

NOTICE OF FILING

Details of Filing

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File Number: NSD673/2022
File Title: LACHLAN KEITH MURDOCH v PRIVATE MEDIA PTY LTD ACN 102
933 362 & ORS
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Sia Lagos

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Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Affidavit

No. NSD 673 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

LACHLAN KEITH MURDOCH

Applicant

PRIVATE MEDIA PTY LTD and others

Respondents

Affidavit of: **Michael David Bradley**
Address: Level 4, 343 George Street, Sydney NSW 2000
Occupation: Managing Partner
Date: 16 January 2023

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I affirm:

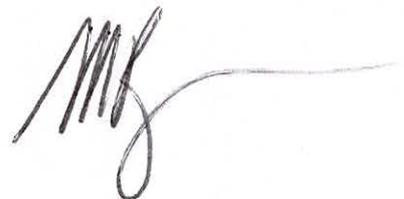
- I am the Managing Partner at Marque Lawyers, the solicitors on the record for the Respondents in this proceeding. I am a solicitor of the Supreme Court of New South Wales.

Filed on behalf of (name & role of party) The Respondents
 Prepared by (name of person/lawyer) Michael Bradley
 Law firm (if applicable) Marque Lawyers
 Tel (02) 8216 3000 Fax (02) 8216 3001
 Email michaelb@marquelawyers.com.au; laureng@marquelawyers.com.au
 Address for service Level 4, 343 George Street,
 (include state and postcode) Sydney NSW 2000

2. Unless otherwise indicated, I make this affidavit on my own knowledge, information and belief. Where I depose to matters on information and belief, I believe those matters to be true and my means of knowledge and sources of information appear in this affidavit.
3. I was admitted as a solicitor in December 1988. I have conducted superior court litigation continuously for more than 30 years, including many cases in the Federal Court of Australia.
4. I make this affidavit in relation to the Applicant's interlocutory application filed on 13 December 2022 (the **Application**). In the Application, the Applicant seeks leave to:
 - (a) join Eric Beecher as the Fourth Respondent to the proceeding;
 - (b) join William Hayward as the Fifth Respondent to the proceeding;
 - (c) amend his Originating Application filed on 23 August 2022;
 - (d) file an Amended Statement of Claim, as annexed to the Application; and
 - (e) to the extent that the Court thinks it necessary, abridge the time for the filing of the Amended Statement of Claim.
5. The Respondents oppose the Application.

Material Available to the Applicant on or before 23 August 2022

6. Between 15 and 18 August 2022, Private Media published a series of Tweets, which are referred to at 5.36 and 5.38 of the Statement of Claim filed on 23 August 2022 (**Statement of Claim**). A copy of those tweets is annexed to this affidavit at **pages 11 to 24 of Exhibit MDB-1**. The LinkedIn post by Mr Hayward on 15 August 2022 at page 13 of Exhibit MDB-1 contained a hyperlink to the Reposted Article.
7. On 22 August 2022, Private Media published a series of Tweets, which are referred to at 5.50(a) to 5.50(h) of the Statement of Claim. A copy of those tweets is annexed to this affidavit at **pages 25 to 31 of Exhibit MDB-1**.
8. On 22 August 2022, Private Media published a series of Instagram posts, which are referred to at 5.50(k) of the Statement of Claim. A copy of those tweets is annexed to this affidavit at **pages 32 to 35 of Exhibit MDB-1**.
9. On 22 August 2022, Private Media published an advertisement in the *New York Times*. The advertisement was signed by Mr Fray and Mr Beecher. The advertisement is referred to at paragraphs 5.42 to 5.44 of the Statement of Claim. A copy of this advertisement is annexed to this affidavit at **page 36 of Exhibit MDB-1**.
10. On 22 August 2022, an article written by Mr Fray and Mr Beecher and titled "*The power of one: how Lachlan Murdoch turned nuclear over a legitimate piece of journalism*" was published on *Crikey's* website. This article is referred to at paragraph 5.45(c) of the Statement of Claim. A copy of this article is annexed to this affidavit at **pages 37 to 58 of Exhibit MDB-1**.

11. On 22 August 2022, an article written by Mr Fray and Mr Beecher and titled "*An open letter to Lachlan Murdoch: Chairman of News Corporation and Executive Chair of Fox Corporation*" was published on *Crikey's* website. This article is referred to at paragraph 5.45(d) of the Statement of Claim. A copy of this article is annexed to this affidavit at **pages 59 to 63 of Exhibit MDB-1.**
12. On 22 August 2022, an article written by Mr Beecher and titled "*Standing up for the free press: here's what abuse of media power looks like in Australia*" was published on *Crikey's* website. This article is referred to at paragraph 5.45(e) of the Statement of Claim. A copy of this article is annexed to this affidavit at **pages 64 to 71 of Exhibit MDB-1.**
13. On 23 August 2022, an article written by Mr Hayward and titled "*A huge bet, for sure, but we believe a free press is worth fighting for*" was published on *Crikey's* website. A copy of this article is annexed to this affidavit at **pages 72 to 77 of Exhibit MDB-1.**

Post-Action Correspondence

14. On 30 August 2022, Mr Churchill sent a letter to Marque Lawyers concerning the Reposted Article and subsequent publications. A copy of that letter is annexed to this affidavit at **pages 78 to 80 of Exhibit MDB-1.**
15. On 30 August 2022, Marque Lawyers wrote to Mr Churchill requesting, inter alia, copies of the press articles and social media posts referred to in various paragraphs of the Statement of Claim.
16. On 31 August 2022, Mr Churchill wrote to Marque lawyers declining to provide the materials requested and indicating that they were publicly available.
17. On or around 24 August 2022, I directed Ms Phyllida Behm, a solicitor at Marque Lawyers, to gather the materials referred to in the Statement of Claim from publicly available materials. Those materials appear at **pages 11 to 71 of Exhibit MDB-1.**

Material Available to the Applicant Prior to 30 November 2022

18. On 22 September 2022, a video of Mr Hayward explaining the Respondents' defence was published on *Crikey's* website. A link to this video is annexed to this affidavit at **page 81 of Exhibit MDB-1.**
19. On 3 November 2022, an article written by Mr Beecher and titled "*Eric Beecher's diary: I'm being sued by Lachlan Murdoch*" was published in *Prospect Magazine*. A copy of this article is annexed to this affidavit at **pages 82 to 85 of Exhibit MDB-1.**
20. On 8 December 2022, I received a letter from the Applicant's solicitor which referred to the material mentioned at paragraphs 9, 10, 11, 12, 18 and 19 above. A copy of this letter is annexed to this affidavit at **pages 86 to 87 of Exhibit MDB-1.**

Work Performed




21. Pursuant to order 13 of his Honour's orders made on 26 September 2022, the proceeding has been listed for hearing with an estimate of nine days, commencing on 27 March 2023 (the **March Hearing**).
22. From the commencement of the proceeding on 23 August 2022 to present, the Respondents have completed significant work in order for the March Hearing to take place. This includes, and is not limited to:
 - (a) reviewing the Applicant's Statement of Claim and Originating Application filed on 23 August 2022;
 - (b) briefing senior and junior counsel;
 - (c) drafting and sending a request for particulars to the Applicant;
 - (d) attending a case management hearing on 23 September 2022;
 - (e) reviewing the Applicant's response to the Respondents' request for particulars;
 - (f) drafting the Respondents' Defence, filed on 20 September 2022;
 - (g) drafting and serving on the Applicant a Notice to Produce;
 - (h) reviewing the Applicant's response to the Respondents' Notice to Produce;
 - (i) drafting the Respondents' Interlocutory Application, filed 5 October 2022;
 - (j) preparing a schedule of particulars in relation to paragraph 8 of the Defence;
 - (k) preparing for and attending an interlocutory hearing on 10 October 2022;
 - (l) drafting the Respondents' Amended Defence, filed on 7 November 2022;
 - (m) reviewing the Applicant's Reply to Amended Defence, filed on 8 November 2022;
 - (n) preparing an outline of evidence on behalf of the Second Respondent;
 - (o) preparing an outline of evidence on behalf of the Third Respondent;
 - (p) reviewing all documents produced by the Respondents in discovery, filtering these documents according to relevance, drafting a verified list of documents on behalf of each Respondent, and collating the documents in a format that could be provided to the Applicant;
 - (q) preparing notices under s 78B of the *Judiciary Act 1903* (Cth);
 - (r) preparing for and attending a case management hearing on 30 November 2022;
 - (s) reviewing and drafting objections to the Applicant's interrogatories;
 - (t) drafting interrogatories to the Applicant;



- (u) reviewing 31 affidavits and three outlines of evidence served by the Applicant;
- (v) preparing an outline of evidence in reply on behalf of the Second Respondent;
- (w) preparing an outline of evidence in reply on behalf of the Third Respondent;
- (x) drafting a letter of instruction for expert evidence to Ms Lesley Power;
- (y) preparing for and attending a case management hearing on 30 November 2022;
- (z) preparing for and attending a case management hearing on 1 December 2022;
- (aa) reviewing the Applicant's interlocutory application filed on 13 December 2022;
- (bb) preparing the Respondents' verified list of answers to interrogatories;
- (cc) preparing for and attending a mediation on 21 December 2022; and
- (dd) preparing for and attending a case management hearing on 22 December 2022.

Additional Steps Required if Application is Successful

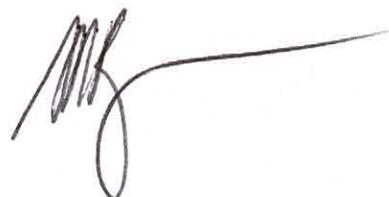
- 23. Should the Application be granted, the Respondents will need to undertake further steps to prepare for a rescheduled hearing, in addition to or instead of work that has already been completed.
- 24. Below is a list of the steps the Respondents anticipate they will need to take if the Application is granted. Where a step would involve a deadline set by the Court or would require significant work, an estimated timeframe for completing the step has been included.
 - (a) reviewing the Amended Originating Application and Amended Statement of Claim;
 - (b) drafting a Further Amended Defence (to take place 28 days after the filing of the Amended Statement of Claim);
 - (c) reviewing the Applicant's Reply to Further Amended Defence (to be filed 14 days after the Further Amended Defence referred to at sub-paragraph (b) above);
 - (d) reviewing any further affidavits or outlines of evidence served by the Applicant (the Respondents anticipate that the Applicant will require four weeks to complete fresh evidence);
 - (e) preparing a supplementary outline of evidence on behalf of the Second Respondent (the Respondents anticipate that they will require four weeks to prepare the outlines referred to at sub-paragraphs (e) to (h) below);
 - (f) preparing a supplementary outline of evidence on behalf of the Third Respondent;
 - (g) preparing an outline of evidence on behalf of the proposed Fourth Respondent;




- (h) preparing an outline of evidence on behalf of the proposed Fifth Respondent;
- (i) preparing any evidence in reply (the Respondents anticipate that the parties will require two weeks to prepare reply evidence);
- (j) preparing expert evidence and reviewing expert evidence from the Applicant (the Respondents anticipate that the parties will require four weeks to brief an expert and receive their evidence);
- (k) making any application for interrogatories and discovery (to be filed one week after evidence is served)
- (l) if an order for discovery is made, providing further discovery (to be served two weeks after a decision on any application for discovery)
- (m) if an order for discovery is made, reviewing any further discovery provided by the Applicant;
- (n) if an order for interrogatories is made, drafting further interrogatories to the Applicant (to be served two weeks after the decision on any application for interrogatories);
- (o) reviewing and drafting objections to further interrogatories from the Applicant (to be served two weeks after the decision on any application for interrogatories);
- (p) preparing the Respondents' verified list of answers to further interrogatories (to be served four weeks after interrogatories are exchanged);
- (q) preparing for and attending further case management hearings;
- (r) preparing for and attending further interlocutory hearings, if required; and
- (s) attending the final hearing for an additional five days, noting that the hearing is currently set down for an estimate of only nine days.

