

NOTICE OF FILING

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Details of Filing

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File Title: CHARLES CHRISTIAN PORTER v AUSTRALIAN BROADCASTING CORPORATION ACN 429 278 345 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 7/05/2021 12:02:10 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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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REPLY

No. NSD206 of 2021

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

CHARLES CHRISTIAN PORTER

Applicant

AUSTRALIAN BROADCASTING CORPORATION AND LOUISE MILLIGAN

Respondents

In reply to the Defence filed on 4 May 2021 (**Defence**), Porter relies upon the following facts and assertions:

1. Save and except in so far as it contains admissions (including deemed admissions), or as otherwise expressly pleaded in this Reply, Porter:
 - a) joins issue with the matters pleaded in the Defence; and
 - b) relies upon the matters pleaded in the Statement of Claim and the letter of particulars dated 23 March 2021.
2. In answer to paragraphs 11, 12 and 15 of the Defence, Porter says that in publishing the Article the ABC and Milligan were actuated by malice in that they predominantly acted with the improper purpose of harming Porter as evidenced by the following:
 - a) The conduct of Milligan and the ABC in disclosing the confidential information of AB in circumstances where:
 - (i) the ABC and/or Milligan attempted to speak to AB before her death and AB declined;
 - (ii) prior to her death AB did not provide the ABC or Milligan with a copy of the document referred to in paragraph 5n) of the Statement of Claim (the Dossier comprising an anonymously authored 6-page cover letter (**Cover Letter**) and

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25 pages of typed written and pictorial material purportedly created by AB (**the Material**));

- (iii) prior to her death AB had the opportunity to make a statement to New South Wales police and/or South Australian police in relation to her allegations against Porter and declined to do so;
 - (iv) prior to her death AB did not give the police a copy of the Material or any statement by her;
 - (v) prior to her death AB did not consent to the ABC or Milligan publishing the Material, any statement by her, or using such documents in any way;
 - (vi) the ABC and Milligan did not seek the consent of AB's family to use the Dossier or other information confidential to AB for publication or otherwise;
 - (vii) no person from AB's family consented to the ABC or Milligan using the Material, any statement by AB or other information confidential to AB for publication or otherwise;
 - (viii) AB's parents informed the ABC and Milligan that they did not consent to, or approve of, information confidential to AB being used or published by the ABC or Milligan;
 - (ix) the Article and the Four Corners programme broadcast on 8 March 2021 disclosed information confidential to AB, including medical information about AB.
- b) The conduct of the ABC and Milligan described in the preceding sub-paragraphs was engaged in because of their determination to harm Porter irrespective of the self-evident impropriety of that conduct.
- c) The conduct of the ABC and Milligan in alleging that Porter engaged in criminal conduct or was otherwise reasonably suspected of it, in circumstances where they knew or otherwise believed that:
- (i) because Porter and AB were minors at the time of the alleged offences, had he been charged, neither he nor AB could be identified by reason of the operation of s15A *Children (Criminal Proceedings) Act 1987* (NSW) and s578A *Crimes Act 1900* (NSW);
 - (ii) there was insufficient evidence for the police to charge Porter;
 - (iii) there was insufficient evidence to pursue an investigation of Porter;
 - (iv) the police did not hold a reasonable suspicion that Porter was guilty of the offences alleged;

