

Friday, 15 December 2023

## Weekly Immigration Law Review

Editor: Oliver Jones, Barrister, Four Selborne

**A Weekly Bulletin listing Decisions  
of Superior Courts of Australia covering immigration**

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (One Minute Read)

**Kassem v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC)** - Minister had given proper notice of the non-revocation decision by emailing to solicitor

**QYFM v Minister for Immigration, Citizenship and Multicultural Affairs (No 2) (FCAFC)** - Tribunal did not err by characterising s501CA(4)(b)(ii) of the *Migration Act 1958* (Cth) as discretionary or requiring a reason of weight or significance

**Le v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCA)** - Tribunal erred by not seeking comment on international movement records obtained after hearing

**GKYW v Minister for Immigration, Citizenship and Multicultural Affairs (FCA)** - Tribunal had erred in taking juvenile offending into account where no conviction was recorded

**Thien v Minister for Immigration, Citizenship and Multicultural Affairs (FedCFamC2G)** - applicant not out of time for revocation of cancellation as notice defective

**EQU18 v Minister for Immigration, Citizenship and Multicultural Affairs (FedCFamC2G)** - the Tribunal based credibility finding on inconsistency which was in fact absent

**CKJ18 v Minister for Immigration, Citizenship and Multicultural Affairs (FedCFamC2G)** - Tribunal unreasonably failed to take evidence or get information from the applicants' proposed witnesses

## HABEAS CANEM

McGregor wishes you a happy and peaceful holiday season



## Summaries With Link (Five Minute Read)

### **Kassem v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 193**

Full Court of the Federal Court of Australia

Burley, Lee, & Raper JJ

Migration - mandatory cancellation due to criminal convictions - delegate decided not to revoke cancellation - Administrative Appeals Tribunal found that it did not have jurisdiction as application for review out of time - Bromwich J of the Federal Court dismissed an application for judicial review - time requirement depended on whether delegate's decision notified by proper means - Appellant in immigration detention - Appellant had requested Delegate's decision be emailed to his solicitor - effect of reg 5.02 of *Migration Regulations 1994* (Cth) - relationship with s494A of the *Migration Act 1958* (Cth) - proper notice given - appeal dismissed.

[Kassem](#)

[From Benchmark Friday, 15 December 2023]

### **QYFM v Minister for Immigration, Citizenship and Multicultural Affairs (No 2) [2023] FCAFC 195**

Full Court of the Federal Court of Australia

Katzmann, O'Callaghan, & McEvoy JJ

Migration - partner visa - mandatory cancellation due to criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed delegate's decision - Federal Court dismissed application for judicial review and Full Court dismissed appeal - High Court allowed appeal on the ground of apprehended bias of a judge in the Full Court and remitted matter to Full Court - Tribunal did not misunderstand law when describing s501CA(4)(b)(ii) of the *Migration Act 1958* (Cth) as discretionary or as requiring a reason of "sufficient weight or significance" - no want of procedural fairness - appeal dismissed.

[QYFM](#)

[From Benchmark Friday, 15 December 2023]

### **Le v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2023] FCA 1547**

Federal Court of Australia

Anderson J

Migration - partner visa - delegate refused visa - Administrative Appeals Tribunal affirmed delegate's decision - Judge Ladhams of Federal Circuit and Family Court dismissed application for judicial review - Tribunal failed to observe ss 359A and 359AA of *Migration Act 1958* (Cth) by not providing clear particulars of international movement records - Tribunal breached s360 of Act by not inviting comment on records obtained after hearing - appeal allowed.

[Le](#)

[From Benchmark Friday, 15 December 2023]

**GKYW v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCA 1543**

Federal Court of Australia

Moshinsky J

Migration - bridging visa - mandatory cancellation due to criminal convictions - delegate decided not to revoke cancellation - Administrative Appeals Tribunal affirmed delegate's decision - Tribunal had erred in taking juvenile offending into account where no conviction was recorded - error material - application allowed.

[GKYW](#)

[From Benchmark Friday, 15 December 2023]

**Thien v Minister for Immigration, Citizenship and Multicultural Affairs [2023]**

**FedCFamC2G 1175**

Federal Circuit and Family Court of Australia (Division 2)

Judge D Humphreys

Migration - return resident visa - mandatory cancellation due to criminal convictions - visa reinstated following High Court decision in *Pearson v Minister for Home Affairs* [2022] FCAFC 203 - visa cancellation validated after the *Migration Amendment Act (Aggregate Sentences) Act 2023* (Cth) commenced - applicant said he did not receive notice of this - department advised that application for revocation was invalid as not made within 28 days of the amending Act commencing - notice provided inadequate particulars following amending Act and was sent to old address - notice invalid under s501CA(3) of the *Migration Act 1958* (Cth) - application allowed.

[Thien](#)

[From Benchmark Friday, 15 December 2023]

**EQU18 v Minister for Immigration, Citizenship and Multicultural Affairs [2023]**

**FedCFamC2G 1168**

Federal Circuit and Family Court of Australia (Division 2)

Judge Given

Migration - protection visas - delegate refused to grant visas - Administrative Appeals Tribunal affirmed delegate's decision - legal unreasonableness in assessment of credibility - Tribunal alleged inconsistency as basis for credibility finding - Tribunal misunderstood evidence as inconsistency in fact absent - interjection at Bar table by counsel for Minister - distinction between jousting and rudeness - potential for trauma in the face of possible unbecoming zeal by model litigant - Court's consideration of grounds not affected - application allowed.

