

A tale of good lawyers doing great work

Just the other day I heard, yet again, another bad lawyer joke – “How many lawyer jokes are there? Just one, all the rest are true!”

Lawyer jokes are rife about how bad we supposedly are, but how often do we acknowledge and celebrate the work of our profession?

The matter of *Public Trustee of Qld v Mrs X* [2016] QSC 179 struck me irresistibly as a poignant example of good lawyers doing great work, in this instance Kate Do and her amazing efforts on behalf of the Public Trustee.

For a short judgment, the matter had a long and difficult journey to ensure that an indigent, illiterate wife and mother living in a Middle Eastern country would receive the beneficial entitlements of her husband's modest estate.

In terms of estates \$196,000 is not a particularly large sum, but to a destitute family living in a remote village, it is a fortune. The names of the deceased, his wife and the country in which she resided have been redacted for security reasons.

Mr X migrated to Australia in 2001, leaving his wife and children behind in the Middle East. Mr X lived and worked in Victoria and was granted a permanent visa in 2005 but sadly died intestate, in a motor vehicle accident in Queensland in 2006. His estate primarily consisted of the life insurance component of a superannuation policy.

Over the course of the years that the estate was administered, many questions needed to be resolved. First, what was the status of the deceased's overseas marriage under the *Marriage Act 1961* (Cth). It was so recognised.² Then the question of which intestacy laws applied – Victoria.³

Under Victorian laws the deceased's spouse received the estate. She lived in a remote village in the Middle East; she was illiterate and her thumb print was her only signature. She did not have a postal or residential address.

A bank account was opened for the purposes of transferring the money to her. Unfortunately, the Commonwealth Bank refused to transfer the money to that particular country.⁴

This set off a complex process of establishing a reliable means of ensuring the wife received her entitlements. The material before the Supreme Court identified the herculean efforts that Kate Do went to in order to have the money paid to the wife, including extensive attempts to communicate with the chief consular officer in Australia for that country.⁵

However, that office was non-responsive and in those circumstances the court declared such payment “was not a viable option”⁶ under the *Public Trustee Act 1978* (Qld). Kate Do then attempted to have the money paid to a lawyer in that country to accept on behalf of the wife⁷ and in doing so brought an application before Chief Justice Holmes for direction.

This process involved complex communications with the Australian embassy in the country to have the authority documents explained to the wife to achieve this end. Through that process, information was passed back that the funds would not be distributed to the wife, as it was said payment to females in that country was not permitted.

That, along with other information, led the Public Trustee to lose confidence “that the money paid into the lawyer's account would reach the deceased's family”.⁸

Further enquiries were made, and a different Middle Eastern lawyer was sourced, a Ms Y, to represent the wife. Ms Y was dual qualified in the United States and the Middle Eastern country. Her curriculum vitae was impressive and impeccable,⁹ with a particular emphasis on representing women and children in local and national courts.

She set out in her affidavit a complex process by which she would facilitate the payment to the wife. This was complicated by the fact that the wife could only sign by thumb print and so the option of the wife opening her own US bank account was unavailable. Ultimately, a viable plan was put before the court for the process of Ms Y ensuring that the funds would reach the wife.¹⁰ Only then was the court satisfied that the process would result in the wife receiving her beneficial entitlements and so directed “that Ms Y's receipt will be a sufficient discharge to the Public Trustee”.¹¹

What makes this matter so heartening is the tireless efforts of the solicitors to ensure an unknown, impoverished, illiterate lone woman would receive her entitlements under Australian law. Congratulations to all involved.

Where do financial sanctions apply?¹²

This matter left me wondering, however, that with estate administrations increasingly involving the transfer of money to overseas beneficiaries, how many countries are there where sanctions might exist in relation to international money transfers from Australia?

Quite a few! Australia has previously been a member of the United Nations Security Council (UNSC), which has implemented sanction regimes in relation to a number of countries. In addition to those of the UNSC adopted by Australia,¹³ we have also autonomously issued sanctions against a variety of countries.¹⁴

'It is a pleasant world we live in, sir, a very pleasant world. There are bad people in it, Mr. Richard, but if there were no bad people, there would be no good lawyers.'¹



with Christine Smyth

Generally Australian law prohibits, without a sanctions permit, dealing with 'assets' that are owned or controlled by a 'designated person or entity' of the country where the sanction law applies, or making 'assets' directly or indirectly available to a 'designated person or entity' for the country where the sanction law applies.

'Asset' is generally defined broadly to include an asset of any kind, whether tangible or intangible, movable or immovable.

There is specific legislation which applies for each UN sanction that Australia has adopted. This table (*below*) lists the

sanctions regimes, and whether the regime includes financial sanctions.

So if your estate administration involves a distribution of an estate asset to one of these countries, your client will need to be aware well in advance in order that they may plan for the difficulties that will lie ahead in giving effect to the distribution.

The list of nations on which sanctions are imposed is subject to change and practitioners should always cross-check the current status of any country in matters of this kind.

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Country	Do financial sanctions/asset restrictions apply?
Central African Republic	Yes, legislation.gov.au/Details/F2014C01373
Crimea and Sevastopol	Yes, legislation.gov.au/Series/F2015L00390
Democratic People's Republic of Korea (North Korea)	Yes, legislation.gov.au/Series/F2006L05741
Democratic Republic of the Congo	Yes, legislation.gov.au/Series/F2008L01031
Eritrea	Yes, legislation.gov.au/Series/F2010L00573
Former Yugoslavia	Yes: Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) List 2012 legislation.gov.au/Details/F2012L00477
Guinea-Bissau	No
Iran	Yes: Charter of the United Nations (Sanctions – Iran) Regulation 2016 legislation.gov.au/Details/F2016L01181
Iraq	Yes: Charter of the United Nations (Sanctions – Iraq) Regulations 2008 legislation.gov.au/Series/F2008L01033/
ISIL (Da'esh) and Al-Qaida	Yes: Charter of the United Nations (Sanctions – Al-Qaida) Regulations 2008 legislation.gov.au/Series/F2008L01023
Lebanon	Yes
Libya	Yes
Russia	Yes
Somalia	Yes
South Sudan	Yes
Sudan	Yes
Syria	Yes
Ukraine	Yes
Yemen	Yes
Zimbabwe	Yes

Notes

- ¹ Charles Dickens, *The Old Curiosity Shop*.
- ² *Public Trustee of Qld v Mrs X* [2016] QSC 179 at [6].
- ³ At [7].
- ⁴ At [9].
- ⁵ At [10]-[11].
- ⁶ At [11].
- ⁷ At [12].
- ⁸ At [15].
- ⁹ At [17].
- ¹⁰ At [19]-[23].
- ¹¹ At [24].
- ¹² My thanks and gratitude to QLS policy solicitors Louise Pennisi, Wendy Devine and Julia Connelly for their assistance in undertaking this extensive research.
- ¹³ See dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx, and the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, legislation.gov.au/Details/F2015C00761.
- ¹⁴ *Autonomous Sanctions Regulations 2011*, legislation.gov.au/Details/F2013C00777.