Respondents' New Public Interest Defence

25. If the Application is successful and the Reposted Article is now sued on as a primary cause of action, *Crikey*, Mr Fray, Mr Hayward and Mr Beecher anticipate that the principal defence will be the public interest defence under s 29A of the *Defamation Act 2005* (NSW). The nature of that defence will engage a different set of matters for determination than the current defence.
26. The Respondents are likely to plead that the re-publication of the Article on 15 August 2022 (the **Reposted Article**) concerned an issue of public interest, namely, free speech, free press and media power in influencing the political narrative. That belief was reasonable given the position occupied by Lachlan Murdoch, his involvement in the conduct of Fox News in its coverage of President Trump's claims of electoral fraud and his subsequent conduct in connection with the Article including the attempts by the Respondents to resolve the dispute prior to litigation.

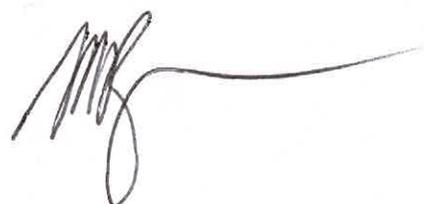
27. These issues do not presently fall for determination on the Statement of Claim as pleaded as the Applicant elected to rely on the Reposted Article as to damages only (see paragraph 5.61 of the Statement of Claim).
28. The Respondents will need to consider how this new defence might be pleaded and what evidence will be required if the Application is granted.

Costs Likely to be Incurred if Application is Successful

29. I estimate that, if the Application is successful, the Respondents will incur additional costs by reason solely of the amendment in the range of \$500,000 to \$600,000. This estimate includes solicitors' fees, counsels' fees and disbursements.
30. The estimate referred to in paragraph 29 above is based on my assessment of the additional work that will be required, the additional time that the litigation will occupy and the additional length of the hearing. It is also based on the cost incurred by the Respondents for work already done.
31. I have assessed that additional work and time will be required if the Application is successful because new evidence will be required for both parties to make their case and new defences will be raised including the new public interest defence under s 29A referred to at paragraphs 25 to 28 above.

Interruption to the First Respondent's Business

32. *Crikey* has a full-time staff of approximately 13 people.
33. I have been instructed by Mr Hayward and verily believe that Private Media has invested hundreds of hours into defending the proceeding. I have been instructed by Mr Hayward that the proceeding has been a significant drain on Private Media's resources and a distraction from the day-to-day running of its business. I have been instructed by Mr Hayward that the proceeding has imposed a huge mental burden on Private Media's senior leadership, journalists and other staff members.
34. I have been informed by Mr Hayward, Mr Beecher and Mr Fray that the proceeding is their primary concern.
35. I have been instructed by Mr Hayward that he estimates he has spent 20% to 30% of his total time each day working on the proceeding. This includes reading and responding to correspondence from his lawyers; attending meetings with his lawyers; attending or watching court proceedings; discussing case strategy with other members of Private Media's leadership team; considering and responding to incoming media requests about the proceeding; and liaising with his staff to mitigate his absence.
36. I have been instructed by Mr Hayward that he has had to restructure his leadership team to accommodate the demands of the proceeding. Mr Hayward has told me that this restructure has been challenging, as Private Media does not have a broad leadership team to rely on for projects that the CEO would normally lead. Consequently, many projects have run over time, over budget, or been completed to a lower standard than would otherwise have been the case.



37. I have been instructed by Mr Beecher that he spends an average of one to three hours a day, seven days a week, working on all aspects of the proceeding and has done so since the proceeding commenced. This includes reviewing material sent to him by his lawyers; attending meetings with his lawyers; analysing the proceeding and discussing strategy with other members of Private Media's leadership team and others; consulting shareholders; reading other material related to the case; and reflecting generally on the case.
38. I have been instructed by Mr Hayward that every candidate he has interviewed for a commercial or editorial role has raised the litigation as a concern that might prevent them joining the company, despite their sympathy for or agreement with the Respondents' case.
39. I have been informed by Mr Hayward that several of Private Media's advertising partners have expressed hesitancy in planning long-term campaigns with it as they are concerned that either Private Media will not have the resources to meet its commitments or will be put out of business by the cost of the proceeding.
40. I am informed by Mr Hayward that the litigation has caused several of Private Media's staff to experience burn out, anxiety, stress and loss of sleep that has interfered with their day-to-day work. In particular, several of Private Media's leadership team have reported disrupted sleep and heightened anxiety, so much so that, if the March Hearing were to be vacated, Mr Hayward is concerned that some of his colleagues would resign.
41. I have been instructed by Mr Hayward that, in addition to himself, Mr Beecher and Mr Fray, Private Media's Chief Operating Officer and Chief Growth Officer have also been required to complete work for the proceeding. I have also been instructed by Mr Hayward that *Crikey's* Brand Manager, Sub-Editor, Production Editor, Performance Marketer and Audience Editor have been required to complete work for the proceeding.
42. I have been instructed by Mr Hayward that Private Media has missed business opportunities as a result of the proceeding. In particular, Mr Hayward was unable to drive *Crikey's* end of year sale due to commitments relating to the proceeding. As a result, less qualified and experienced team members had to manage and run the campaign. This resulted in poorer business performance than Private Media has previously experienced.
43. The adverse consequences that the litigation has caused for Private Media and its employees will be prolonged if the Application is granted.

Prejudice to the Second Respondent

44. I am informed by Mr Keane and verily believe that the proceeding has had a negative impact on him and caused him what he describes as "a level of stress and anxiety significantly beyond normal professional pressure".
45. I am informed that the proceeding provides Mr Keane with a constant, low-level stress that has not ceased or reduced since it commenced. Mr Keane has told me that this



Rule 29.02(8)

Certificate identifying exhibit

No. NSD 673 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

LACHLAN KEITH MURDOCH

Applicant

PRIVATE MEDIA PTY LTD & ORS

Respondents

Exhibit "MDB-1"

This is the exhibit marked "MDB-1" to the affidavit of Michael David Bradley affirmed before me on 16 January 2023.



.....
Signature of Witness



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11



This article was first published on June 29 but taken down after a legal threat from Lachlan Murdoch.

Now, we've decided to republish the article in order to clarify recent media reports about a legal threat.

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15 August at 11:41

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Values are lived, not just written down. One of [Crikey's](#) is bravery. [Zoe Samios](#) got the scoop on the recent threats we've been receiving from Lachlan Murdoch. He believes it should be illegal to say Fox News had something to do with the Jan 6th riots. We disagree, as do most people, we reckon.

So we've republished the article. Link in the comments. We will not be intimidated out of our reporting.

If you think brave independent journalism matters, subscribe to Crikey (or any number of other teams that are investing in meaningful journalism that speaks truth to power).

And if you want to do great work with a values driven team, join [Private Media](#)



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As Crikey's editor-in-chief [@PeterFray](#) said, "We're sick of being intimidated."

Here's what we published about Fox News, Trump and Jan 6.

We've republished it to clarify media reports concerning a legal threat over the article from Lachlan Murdoch.



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This is the article Lachlan Murdoch threatened Crikey with legal action over.

An important piece by [@BernardKeane](#) on Trump, the January 6 riots and Fox News.

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On June 29 Crikey published an article by Bernard Keane about former US president Donald Trump, the January 6 Capitol riot, and Fox News. We removed the piece from our site the following day after a legal threat from Lachlan Murdoch.

We have decided to republish it now, in order to clarify recent media reports about that legal threat — and because, as Crikey's editor-in-chief Peter Fray put it:

"We are sick of being intimidated by Mr Murdoch."... See more

Crikey.



The House Select Committee to Investigate the January 6th

This is the article Lachlan Murdoch has threatened to sue us over

Hutchinson's evidence shows that Trump was aware of how heavily armed many of the attendees of his rally and planned march on the Capitol building were on January 6 — "I don't fucking care that they have weapons," he said —

Analysis / World

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BERNARD KEANE JUN 29, 2022 81



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"We are sick of being intimidated by Mr Murdoch."

Read and share the article in full at the link in our bio — it's out from behind the paywall.

#murdoch #lachlanmurdoch #trump #donaldtrump #trump #foxnews #jan6 #jan6riots #australianmedia

1w



julian.lookslikethis Stick it to'em ... 🍌

1w 7 likes Reply



ddddanni Good on you 🍌🍌🍌

1w 2 likes Reply



jan_willow I'll be subscribing directly 🍌

1w 5 likes Reply



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1w • 

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crikey.com.au/2022/06/29/jan...

 **Kevin Rudd**  [@MrKRudd](#) · Aug 17

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smh.com.au/business/compa...

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Replying to @MrKRudd

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We made it onto Lachlan Murdoch's [@Wikipedia](#) page!

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in based Political News Website Crikey [[edit](#)]

rdoch sent a series of legal threats to the Crikey website after political editor B
the Murdoch's to Donald Trump's January 6th attempted coup in a June 29th a
e the opinion "If Trump ends up in the dock for a variety of crimes committed as
d be, not all his co-conspirators will be there with him. Nixon was famously the
tor" in Watergate. The Murdochs and their slew of poisonous Fox News comm
ed co-conspirators of this continuing crisis." Crikey originally removed the artic
cution but later republished it with Editor Peter Fray accusing Murdoch of "using
lic debate," and "seeking to intimidate us."^[50]

8:32 AM · Aug 18, 2022 · Twitter Web App

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This article was first published on June 29 but taken down after a legal threat from Lachlan Murdoch.

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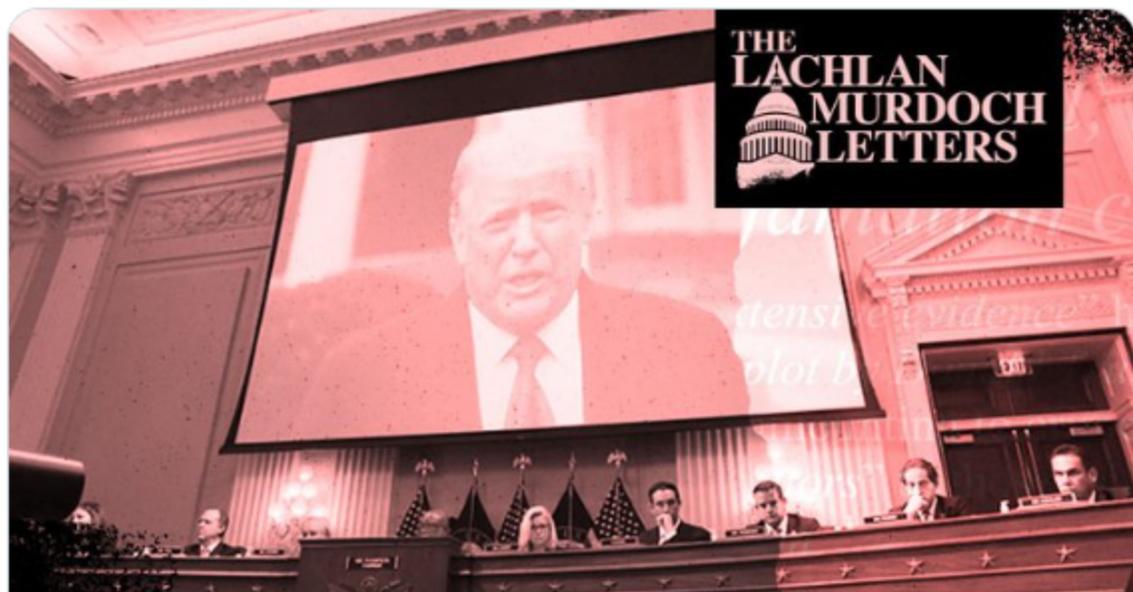


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44 Retweets 3 Quote Tweets 99 Likes



