
1
2 TRANSCRIPT OF PROCEEDINGS
3

4
5 SUPREME COURT OF VICTORIA

6
7 COMMON LAW DIVISION

8
9 MELBOURNE

10
11
12 THURSDAY 29 NOVEMBER 2001

13
14
15 BEFORE THE HONOURABLE JUSTICE EAMES

16 B E T W E E N

17
18 THE QUEEN (ex parte ATTORNEY-GENERAL
19 FOR THE STATE OF VICTORIA)

20 Applicant

21 - and -

22 RAYMOND TERRENCE HOSER

23 First Respondent

24 - and -

25
26 KOTABI PTY LTD

27 Second Respondent

28
29 HIS HONOUR: In this matter the Crown has brought two counts of
30 contempt by scandalising the court. My reasons for
31 decision as to those counts are set out in a written
32 judgment and regrettably the reasons are far too lengthy
33 for me to read now for the purpose of setting out those
34 reasons for decision.

1 I will not attempt to summarise my reasons because
2 to do so is likely to fail to adequately indicate the
3 basis for my decision which can be found by those who are
4 interested in reading the written reasons. Because I am
5 not going to provide my reasons now, so much as simply a
6 summary of my findings, I have ensured that there will be
7 ample copies available of my reasons for any members of
8 the public who are interested to know the basis for my
9 decision and my analysis of the books which were the
10 subject of the charges and of the particulars which were
11 referred to in the charges.

12 I therefore at this stage simply summarise the
13 findings that I made with respect to these charges. On
14 Count 1 I am satisfied beyond reasonable doubt that the
15 three particulars relating to Judge Neesham and the two
16 particulars concerning Judge Balmford, as she then was,
17 constitute contempt by scandalising the court. In
18 reaching those conclusions I reject Mr Hoser's contention
19 that the statements were published in good faith and
20 without malice.

21 As to the particulars concerning Magistrate Heffey,
22 I have a reasonable doubt as to whether they constitute
23 contempt and the benefit of that doubt goes to the
24 respondents. In reaching that conclusion, I do not
25 accept that there could've been any basis for a
26 suggestion of bias or impropriety. My reasonable doubt
27 is based on the fact that it is possible that the
28 statements should be regarded as not in fact having made
29 allegations of bias, but as having been intended to be
30 criticism which - whether justified or not - could not
31 constitute contempt as a matter of law.

1 As to the particulars concerning Magistrate Addams,
2 these particulars - one is in the first count, and the
3 second count is solely concerning with a particular
4 relating to Magistrate Addams.

5 I have concluded that those passages in the two
6 books referring to Mr Addams were not written in good
7 faith and did not constitute fair comment. Any defence
8 based on fair comment would have failed. The defence
9 however based on fair comment has raised a question as to
10 the truth of the allegation of corruption contained in
11 those passages and made whether directly or by
12 implication in those passages.

13 I have concluded the truth is a defence, even when
14 - as here, the respondents expressly state they do not
15 seek to establish that the allegations are true. Indeed
16 I have concluded that Mr Hoser does not believe that
17 those allegations are true, but merely asserts that it is
18 possible that they are true.

19 Once some material is identified which raises the
20 question of truth, then it seems to me the same principle
21 applies here as applies in the criminal law generally,
22 but as I've discussed in my analysis, it appears not to
23 have been the subject of discussion in the authorities
24 with respect to an offence of contempt.

25 It seems to me that following those principles,
26 once some material is raised or is identified which
27 raises the question of truth, then the Crown must
28 thereafter prove beyond reasonable doubt that the
29 allegation is not true. That is a very difficult task
30 for the Crown, because there are important policy reasons
31 why the court should not embark on what amounts to a

1 collateral attack on decisions of a court, nor should
2 allow unjustified attacks on judges or magistrates not
3 having been made in good faith to be perpetuated under
4 the guise of defending a charge of contempt.

5 Nonetheless these are criminal proceedings. Whilst
6 it is my view that the probability of there being any
7 truth in the allegations contained with respect to
8 Magistrate Addams, that that probability is remote.
9 Notwithstanding that, in my view I could not be satisfied
10 beyond reasonable doubt that the allegations are not
11 true. And therefore the particular of contempt in Count
12 1 relating to Magistrate Addams, and the second count
13 which solely relates to Magistrate Addams, are not proved
14 beyond reasonable doubt.

15 Accordingly I find that both respondents are guilty
16 of contempt on Count 1, and I dismiss Count 2. I publish
17 my reasons.

18 As counsel will see, the reasons are very lengthy
19 indeed, and I've no doubt the parties will want to
20 examine those before making submissions both as to
21 penalty and as to costs. Do you have any time that you
22 would suggest is convenient? I was going to suggest next
23 Tuesday, but I'll do it earlier or later.

24 MR MAXWELL: 10.30 on Tuesday would be convenient, if Your
25 Honour please.

26 HIS HONOUR: Mr Graham?

27 MR GRAHAM: I'm in the same position, Your Honour.

28 HIS HONOUR: All right. Are there any matters that need be
29 raised now? Or will I simply adjourn the matter to - I
30 will adjourn the further hearing of this matter - - -

31 MR GRAHAM: There is one matter, Your Honour, which I will

1 raise because Your Honour may be assisted in advance of
2 hearing submissions. If I refer Your Honour to three
3 authorities, two of which are concerned with the
4 Sentencing Act.

5 The first of them is the case of Hinch - I don't
6 have the full citation but it's Hinch v. Attorney General
7 of Victoria (1987) V.R. 721. It was concerned with the
8 penalties in Sentencing Act 1981, and there are passages
9 at pp.731 and 749 which Your Honour might care to look
10 at.

11 HIS HONOUR: Yes, thank you for that, I will check that before
12 next week.

13 MR GRAHAM: A later case which is not yet reported, which is
14 Hugo Alistair Rich v. Attorney General of Victoria (1999)
15 V.S.C.A. 14. I would refer Your Honour to what the
16 President said in paragraph 46 and 47 in relation to the
17 Sentencing Act 1991.

18 HIS HONOUR: Thank you.

19 MR GRAHAM: There's also a question which may arise as to the
20 form that any judgment of Your Honour might take, but I
21 don't think I need trouble Your Honour with giving
22 references in advance about that.

23 HIS HONOUR: No, I'll leave all those questions at the moment.
24 I've simply made the findings which I think I'm required
25 to put in terms of finding guilt beyond reasonable doubt,
26 but otherwise what flows from that I think is a matter
27 for submissions.

28 MR GRAHAM: If Your Honour pleases.

29 MR MAXWELL: Your Honour, it's likely, I think, as in the case
30 itself, that we'll put in a written outline. We'll
31 endeavour to have that to Your Honour's Associate by the

1 end of Monday, and of course provided to our learned
2 friends.

3 HIS HONOUR: That would be helpful if you could. The further
4 hearing of this matter to deal with submissions as to
5 sentence and costs and any other issues which arise will
6 be adjourned to 10.30 a.m. on Tuesday, 4 December.

7 ADJOURNED UNTIL TUESDAY 4 DECEMBER 2001

8