

Swiss precision can prove timely

By JADE RICHARDSON

AN AUSTRALIAN MAN who began divorce proceedings against his Swiss wife last year was staggered by her claim that she had no assets at all in Switzerland.

The woman received benefits from Centrelink and sought very high maintenance payments from her husband, who suspected she was hiding an inheritance in her homeland.

How would you deal with this scenario? Where would you begin to investigate your Australian client's suspicions, and are you aware that the choice of which country proceedings are begun in will doubtless cost one party a small fortune?

It's the kind of case that often crosses Swiss-born lawyer Beatrice Stuber's desk at Sydney firm Schweizer Kobras, where she and her colleagues, including migration agent and Austrian law specialist Sigrid Neumueller, and German law consultant (and former German succession law judge) Kerstin Glomb, specialise in traversing legal bridges between Australia, Switzerland, Germany and Austria. Each also holds a NSW practising certificate.

While language, legal and even cultural obstacles clutter the path of litigation for those like the intending divorcee, Schweizer Kobras lawyers have a special advantage, and not just because they have seven languages between them, and training in multinational law.

"Just getting on the phone to Switzerland, speaking the language and saying I'm calling from Australia has an amazing effect," Beatrice Stuber told *LSJ*. "Swiss lawyers and officials can be so amazed to hear from Australia that they are often more willing to assist than if I were actually there!"

Choice of jurisdiction

In the case above, Stuber

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was able to make a search of Swiss registries to discover that her client's wife did indeed own several investment properties, and had assets worth several million dollars. Knowing that Swiss courts are very generous in granting maintenance payments, and that Australian courts tend to split assets more equally in divorce settlements, she quickly calculated the balance and recommended her client begin proceedings here.

Such decisions are part of everyday work for the team at Schweizer Kobras. Well versed in the legal systems of their homelands, they are each able to work within Australian and foreign systems, benefitting from intimate knowledge of language and culture, and delighting in the contrasts and challenges.

Benefits of both systems

Arriving in Australia from Switzerland in 2000 with two degrees in law, Beatrice Stuber's ambition was to specialise in work crossing over the two nations, taking maximum advantage of the differences between a common law system and the Swiss civil law approach.

And this is where Schweizer Kobras plays a vital role. A large part of the firm's work is in advising solicitors in Australia and overseas about pitfalls and opportunities in cross-continent litigation, and explaining that there are some asymmetries which can achieve quite radical results, if you know how to use them.

As further examples of these differences in action, Stuber cites Australia's discovery procedures, which are not available to litigants in German and other civil law courts; and the more specialised roles of barristers and solicitors who, in Australian law, are able to achieve outstanding results in their more specific fields of expertise.

"It means that when you have a choice, you might bring the relevant matters to an Australian court where you expect

a more favourable result," she said.

On the other hand, there are advantages in the German, Austrian and Swiss systems too, where costs of litigation are significantly reduced in several ways.

"There is no distinction between barristers and solicitors, which obviously reduces one level of fees," Stuber said. "In those countries, an advocate takes the brief and appears in court. Advocates charge according to a given scale and have predictable and usually fully recoverable fees, which means even small claims may be well worth pursuing," she explained.

"And the Swiss inquisitorial system, where judges take a very active part in proceedings, do not ask for submissions on the law, and only require the facts in court, means litigation is quicker and cheaper."

It also means, by contrast, that Australian lawyers have a greater part in influencing court outcomes than their German, Austrian and Swiss colleagues acting under civil law where the judge applies the relevant laws independently.

"Also, cross-examination works differently," Beatrice Stuber explained. "In the adversarial system the parties cross-examine without the judge's involvement, whereas examination of witnesses in an inquisitorial system allows the judge to question the party and witnesses directly, and only then can opposing lawyers ask further questions. This can cause awkward situations, as for instance when a Swiss judge may get the impression that the lawyer thinks the judge has failed to ask all relevant questions."