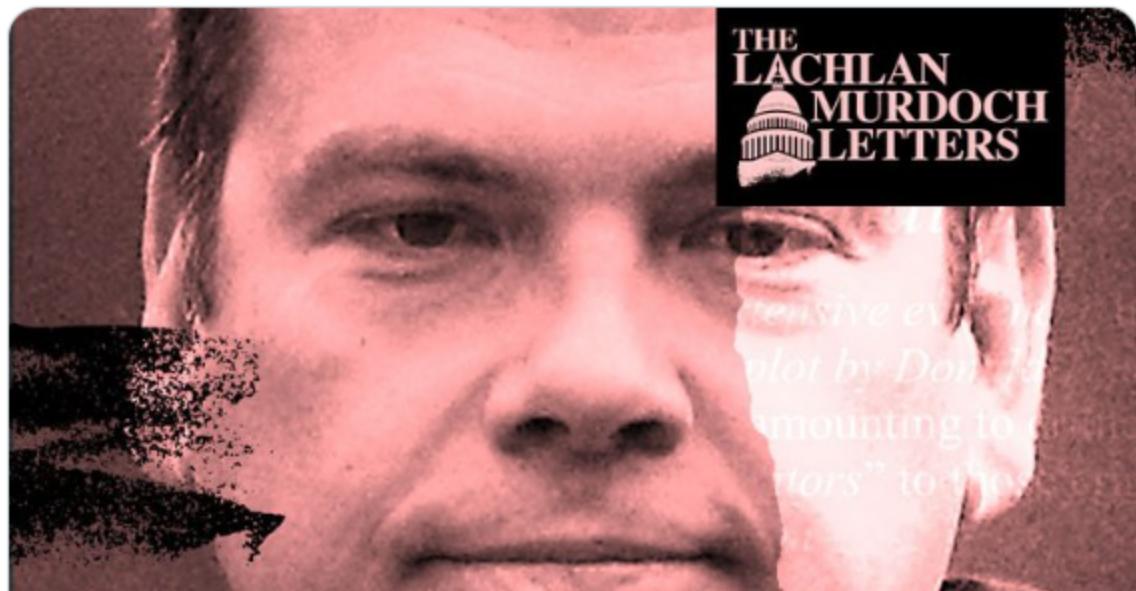
Crikey 
@crikey_news

25



Lachlan Murdoch threatened to sue us for publishing public interest journalism.

We believe in media freedom. So today we're standing up to Murdoch and publishing the legal letters from his lawyer to show you how abuse of media power works in Australia.



crikey.com.au

Standing up for the free press: here's what abuse of media power looks like in ...
Today Crikey is publishing a series of lengthy legal demands by Lachlan Murdoch's lawyers. Here's why.

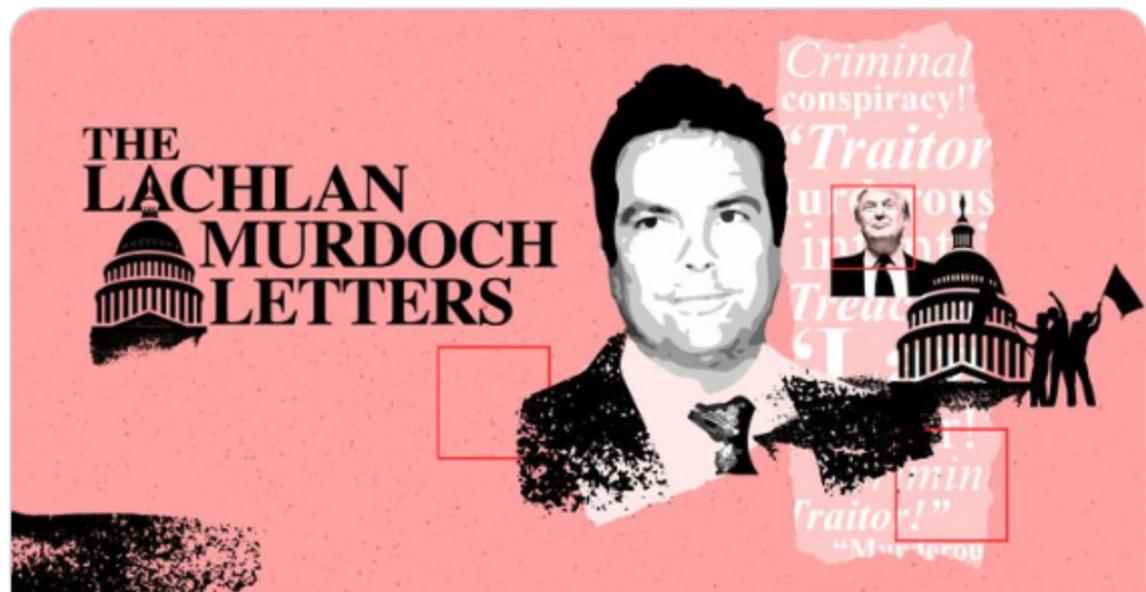
5:09 PM · Aug 22, 2022 · Twitter Web App

1,846 Retweets 160 Quote Tweets 5,606 Likes



Publishing these letters and exposing this legal assault is the only way to shine a light on how one billionaire media owner can abuse his power to silence a small publisher under Australia's defamation laws.

Read the series of letters here:



crikey.com.au

All Lachlan Murdoch letters • Crikey holds power to account

Read all the letters between Crikey and Lachlan Murdoch's lawyer.

5:09 PM · Aug 22, 2022 · Twitter Web App

323 Retweets 14 Quote Tweets 1,094 Likes



Back in June, Crikey mentioned the Murdochs in an article about Fox News, Trump and Jan 6 insurrection

The next day Lachlan Murdoch threatened legal action.

Now we're publishing an open letter in the [@nytimes](https://www.nytimes.com) inviting him to follow through and sue us.



crikey.com.au

Lachlan Murdoch says he'll sue us for our Jan 6 article. We say 'bring it on' Lachlan Murdoch has claimed he intends to take court action to resolve a defamation allegation against Crikey. We await your writ.

5:22 PM · Aug 22, 2022 · Twitter Web App

116 Retweets 5 Quote Tweets 483 Likes



Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator.

Lachlan Murdoch threatened to sue us for publishing this story. But this is public interest journalism. We stand by our story and your right to read it.

[FREE TO READ]



crikey.com.au

Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-consp...
New evidence to the January 6 committee shows just how treacherous Donald Trump was, but will it prise loose his grip on the Republicans?

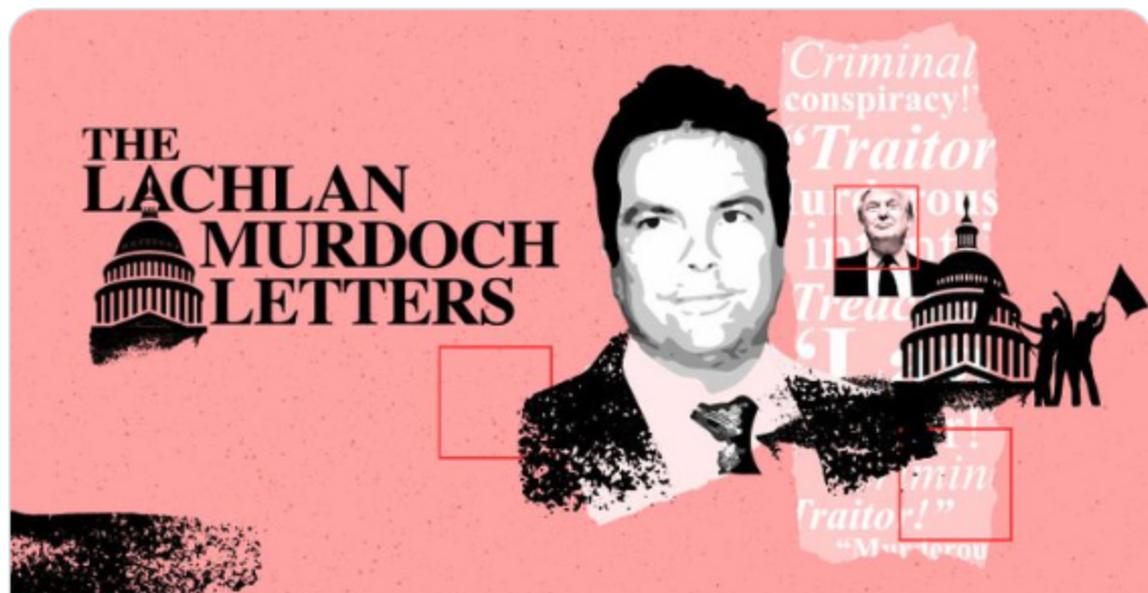
5:29 PM · Aug 22, 2022 · Twitter Web App

318 Retweets 9 Quote Tweets 1,144 Likes



When Crikey published an article referencing the role of Fox News in the January 6 insurrection, Lachlan Murdoch's lawyers sharpened their pencils.

What happened next paints a disturbing picture of Australian media power in its most bullying form.



crikey.com.au

How Lachlan Murdoch turned nuclear over a legitimate piece of journalism
Lachlan Murdoch has sent Crikey a series of letters threatening to sue over the publication of an article referencing the role of Fox News in the Capitol Hill riot...

5:48 PM · Aug 22, 2022 · Twitter Web App

43 Retweets 1 Quote Tweet 213 Likes



The Murdochs and their media empire pose an existential threat to the US & Australia.

Politics editor [@BernardKeane](#) has been threatened with defamation by Lachlan Murdoch for writing an article.

Here's why he'd write an even stronger article next time:



crikey.com.au

Why I'd write an even stronger story today about Murdoch, Fox and Trump
It's a simple fact that the Murdoch family, via Fox News, helped create the conditions for the January 6 insurrection in the United States. And it's importa...

5:57 PM · Aug 22, 2022 · Twitter Web App

409 Retweets 18 Quote Tweets 1,230 Likes



On June 30, Lachlan Murdoch's lawyer issued Crikey a concerns notice over an allegedly defamatory article. It was a whopping five pages long.

What does it look like to get threatened with defamation by a billionaire? See for yourself [FREE TO READ]



crikey.com.au

The Lachlan Murdoch letters in full: Fox CEO demands Crikey apologise

In letter one, Lachlan Murdoch's lawyer issues Crikey a concerns notice over an allegedly defamatory article. He requests immediate deletion and publication o...

6:15 PM · Aug 22, 2022 · Buffer

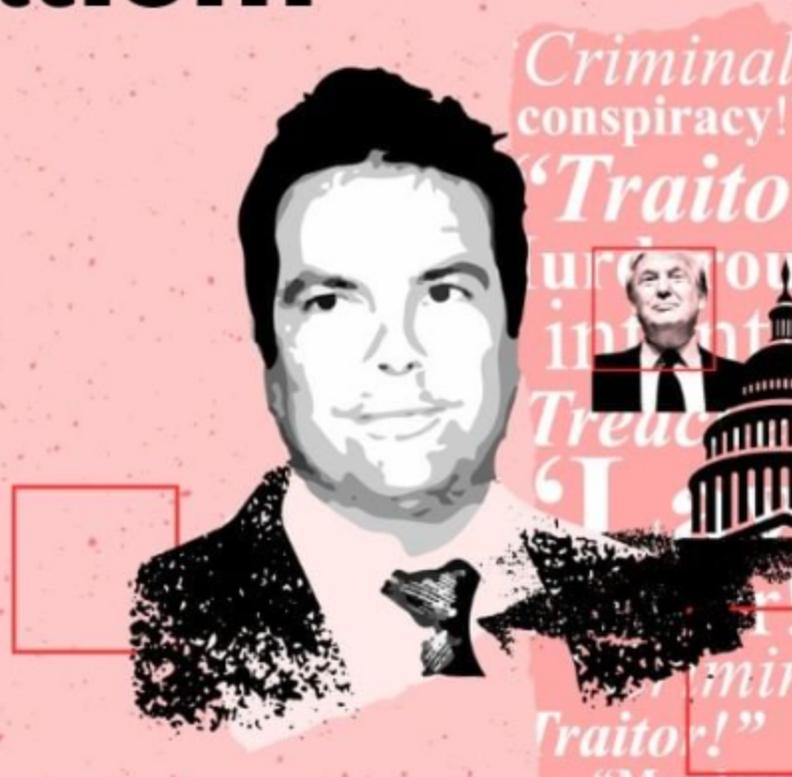
127 Retweets 3 Quote Tweets 348 Likes



Lachlan Murdoch threatened to sue us for publishing public interest journalism

Today we're taking a stand for freedom of the press and fighting back.

