the Regulations were expressed in the present tense, and the natural way to read them was that that the supply by Queensland Alumina did not does not have occur at the same time as the transfer to, for use in, or for the benefit of, Russia, or be planned or pre-ordained at the time of the supply, sale or transfer, and the transfer to, for use in, or for the benefit of, Russia did not have to be planned or pre-ordained at the time of the supply by Queensland Alumina - contrary to the Russian subsidiaries' submissions, Queensland Alumina's case at first instance had been that the Gladstone alumina would have ended up in Russia - there was evidence to support the primary judge's findings that the Gladstone alumina would have ended up in Russia - the primary judge also did not err in finding that, even if steps were successfully taken to prevent the Gladstone alumina being physically transferred to Russia, a direct or indirect result of the delivery of alumina to the Russia subsidiaries would be that the alumina would have been transferred for the benefit of Russia - appeal dismissed.
Alumina and Bauxite Company Ltd
[From Benchmark Tuesday, 12 November 2024]

Seadragon Offshore Wind Pty Ltd v Minister for Climate Change and Energy [2024] FCA 1290
Federal Court of Australia

Perram J
Administrative law - the Minister for Climate Change and Energy decided to refuse to grant a feasibility licence to Seadragon under s33(1) of the *Offshore Electricity Infrastructure Act 2021* (Cth) - there is no dispute that Seadragon met the merit criteria set out in s34, but the Minister stated that Seadragon's application had been found to be of lower merit than an application with which it overlapped on two of those criteria, namely technical and financial capability and suitability - Seadragon submitted to the Minister that he should grant it a licence over a reduced area from which the overlapping parts had been excised - the Minister reused the grant the feasibility licence on the basis that s33 did not permit him to grant Seadragon a licence over an area reduced in size from the area set out in the licence application - Seadragon sought relief under s5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) on the basis of an error of law - held: the objects of the *Offshore Electricity Infrastructure Act* are to provide an effective regulatory framework for offshore renewable energy infrastructure and offshore electricity transmission infrastructure - the Act imposes an orthodox licensing scheme under which a prohibition is placed on offshore renewable energy infrastructure or offshore electricity transmission infrastructure in most of Australia's exclusive economic zone, coupled with a power to grant a licence to engage in that activity - the power in s33 is a power in the Minister to grant a feasibility licence 'in respect of an area', subject only to the requirements that, at the time the licence is granted, the area be, or be part of, a declared and that the area meet the requirements in s33(4) - reduced area to that sought by an applicant is still 'an area' - it was not possible, from the terms of the Act, to infer that the Minister's power to grant a licence with respect to an area was delimited by the area applied for by the Applicant - s33 could not be construed by reference to Regulations made under the Act - Minister's decision set aside, and Minister ordered to determine Seadragon's application according to law.
Seadragon Offshore Wind Pty Ltd
[From Benchmark Tuesday, 12 November 2024]

Commissioner of Police v Coglin [2024] NSWSC 1412
Supreme Court of New South Wales
Fagan J
Public assemblies - the defendant served two notices under the *Summary Offences Regulation 2020* (NSW) on the Commissioner, advising of the intention to hold two public assemblies, one on Horseshoe Beach, Newcastle, and in adjoining parkland, and one on Newcastle Harbour, which would be a blockade of the Port of Newcastle kayaks other small craft - the purpose was to protest against coal exports - as amended the land assembly was to go from Friday to Monday, and the harbour protest from Saturday to Sunday - the Commissioner sought orders under s25 of the *Summary Offences Act 1988* (NSW) prohibiting the two public assemblies - held: if the Commissioner's application were refused then, s24 of the *Summary Offences Act* would protect participants in assemblies held substantially in accordance with the notices from conviction for offences relating to participating in an unlawful assembly or the obstructing any person, vehicle, or vessel in a public place - if the Commissioner's application were upheld, this would not of itself render either assembly unlawful, but any participant would likely contravene

