

**54/78**

**FAMILY COURT OF AUSTRALIA at SYDNEY**

***In the Marriage of SLENDER (MH and DM)***

**Watson SJ**

**28 July, 5 August 1977**

**[1977] 29 FLR 267**

**FAMILY LAW – CONTEMPT OF COURT – UNQUALIFIED PERSON PURPORTING TO APPEAR AS A LEGAL PRACTITIONER – POWER OF COURT TO PUNISH FOR CONTEMPT: *FAMILY LAW ACT 1975-78, S122.***

E. appeared before the court stating he appeared for the wife and that he was a barrister of the High Court of Australia. Watson SJ cited him for contempt in the face of the court and sentenced him to be imprisoned for ninety days on condition that he be released after fourteen days upon entering into a recognizance on certain specified conditions.

**Contempt in the face of the court may be broadly described as any words spoken or act done in or in the precincts of the court, which obstructs or interferes with the due administration of justice or is calculated to do so. Such contempt must be proved beyond reasonable doubt.**

**WATSON SJ:** When the case was called on, one Jack Victor Macklin appeared before me stating that he was appearing for Mrs Slender that he was a barrister of the High Court of Australia, and that he was instructed by a solicitor, Mr McCrudden. I had inquiries made. I confronted Mr Macklin with those inquiries. He re-asserted that he was a barrister. I cited him for contempt and adjourned the matter until today. Mr Macklin appears unrepresented. He claimed there had been a mistake and apologized to the court.

I find on the facts before me that: (a) he is not a legal practitioner; (b) he has had a sexual association with Mrs Slender; and (c) he has committed a grave contempt in the face of this court.

Contempt in the face of the court may be broadly described as any words spoken or act done in or in the precincts of the court, which obstructs or interferes with the due administration of justice or is calculated to do so (*Halsbury*, 4th ed. vol. 9 par.5). Such contempt must be proved beyond reasonable doubt (*Balogh v Crown Court at St Albans* (1975) QB 73; *In the Marriage of Sahari* (1976) 25 FLR 475). In *McKearn v The Queen* (1971) 16 DLR 390 (a Canadian Case) Laskin J said:

'Contempt in the face of the court is in my view distinct from contempt not in its face on the footing that all the circumstances are in the personal knowledge of the court. The presiding judge can then deal summarily with the matter without the embarrassment of having to be a witness to issues of fact which may be in dispute because of events occurring outside.'

In applications of this nature the only person having any right of appearance is a party or a legal practitioner (r104(c)). As to the rights of legal practitioners, see s122 of the *Family Law Act*.

The Family Court of Australia is a superior court of record (s21(2)), neither the nature of its jurisdiction nor its deliberate informality should be seen as a temptation to any person, professional or lay, to treat it as other than what it is – a specialized superior court of record. Mr Macklin's offence is grave. He has impersonated a legal practitioner. Such personation does not have to be in relation to an identified person (*R v Allison* (1965) 83 WN (Pt 1) (NSW) 220).