

BETWEEN P E C DOONE AND R J DOONE  
Appellants  
AND FAIRFAX NEW ZEALAND LIMITED  
Respondent

Hearing: 26 April 2005  
Court: Hammond, W Young and O'Regan JJ  
Counsel: J O Upton QC for Appellants (by telephone)  
P A McKnight for Respondent (by telephone)  
Judgment: 26 April 2005

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**JUDGMENT OF THE COURT**

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- A. The appeal is dismissed.**
- B. The respondent will have costs of \$750, and its reasonable disbursements.**
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**REASONS**

(Given by Hammond J)

[1] We have before us an urgent appeal against an order of Miller J, declining to adjourn a defamation proceeding which is scheduled to commence before Miller J in the High Court at Wellington at 10.00am today.

[2] The appeal was filed late last Friday. This panel was convened as a matter of urgency, this morning, after a long weekend, at 9.30am.

[3] The circumstances leading to the appeal are set out in Miller J's Minute of 22 April 2005, and need not be repeated here. In essence, the appeal is against a decision of Miller J declining to adjourn the hearing of this defamation proceeding.

[4] We heard counsel and dismissed the appeal. We said we would give short reasons. This we now do.

[5] First, we have the gravest reservations as to whether this Court has jurisdiction in relation to this appeal. The law relating to appeals under s 66 of the Judicature Act 1908 was reviewed by this Court in *The Association of Dispensing Opticians of New Zealand Inc v The Opticians Board* [2000] 1 NZLR 158. The Court there noted that rulings made in the course of the hearing (such as an application for an adjournment) will not ordinarily be subject to an interlocutory appeal (at 166). There must be a sound substantive concern for this Court to have jurisdiction. No such appropriate concern has been demonstrated in this instance.

[6] Secondly, we are not satisfied that it has been shown that Miller J was plainly wrong in declining an adjournment. Mr Upton suggested that, in essence, the ground has shifted beneath the appellants' feet recently and in a way that the appellants should be able to further explore, pre-trial, by further discovery and if necessary interrogatories to the Prime Minister, Ms Helen Clark. On our appreciation however, a brief of evidence of the Prime Minister was served, and it is difficult to see why Mr Upton cannot now put to the Prime Minister whatever should appropriately be put.

[7] Thirdly, and relatedly, we are not persuaded that there is prejudice to the appellants of a character which requires this adjournment. There is a suggestion that the Prime Minister might now herself be a potential defamation defendant. However, Mr Upton acknowledged that there was nothing to prevent separate proceedings being taken against the Prime Minister in due course, if whatever was said by her is considered to be actionable.

[8] The appeal will therefore be dismissed.

[9] The respondent will have costs of \$750 together with its disbursements on this appeal, if necessary as fixed by the Registrar.

Solicitors:  
Phillips Fox, Wellington for Appellants  
Izard Weston, Wellington for Respondent