- (v) there was insufficient objective evidence for there to be reasonable grounds to suspect Porter was guilty of the offences alleged;
 - (vi) there was no evidence of any type before the police that would have allowed for any objective judgment about the credibility of any complaint, let alone any admissible evidence that any person of reasonably sound judgment would regard as sufficient to pursue an investigation;
 - (vii) given the matters in (i) - (vi) above, there was no public interest in publishing the Article;
 - (viii) given the matters in (i) - (vii) above, there was no basis to publish the Article;
 - (ix) given the matters in (i)-(vii) above, the ABC and Milligan had knowledge of the falsity of imputations 5d), 5e), 5f), 5g), 5h), 6a), 6b), 6c), 6d), 6e) and 6f) (and imputations that do not differ in substance).
- d) The conduct of the ABC and Milligan in publishing the Article (despite being aware of the matters set out in the preceding paragraph) knowing and/or intending that it would cause Porter irreparable harm to his reputation, and likely cause him to have to step down as the Commonwealth Attorney-General.
- e) The conduct of the ABC and Milligan in publishing the Article, having been previously advised in relation to the November 4Corners that the publication of the allegation that Porter engaged in criminal conduct could not be justified; in circumstances where there was no material change (between November 2020 and the date of publication of the Article) in the information that the ABC and Milligan had about the credibility of that allegation.
- f) The determination of the ABC and Milligan to publish the accusation that Porter engaged in criminal conduct, following the omission of the same allegation from the November 4Corners including as evidenced by:
- (i) a tweet by Sally Neighbour, Executive Producer of the Four Corners programme on 9 November 2020 which included the words (in relation to the November 4Corners) *“And rest assured, our work on this story is not finished yet.”*
 - (ii) a tweet by Milligan on 17 February 2021 (possibly repeating a tweet from about November 2020) in which she stated, in relation the November 4Corners *“The story was only the tip of the iceberg. The iceberg is large. The broader story is grim.”*
 - (iii) an admission by a producer of the Four Corners programme Morag Ramsay in about mid-November 2020 where (after there was a discussion about the

omission of the allegation that Porter engaged in criminal conduct from November 4Corners) Ramsay said words to the following effect *“One way or the other, we are going to get that allegation out. This is not over.”*

- (iv) alternatively to (ii) an admission by a producer of the Four Corners programme Morag Ramsay in about mid-November 2020 where (after there was a discussion about the omission of the allegation that Porter engaged in criminal conduct from November 4Corners) Ramsay said words to the following effect *“One way or the other, Louise is going to get that allegation out. This is not over.”*
- g) The conduct of Milligan in her questioning of sources relating to the allegations by AB against Porter, and in particular Milligan’s conduct in making inappropriate comments for the purpose of prejudicing those sources against Porter including words to the following effect: *“a woman has died because of this”* and *“if men like you don’t speak out, violence against women will continue”*.
- h) The conduct of the ABC and Milligan in publishing the Article, without adequately investigating the veracity of the claims (purportedly) made by AB in the Material or the claims made by the anonymous author(s) in the Cover Letter, as evidenced (at least) by the fact that Milligan claimed that she received the Dossier only a day before publication of the Article.
- i) The conduct of the ABC and Milligan in publishing the Article without adequately investigating the veracity of the claims (purportedly) made by AB in the Material, or the claims made by the anonymous authors(s) in the Cover Letter in circumstances where even basic inquiry would have revealed key claims to be demonstrably incorrect or implausible.
- j) The conduct of the ABC and Milligan in publishing the Article on 26 February 2021 without any warning to Porter or any opportunity for him to respond in circumstances where they:
 - (i) were aware of the allegation that Porter engaged in criminal conduct from at least July 2020;
 - (ii) intended to broadcast the accusation that Porter engaged in criminal conduct in the November 4Corners;
 - (iii) wrote to Porter from 23 October to 6 November 2020 and asked a series of questions about other matters in relation to the November 4Corners, but did not refer to the allegations made by AB; and