Crikey.



crikey.news • Follow



crikey.news Today Crikey is taking a stand for freedom of the press in the face of a legal threat from Lachlan Murdoch. Murdoch himself supports and greatly benefits from a free press, yet he wishes to curb our capacity to report on the role Fox News played in inciting the January 6 insurrection in Washington DC.

Murdoch is threatening to sue this publication, politics editor Bernard Keane and editor-in-chief Peter Fray over an article published in late June titled "Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator". Almost two months on, following multiple legal letters, Crikey has had enough.

In today's New York Times and tomorrow's Canberra Times we have published an open letter inviting Murdoch to go ahead and sue us. We're also publishing all the legal correspondence between Murdoch's lawyer and our own. We believe these missives offer a rare insight into how power works in this country — and how legal threats are used to silence debate.

Have a read of the open letter, the legal letters and more at the link in our bio.

#murdoch #lachlanmurdoch #foxnews #jan6 #jan6hearings #trump #donaldtrump #freepress #trump #jan6insurrection #defamation #australianmedia

1d



cmrnwlsn Carn

1d 4 likes Reply



bearsybob 🍌🍌🍌🍌🍌

1d 1 like Reply



the_commongood_company Game On 🙌

1d 13 likes Reply



planet_anus Unleash!

1d 8 likes Reply



Liked by cmrnwlsn and 1,496 others

1 DAY AGO



Add a comment...

Post



An open letter to Lachlan Murdoch, co-chairman of News Corporation and executive chairman of Fox Corporation



Crikey.



crikey.news • Follow



crikey.news Back in June, Crikey mentioned the Murdochs in an article about Fox News, Trump and Jan 6 insurrection. The next day Lachlan Murdoch threatened legal action.

Now we're publishing an open letter in the New York Times and the Canberra Times inviting him to follow through and sue us.

Read the open letter here and share it at the link from our bio.

If you see the open letter tomorrow, make sure to tag us in it!

#murdochletters #murdoch #lachlanmurdoch #pressfreedom #freedomofspeech #trump #jan6insurrection #jan6 #capitolriots #australianmedia

1d



suzythommo Lachlan Roy

1d 1 like Reply



leoneutrals Boss move ☐☐☐

1d 9 likes Reply



jennylouhome Go get them!

1d 2 likes Reply



rachtaylor74 This is wonderful. Independent news will not be cowed by big boss bullies.

1d 12 likes Reply



joanne.anargyros 🍌🍌🍌🍌🍌🍌🍌🍌

1d 2 likes Reply



_amy.patterson 🍌🍌🍌🍌🍌🍌🍌🍌

1d 1 like Reply



catherine4arts 🍌🍌🍌🍌🍌🍌🍌

1d 1 like Reply



1,298 likes

1 DAY AGO



Add a comment...

Post

“



If the Murdochs don't like being associated with the direct results of the propaganda spewed out by their outlets, the solution is simple. Rather than suing, they should return those outlets to being genuine vehicles for journalism, not division and propaganda.

Bernard Keane

Politics editor

Crikey.



crikey.news • Follow



crikey.news Politics editor Bernard Keane has been threatened with defamation by Lachlan Murdoch for writing an article that says that the Murdoch family, via Fox News, helped create the conditions for the January 6 insurrection in the United States.

Would he do it all again?

Absolutely. And he'd make the case stronger this time.

It's no exaggeration to say that Fox News is an existential threat to US democracy and to Australia, Keane writes. And it's important to say that.

Read more by Bernard Keane at the link in our bio.

#murdoch #lachlanmurdoch #murdochletters #foxnews #jan6 #january6 #jan6insurrection #defamationlaw #australianmedia

1d



paulfieldofficial All power to you Bernard Keane and Crikey, that's why I subscribe. "However much you deny the truth, the truth goes on existing". Take it to them

1d 12 likes Reply



buzz_may We've had our beefs Crikey, but set up a Go Fund Me and I'm in.

1d 6 likes Reply

View replies (2)



david.johnston10 Too true

1d 1 like Reply



hol_ly_ I'm sure you would find a large number of Australians and Americans who would happily contribute funds to fight the legal battle. Are you considering crowd funding?

1d 4 likes Reply



geoffrey.brownlatrobe.edu.au_ 🍌🍌🍌🍌🍌🍌

1d Reply



766 likes

1 DAY AGO



Add a comment...

Post

this year had put pressure on the government to act.
The Court of Appeal, the nation's highest court, declined to overturn Section 377A in February, ruling that the three men did not have legal standing because the government had pledged not to enforce the law.

es Ex-Premier, Public Unrest

governments, the military establishment is seen as the country's primary power broker, and wields significant influence over electoral politics.
But the current crackdown on Mr. Khan is a stark change in fortunes for him.
When Mr. Khan was elected prime minister in 2018, many of his opponents attributed the victory to a back-room deal he struck with the country's military. His political rivals described security forces as carrying out a campaign of coercion and intimidation that deterred opposition to Mr. Khan and narrowed the election field, ensuring his success. Military officials have denied those accusations.

Earlier this year, after Pakistan's military leaders appeared to withdraw their support for Mr. Khan and eased their grip on his political opposition, he was ousted in a vote of no-confidence in Parliament.
In the months since, Mr. Khan has demanded fresh elections and accused the United States and Pakistan's military of orchestrating a conspiracy to topple his government. During a speech Sunday at a garrison city of Rawalpindi, 100 miles from the capital, Mr. Khan reiterated his attacks on the military over its role.
"Are you really neutral or not?" he asked.

any fear that if Mr. Khan is arrested, it could plunge the country into a new round of public disorder and violent street protests. The word about his likely arrest spread, his party workers and supporters gathered at Mr. Khan's residence on the outskirts of the capital and chanted slogans against the government.
Hundreds of people are gathered at the residence of Mr. Khan. Thousands are headed here from other parts of the country to support for their leader," said Chaudhry, the senior member of Mr. Khan's party. "Police have retreated after looking at a huge number of people. We'll see what happens

ADVERTISEMENT

An open letter to Lachlan Murdoch, co-chairman of News Corporation and executive chairman of Fox Corporation

Dear Lachlan,

As you know, nearly two months ago *Crikey* published a piece of commentary about the sorry state of US politics, and the January 6 insurrection, that mentioned the Murdoch family name twice.

You responded through your lawyer with a series of letters in which you accused us of defaming you personally in that story.

Crikey is an independent Australian news website, launched in 2000, covering politics, media and public issues. We at *Crikey* strongly support freedom of opinion and public interest journalism. We are concerned that Australia's defamation laws are too restrictive.

Today in *Crikey*, we are publishing all the legal demands and accusations from your lawyer, and the replies from our lawyers, in full, so people can judge your allegations for themselves.

We want to defend those allegations in court. You have made it clear in your lawyer's letters you intend to take court action to resolve this alleged defamation.

We await your writ so that we can test this important issue of freedom of public interest journalism in a courtroom.

Yours sincerely,

Eric Beecher
Chairman, Private Media

Peter Fray
Managing Editor, Private Media
Editor-in-Chief, *Crikey*

Crikey.



Crikey.

crikey.news • Our open letter to Lachlan Murdoch in the New York Times today 🙌

Lachlan Murdoch threatened to sue Crikey, politics editor Bernard Keane and our editor-in-chief over an article about Donald Trump, the January 6 insurrection and Fox News. We say: bring it on.

"We await your writ so that we can test this important issue of freedom of public interest journalism in a courtroom."

Read the open letter to Lachlan Murdoch at the link in our bio now (it's out from behind the paywall).

💡 Have you seen this open letter in the Canberra Times? Take a photo and tag us or send it to us!

#auspol #lachlanmurdoch #murdoch #foxnews #newscorp #defamation #defamationlaw #australiannews #newyorktimes #donaldtrump #trump #jan6

1d

rachtaylor74 100% respect. Go Crikey ❤️
23h 3 likes Reply

merrirobinson 🙌
1d 1 like Reply

jackso.ts 🙌🙌🙌🙌
1d 2 likes Reply

samdraws Bring it on! We the people support you!
1d 3 likes Reply

darciekc Gooooo Team Crikey 🙌
1d 3 likes Reply

elizabethwinkelman_ 🙌
1d 2 likes Reply

👍 🗨️ 📌

Liked by cmrnwlsn and 886 others

1 DAY AGO

Add a comment... Post

An open letter to Lachlan Murdoch, co-chairman of News Corporation and executive chairman of Fox Corporation

Dear Lachlan,

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Yours sincerely,

Eric Beecher
Chairman, Private Media

Peter Fray
Managing Editor, Private Media
Editor-in-Chief, *Crikey*

Crikey.



News / Media

The power of one: how Lachlan Murdoch turned nuclear over a legitimate piece of journalism

Lachlan Murdoch has sent Crikey a series of letters threatening to sue over the publication of an article referencing the role of Fox News in the Capitol Hill

riots. Below is a summary of what they said.

ERIC BEECHER AND PETER FRAY AUG 22, 2022  19

 [Give this article](#)



(IMAGE: PRIVATE MEDIA)

This article is part of a series about a legal threat sent to *Crikey* by Lachlan Murdoch, over an article *Crikey* published about the January 6 riots in the US. For the series introduction [go here](#), and for the full series [go here](#).

It all started in late June. As the world digested revelations from the inquiry in Washington into the January 6 riots at Capitol Hill, *Crikey* went to work, offering its subscribers its typical mix of news, analysis, investigation and opinion. Somewhere in Sydney, a lawyer for Lachlan Murdoch was paying close attention to every word we published...

The following is a summary of the correspondence between lawyers representing Lachlan Murdoch

and *Crikey*. To read all the letters in full, as well as more on this story, [click here](#).

Public interest journalism as usual

WEDNESDAY, JUNE 29 2022

Crikey publishes [a routine piece of analysis](#) by Bernard Keane about the sordid state of US politics. The copy contains a single reference to Fox News:

“ The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.

The headline of the piece reads:

“ Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator

Analysis / World

Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator

New evidence to the January 6 committee shows just how treacherous Donald Trump was, but will it prise loose his grip on the Republicans?

BERNARD KEANE RELEASE DATE: JUN 29, 2022 79



DONALD TRUMP ON A VIDEO SCREEN AS CASSIDY HUTCHINSON TESTIFIES ON TUESDAY (IMAGE: EPA/MICHAEL REYNOLDS)

The House Select Committee to Investigate the January 6th Attack on the United States Capitol has already exposed extensive evidence of a plot by Donald Trump and his co-conspirators to overturn the 2020 presidential election result. But yesterday's evidence by Cassidy Hutchinson, the former senior aide to Trump's chief of staff Mark Meadows, has confirmed his treachery and violent intent.

