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WITH EMALENE T. GEMMELL – SOLICITOR  
FROM LEGAL MINDS

# THINKING

# FAMILY

Aberdeen, Scotland: the oil capital of Europe, experiencing winter temperatures of subzero, showcasing vibrant reflections of differing people drawn to an economic centre for personal and lifestyle reasons including art, agriculture, education, skilled labour, goods and services or other trade. While spending this year at the University of Aberdeen completing my Masters Degree, it has occurred to me that the New England region shares many similarities, and in particular its cultural diversity as the home to numerous families who differ in cultures, traditions and religious denominations.

### > European Union

With such diversity comes the ever challenging dilemma of how the law can and should apply to issues where family and community values and traditions may differ.

Within the last two months, the Commission for the European Union (EU) released a proposal of how matters relating to the family within the EU should be governed. The latest proposal is focused on introducing rules to govern applicable law in matrimonial matters, in the area of divorce and legal separation. The latest proposal aims to provide amicable solutions to matters which involve 'cross-border' elements.

Given that citizens of EU Member States can now travel more freely between other Member States, it seems that there may be a greater number of people marrying, forging relations and acquiring property outside their country of natural origin. The EU proposal is designed to come into play when there is an international dimension to a family dispute.

For example, where spouses are of different nationalities, or where the couple live in a Member State that is not their country of origin, to provide parties with the freedom to choose which countries' laws should be applied to their dispute, and also to circumvent a 'rush to court' approach by any single party.

### > Australia

This approach is very similar to the current

approach taken by the Family Court of Australia, which encourages parties to participate in mediation, alternative dispute resolution and less adversarial processes where possible before embarking on the costly and usually stressful process of litigation.

Many of the issues discussed in the EU Commission's proposal are matters that are frequently raised in family law cases in Australia.

As people migrate to Australia or travel abroad, Australian families have become increasingly exposed to international complications. Such complications can affect families in situations other than divorce and separation. For example, conflicting laws can apply in cases involving the international recovery of a child and in relation to child support or spousal maintenance, or

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when parties wish to dispose of property owned abroad, in matters relating to wills and estates, as well as in the recognition and enforcement of judgements made in differing jurisdictions.

It may also be of particular focus in matters involving international adoption. While the Hague convention deals with many matters concerning

the interests of children, the laws concerning matrimonial property and other matters incidental to family life are presently diverse, and initiatives and legislation enacted to resolve matters without inconsistency are becoming increasingly important in the dynamic and diverse demographic within which we now all live.

If you have a family law situation which you feel involves a 'cross-border' or international element, it is important that you seek comprehensive legal advice which will not only help you to understand your position, but also assist you in deciding on the most appropriate avenues to pursue to achieve your goals.

For more information on the EU Commission's proposal, and to view the full text, log on to [http://ec.europa.eu/justice\\_home/news/intro/doc/com\\_2010\\_105\\_en.pdf](http://ec.europa.eu/justice_home/news/intro/doc/com_2010_105_en.pdf).

For more information in relation to Family Law and the Family Court of Australia, log on to [www.familylawcourts.gov.au/](http://www.familylawcourts.gov.au/)