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IN THE SUPREME COURT OF VICTORIA
2001
**COURT OF APPEAL
AT MELBOURNE**

No: 5928 of

BETWEEN:

RAYMOND TERRENCE HOSER

First Appellant

- and -

**KOTABI PTY LTD
(ACN 007 395 048)**

Second Appellant

- and -

**THE QUEEN (ex parte THE ATTORNEY GENERAL FOR THE STATE OF
VICTORIA)**

Respondent

NOTICE OF APPEAL

Date of Document:	20 December 2001
Filed on behalf of:	The Appellants
Prepared by:	
Kotabi P/L and Raymond Hoser Publisher/Author PO Box 599 DONCASTER, VIC, 3108	Solicitor's Code: N/A Telephone: 9812-3322 Fax: 9812-3355 Ref: Free Speech Trial

TAKE NOTICE the Appellants, being dissatisfied with the whole of the judgment and order of the Honourable Justice Eames given and made on 6 December 2001, by which judgment and order His Honour adjudged the Appellants guilty of contempt of court and fined the First Appellant the sum of \$2,000.00 and fined the Second Appellant the sum of \$3,000.00, appeal to the Court of Appeal.

GROUNDINGS

1. The learned Judge erred in law in concluding that the appellants had not made out the defence of fair comment.
2. The learned Judge erred in concluding that the first appellant (“**Hoser**”) had not acted in good faith.
3. Having found that –
 - (a) there had been no appreciable damage to the Court system in the two years since the publication of the statements relating to Judge Neesham and Judge Balmford; and
 - (b) it was not possible to assess whether the attitude of individual readers towards the Court system would have been adversely affected by reading those statements,

it was not open to the Court, as a matter of law, to find that there was –

“a real risk... as a matter of practical reality”

that the statements had a tendency to undermine the confidence of the public in the administration of justice or to lower the authority of the Courts.

4. The learned Judge failed to take into account relevant considerations, namely –
 - (a) the importance to the community of vigorous and open discussion concerning the administration of justice and perceived deficiencies therein, including relevant free speech considerations;
 - (b) the public interest in the existence, and the exercise, of the right of members of the public to criticise publicly the acts of judges and magistrates in the performance of their duties as such;
 - (c) the unchallenged sworn evidence of Hoser that –

- (i) to the best of his knowledge at the time of publication, the statements of fact contained in the relevant books were true; and
- (ii) the views, opinions and beliefs expressed by him in the relevant publications were held by him at the time of publication;
- (iii) it was no part of his purpose in writing the relevant books to harm the administration of justice;
- (iv) his purpose in writing the relevant books was to highlight what he perceived to be wrongs in the justice system and in the conduct of police, as the first step towards rectifying those deficiencies and ultimately strengthening public faith and trust in the criminal justice system;
- (v) and other matters, which showed good faith on the part of the plaintiffs and other relevant considerations.

5. The Court having identified several areas in which the publication of the relevant books had highlighted matters of legitimate concern, in particular regarding –

- (a) the inappropriate conduct of the prosecutor in Hoser’s perjury trial, and the anxiety and unfairness which such conduct would be likely to create in an unrepresented person in Hoser’s position;
- (b) the inherent tendency of the phrase “A criminal trial is not a search for the truth” – used by the Judge in that trial - to create the sort of misunderstanding expressed by Hoser, namely that in determining the issues the jury are engaged in an exercise in which truth does not matter;
- (c) the importance of having all proceedings tape-recorded;
- (d) adverse finding by a higher court of bias against a magistrate named in the same manner in an earlier book, and

- (e) the erroneous basis on which Hoser's application for legal aid had been rejected,

it was not open to the Court, as a matter of law, to find that Hoser's was acting maliciously and with the intention of lowering the authority of the courts.

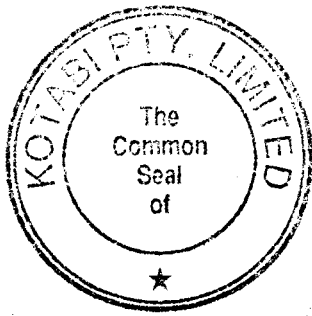
6. The learned Judge took into account an irrelevant consideration, namely, his Honour's own view of the likely effect on Hoser's perjury trial of the exclusion of critical evidence favourable to Hoser, and/or other matters.
7. The learned judge made readily identifiable errors in findings of fact and inferences that were not open to him, either absolutely (i.e. demonstrably false on the evidence before him) and/or in likelihood (so unlikely as to be improbable), which either individually or cumulatively led to one or more adverse findings against the appellants.
8. The learned judge made other errors of consideration in judgement, including a potential relitigation of a prior conviction, without the evidence before him, the possibility of the trial being a defacto defamation case and/or in lieu of one and other matters.
9. The learned Judge erred in law in holding that the appellants, as defendants to a criminal prosecution –
 - (a) should, on conviction, pay the respondent's costs of the proceeding; and
 - (b) should pay those costs in full notwithstanding that the prosecution had substantially failed, in that the Court –
 - (i) found that there was no case to answer with respect to 14 of the 23 passages complained of; and
 - (ii) dismissed the charges with respect to four of the remaining nine passages complained of.

ORDERS SOUGHT

In lieu of the order against the Appellants, the Appellants seek orders as follows:

1. An order that the Originating Motion of the Respondent be dismissed.
2. An order that the Respondent pay the Appellants' costs of the Originating Motion on a solicitor/client basis.
3. An order that the Respondents pay the costs of the Appellants of the appeal.

DATED: 20 December 2001



RAYMOND HOSER
For the Appellants

**TO: THE RESPONDENT
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NOTE OF PROPOSED CONTENTS OF APPEAL BOOK

Date of Document:	20 December 2001	
Filed on behalf of:	The Appellants	
Prepared by:		
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DONCASTER, VIC, 3108	Ref:	Free Speech Trial

1. Originating Motion filed 23 May 2001
2. Summons on Originating Motion issued 23 May 2001
3. Affidavit of Stephen Lee sworn 18 May 2001 together with exhibits

Exhibit A - Victoria Police Corruption

Exhibit B - Victoria Police Corruption Vol 2

Exhibit C - Company Search of Kotabi Pty Ltd

Exhibit D - Letter from Victorian Government Solicitor dated 26 July 2000

Exhibit E - Bundle of replies to letter dated 26 July 2000

Exhibit F - Affidavit of Raymond Terrence Hoser in proceeding no 7825 of 1999

Exhibit A1 - The Hoser Files

4. Affidavit of Raymond Hoser sworn for case dated November 2001 together with

Exhibits

Exhibit A

Exhibit B

Exhibit C

5. Reasons for Judgment of Justice Eames dated 28 November 2001

6. Authenticated Order of Justice Eames dated 28 November 2001

7. Reasons for Judgment of Justice Eames dated 6 December 2001

8. Authenticated Order of Justice Eames dated 6 December 2001

9. Notice of Appeal dated 20 December 2001

10. Transcript of hearing before Justice Eames on 23 October 2001

11. Transcript of hearing before Justice Eames on 24 October 2001

12. Transcript of hearing before Justice Eames on 25 October 2001

13. Transcript of hearing before Justice Eames on 30 October 2001

14. Transcript of hearing before Justice Eames on 31 October 2001