**‘Criminal conspiracy!’ ... ‘Traitor!’ ...
‘Murderous intent!’ ... ‘Treachery!’
... ‘Law breaker!’**

THURSDAY, JUNE 30

Under the heading “Defamation of Mr Lachlan Keith Murdoch”, Lachlan Murdoch’s lawyer John Churchill dispatches a five-page concerns notice to *Crikey* alleging that the previous day’s story carried these “defamatory imputations of and concerning him”:

“ 1. Mr Murdoch illegally conspired with Donald Trump to overturn the 2020 presidential

election result;

2. Mr Murdoch illegally conspired with Donald Trump to incite an armed mob to march on the Capitol to physically prevent confirmation of the outcome of the 2020 presidential election;

3. Mr Murdoch illegally conspired with Donald Trump to incite a mob with murderous intent to march on the Capitol;

4. Mr Murdoch illegally conspired with Donald Trump to break the laws of the United States of America in relation to the 2020 presidential election result;

5. Mr Murdoch knowingly entered into a criminal conspiracy with Donald Trump to overturn the 2020 presidential election result;

6. Mr Murdoch knowingly entered into a criminal conspiracy with Donald Trump and a large number of Fox News commentators to overturn the 2020 election result;

7. Mr Murdoch engaged in treachery and violent intent together with Donald Trump to overturn the 2020 presidential election result;

8. Mr Murdoch was aware of how heavily armed many of the attendees of the planned rally and march on the Capitol building were on January 6 before it occurred;

9. Mr Murdoch was a co-conspirator in a plot with Donald Trump to overturn the 2020 election result which costs people their lives;

10. Mr Murdoch has conspired with Donald Trump to commit the offence of treason against the United States of America to overturn the 2020 election outcome;

11. Mr Murdoch has conspired with Donald Trump to commit the offence of being a traitor to the United States of America to overturn the 2020 election outcome;

12. Mr Murdoch should be indicted with conspiracy to commit the offence of being a traitor to the United States of America to overturn the 2020 election outcome;

13. Mr Murdoch should be indicted with the offence of being a traitor to the United States of America to overturn the 2020 election outcome;

14. Mr Murdoch conspired with Donald Trump to lead an armed mob on Congress to overturn the 2020 election outcome.

According to Mr Churchill, “the unwarranted attack on my client, without any notice and in complete disregard to the facts is malicious and aggravates the harm to my client”. As such, the article must “be deleted immediately and permanently from the *Crikey* website”, after which “you must each thereafter immediately publish an apology in the following form ...”

APOLOGY TO LACHLAN MURDOCH

“ On 29 June 2022, *Crikey* and Mr Keane published an article and social media posts about Lachlan Murdoch.

Crikey and Mr Keane accept that the claims made in the article and other publications were false and defamatory of him. They were baseless allegations that should never have been made.

Crikey and Mr Keane unconditionally withdraw the claims and apologise to Mr Lachlan Murdoch for the hurt and offence caused to him by reason of the publication of the article and the social media tweets and posts (the apology).

After that, says the letter, Lachlan Murdoch will “consider whether he pursues any further relief, which will invariably depend on the promptness with which the above steps are taken and having regard to the damage that he has already suffered by reason of the scandalous allegations that have been published about him”. The letter then warns that “any delay in deleting the matters and publishing an apology will necessarily increase the damages payable to my client”.

‘Each of the alleged imputations are contrived and do not arise’

THURSDAY, JULY 7

“Dear Mr Churchill,” writes our lawyer Peter Bartlett, from the law firm MinterEllison, in a three-

page response to the concerns notice, “it cannot be reasonably suggested that the article, the *Crikey* Facebook post and/or the *Crikey* tweet (together, the *Crikey* publications) caused actual harm of a serious kind to Mr Murdoch. This is particularly so in circumstances where various other (much larger) mainstream media outlets, including (but not limited to) *The Washington Post*, *The New York Times* and the ABC have published stories in the past 12 months about Fox News and its alleged propagation of the Big Lie”.

Anyway, argues Bartlett, ”to the extent that any harm has been caused to Mr Murdoch by reason of the *Crikey* publications, it pales in comparison to the harm that has already been occasioned by the multitude of other global media outlets that have published similar allegations, such that any harm said to have been caused by the *Crikey* publications could not conceivably satisfy the high threshold required by your client to successfully commence proceedings against our clients”.



1.3 To the extent that any harm has been caused to Mr Murdoch by reason of the *Crikey* Publications, it pales in comparison to the harm that has already been occasioned by the multitude of other global media outlets that have published similar allegations, such that any harm said to have been caused by the *Crikey* Publications could not conceivably satisfy the high threshold required by your client to successfully commence proceedings against our clients.

As for the “large number of defamatory imputations concerning your client”, writes Bartlett, “in our view, each of the alleged imputations are contrived and do not arise”. That’s because “questions of meaning are determined objectively by reference to the hypothetical

construct of the ‘ordinary reasonable reader’” who is “generally regarded as being fair-minded; neither perverse, morbid nor suspicious of mind, nor avid for scandal; does not search for strained meanings; and reads the entire article and considers the context as a whole”.

Crikey’s lawyer then addresses the issue of who is the “Murdoch” referred to in the headline of the story, arguing that “the ordinary reasonable reader would interpret the reference to ‘Murdoch’ as a reference to Rupert Murdoch, being the person most synonymous with Fox News, and the person who has a renowned association with Donald Trump”.

As for the suggestion in the concerns notice that the *Crikey* article claims that Lachlan Murdoch “had some kind of knowing, direct and intimate involvement with the events of January 6”, not only does it not “contain any such suggestion”, but the article “plainly lays blame for the creation and scheming of the insurrection on Trump”.

Bartlett argues that “in all the circumstances, we consider that the interpretation of the imputations, as set out in the concerns notice letter, are likely to be rejected by any court”, but “as a goodwill gesture, our clients have removed the article, the *Crikey* Facebook post and the *Crikey* tweet”.

And as an additional goodwill gesture: “Our clients invite your client to participate in an on-the-record interview with *Crikey*, which would cover topics relating to Fox News and its coverage of the 2020

US election results. Please let us know if your client accepts our invitation”.

3.3 As an additional goodwill gesture, our clients invite your client to participate in an on-the-record interview with *Crikey*, which would cover topics relating to Fox News and its coverage of the 2020 US election results. Please let us know if your client accepts our invitation.

‘Mr Murdoch is content to have this issue determined by a Court’

TUESDAY, JULY 19

“The assertions you make in relation to serious harm,” responds Lachlan Murdoch’s lawyer in his next letter to *Crikey*, “are disingenuous and they aggravate the harm to our client. The notion that a mass media publication accusing a public figure of criminal conduct has not caused, and is not likely to cause, serious harm is spurious.”

As for the fact that there has been global coverage of Fox News’ involvement in the events at the Capitol, Mr Churchill is dismissive: “It is offensive to my client and aggravates his hurt that you falsely suggest that the allegations made by your clients in the article, *Crikey* Facebook post and *Crikey* tweet have been published elsewhere. That is plainly not true. It is only in your clients’ publications that such scandalous allegations of criminal conduct and conspiracy have been alleged, directly imputing personal and deliberate participation in a plan to cause violence.”

Mr Churchill then reveals that “persons have approached members of Mr Murdoch’s family, staff

and his friends about the allegations in the article, *Crikey* tweet and *Crikey* Facebook post that he is an unindicted co-conspirator with Donald Trump, and have specifically queried whether he was the subject of evidence before the House Select Committee”.

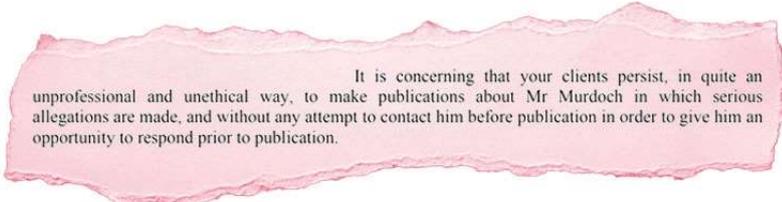
So what happens next? Lachlan Murdoch “is content to have this issue determined by a Court. In my experience, a baseless assertion to this effect is commonly made on behalf of media organisations”, says Mr Churchill. “Senior Counsel who settled the imputations is one of the most experienced defamation counsel in the country.”

And “the notion that a person is not defamed in a publication because he is only ‘mentioned twice’ is untenable”, writes Mr Churchill. As he continues:

“ The fact that some readers identified another Murdoch does not detract from the fact that my client is also identified — you are no doubt aware of the High Court authority to that effect. Your clients’ intention as to who they were referring to is irrelevant to that issue. As we have already informed you, Lachlan Murdoch was the executive chairman and CEO of Fox Corporation on 6 January 2021 and has held those positions since March 2019. Any person who then went on to read the article from the link in either the *Crikey* tweet or *Crikey* Facebook post would have seen that the reference to Murdoch in each of those social media posts was to more than one Murdoch.

Mr Churchill then turns to the article's removal from the *Crikey* website and his client's previous interactions with *Crikey*:

“ Given the unjustified and scandalous allegations made in the publications, it is unsurprising that your clients' reaction was to delete them. They were unjustified, unreasonable and malicious. In that regard we note that this is not the first time Private Media and [*Crikey* editor-in-chief] Mr Fray have indefensibly defamed Mr Murdoch without any basis whatsoever. It is concerning that your clients persist, in quite an unprofessional and unethical way, to make publications about Mr Murdoch in which serious allegations are made, and without any attempt to contact him before publication in order to give him an opportunity to respond prior to publication.



It is concerning that your clients persist, in quite an unprofessional and unethical way, to make publications about Mr Murdoch in which serious allegations are made, and without any attempt to contact him before publication in order to give him an opportunity to respond prior to publication.

Finally, insists his lawyer, “Mr Murdoch's primary concern is to seek redress in relation to this unjustified attack on his reputation. For that reason, I am instructed to offer your clients one final opportunity to make amends in the terms set out in the concerns notice. This offer is open until 4pm Friday 22 July 2022.”

He concludes, “Mr Murdoch will rely upon this letter, and any response to it (or lack of response)

in any proceedings commenced, including in relation to aggravated damages, costs and injunctions and otherwise reserves all his rights.”

‘A genuine attempt by our clients to resolve this matter’

WEDNESDAY, JULY 27

“This letter contains an offer to make amends, pursuant to section 13 of the *Defamation Act 2005* (NSW), in respect of your client’s purported concerns notice dated 30 June 2022,” writes *Crikey*’s lawyer Michael Bradley to Mr Churchill. “It is a genuine attempt by our clients to resolve this matter, notwithstanding that our clients maintain that none of the alleged imputations were conveyed by the publications the subject of the concerns notice.”

Our offer was to publish this statement in *Crikey*, under Peter Fray’s byline:

“ Mr Lachlan Murdoch

On 29 June 2022, *Crikey* published an opinion piece by Bernard Keane titled “Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator.”

The article laid out a case against Donald Trump in respect of the attempt to overthrow the result of the 2020 US presidential election, culminating in the assault on the

Capitol on January 6 2021. It concluded with Keane's opinion that:

“The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.”

Mr Lachlan Murdoch took exception to the article, instructing his lawyers to issue a defamation concerns notice to *Crikey* as well as to Bernard Keane and me personally, threatening to sue us.

As a gesture of goodwill, we made the decision to remove the article from publication as soon as we received the letter from Mr Murdoch's lawyers.

We would now like to set the record straight. Mr Murdoch feels that the article conveyed a large number of extremely serious defamatory imputations regarding his actions, by virtue of the article's title and its closing sentence (which were the only mentions of him in the article).

We do not agree that the article did convey these imputations. However, we don't want there to be any confusion about exactly what we do say about his actions.

To be fair to Mr Murdoch, this is the full list of defamatory imputations he says the article conveyed about him:

[Full list of imputations found above in Mr Churchill's letter of June 29]

There is no evidence that Mr Murdoch did any of the things described above. *Crikey* does not say that he did any of them.

Crikey does believe that Mr Murdoch bears some responsibility for the events of January 6 because of the actions of Fox News, the network he leads. However, *Crikey* does not believe that he was actively involved in the events of that day as the things described above would suggest.