- (iv) were not reporting urgently on 'breaking news' given that the allegation that Porter engaged in criminal conduct had been made at least months earlier.
- k) The conduct of the ABC and Milligan described in the preceding subparagraph was engaged in to cause maximum harm to Porter, in particular:
 - (i) so that his denials would not be recorded in the body of the Article; and
 - (ii) to prevent him from seeking an injunction to stop the publication of the Article given the matters referred to in subparagraph 2c) above.
- l) The conduct of the ABC and Milligan in publishing the Article and purporting not to identify Porter when they knew and/or intended that he would be so identified which is evident from:
 - (i) how easily Porter was in fact quickly and easily identified;
 - (ii) the conduct of the ABC and Milligan in publishing other material, including the 1 March Article and 7:30 Story which, by their content and persons interviewed, directed viewers to the November 4Corners in which allegations of inappropriate behaviour, sexism and misogyny were made against Porter;
 - (iii) the conduct of the ABC in calling for an inquiry into the cabinet minister the subject of the Article, knowing that would inevitably result in his identification;
 - (iv) the conduct of the ABC in calling for the resignation of the cabinet minister the subject of the Article, knowing that would inevitably result in his identification;
 - (v) the conduct of the ABC and Milligan in leaving the Article online available to be viewed and published after it was evident that large numbers of people set out in the categories in the particulars knew it referred to Porter and, in any event, after he had identified himself shortly after 3pm on 3 March 2021;
 - (vi) as to the above, see particulars of identification in Statement of Claim and letter of 23 March 2021.
- m) Shortly after the publication of the Article and before 3pm on 3 March 2021, the ABC received enquiries about the connection with the November 4Corners and the Article and dishonestly asserted that the two publications were unrelated.
- n) The conduct of the ABC and Milligan in failing to disclose that the portion of the Material that purported to be AB's 'statement' was unsigned and undated and that the provenance of all of the Material was unknown.
- o) The failure of the ABC and Milligan to undertake any or any sufficient inquiry to ascertain who drafted or participated in the drafting of the Cover Letter.

- p) The failure of the ABC and Milligan to undertake any or any sufficient inquiry to ascertain who drafted or participated in preparation of the Material.
- q) Given the matters set out in the particulars above, the ABC and Milligan acted with reckless indifference amounting to wilful blindness to the truth or falsity of imputations 5a), 5b) and 5c) or any imputations that do not differ in substance.
- r) The conduct of the ABC and Milligan in selectively quoting from the Dossier in the Article to cause maximum damage to Porter (as already particularised in the letter of 23 March 2021) and failing to quote or describe a single part of the many parts of the Cover Letter and the Material which demonstrate that the allegations were not credible.
- s) The conduct of the ABC and Milligan in seeking to cause maximum damage to Porter by purporting to quote AB from the Dossier:
- (i) *““This is my story, plain and simple””*
 - (ii) *“This is my story, plain and simple. It's not pretty, but it is mine.”*
 - (iii) *“And I stand by it, every single word and image in this document is true.”*
 - (iv) *“All I really want, in the end, is for this to have been reported to the NSW Police Force and to know that a copy of this document, and a transcript of any interview they might do with me, is in their archives...”*
 - (v) *“If this story does become public knowledge, I hope that it will encourage other women to come forward.”*
 - (vi) *“Not for me, but for themselves... I also hope that other people who have endured similar traumas, should these facts become public knowledge, will feel less alone”,*

when in fact those words came from another document (or documents) unknown to Porter, and whose existence, form or provenance is not disclosed to the readers of the Article.

- t) The disingenuous and dishonest conduct of the ABC and Milligan in claiming on 15 March 2021 that the reason Porter was not offered any opportunity to respond to the accusations prior to publication of the Article was because *“the letter was sent to the Prime Minister's Office and to Senator Hanson Young and to Senator Wong. We, on advice, were told to send the questions to the Prime Minister's office because we didn't know whether the Prime Minister had identified to the Attorney-General that this letter was about him”* when in fact the most damaging parts of the Article (set out in the preceding subparagraph) were not contained at all in the Dossier.