[EQU18](#)

[From Benchmark Friday, 15 December 2023]

**CKJ18 v Minister for Immigration, Citizenship and Multicultural Affairs [2023]**

**FedCFamC2G 1148**

Federal Circuit and Family Court of Australia (Division 2)

Judge Mansini





Migration - protection visa - delegate refused to grant visa - Administrative Appeals Tribunal affirmed delegate's decision - Tribunal failed to exercise its powers under s427 or s424 of the *Migration Act 1958* (Cth) to take evidence or get information from the applicants' proposed witnesses - Tribunal rejected a request to call additional witnesses without reasons and then proceeded to make adverse findings as to the lack of detail in their relevant witness statements, which could have been tested or developed orally - legal unreasonableness - application allowed.

[CKJ18](#)

[From Benchmark Friday, 15 December 2023]

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Minnesota v Torgerson** (MINSC) - Odor of marijuana on its own without other facts did not constitute probable cause for warrantless search of vehicle

### Summaries With Link (Five Minute Read)

**Minnesota v Torgerson 995 N.W.2d 164 (2023)**

Supreme Court of Minnesota

Gildea CJ, Anderson, & McKeig JJ

A motor vehicle was stopped by the police because it had too many lights mounted on the grill. When the driver gave his license to the police, the officer stated that he smelled marijuana emanating from the vehicle. When questioned, the driver denied possessing marijuana. After conferring with a second officer, the police ordered the driver and passengers out of the vehicle and conducted a search. In the course of the search, the police discovered a canister of what was later found to be methamphetamine. At trial, the defendant sought to suppress the evidence obtained from the vehicle search on the grounds that there did not exist requisite probable cause for the search. The trial court suppressed the evidence and dismissed the matter. This was affirmed by the Minnesota Court of Appeals. The Minnesota Supreme Court stated that both the US and Minnesota Constitutions protect against unreasonable searches and seizures. Warrantless searches are *per se* unreasonable unless one of the exceptions to the warrant requirement applies. One of these exceptions is the automobile exception which permits the police to search a vehicle without a warrant if there is probable cause to believe the search will result in the discovery of evidence. The Court said that probable cause requires more than suspicion but less than the evidence necessary for conviction. A warrantless search must be based on objective facts and not the subjective good faith of the police. The Court noted that both industrial hemp and medical cannabis were lawful in Minnesota and the possession of a small quantity of marijuana was a petty misdemeanour and not a crime. The Supreme Court stated that, while the odour of marijuana can be a fact that supports probable cause, it is insufficient on its own because of the lawful right to possess medical cannabis under certain circumstances. As there was nothing else to support probable cause, the facts were insufficient to establish a fair probability that the search would yield evidence of criminal conduct. The suppression order was affirmed.

[Minnesota](#)



## Poem for Friday

### **In Memoriam, (Ring out, wild bells)**

**By:** Alfred, Lord Tennyson (1809-1892)

Ring out, wild bells, to the wild sky,  
The flying cloud, the frosty light:  
The year is dying in the night;  
Ring out, wild bells, and let him die.

Ring out the old, ring in the new,  
Ring, happy bells, across the snow:  
The year is going, let him go;  
Ring out the false, ring in the true.

Ring out the grief that saps the mind  
For those that here we see no more;  
Ring out the feud of rich and poor,  
Ring in redress to all mankind.

Ring out a slowly dying cause,  
And ancient forms of party strife;  
Ring in the nobler modes of life,  
With sweeter manners, purer laws.

Ring out the want, the care, the sin,  
The faithless coldness of the times;  
Ring out, ring out my mournful rhymes  
But ring the fuller minstrel in.

Ring out false pride in place and blood,  
The civic slander and the spite;  
Ring in the love of truth and right,  
Ring in the common love of good.

Ring out old shapes of foul disease;  
Ring out the narrowing lust of gold;  
Ring out the thousand wars of old,  
Ring in the thousand years of peace.

Ring in the valiant man and free,



The larger heart, the kindlier hand;  
Ring out the darkness of the land,  
Ring in the Christ that is to be.

Alfred, Lord Tennyson was born on 6 August 1809, in Somersby, Lincolnshire, England. *Ring Out, Wild Bells*, was part of *In Memoriam*, written to Arthur Henry Hallam, who died at 22. The poem was published in 1850, the year Tennyson was appointed Poet Laureate. The poem is inspired by the English custom to have the ring of bells, muffled to ring out the old year, and then, with muffles removed, to ring in the new year. *Ring Out, Wild Bells*, has been set to music including by Charles Gounod and Percy Fletcher. Alfred, Lord Tennyson died on 6 October 1892.

**Ring Out, Wild Bells**, Gounod, sung by the Mormon Tabernacle Choir  
[https://www.youtube.com/watch?v=TVEAt8v7b\\_g](https://www.youtube.com/watch?v=TVEAt8v7b_g)

**Ring Out, Wild Bells**, from The Passing of the Year by Jonathan Dove, Andrew Hon, conductor, sung by the Yale Glee Club  
<https://www.youtube.com/watch?v=yPlqqvOM8Og>

Bell Ringing in the Belfry at Great St. Mary's, Cambridge  
<https://www.youtube.com/watch?v=KNMFvNZIsCM>

[Click Here to access our Benchmark Search Engine](#)