

**IN THE COURT OF APPEAL OF NEW ZEALAND
I TE KŌTI PĪRA O AOTEAROA**

CA592/2020

BETWEEN THE DIRECTOR OF THE SERIOUS
FRAUD OFFICE
Appellant

AND ABC AND DEF
Respondents

Counsel: R K P Stewart for Mediaworks, NZME, RNZ, Stuff and TVNZ
J C L Dixon QC and R J Williams for Appellant
ABC in person
No appearance for DEF

Date of Telephone
Conference: 15 October 2020

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[1] The media entities for which Mr Stewart acts seek leave to appeal concurrent decisions of the District Court (on 9 October) and High Court (on 14 October) continuing name suppression for the defendants until their second appearance on charges of obtaining monies by deception.¹

[2] The circumstances of the charges are described in the decision of Jagose J in his judgment in the High Court:

[3] The Serious Fraud Office (the “SFO”) alleges the defendants “conceived and conducted a scheme under which, between September 2015 and February 2020, some \$750,000 of donations intended for the NZ First Party was diverted to entities controlled by one or both defendants. The money is said to have been used for NZ First’s benefit, but without disclosure to its secretary and therefore not disclosed on the party’s electoral return. The defendants are charged with obtaining by deception.

¹ Crimes Act 1961, ss 240(1)(a) and 241(a); *Serious Fraud Office v ABC and DEF* [2020] NZDC 20552; *Serious Fraud Office v ABC and DEF* [2020] NZHC 2704.

[3] Enquiry was made early this morning as to the willingness of this Court to schedule an urgent hearing tomorrow afternoon to hear the application and appeal. Two contextual points should be noted. First, tomorrow afternoon is, of course, the eve of the date of the general election. Secondly, an unprecedented level of advance voting has occurred already in this election. As at the end of Tuesday, 13 October, 1,418,171 people had cast their votes. The number now is likely to exceed 1.6 million. The number of enrolled voters is 3,436,178.

[4] In response to the enquiry, I issued a minute earlier in the day:

I have read the decision of Jagose J. There being now concurrent decisions of the trial and first appeal courts, and the proposed appeal being against discretion, I am not satisfied a case exists for final hearing within so contracted a timetable. Or that such contraction of time would be consistent with justice to the primary parties. If counsel wish to contend otherwise, a teleconference at 1.15pm may be convened.

[5] At 1.15 this afternoon that teleconference was convened. Mr Stewart sought to persuade me that the Court should allocate a fixture to hear the application and appeal at 2 pm tomorrow. He accepted that this would mean an undesirably truncated timetable for submissions, hearing, time to consider and delivery of judgment.

[6] The essential arguments to be made are that the District Court Judge set the bar too low in finding extreme hardship for defendant ABC,² and considered in his discretion an irrelevant consideration in the potential effect of asymmetrical voter knowledge (some knowing identity if the appeal is allowed, others who have voted already, not) on his fair trial rights. Given the terms of the judgment of Jagose J, I take the clear view that the prospects of the appeal succeeding are not strong.

[7] Mr Stewart argues the public still to vote should know the identity of the defendants because of their past association with the leader of New Zealand First, the Rt Hon Winston Peters. However, the public are well aware already of the fact of the charges, their subject matter and their general connection to the affairs of the New Zealand First Party.

² Criminal Procedure Act 2011, s 200(2)(a).

[8] I am not persuaded that the additional information that might be shared with some only of those voting justifies a departure from due process in the conduct of criminal justice. The primary interests requiring consideration here are those of the defendants in obtaining a fair trial. Any decision by this Court is likely to be a final determination.³ It should not be undertaken with an undue haste, particularly when the appeal grounds are not strong and the public interest in departure from due process is so limited. Attempting to shoehorn the hearing into the very limited time available over the next 24 hours will cause significant actual and potential prejudice to the defendants.

[9] For these reasons I decline the request to allocate an appeal fixture tomorrow afternoon. *Fiat justitia ruat caelum*. Justice must take its normal course, even in abnormal times.

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³ Section 269 permits a further appeal by leave to the Supreme Court on a question of law only.