

Friday, 18 October 2024

Weekly Immigration Law Review

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

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Executive Summary (One Minute Read)

XRZG v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - Tribunal's finding that drugs are not as readily available in immigration detention as they are in the community was not a finding that was required to be supported by evidence or other material

PHTP v Minister for Immigration and Multicultural Affairs (FCA) - Tribunal had made the same error as in *AJN23 v Minister* [2024] FCAFC 103 (see Weekly Immigration Benchmark, 23 August 2024)

EHM24 v Minister for Immigration and Multicultural Affairs (FedCFamC2G) - applicant granted an extension of time in which to seek judicial review of the Tribunal's decision, and an injunction restraining his removal from Australia

HABEAS CANEM

Peace



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Summaries With Link (Five Minute Read)

XRZG v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 131

Full Court of the Federal Court of Australia

Markovic, Cheeseman, & Horan JJ

Migration - Refugee visa - visa mandatorily cancelled after criminal convictions - delegate refused to revoke cancellation - the Administrative Appeals Tribunal affirmed - the Federal Court dismissed an application for judicial review - the primary judge had not erred in finding that it was not legally unreasonable of the Tribunal to conclude that the appellant's abstinence from drugs during his incarceration could not evidence his ability to abstain from drug use when living in the community, on the basis of a finding that drugs are not as readily available in immigration detention as they are in the community - the Court undertook a detailed consideration of whether findings of fact cited as part of a decision that the decision-maker is not satisfied that a visa cancellation should be revoked have to be supported by evidence, in the light of the High Court's decision in *Minister v Viane* (2021) 274 CLR 398, and concluded that, although all findings of fact must be supported by either evidence or other material or the decision-maker's personal or specialised knowledge, an obligation to refer to evidence or other material only arises where the statement is about the particular or personal circumstances of the applicant, or where it can be suggested that the decision-maker has "merely made things up" - the finding about the relative availability of drugs was not one that required reference to evidence or other material - appeal dismissed.

[XRZG](#)

[From Benchmark Friday, 18 October 2024]

PHTP v Minister for Immigration and Multicultural Affairs [2024] FCA 1170

Federal Court of Australia

Goodman J

Migration - Safe Haven Enterprise visa - visa mandatorily cancelled after criminal convictions - delegate refused to revoke cancellation - the Administrative Appeals Tribunal affirmed - after the Full Court of the Federal Court published its reasons in *AJN23 v Minister* [2024] FCAFC 103 (see Weekly Immigration Benchmark, 23 August 2024), the parties consented to orders quashing the Tribunal's decision and requiring the Tribunal to re-determine the application - the Court was satisfied the Consent orders were appropriate as the Tribunal had made a finding that the almost inevitable consequence of the cancellation of the applicant's visa would be his indefinite detention - application allowed.

[PHTP](#)

[From Benchmark Friday, 18 October 2024]

EHM24 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 997

Federal Circuit and Family Court of Australia (Division 2) General Federal Law

Judge Laing

Migration - protection visa - delegate refused visa - the Administrative Appeals Tribunal affirmed



- the applicant sought an extension of time in which to seek judicial review and an injunction restraining his removal from Australia - there was a serious question to be tried as to whether the applicant was sufficiently on notice of the issues on the review - the balance of convenience favoured grant of the injunction - the applicant's delay was reasonably limited - extension of time and injunction granted.

[EHM24](#)

[From Benchmark Friday, 18 October 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Aquino v Bondfield Construction Co (SCC) - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

Summaries With Link (Five Minute Read)

Aquino v Bondfield Construction Co 2024 SCC 31

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)



Poem for Friday

In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art
Exercised in the still night
When only the moon rages
And the lovers lie abed
With all their griefs in their arms,
I labour by singing light
Not for ambition or bread
Or the strut and trade of charms
On the ivory stages
But for the common wages
Of their most secret heart.
Not for the proud man apart
From the raging moon I write
On these spindrift pages
Nor for the towering dead
With their nightingales and psalms
But for the lovers, their arms
Round the griefs of the ages,
Who pay no praise or wages
Nor heed my craft or art.

Dylan Marlais Thomas, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

Dylan Thomas reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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