A certain level of etiquette is required in such cases. "In Australia it is safe to interrogate under cross-examination, whereas in Switzerland you may find that you are seen as indirectly challenging the judge," Stuber said.

Attuned to the distinctions

It's often the small things that make the difference. When handling cases for European clients operating in Australia and vice versa, part of the Schweizer Kobras lawyers' work is ensuring that differences in legal processes, language and turns of phrase are turned to their clients' advantage. "It's very, very easy to make mistakes when you work this way," Stuber said. "It may be that a Swiss lawyer talks to an Australian lawyer, and although they use the same vocabulary, the words may have very different connotations or implications. This can be very dangerous – and expensive."

For example, in Switzerland a trust is a fiduciary system where an attorney represents the interests of a client without becoming the legal owner of the goods involved. An Australian lawyer discussing trusts with a Swiss (and vice versa), would actually be speaking another language.

Probate is another example. "There is no literal translation for this term," said Stuber. "It could be interpreted as either 'Willensvollstreckerzeugnis'; a certificate appointing an executor of the estate, or 'Erbgangsbescheinigung'; a certificate setting out, among other things, the beneficiaries of the estate – neither of which is satisfactory."

There are many legal terms that do not correlate, and significant contrasts in interpretation, costs and court outcomes. Even timeframes and legal roles are very different. Estate planning, death duty, divorce settlement, marital contracts and debt recovery all work differently in the German, Austrian, Swiss and Australian systems. "Ideally, you want to know this before you begin any work," said Stuber. "It makes a huge difference to where you would lodge your application, which system you elect to operate under, and how solicitors and courts in different countries will interpret your claim."



Operating at the intersection of Australian and Swiss law can offer tactical advantages for solicitor Beatrice Stuber, of multilingual firm Schweizer Kobras. PHOTO: ALEX CRAIG

"There are major differences in just about every area, from family law to estate planning and contracts – and in the main, the ones I hear crying, 'Oh, if only I'd known earlier', after mistakes, are our fellow practitioners. Australian solicitors working between countries like France, Germany and

Switzerland can certainly find it a sticky business."

Family law is one area where Beatrice Stuber's bridge between the two systems can often change the destiny of her clients. "Outcomes depend on a number of factors including pre-marital assets, whether children are involved and the

length of separation," Stuber said.

Due to slightly differing interpretations of the Hague Convention regarding International Child Abduction, she has also been able to assist clients whose disputes involve the two nations, and elect the court most likely to find in their favour.

Swiss lawyers respected

Aside from the professional distinctions Beatrice Stuber is mastering in Australia, there have been personal challenges too. "In the beginning I struggled with some people's perception of lawyers in Australia," she said. "In Switzerland there are no class actions, expensive litigation procedures or systems where lawyers' fees are connected to the sum awarded. Therefore, lawyers are generally perceived to be less aggressive and less financially motivated. It makes a big difference in the client relationship. In particular, Swiss notaries (which is my training), who do not go to court at all, enjoy a very high reputation."

"To this day, my father, who is a fourth-generation Swiss notary, gets chocolates, flowers and thank-you cards from his clients, merely for attending them in conference! There is no question that bills are paid immediately, but this, sadly, is slowly changing there too."

"I try my best to have as many happy clients as possible, and think I'm lucky that this is mostly the case. Being able to speak Swiss German, High German, English, French and a little Italian means I save my clients a lot of money in translation costs, and am often able to get results from overseas that may just seem too hard to an Australian who cannot leap the language barrier."

That leap, though, has been one that Stuber admits to not making perfectly every time herself. "Language differences are so subtle, and it can take a while to work them out," she said. "I've learned that in Australia, 'casual' at barbecue parties means shorts and T-shirts, whereas 'casual' in Switzerland means 'no tie required'.

"My husband and I also learned that when somebody says come over 'around 7 p.m.', it's not a good idea to turn up before 7.30 unless you want to see the host in their underwear. We are now very much at home with the more relaxed way of life. It has been a wonderful sea change." □