‘An attempt by your clients to publish, with Mr Murdoch’s permission, a self-serving justification of their conduct’

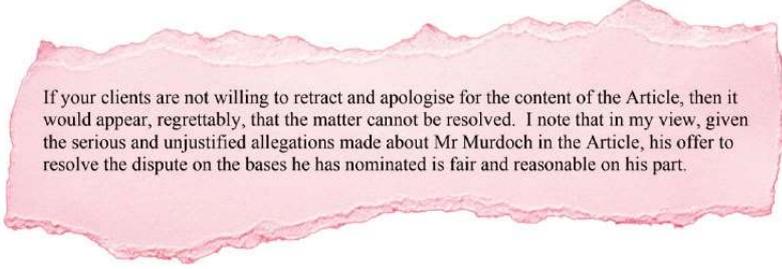
FRIDAY, JULY 29

“The offer made in your letter is rejected by Mr Murdoch,” responds the next legal missive to *Crikey* from Lachlan Murdoch’s lawyer.

That’s because “a genuine offer to resolve my client’s complaint would not include the republication of the defamatory material as part of a statement published with his consent. That is particularly the case given the disingenuous references in the statement to your clients’ (non-existent) ‘goodwill’ and fairness to Mr Murdoch. Contrary to the purpose of the making of amends under the act, the suggested statement appears to be an attempt by your clients to publish, with Mr Murdoch’s permission, a self-serving justification of their conduct, which defames him in the same

sense of the article, and thereafter adds additional allegations”.

The offer, writes Mr Churchill, is not a reasonable one, and if *Crikey* is “not willing to retract and apologise for the content of the article, then it would appear, regrettably, that the matter cannot be resolved”.



If your clients are not willing to retract and apologise for the content of the Article, then it would appear, regrettably, that the matter cannot be resolved. I note that in my view, given the serious and unjustified allegations made about Mr Murdoch in the Article, his offer to resolve the dispute on the bases he has nominated is fair and reasonable on his part.

Oh, and “Mr Murdoch will rely upon this letter, and any response to it (or lack of response) in any proceedings commenced, including in relation to aggravated damages, costs and injunctions and otherwise reserves all his rights.”

‘Our client stands by its reporting as a matter of critical public importance’

TUESDAY, AUGUST 2

From *Crikey*’s lawyer Michael Bradley to Mr Churchill:

- 1. We refer to your letter of 29 July 2022.**
- 2. Our letter of 27 July 2022 included no admissions.**

3. You have rejected our client's offer to make amends on baseless assumptions regarding our client's motivations.

4. Our client published its article as a legitimate exercise in press freedom and freedom of speech. It stands by its reporting of what is a matter of critical public importance.

5. You chose to come up with the most extreme set of wildly exaggerated imputations imaginable, none of which were conveyed by the article. An ordinary, reasonable person would not have taken those imputations from the article, and nor would a court.

6. Having alleged such extreme imputations, you now demand that our client publishes a retraction and apology with no explanation of what it is apologising for. That is unreasonable.

7. Your position is that Mr Murdoch alone may dictate what other media publishers can say about his actions. The tone of your letters is peremptory and intimidatory, threatening litigation from the outset and including the completely unnecessary threat of personal suit against Mr Fray and Mr Keane. As you know, nothing is to be gained from joining them to any litigation.

8. Our client accepts that Mr Murdoch does not wish to resolve this matter. Our client stands by its commitment to freedom of

speech and freedom of the press, and is fully prepared to defend those freedoms in court if Mr Murdoch wants to use his resources to attempt to curtail them.

9. Lachlan Murdoch stated in his Keith Murdoch Oration in 2014 that “a free media must be dependent on no one for favours”, and censorship in any form “erodes our freedom to know, to be informed, and to make reasoned decisions in our society and in our democracy”. Our client agrees.

10. We hold instructions to accept service on behalf of our clients.

‘Mr Murdoch is not seeking to dictate stories ... he isn’t unreasonable or intimidating’

THURSDAY, AUGUST 4

“We disagree with each of the contentions” in the August 2 letter, Mr Churchill informs us. “Your clients propose to repeat the defamation, rendering your offer worthless, and in fact worsening the situation. No lawyer with defamation expertise would consider it a rational offer in the circumstances.”

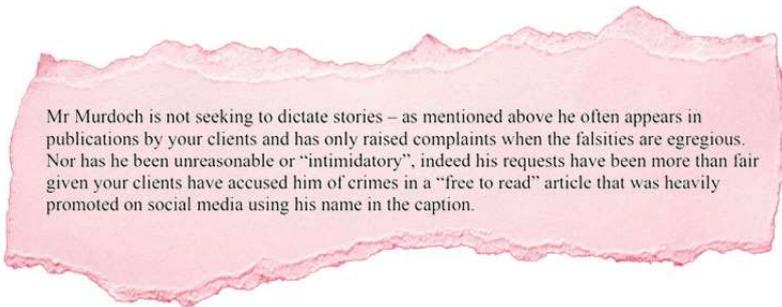
Mr Churchill then presents his view of the *Crikey*-Lachlan Murdoch relationship:

“*Crikey*, over the last two years, has published dozens of articles about my client. A number of those make baseless allegations against

Mr Murdoch and have been the subject of complaint. On each occasion, where a complaint has been communicated to your clients, the publications have been amended or taken down entirely. On two occasions apologies have been made. Some of those publications attracted significant readership and commentary on social media.

Despite being a frequent subject of *Crikey's* ire, never has Mr Murdoch been approached prior to publication for his response by your clients. On each occasion the allegations appeared to spring from no proper source or information and have always involved some serious act or misconduct. The article the subject of this complaint is yet another example of this pattern of behaviour by *Crikey* towards Mr Murdoch.

Mr Murdoch, says Mr Churchill, “is not seeking to dictate stories ... nor has he been unreasonable or ‘intimidatory’, indeed his requests have been more than fair given your clients have accused him of crimes in a ‘free to read’ article that was heavily promoted on social media using his name in the caption”.



Mr Murdoch is not seeking to dictate stories – as mentioned above he often appears in publications by your clients and has only raised complaints when the falsities are egregious. Nor has he been unreasonable or “intimidatory”, indeed his requests have been more than fair given your clients have accused him of crimes in a “free to read” article that was heavily promoted on social media using his name in the caption.

The article, asserts Mr Churchill, “clearly fails the tests of responsible and reasonable public interest journalism. Making allegations about my client in the article was a mistake that should be corrected, and any fair-minded publisher would have promptly offered a genuine apology. Your quotes and exaltations about curtailing freedom of speech do not apply – because, as occurs from time to time to most publishers, the journalism in this case is indefensible”.

‘Crikey stands by its reporting’

TUESDAY, AUGUST 9

“ Dear Mr Churchill,

It is not *Crikey*’s responsibility to solve a problem that you and your client have created. You are asking that our client apologise for the most extreme possible interpretation of our article, but not explain what that interpretation is. Readers would think our client is apologising for the article itself. It won’t. It stands by its reporting.

**Yours sincerely
Michael Bradley
Managing Partner**

Has Crikey done the right thing by publishing these letters? Let us know by writing to letters@crikey.com.au. Please include your full

name to be considered for publication. We reserve the right to edit for length and clarity.

ABOUT THE AUTHORS

Eric Beecher

CHAIRMAN OF PRIVATE MEDIA

Eric Beecher is the chairman and co-founder of Private Media, publisher of *Crikey*, *The Mandarin* and *Smart Company*, chairman of Australian Communities Foundation and a board member of PIJI, the Public Interest Journalism Initiative. He's been an editor and executive at Fairfax and News Corp and was co-founder of Text Media.



Peter Fray

EDITOR-IN-CHIEF [@PETERFRAY](#)

Peter Fray is *Crikey's* editor-in-chief and managing editor of Private Media. He is formerly the editor-in-chief of *The Sydney Morning Herald* and *The Sun-Herald*, the editor of the *SMH*, *The Sunday Age* and *The Canberra Times* and the deputy editor of *The Australian* and *The Sun-Herald*. In 2013, he started PolitiFact Australia, the country's first stand-alone fact-checking website.



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An open letter to Lachlan Murdoch, co-chairman of News Corporation and executive chairman of Fox Corporation

Lachlan Murdoch has claimed he intends to take court action to resolve

a defamation allegation against Crikey. We await your writ.

ERIC BEECHER AND PETER FRAY AUG 22, 2022  36  Share



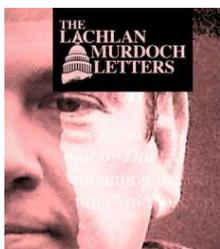
(IMAGE: PRIVATE MEDIA)

This article is part of a series about a legal threat sent to *Crikey* by Lachlan Murdoch, over an article *Crikey* published about the January 6 riots in the US. For the series introduction [go here](#), and for the full series [go here](#).

Dear Lachlan,

As you know, nearly two months ago *Crikey* published [a piece of commentary](#) about the sorry state of US politics, and the January 6 insurrection, that mentioned the Murdoch family name twice.

You responded through your lawyer with a series of letters in which you accused us of defaming you personally in that story.



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Crikey is an independent Australian news website, launched in 2000, covering politics, media and public issues. We at *Crikey* strongly support freedom of opinion and public interest journalism. We are concerned that Australia's defamation laws are too restrictive.

Today in *Crikey*, we are publishing all the legal demands and accusations from your lawyer, and the replies from our lawyers, in full, so people can judge your allegations for themselves.

We want to defend those allegations in court. You have made it clear in your lawyer's letters you intend to take court action to resolve this alleged defamation.

We await your writ so that we can test this important issue of freedom of public interest journalism in a courtroom.

Yours sincerely,

Eric Beecher
Chairman, Private Media

Peter Fray
Managing Editor, Private Media
Editor-in-Chief, *Crikey*

ABOUT THE AUTHORS

Eric Beecher

CHAIRMAN OF PRIVATE MEDIA

Eric Beecher is the chairman and co-founder of Private Media, publisher of *Crikey*, *The Mandarin* and *Smart Company*, chairman of Australian



Communities Foundation and a board member of PIJI, the Public Interest Journalism Initiative. He's been an editor and executive at Fairfax and News Corp and was co-founder of Text Media.

Peter Fray

EDITOR-IN-CHIEF [@PETERFRAY](#)

Peter Fray is *Crikey's* editor-in-chief and managing editor of Private Media. He is formerly the editor-in-chief of *The Sydney Morning Herald* and *The Sun-Herald*, the editor of the *SMH*, *The Sunday Age* and *The Canberra Times* and the deputy editor of *The Australian* and *The Sun-Herald*. In 2013, he started PolitiFact Australia, the country's first stand-alone fact-checking website.



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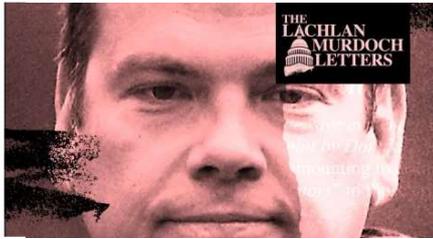
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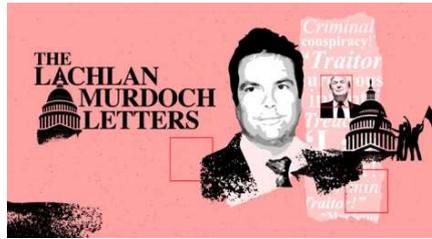
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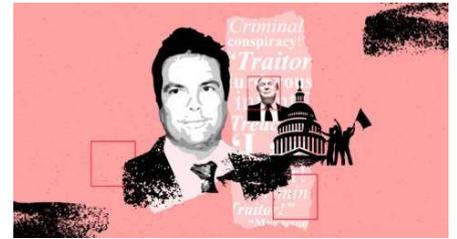
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Ken Olah  4 months ago

Respect to you, Crikey. This is a very important but incredibly courageous stand.
Je suit Crikey.

[Opinion / Media](#)

Standing up for the free press: here's what abuse of media power looks like in Australia

Today Crikey is publishing a series of lengthy legal demands by Lachlan Murdoch's lawyers. Here's why.



(IMAGE: PRIVATE MEDIA)

This article is part of a series about a legal threat sent to *Crikey* by Lachlan Murdoch, over an article *Crikey* published about the January 6 riots in the US. For the full series [go here](#).

