



Friday, 18 October 2024

## Weekly Intellectual Property Law

### A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Intellectual Property Law

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#### Executive Summary (One Minute Read)

**Gaynor v Minister for Communications (FCA)** - Classification Review Board erred in giving an "Unrestricted" classification to the publication *Gender Queer*

## HABEAS CANEM

Peace



## Summaries With Link (Five Minute Read)

### **Gaynor v Minister for Communications [2024] FCA 1186**

Federal Court of Australia

Jackman J

Administrative law - a majority of the Classification Review Board upheld a decision of the Classification Board which classified a publication titled *Gender Queer* as "Unrestricted" and gave consumer advice of "M-Not recommended for readers under 15 years" under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) - the Review Board described *Gender Queer* as "an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual" - an applicant sought judicial review of the Review Board's decision - the applicant contended that the Review Board ignored, overlooked, or misunderstood relevant facts or materials, namely (1) the written submissions from interested members of the public, and (2) a letter from a lecturer in Educational Psychology and Child Protection at the University of South Australia - if a decision-maker ignored, overlooked, or misunderstood relevant facts or materials, that may give rise to jurisdictional error - in applying that principle, the Court must bear in mind its limited role in reviewing the exercise of an administrative discretion and not substitute its decision for that of an administrative decision-maker - the "overwhelming" or dominant theme of the submissions were that the book tolerates or promotes paedophilia, and that such a stance is against the criminal law in Australia and is morally repugnant - few of the submissions opposing an unrestricted classification could rationally be described as "broadly anti-LGBTQIA+", as characterised by the Review Board, although some clearly did - no rational person who had actually read the submissions could arrive at the conclusion that they were broadly anti-LGBTQIA+ - the Review Board had also ignored, overlooked, or misunderstood an argument made by the lecturer in her letter that an ancient Greek image depicting a sexual encounter between a teacher and his student may be problematic in the light of standards of morality, decency and propriety generally accepted by reasonable adults whether or not the student were a child - decision quashed and an order in the nature of mandamus be made to compel the Review Board to determine the matter according to law.

[Gaynor](#)

[From Benchmark Wednesday, 16 October 2024]

# Benchmark

## 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](https://en.wikipedia.org/wiki/Patricia_Conolly) and <https://trove.nla.gov.au/newspaper/article/47250992>.

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