- u) The dishonest representation by the ABC and Milligan that the purpose of the Article (as described in the 'key points' section of the Article) was to inform readers of the fact of the Dossier being sent to the Prime Minister and others in circumstances where the most damaging parts of the Article (as set out above) were not contained at all in the Dossier.
- v) The conduct of the ABC and Milligan in seeking to cause maximum damage to Porter by failing to disclose in the Article that the anonymous author(s) of the Cover Letter also stated that AB's parents:
 - (i) were concerned that "*she may have confected or embellished the allegations due to her mental illness*" against Porter;
 - (ii) believed that AB told her psychiatrist "*that she felt ashamed of what she had done during her hypomania*"; and
 - (iii) believed that her call to the police before her suicide "*possibly represented [AB] retracting her allegations*".
- w) The conduct of Milligan, and other servants or agents of the ABC, in retweeting the despicable, unjustified and improper comment made by former Prime Minister Malcolm Turnbull that there was a need for an inquest to investigate AB's cause of death and suggesting that her death may not have been caused by suicide and instead had something to do with the cabinet minister the subject of the Article which led to the creation of the Twitter hashtag #cabinetmurderer.
- x) The conduct of Milligan after publication of the Article on or about 2 March 2021 in linking her over 83,000 Twitter followers by the use of the hashtag #cabinetminister and by the phrase "*is #cabinetminister suitable for high office*" to conversations which by that time had identified Porter as the subject of the Article hundreds of times.
- y) The conduct of the ABC and Milligan in publishing the Article (given all of the matters set out above) in circumstances where (to their knowledge) other media organisations had (or were aware of) the content of the Dossier and responsibly did not report it including the Guardian, News Limited, Crikey and Nine.
- z) The conduct of the ABC in seeking to have Porter removed from his position as Commonwealth Attorney-General by persistently publishing and publicising views that he should be stood down or otherwise be the subject of an inquiry, such publications and calls continuing after the commencement of these proceedings.
- aa) The conduct of the ABC in making and publishing continuous calls for an inquiry for, amongst other purported purposes, the purpose of testing the allegations contained in the Dossier to the lower civil standard in circumstances where in these

proceedings the ABC has not taken the opportunity to plead truth as a defence to 5a), 5b) or 5c) being imputations that Porter raped AB despite the fact that this would have allowed for that type of civil inquiry.

- bb) The conduct of the ABC in repeatedly publishing statements to the effect that AB was telling the truth and describing her as “*the victim*”.
- cc) The conduct of the ABC in broadcasting an assertion on 4 March 2021 on ABC Radio National’s The Party Room programme that AB was under extreme pressure to withdraw her police complaint when there was no basis to make that suggestion.
- dd) The conduct of the ABC in broadcasting an assertion on 4 March 2021 on ABC News Radio that the serious allegations made against Porter were supported by evidence collected when AB was 16 years old when there was no basis to make that suggestion.
- ee) The conduct of the ABC in, at some time since the commencement of these proceedings, amending the online version of the article by adding a highly visible and large text box under the headline and a photograph of Prime Minister Morrison titled ‘*Help keep family & friends informed by sharing this article*’ with a mechanism to allow readers to copy the URL of the Article or share the Article on various social media platforms, messaging services and by email.
- ff) Milligan’s relentless campaign against Porter on her Twitter account, including the following tweets:
 - (i) on 27 February 2021: “*So perhaps inform yourself of the details before going for the cheap sledge. Many of the complainant’s most ardent supporters are both lawyers and lifelong Liberals who have put their ideology aside because this is not about ideology, after all*”;
 - (ii) on 27 February 2021, in response to a Tweet by the ABC in relation to comments made by Senator Birmingham that the “*allegations in letter accusing Cabinet Minister of rape should be left to police*”, Milligan tweeted: “*Except it can’t be, bc the complainant, sadly, died. She was an assiduous record keeper, though. & she had many friends, to whom she told her story in detail. They’re accomplished in their respective fields – many legally trained. They want the PM to commission an investigation*”;
 - (iii) on 28 February 2021: “*So when the likes of @Birmo says govt should leave it to police to investigate, they say so knowing police CANNOT investigate. That’s the point friends of the complainant who wrote to PM made. & why they want an independent investigation to maintain public confidence in Cabinet*”;