Crikey has decided to lift the veil and reveal how abuse of media power in Australia really works.

Today we're publishing a series of lengthy legal demands sent to us over the past two months by Lachlan Murdoch, the billionaire chairman of [News Corp](#) and Fox Corporation, as well as our lawyers' replies to those demands.

Murdoch's lawyer believes [an article in late June](#) by *Crikey*'s politics editor Bernard Keane was an "unwarranted attack on my client, without any notice and in complete disregard to the facts" and "is malicious and aggravates the harm to my client".

The article in question was commentary about [Donald Trump's](#) involvement in the [January 6 insurrection](#) attempt at the US Capitol. The article

briefly refers to the role of Fox News in these events, and doesn't mention Lachlan Murdoch by name.

The headline — “Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator” — clearly refers to [Rupert Murdoch](#), the only “Murdoch” used as shorthand by the media and the rest of the world.

The only other reference to the Murdoch family in the entire story is in the final paragraph: “The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.” The rest of the article is about Trump's role on January 6 and the state of US politics.

Based on that headline and one sentence, Lachlan Murdoch's lawyer began sending us long legal letters of demand, threatening litigation and accusing *Crikey* of making outrageous suggestions that his client “illegally conspired with Donald Trump to overturn the 2020 presidential election”, “illegally conspired with Donald Trump to incite a mob with murderous intent to march on the Capitol”, “knowingly entered into a criminal conspiracy with Donald Trump to overturn the 2020 presidential election result”, and “engaged in treachery and violent intent together with Donald Trump to overturn the 2020 presidential election result” — among 14 alleged defamatory imputations in total.

Absent any feelings about the Murdochs, their ethics or their role in the media, think about this:



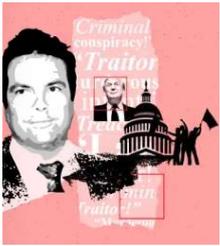
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- A small Australian news website publishes an opinion piece about the Trump presidency and the US Select Committee investigation into the January 6 riot, briefly (and critically) including the key role of Fox News.
- The article is not dissimilar to thousands of stories published in the US media about the complicity of Fox News in the Trump presidency and January 6 riots — many of those stories far more accusatory than ours. Indeed, Lachlan Murdoch described the role of Fox News after the 2020 presidential election as “the loyal opposition ... that’s what our job is now with the Biden administration”.
- The Murdochs haven’t taken legal action in the US (where Fox News operates) because they are public figures and can’t successfully sue for defamation over a matter of public interest under US law, where the constitution *protects* freedom of the media.
- Instead, the head of Fox News attempts to use Australian defamation law against a small Australian publication — *Crikey* — including a claim that “persons have approached members of Mr Murdoch’s family, staff and his friends about the allegations in the article, *Crikey* tweet and *Crikey* Facebook post that he is an unindicted co-conspirator with Donald Trump, and have specifically queried whether he was the subject of evidence before the House Select Committee”.

We are publishing these letters because we believe they expose the normally concealed world of Australian media power, in its most bullying form.

Lachlan Murdoch and his father run two of the Western world's biggest and most powerful media organisations, with a combined market capitalisation in the tens of billions. Our company, Private Media, is valued at less than \$20 million.



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Murdoch, his father and their companies are strong public advocates of media freedom. Their string of newspapers, websites and TV networks expose hypocrisy and publish controversial (sometimes incendiary) opinions on an almost daily basis. In Australia, News Corp is the biggest player in commercial journalism and is regularly attacked for its market dominance.

We know it's unusual to publish correspondence of this type, but confidentiality can't be imposed unilaterally by a lawyer, only by a court or government.

Besides, we're just following [Rupert Murdoch's own playbook](#). In the 1950s, as the fledgling owner of the small Adelaide tabloid *The News*, he responded to a threat from his large competitor, the *Advertiser*, to drive him out of business if he didn't sell out to them, by printing their threatening letter on the front page.

Like the Murdochs, we believe in the public's right to know. Exposing this legal assault is the only way we believe we can shine light on the actions of a powerful media owner (and therefore a competitor of ours) to silence a small publisher by resorting to

Australia's defamation laws — laws that News Corp itself constantly argues should give the media more freedom to fulfil its mandated role.

At Private Media, we're proud of our moral compass and our editorial mission. Sure, we're small, but if publishers like us didn't exist in Australia, the Murdochs would be even more powerful and politically influential.

Ironically, News Corp, Fox News and *Crikey* do the same thing — journalism. We may do it in different ways, but we share a desire to reveal truth and expose hypocrisy. As Lachlan Murdoch argued in a lecture to the Institute of Public Affairs a few months ago, “we should reject every effort, and there are many, to limit points of view, to obstruct a diversity of opinions, and to enforce a singular world view. Those efforts are fundamentally anti-Australian”.

We didn't start this senseless altercation with Lachlan Murdoch. We may not be as big, rich, powerful or important as him, but we have one common interest: we're a news company that believes in publishing, not suppressing, public interest journalism.

That's why we're looking forward to meeting Lachlan Murdoch in court, as he has foreshadowed, to test the defamation laws he and his editors constantly complain about. And to hear him express his views to a judge about the purpose of journalism, as he articulated so cogently in his 2014 Keith Murdoch Oration at the State Library of Victoria:

“ **Censorship should be resisted in all its insidious forms.**

We should be vigilant of the gradual erosion of our freedom to know, to be informed and make reasoned decisions in our society and in our democracy.

We must all take notice and, like Sir Keith, have the courage to act when those freedoms are threatened.

Has Crikey done the right thing by publishing these letters? Let us know by writing to letters@crikey.com.au. Please include your full name to be considered for publication. We reserve the right to edit for length and clarity.

ABOUT THE AUTHOR

Eric Beecher

CHAIRMAN OF PRIVATE MEDIA

Eric Beecher is the chairman and co-founder of Private Media, publisher of *Crikey*, *The Mandarin* and *Smart Company*, chairman of Australian Communities Foundation and a board member of PIJI, the Public Interest Journalism Initiative. He's been an editor and executive at Fairfax and News Corp and was co-founder of Text Media.



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YOUR SAY • CRIKEY • AUG 24, 2022  **12**



An apology demanded
The Lachlan Murdoch letters in full: Fox CEO demands Crikey apologise

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Opinion / Media

A huge bet, for sure, but we believe a free press is worth fighting for

CEO Will Hayward explains why Crikey isn't backing down in the face of legal threats from Lachlan Murdoch.

WILL HAYWARD AUG 23, 2022  35

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PRIVATE MEDIA CEO WILL HAYWARD (IMAGE: PRIVATE MEDIA)

This article is part of a series about a legal threat sent to *Crikey* by Lachlan Murdoch, over an article *Crikey* published about the January 6 riots in the US. For the series introduction [go here](#), and for the full series [go here](#).

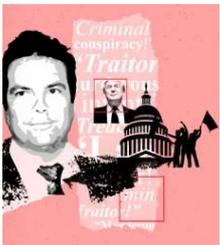
My job at Private Media, parent company of *Crikey*, is to make sure our work reaches many and is sustainable. I'm not a journalist; most of my time is spent on product, marketing, ad sales, strategy — and budgets.

Oftentimes, this makes me the one who has to make the unpopular choice. This might involve reducing costs, not pursuing potentially great ideas, and from time to time apologising to people we've written about because we got it wrong.

Sometimes we apologise not because we've written anything we believe to be wrong, but because legal advice is that the wrong judge, plus Australia's extraordinarily pro-litigant defamation laws, might

find against us. Sometimes the speculative bill is just too high.

Each year, we spend in the region of \$100,000-\$200,000 on legal services. This is probably appropriate — we often write on contentious matters, and more often than not these matters include many details others would rather be kept secret. This bill is growing, but so is our business. We'd rather spend the money on journalism, but such is the business of reporting.



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When we received the initial concerns notice from Lachlan Murdoch, we sought our usual legal advice. We had a range of estimates for what the worst case could look like. One went as high as \$3 million if we lost the case and had to pay much of Murdoch's legal fees.

That would be enough to force some radical changes to our business, something I suspect Murdoch knows. As is often the case, the power distribution is unfathomably large. As context, that would be close to all the revenue we received from our subscribers last year. For Murdoch, it's just a good day on the stock market.

We aren't David to the Goliath; we're David's weaker younger sibling. And Goliath has been on the juice again.

So why take on this fight? One of the first rules in business is never bet the company, no matter how strong the odds. We are not doing that. But we believe a free press is worth fighting for.

[The article we published on June 29](#) is one of the most uncontroversial opinion pieces we've ever written (no offence Bernard). I strongly suspect if you stopped 10 Australians in the street and asked them if Fox News and the Murdochs had anything to do with the riots of January 6, at the very least nine would say they had.

What about the one in 10 who might not be so sure?

Ask them this question — even if you *don't* think Fox News had anything to do with the riots, is it a fair reaction to begin defamation proceedings for suggesting they did? Should the opinion writer that wrote the article, and his editor, be personally pursued through the courts? Should the publication that published this opinion face a multimillion-dollar court battle to defend this comment?

Lachlan Murdoch's answer to all of the above questions appears to be "yes". Yes, that suggestion is beyond free speech and should be pursued in the courts. Yes, our journalists should be held personally responsible. Yes, *Crikey* should suffer.

I'm no journalist. But I grew up in a house, like Lachlan, that believes in free speech. We are prepared to defend it. Why does *Crikey* exist if not to take on this kind of fight?

We don't know how this will play out. We are making a huge bet. It is our subscribers versus Murdoch's billions. If you want to support this battle, [please join us](#). And thank you to those who already have.



Do you support Crikey's decision to publish these letters? Let us know your thoughts by writing to letters@crikey.com.au. Please include your full name to be considered for publication. We reserve the right to edit for length and clarity.

ABOUT THE AUTHOR

Will Hayward

CEO [@MRWILLHAYWARD](https://www.instagram.com/mrwillhayward)

Will Hayward is CEO of Private Media, publisher of *Crikey*, *SmartCompany* and *The Mandarin*.



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Richard ⌚ 4 months ago

Kudos. If this goes into the courts I’d happily donate some money to the defence.

+ 20 - Reply

Editor

whayward ⌚ 4 months ago



Reply to [Richard](#)

Thank you Richard.



JOHN CHURCHILL

LEVEL 3, 32 MARTIN PLACE, SYDNEY, NSW, 2000

TELEPHONE 02 9216 9816 MOBILE 0413 98 66 77 EMAIL jmc@johnchurchill.com.au

30 August 2022

Mr Michael Bradley
Managing Partner
MARQUE Lawyers Pty Ltd
Level 4, 343 George Street
Sydney NSW 2000
Email: michaelb@marquelawyers.com.au

Dear Mr Bradley

Defamation of Mr Lachlan Keith Murdoch

The Article the subject of these proceedings was reposted on the Crikey website on 15 August 2022 having been removed on 30 June. Since that time, I observe that:

- (a) Private Media Pty. Ltd (Private Media) has published in the order of 30 articles about my client;
- (b) Some of those articles were written by Mr Keane, Mr Fray or yourself;
- (c) In the order of half of those articles were published after the commencement of proceedings;
- (d) The rest were published before the commencement of the proceedings but after Private Media and Mr Fray published an advertisement on 22 August 2022 in the New York Times and in the Canberra Times on 23 August 2022 requesting that my client commence these proceedings;
- (e) Private Media and Mr Fray have issued in the order of 10 newsletters by email to Crikey subscribers in that same period about my client;
- (f) Each of the articles and newsletters made personal attacks on my client or myself in my role as his solicitor;
- (g) In the same period Private Media, Mr Keane, Will Hayward CEO and other employees of Private Media or yourself, have published between them over 50 social media posts about my client;
- (h) Those social media posts have given rise to comments about members of my client's family, myself and his counsel;
- (i) The comments referred to in the preceding paragraphs appear on the social media feeds of each of the Mr. Keane, Mr Hayward and yourself or those associated with your Firm and they are publishers of them, as they have the power to delete them;
- (j) In the same period, Mr Fray, Mr Hayward and Mr Keane have each given interviews to, or made adverse comments to the mass media about my client, the proceedings and/or myself;
- (k) Mr Keane has also published some videos;
- (l) Some of the publications, social media posts and interviews referred to above include complaints about other media organisations and their apparent lack of sufficient support of the conduct and views held by the respondents;

- (m) Despite advertising in the New York Times on 22 August 2022 and The Canberra Times on 23 August 2022 the demand to be sued by my client so that the dispute can be determined by a Court, your clients have persisted in their publications seeking to make their arguments in those forums and have frequently complained about the laws, the court system and the fact that they have been sued by my client in the course of those publications.

