

33/78

FAMILY COURT OF AUSTRALIA

In the Marriage of SAMPSON (JJ and JM) (No 1)

Fogarty J

7-10 June 1977 — (1977) 29 FLR 135

FAMILY LAW – EVIDENCE – SOCIAL WORKER ACTING IN CAPACITY AS MARRIAGE COUNSELLOR AND WELFARE OFFICER – ROLES INSEPARABLY INTERTWINED – WHETHER EVIDENCE ADMISSIBLE: FAMILY LAW ACT 1975-76 SS18, 64(5).

During the hearing of a claim for custody of a child of the marriage in December 1976, W. expressed doubts as to whether she intended to pursue her claim. Fogarty J adjourned the hearing to enable W. to receive counselling from a marriage counsellor. W. then attended at the Catholic Family Welfare Bureau where she received certain counselling on 9th December 1976. On 15th December, 1976, Fogarty J granted custody to W. and ordered (*inter alia*) that the custody and access be supervised as far as practical by a counsellor nominated by the Director of Court counselling of the Melbourne registry of the Family Court of Australia in conjunction with the Catholic Family Welfare Bureau. W. continued to attend at the Catholic Family Welfare Bureau after 15 December 1976 both for counselling and for the purposes of carrying out the order of Fogarty J. In June 1977 the competing custody claims of H. and W. were once again litigated. W. sought to lead evidence from the social worker at the Catholic Family Welfare Bureau who had seen her both in her capacity as counsellor and welfare officer.

HELD:

- (1) Where a person attends a marriage counsellor for the purpose of receiving counselling in respect of a matter arising out of the marriage relationship s18(2) of the *Family Law Act 1975-76* applies to evidence of anything said during the course of such counselling and such evidence is not admissible in any court.
 - (2) Section 18(2) of the *Family Law Act 1975-76* does not raise a question of privilege capable of being waived by the party concerned but establishes a complete prohibition to the admissibility of such evidence.
 - (3) The "marriage counselling" referred to in s18(2) of the *Family Law Act 1975-76* includes counselling not only to the marriage relationship itself but to any aspect arising out of the marriage past or present.
 - (4) The prohibition extends not only to things said or admissions made during conferences with a marriage counsellor, but also to observations made and opinions formed by the counsellor arising out of things said or admissions made during the course of the conference.
 - (5) If a counsellor sees a party to a marriage both in the capacity of "marriage counsellor" and "welfare officer" then the evidence of such counsellor is inadmissible.
 - (6) *Semble* it is inappropriate for a person who has acted as a marriage counsellor to a party to act as a supervising welfare officer in respect of that party.
-