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13 October 2009

By Email - groberst@bigpond.net.au

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Our reference: 12352/12209/80070709.005

Dear Ms Robertson

Geraldine Robertson -v- Chief Executive DPI &F and RSPCA BD Appeal 2268/2009

We acknowledge your Notice of Appeal and Outline of Argument in relation to the decision of his honour Strofield (M) delivered 24 July 2009. The Appeal and associated Outline of Argument are flawed and this letter is to place you on notice that the RSPCA will seek to strike the Appeal out in whole or part should you not take immediate steps by you in relation to the same.

Again, we invite you to:

- (a) seek independent legal advice in relation to these matters; and
- (b) reconsider your continuation of these proceedings.

The Appeal fundamentally misconceives the matters that may constitute an effective appeal proceeding. The RSPCA's position is that the *Animal Care and Protection Act* provides that the appeal process may only be "...on a question of law". This statutory restriction has the consequence that:

- (a) The appeal court does not have a re-trial of the matter;
- (b) The matters that were dealt with before the trial court were limited in scope & issue and accordingly matters that could be agitated on appeal are similarly limited; and
- (c) On appeal a party is ordinarily bound by the conduct of the proceedings at first instance,
- (d) As the appeal is only on a question of law - there can be no error of law on the part of the Court in not deciding an issue which was not raised for decision by it.

The Appeal and associated Outline of Argument does not constitute a valid Notice of Appeal in that:

- (a) A large portion of the delivered material simply comprises a reassertion of contrary views as to factual conclusions that the trial court has made;
- (b) The bulk of the delivered material addresses issues such as the alleged adverse impact of pre-trial publicity, assertions of defamation, allegations of improper motive on the part of the RSPCA (and DPI&F) and misfeasance in public office which are not related to the matters for any appeal;
- (c) You seek to traverse issues which were not raised or the subject of agitation in the trial; and
- (d) The documents you filed contain numerous assertions and allegations which are not the subject of evidence before the trial court or otherwise placed before the court.

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Ms G Robertson

We have advised the District Court Registry of the Second Respondent's concerns in relation to the Notice of Appeal.

We await your immediate advice that appropriate steps will be taken by you in relation to this Appeal. In the event that you advise that you intend to proceed as stated, we will proceed with an application to have the appeal struck out in whole or part and summary judgement entered.

We await your written response by 4-00 pm Monday 19 October 2009.

Yours faithfully,



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