On one view:

1. It would appear to be an excessive number of publications about a mandatory notice required under the *Defamation Act*;
2. The conduct towards my client and at times myself, appears to have been taken because:
 - (a) my client exercised his legal rights under the *Defamation Act* by issuing a Concerns Notice and seeking amends;
 - (b) my client sued the respondents in these proceedings;
 - (c) I sent letters on behalf of my client;
 - (d) I represent my client in the proceedings.
3. It has a tendency to demonstrate that the respondents intend to and will castigate, on the Crikey website, in the newsletter, in social media and in interviews with mass media, any person associated with my client, any person who represents him, any person who supports him or his litigation, any person who criticises any of the respondents, any person who gives evidence for my client in the proceedings;
4. By its nature and volume amounts to harassment, and it would appear is intended to be for the purpose of putting improper pressure on my client;
5. It is unusual that a solicitor on the record in a matter is publishing articles on his client's website about an opposite party in a dispute and posting social media posts which have caused the comments adverted to above.

All such conduct past and ongoing is relied upon by my client on the question of aggravated damages and also in relation to serious harm, injunctions and costs.

May I draw your attention to the following principles:

1. Where a person engages in conduct calculated to create a substantial risk that the conduct will bring improper pressure to bear on a litigant, including by affecting the willingness of third parties to give evidence, or has a real and definite tendency to prejudice or embarrass a proceeding, it will amount to a contempt by way of improper pressure on a party, and so interfere with the proper administration of justice: *Kazal v Thunder Studios Inc (California)* (2017) 256 FCR 90 at 124 [81]–[82] per Besanko, Wigney and Bromwich JJ; *and Z v W* (2007) 70 NSWLR 377 at 384 [38] per Ipp JA, with whom Spigelman CJ agreed at 379 [6]; *Harkianakis v Skalkos* (1997) 42 NSWLR 22 at 42A–D per Mason P with whom Beazley JA agreed; *Commercial Bank of Australia Ltd v Preston* [1981] 2 NSWLR 554 at 564F–G, 565C–F per Hunt J.
2. Public out of court attacks on a party or the party's lawyers for bringing the proceedings can amount to attempts to bring improper pressure on each of them.

3. We also have our obligations generally as Officers of the Court and the Australian Solicitors Conduct Rules.

It is in the interests of our respective clients, particularly having regard to your clients' advertisements in the New York Times and Canberra Times, that the matters pleaded in the Statement of Claim be resolved by the Federal Court.

Yours faithfully

A handwritten signature in black ink, appearing to read "John Churchill". The signature is written in a cursive, flowing style with a large initial "J".

John Churchill

Hayward, Will, "WATCH: Private Media CEO explains three points of Crikey's defence against Lachlan Murdoch", *Crikey*, 22 September 2022

<https://www.crikey.com.au/2022/09/22/watch-private-media-crikey-lachlan-murdoch-defence/>

Prospect

Eric Beecher's diary: I'm being sued by Murdoch

The editor of "Crikey" says unelected media tycoons have abused power with impunity for too long

By **Eric Beecher**

November 3, 2022

DECEMBER 2022



A court case looms for Beecher and "Crikey" in March next year. PA Images / Alamy Stock Photo

The defamation writ from Lachlan Murdoch arrived a few months ago, in the middle of my birthday dinner. According to the writ, an opinion piece in *Crikey*, our Australian news publication, had accused Murdoch of criminal behaviour due to the role of Fox News (he is executive chairman and CEO of Fox Corporation) in the attack on the US Capitol on 6th January 2021. The headline over that opinion piece was: “Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator.” In the final paragraph, *Crikey’s* politics editor wrote: “The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.”

As a result of these words, claimed the writ, “Murdoch has been gravely injured in his character, his personal reputation, and his professional reputation as a businessperson and company director, and has suffered and will continue to suffer substantial hurt, distress and embarrassment.” The court case has been scheduled to start in Sydney in March next year. A judge will decide whether our headline and paragraph defamed Lachlan Murdoch under Australian law. That’s all I, or my colleagues at *Crikey*, can say about the matter until it is adjudicated.



Media power is both amorphous and real. Under Thomas Jefferson’s famous edict—“our liberty depends on the freedom of the press, and this cannot be limited without being lost”—journalism became the protected species of democracy. At the same time, there were unleashed a handful of unelected media tycoons who have abused power with impunity for nearly 150 years.

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This is the paradox at the heart of the free press. The custodians of journalism are entrusted to protect it, yet incentivised to exploit it. The dominating media moguls in history—like Beaverbrook, Maxwell, Black, the Harmsworths, the Murdochs and now Zuckerberg—accepted their role as society’s watchdogs while also running their own agendas, intimidating governments, peddling mistruths, dispensing patronage, distorting society’s values and building obscene fortunes.

The owners of big media in the west effectively run a state-sanctioned protectio

Privacy

“I operate in a world so free that its only explicit law is that there shall be no law,” acknowledged Henry Luce, co-founder of the *Time–Life* magazine empire, in the 1930s. “Ours is the only business in America whose behavior the Senate of the United States would not yet dare investigate. This is the great freedom which remains. This is the Freedom of the Press.” A freedom that encourages its owners to publish “yards and yards of mediocrity, acres of bad fiction and triviality, square miles of journalistic tripe.”

The owners of big media in the west effectively run a state-sanctioned protection racket. Their actions, safeguarded by freedom of speech laws and conventions, are largely based on trust and conscience. As they hold governments and institutions to account and report essential news, they operate under the protective banner of Jefferson’s other great axiom about journalism: “Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”

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But Jefferson wasn’t naive. He recognised the crucial distinction between the role of the press and the behaviour of its owners. Attacks on public figures by newspapers, he wrote to a friend in 1786, are “an evil for which there is no remedy”. John Stuart Mill described journalism as “the vilest and most degrading of all trades because more affectation and hypocrisy and more subservience to the baser feelings of others are necessary for carrying it on than for any other trade from that of brothel keeper upwards.”



In some sense, almost nothing has changed in two centuries. Even though technology has transformed how we consume information, and even though print newspapers are in the final stages of their lives, journalism is still deeply mistrusted and yet integral to the framework of democracy. And while most of the old-style moguls have faded away—with the notable exceptions of the Murdoch and Harmsworth families—their influence has been replaced by social media, an even more powerful communications tool that messes with facts, taste, privacy and civility on a global scale.

The arrival of social media has made Mark Zuckerberg the new model media baron. Zuckerberg’s empire doesn’t own a single newspaper or TV station, or employ journalists or editors, or publish original content. Yet it operates a platform that has likely disseminated more incendiary, hateful, racist and sexist content than any traditional publisher. Because Zuckerberg insists he’s not a “publisher”, he believes Facebook is exempt from the social compact that requires the “fourth estate” to take responsibility for all its content.

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As someone who *is* a publisher, I believe in Jefferson’s essential thesis that journalism is so important to democracy that it should be valued and protected—despite its many flaws and the overreach of some of its owners and practitioners. It’s just a pity that good conscience and civic responsibility can’t be regulated for.

Eric Beecher

Eric Beecher is chair and co-founder of Crikey

[MORE STORIES BY ERIC BEECHER](#)

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8 December 2022

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Dear Mr Bradley

Murdoch v Private Media & Ors

I refer to your letter received on 7 December 2022 in response to the concerns notice issued to Private Media, Bernard Keane, Peter Fray, Eric Beecher and William Hayward on 6 December 2022 (**Concerns Notice**).

Thank you for confirming that each of the recipients has been given the Concerns Notice under the *Defamation Act 2005 (Act)*.

As I adverted to in the Concerns Notice, I am of the view that it is not in fact a necessary step to allow the amendment of the current proceedings, including the position that sections 12A and 12B of the Act are procedural and conflict with a number of Federal laws and those provisions do not apply to the amendment of current proceedings in any event.

Despite the formal joinder of Mr Beecher and Mr Hayward as part of the proposed amendments, I note that they appear to have already been instructing and participating in the proceedings as officers or agents of Private Media. By way of example:

- (a) Mr Hayward posted a video on 22 September 2022 explaining “our defence” and also verified the list of documents on behalf of Private Media which was served on 18 November 2022;
- (b) Mr Beecher invited my client to sue him in public advertisements and articles on 22 and 23 August and welcomed the proceedings in media interviews shortly after the service of the pleadings on Private Media. He also wrote an article published on 3 November 2022 entitled “*Eric Beecher’s diary: I’m being sued by Murdoch*” located at url: <https://www.prospectmagazine.co.uk/magazine/eric-beechers-diary-crikey-being-sued-by-murdoch>.

The amendment has arisen from the respondents’ discovery, the interrogatories dispute, and the submissions made in Court on behalf of the respondents on 1 December 2022. Senior Counsel for my client raised the forthcoming amendment on that occasion and I am of the view that the parties should co-operate to progress the issue expeditiously.

Further, I do not agree that the Concerns Notice fails to particularise adequately the information required by the Act, and in particular the provision to which you refer, s 12A(1)(a)(iv) relating to serious harm. I note that the Concerns Notice contained 41

paragraphs of particulars of serious harm ([8.1]-[8.41]), over more than 2 pages. The purpose of Part 3, Division 1 of the Act is as I am sure you are aware to enable sufficient notice to be given to the publishers of defamatory matter such that they can consider whether they will offer to make amends, and the terms of such an offer. The sections are part of giving effect to the objects of the Act, as described in s3 which includes “*to promote speedy and non-litigious methods of resolving disputes about the publication of defamatory mater*”.

Are your clients giving genuine consideration to making amends for the 15 August Reposted Article? Please particularise the additional information not already in their possession and/or control they require in order that I may obtain instructions whether to do so? Given the conduct of the respondents, including the reposting of the Article on 15 August 2022, has always formed part of my client’s case, I would be surprised if this information is genuinely required. Having regard to the respondent’s conduct to date as evidenced by reposting the Article on 15 August 2022, the discovery documents, and as pleaded in the Statement of Claim and Reply in the proceedings, my client’s position is that no genuine intention to make amends, or to even consider doing so is evident. In fact, it would appear that the so-called “Offer to Make Amends” of 27 July 2022 on behalf of the respondents was in fact intended to insult, aggravate and provoke my client as part of a deliberate campaign.

In these circumstances, the respondents do not have the right to give a “further particulars notice” under s12A(3) of the Act, and my client is not obliged to respond to it in a substantive fashion. Additionally, I note that your letter does not actually comply with the requirement to nominate any particular respect in which the particulars of serious harm in the concerns notice are inadequate; a generalised contention of inadequacy does not identify the respect in which further particulars are said to be required. The notice is therefore defective and I cannot meaningfully respond to it.

However to avoid delay and any unnecessary cost by technical points being taken about this – despite the matters raised above, please accept this letter as a formal response to the “*further particulars notice*” within the meaning of s12A(4) of the Act. The further particulars that I supply are to refer you to the thousands of adverse comments about my client arising from the social posts made by your clients in promoting the Reposted Article, the media coverage arising from the Reposted Article and the media coverage of the proceedings caused by the Reposted Article evidenced by the documents discovered by the applicant in the proceedings.

I trust this is of assistance.

Yours faithfully



John Churchill