provisions of the *Summary Offences Act* and Council regulations for the land assembly and provisions of the *Marine Safety Act 1988* (NSW) and the *Marine Safety Regulation 2016* (NSW) for the harbour assembly - the Court had to balance between the right of citizens to freedom of speech and assembly integral to a democratic system of government and way of life, and the right of other citizens not to have their own activities impeded by the exercise of those rights - the Commissioner did not have to show either assembly would likely cause a breach of the peace - the Court did not have power to allow the assemblies on conditions - the same group had given notice of a similar assembly on Newcastle Harbour in 2023, which the Commissioner had allowed to proceed, but had not dispersed at the finishing time stated in the notice, and police had had to arrest them - an organiser later told police they had done this to secure greater publicity - some organisers had expressed a similar intention regarding the proposed Harbour assembly - a 30 hour interruption to the operations of a busy port was an imposition on the lawful activities of others that went far beyond what the people affected should be expected to tolerate in order to facilitate public expression of protest and opinion - the need for police to have their full range of statutory powers was amplified in relation to a marine protest, where the conduct of participants, including conduct that may necessitate their rescue, may endanger the officers themselves - the land assembly also involved an unreasonable interference with the convenience of other citizens in their enjoyment of public land - prohibition orders made regarding both assemblies.
View Decision
[From Benchmark Monday, 11 November 2024]

Seek Justice Pty Ltd v State of New South Wales (No 2) [2024] NSWSC 1410
Supreme Court of New South Wales
Schmidt AJ
Administrative law - Jeray was the sole director and controlling mind of Seek Justice, which sought judicial review on the basis that various provisions of the *Government Information (Public Access) Act 2009* (NSW), the *Government Information (Public Access) Regulation 2018* (NSW), and Blue Mountains City Council's *Planetary Health Precinct Plan*, *Parklands Precinct Plan*, and *Katoomba Master Plan* were invalid, seeking declaratory and injunctive relief under the *Supreme Court Act 1970* (NSW), and orders requiring the Council to adhere to claimed mandatory requirements of the Act and Regulations with resulting public release of identified documents - Jeray represented Seek Justice in the proceedings - the State and Council sought summary dismissal on the basis of Seek Justice's lack of standing - held: Seek Justice had been given a fair hearing, notwithstanding the Court had refused its request for an adjournment on the basis that it was in no position to file evidence, submissions or a court book - the Registrar's timetabling orders had been neither unjust nor opposed, and had given Seek Justice a fair opportunity to prepare for and appear at the hearing of the motion - Seek Justice had caused any injustice that the refusal of the adjournment had caused by making an irregular, belated, and unsupported application - the Court, by consent, had addressed the difficulties this caused Seek Justice by allowing it to respond to the defendant's cases in writing after the hearing - while objecting to the way the proceedings were being conducted, Jeray had made

submissions consistent with allegations of bias against the judge - the judge's insistence that that Jeray not interrupt or speak over her or counsel, or Jeray's views about the inappropriateness of the judge briefly adjourning to enable him to compose himself, did not establish that the parties or the public might entertain a reasonable apprehension that the judge might not bring an impartial and unprejudiced mind to the resolution of the questions before her - unlike s9.45 of the *Environmental Planning and Assessment Act 1979* (NSW), which permits any person to bring proceedings to remedy or to restrain a breach of that Act, ss23, 65, 66, 69, and 75 of the *Supreme Court Act* do not permit judicial review proceedings to be brought by "any person" - pursuit of relief claimed to be in the public interest did not give Seek Justice standing - declaratory relief requires an interest beyond that of any other member of the public, and the test is variously described as the existence of 'special damage', a 'special interest', or a 'sufficient interest' - there was no evidence which could establish an interest other than of a kind explained to be insufficient in previous cases - the evidence did not establish that the declarations sought, if made, would produce foreseeable consequences for Seek Justice itself - summary dismissal granted.
View Decision
[From Benchmark Wednesday, 13 November 2024]

