



**VICTORIAN
GOVERNMENT
SOLICITOR**

Your Reference:

When Replying 2001.078.Hoser
Please Quote: AG 4190

Level 2, 55 St. Andrews Place
East Melbourne, Vic. 3002
P.O. Box 4356QQ
Melbourne 3001
Tel: (03) 9651 0444
Fax: (03) 9651 0449
DX 300077
Web: www.vgso.vic.gov.au
ABN: 32 790 228 959

Ms Alison O'Brien
Tel: 9651 0408

18 January 2002

Mr Raymond Hoser
PO Box 599
DONCASTER VIC 3108

Dear Mr Hoser

Hoser and Kotabi Pty Ltd v R (No 5928 of 2001)

I refer to the above matter and the notice of appeal which you served on me on behalf of yourself and Kotabi Pty by facsimile.

Given that you served the notice of appeal on me yourself, I attach, for your information only, a copy of the notice of cross-appeal in this proceeding. The notice of cross-appeal will be filed today. The notice will be served on your solicitors on the record – Access Law.

Yours faithfully,
James Syme
Victorian Government Solicitor

per:

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

COURT OF APPEAL

No. 5928 of 2001

BETWEEN

RAYMOND TERRENCE HOSER

First Appellant

- and -

KOTABI PTY LTD (ACN 007 394 048)

Second Appellant

- and -

THE QUEEN
(Ex Parte THE ATTORNEY-GENERAL for the
STATE OF VICTORIA)

Respondent

NOTICE OF CROSS-APPEAL

Date of Document:
Filed on behalf of the Respondent
Prepared by:
James Syme
Victorian Government Solicitor
Level 2, 55 St. Andrews Place
MELBOURNE VIC 3002

Solicitors Code: 7977
DX 300077 Melbourne
Telephone: 9651 0444
Fax: 9651 0449
Reference: 0004190:AOB

TAKE NOTICE that the Respondent intends to cross-appeal to the Court of Appeal against that part of the judgment of the Honourable Justice Eames delivered on 29 November 2001 which dismissed the second count of contempt against the Appellants, such count ("the second count") comprising paragraph 4 in the Originating Motion in this proceeding dated 23 May 2001.

The grounds upon which the Respondent relies are:

1. The learned trial Judge erred in law:
 - a) in deciding that, in the circumstances of this case, an issue arose as to the truth of the allegation said to constitute contempt by scandalising the Court referred to in the second count ("the said allegation");
 - b) in deciding that there was evidence, alternatively admissible evidence, as to the truth of the said allegation;

- c) in deciding that, in the circumstances of this case, the Crown bore the onus of providing beyond reasonable doubt the falsity of the said allegation;
 - d) in deciding that, even though the First Appellant did not believe that the said allegation was true and even though the First Appellant was recklessly indifferent as to whether the said allegation was true, an issue arose as to the truth of the said allegation;
 - e) in acting on the basis that there was admissible evidence before him as to the contents of a tape recording of a conversation which allegedly took place between the First Appellant and a police officer named Bingley in relation to Magistrate Hugh Francis Adams having received a bribe (“the said tape recording”);
 - f) in placing reliance on the contents of the said tape recording;
 - g) in placing reliance upon the Crown’s decision not to contest the appeal of the First Appellant against the decision of Magistrate Hugh Francis Adams, for the purpose of finding there to be some credible evidence as to the truth of the allegation made by the First Appellant that Magistrate Hugh Francis Adams had received a bribe, in the absence of any evidence as to the reasons why the Crown did not contest that appeal;
 - h) in failing to give any weight or any appropriate weight to the failure of the First Appellant to tender the said tape recording;
 - i) in failing to give any weight or any appropriate weight to the presumption of regularity in relation to the conduct of Magistrate Hugh Francis Adams in the circumstances in which he was alleged to have received a bribe.
2. There was no evidence or, alternatively no admissible evidence, upon which the trial Judge could make a finding:–
- a) that there was some credible evidence as to the truth of the allegation made by the First Appellant that Magistrate Hugh Francis Adams had received a bribe;
 - b) that the Respondent had ever had in its possession a copy of the said tape recording;
 - c) as to the contents of the said tape recording.

In place of that part of the judgment from which the cross-appeal is brought the Respondent seeks judgment that:

- a) the First and Second Appellants be adjudged guilty of contempt of Court on the second count;
- b) the First Appellant be punished by imprisonment or fine, or both on the second count;
- c) the Second Appellant be punished by fine or sequestration, or both on the second count.



Victorian Government Solicitor

Solicitor for the Respondent

TO: The First Appellant and the Second Appellant