AVC Operations Pty Ltd v Maribyrnong City Council & Ors [2024] VSC 683
Supreme Court of Victoria
Harris J
Planning law - AVC was the lessee of licensed premises on the banks of the Maribyrnong River - it applied for an amendment to an existing planning permit, to enable an extension of the premises' beer garden - Melbourne Water objection to the amendment application, on the ground that the grant of the amendment would result in an increase in the potential population at risk from flooding - Council did not make a decision within the statutory time limit, and AVC applied to the Victorian Civil and Administrative Tribunal for review of the Council's failure to grant the amendment - the Tribunal refused to grant the amendment - AVC sought leave to appeal to the Supreme Court on the errors of law - held: leave may only be granted if the Court is satisfied that the appeal has a real, rather than a fanciful, prospect of success - a failure by a decision maker to respond to a substantial, clearly articulated argument relying on established facts is recognised to be a legal error, being a constructive failure to exercise jurisdiction or a failure of procedural fairness - however, not every submission will constitute a matter on which a Tribunal must make findings - it also cannot be inferred from a failure to refer to a particular submission in a decision-maker's reasons that the submission was not considered - the Tribunal had adequately addressed AVC's submissions, in response to Melbourne Water's objection, that it could already lawfully allow more people on site without the need for further planning permission and would likely be able to increase the maximum number of patrons permitted by its liquor licence, and that conditions requiring a Flood Risk Management Plan could mitigate flood risk to both the population of the existing hotel and to any increased population - the Tribunal did not accept a premise of AVC's argument, namely that there was a meaningful benefit to granting the amendment application, in order to impose a condition for a Flood Risk

Management Plan - the Tribunal had an obligation to give reasons for its final decisions - however, nothing in the application before the Tribunal required it to make a finding on the hypothetical situation arising if the application to amend was not granted - a tribunal can commit an error of law if it makes a finding with no evidence to support it, if that finding was critical to the tribunal's ultimate conclusion - as the Tribunal is not bound by rules of evidence and may inform itself on any matter as it sees fit, the no evidence ground of review is only narrowly available - the Tribunal's findings were not made without a proper basis, and were not irrational - there was no real prospect of an appeal succeeding - leave to appeal refused.
AVC Operations Pty Ltd
[From Benchmark Tuesday, 12 November 2024]

EA v Northern Territory of Australia [2024] NTSC 90
Supreme Court of the Northern Territory
Luppino AsJ
Preliminary discovery - the applicant's wife was engaged to provide foster care to children in the Northern Territory's care - with at least the tacit approval of the Territory, the wife appointed the applicant a co-carer - a Senior Child Protection Practitioner within the Child Abuse Taskforce of the Department of Territory Families, Housing and Communities wrote to the wife advising of a report that the applicant had sexually assaulted a child in their care and notifying of an investigation under s84A of the *Care and Protection of Children Act 2007* (NT) - the Practitioner later wrote to the applicant and his wife notifying them that the allegations had been made out, and that the child had suffered significant detrimental sexual harm/exploitation and emotional harm - the letter also said that a similar finding had been made in respect of three other children regarding whom there had been no earlier notification - the Task Force refused a request by the applicant's solicitor for a copy of the investigation report and the material on which the findings were based - the applicant sought preliminary discovery form the Norther Territory as prospective defendant pursuant to r32.05 of the *Supreme Court Rules 1987* (NT) - held: the grant of an order under r32.05 is discretionary - the putative cause of action that the applicant argued for was relief in the nature of certiorari based on jurisdictional error - the jurisdictional error was said to be taking an irrelevant consideration into account, in that the findings made against the applicant were said to be based on strong corroborative, behavioural and psychological information about the child said to have been abused - the question under r32.05(b) is whether there is sufficient information available to the applicant to determine whether or not to commence proceedings for that relief - the applicant is not required to establish a prima facie entitlement to the relief - the requirement to show reasonable cause places an onus on the applicant to at least provide the evidence to support the recognised legal grounds, and not mere assertion and conjecture - the absence of evidence that the applicant had not undergone any psychological assessment was therefore fatal - in any event, had the criteria in rule 32.05(b) had been satisfied, the Court would have declined to exercise its discretion in the applicant's favour - application dismissed.
EA
[From Benchmark Tuesday, 12 November 2024]

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Executive Summary and (One Minute Read)

Robert F Kennedy, Jr v Joseph R Biden, Jr (USCA5CT) - In an action for equitable relief, plaintiffs' claims failed as a result of lack of standing to sue because it was speculative that the wrong complained of was ongoing and therefore redressable

Summaries With Link (Five Minute Read)

Robert F Kennedy, Jr v Joseph R Biden, Jr, No 24-30252
United States Court of Appeals
Higginbotham, Stewart, & Haynes JJ
Robert F Kennedy Jr and others complained that, due to unlawful pressure exercised by federal officials, Meta and YouTube censored or de-platformed Kennedy regarding COVID-related content in 2021. The plaintiffs sought and were granted a preliminary injunction by the District Court. The government appealed. In an earlier decision, *Murthy v Missouri* 144 S Ct 1972 (2024), the Supreme Court held that, to establish standing to sue, plaintiffs must demonstrate a substantial risk that they will suffer injury that is (1) traceable to a government defendant, and (2) redressable by an injunction. The Court of Appeals found that, while Kennedy had evidence that the initial censorship was traceable to government officials, he was unable to show that that the continued censorship could be attributed to government actions. The Court found that there was not any evidence that could attribute continued suppression to government activity as opposed to internal platform moderation procedures. Consequently, standing failed on the redressability issue; namely, that Kennedy was unable to show that an injunction directed against the government would, in fact, redress the injury of which he complained. In accordance with the recent Supreme Court precedent, standing to sue was not established and the orders of the District Court granting a preliminary injunction were reversed.
Robert F Kennedy, Jr

Poem for Friday

How Do I Love Thee? (Sonnet 43, from Sonnets from the Portuguese)

By Elizabeth Barrett Browning (1806-1861)

How do I love thee? Let me count the ways.
I love thee to the depth and breadth and height
My soul can reach, when feeling out of sight
For the ends of being and ideal grace.
I love thee to the level of every day's
Most quiet need, by sun and candle-light.
I love thee freely, as men strive for right.
I love thee purely, as they turn from praise.
I love thee with the passion put to use
In my old griefs, and with my childhood's faith.
I love thee with a love I seemed to lose
With my lost saints. I love thee with the breath,
Smiles, tears, of all my life; and, if God choose,
I shall but love thee better after death.

Elizabeth Barrett Browning, English poet was born on 6 March 1806, in County Durham, the eldest of 12 children, 11 of whom survived into adulthood. She was ill from her mid teens. She was influential in campaigning for the abolition of slavery and the introduction of child labour protection legislation. Her grandfather had been a slave owner in sugar plantations in Jamaica. She was a contemporary of, and met Coleridge, Tennyson, Carlyle, Wordsworth and Mitford. She met Robert Browning in 1845, and after a secret marriage, they moved to Italy in 1846. Whiting, describes her as "the most philosophical poet" living a life as "a Gospel of applied Christianity". Barrett Browning died on 29 June 1861 at the age of 55, in Florence Italy.

How Do I Love Thee? sung by Femmes de Chanson, (2012)
How Do I Love Thee? (Nathan Christensen) - Femmes de Chanson - 2012 (youtube.com)

How Do I Love Thee read by Dame Judi Dench
How Do I Love Thee? (Sonnet 43) by Elizabeth Barrett Browning (read by Dame Judi Dench) (youtube.com)

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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