- (iv) on 28 February 2021: *"For those saying @ScottMorrisonMP commissioning independent investigation into #CabinetMinister would erode criminal presumption of innocence/impede police process, that didn't trouble Chief Justice of High Court when she commissioned independent investigation into Dyson Heydon";*
- (v) on 2 March 2021: *"#Auspol Clarification: NSW police didn't "end" their investigation. The investigation never began. Complainant never made statement. When I inquired, they were very interested to know if I knew of other complainants against #CabinetMinister. My answer: Not in your jurisdiction";*
- (vi) on 2 March 2021: *'This minister has to have the courage that Kerry Packer had in 1985, out himself and say what he knew. He owes it to his colleagues & the country to step out and set out all the details' @TurnbullMalcolm on @RNBBreakfast. #CabinetMinister";*
- (vii) on 10 March 2021: *"I never met Kate, but I have read many, many pages of her correspondence and spoken to dozens of people who knew and loved her. I feel confident that she would have been very moved and gratified to see that #IBelieveKate is trending number one in Australia. #auspol";*
- (viii) on 10 March 2021: *"She did not retract her complaint, she withdrew from investigation. Those are very different concepts. One means she said it didn't happen (which she never said) & second is she decided not to proceed. Which makes sense, given the next day, tragically, she took her life";*
- (ix) on 12 March 2021: *"James Hooke knows a lot. #ChristianPorter @auspol";*
- (x) on 13 March 2021: *"'Why don't other women come forward?' Take a look at what is being done to a woman who lies in her grave";*
- (xi) on 14 March 2021, Milligan retweeted a tweet by The West Australian, @westaustralian: *"The ex-wife of Attorney-General Christian Porter was among thousands of West Australians to march across the Perth CBD in protest of gender discrimination and violence", together with a Tweet "Yes. She was.";*
- (xii) on 14 March 2021: *"BREAKING Thread: #ChristianPorter vigorously denied rape allegation & said hadn't seen Kate since 1988. When later revealed she'd said she saw him again in Perth in Sep 1994, he said was possible but didn't remember. W recipients' approval: 2 chatty postcards ex-Kate. Perth, 1994".*

- gg) The ABC's relentless campaign against Porter in various Twitter accounts of its employees which included Milligan's Tweets in the preceding sub-paragraph and the following tweets:
- (i) Sally Neighbour on 28 February 2021, tweeted an article published by news.com.au entitled '*Turnbull's call over minister rape claim*', together with the words "*Minister rape claim: Malcolm Turnbull calls for inquest into death of woman*";
 - (ii) Annabel Crabb on 2 March 2021: "*@RNBreakfast right now, @TurnbullMalcolm acknowledges the possibility that the complainant's death was not a suicide, says investigation is of paramount urgency.*"
 - (iii) Sally Neighbour on 7 March 2021, retweeted Karen Percy: "*This will be worth a watch. It is time women's voices were heard and the toxic workplace that is Federal Parliament was exposed. Women in Australia demand change. Thanks @louisemilligan @4corner*";
 - (iv) Sally Neighbour on 8 March 2021, retweeted Four Corners: "*The woman who accused Christian Porter of rape first spoke to a sexual assault counsellor back in 2013. She says she was 'extremely articulate <https://ab.co/3taO1lp>. #4corners #auspol*";
 - (v) Sally Neighbour on 8 March 2021, retweeted Milligan: "*Breaking from us: @4corners: This counsellor was specialist in sexual assault, the woman volunteered allegation, there was no recovered memory therapy, it was, on counsellor's account, support with how she might disclose allegation to police. 5yrs before she began telling friends*".
- hh) The inappropriate conduct of Milligan (including the conduct set out above) that amounted to her creating the story and being part of the story as opposed to reporting the news which was in fact her job.
- ii) The conduct of Milligan (including the conduct set out above) in generating and fuelling interest in the Article to ensure that Porter was identified, thus causing him maximum harm and distress.
- jj) The conduct of the ABC and Milligan in publishing the Article contrary to the ABC Code of Conduct and Associated Standards (15 January 2019) and in particular, in breach of the principles of:
- i. accuracy;
 - ii. impartiality;
 - iii. fair and honest dealing.

kk) The conduct of the ABC and Milligan in publishing the Article contrary to the ABC Code of Conduct and Associated Standards (15 January 2019) and in particular, in breach of the following standards:

- i. opportunity to respond;
- ii. attribution to sources;
- iii. privacy;
- iv. causing undue distress to bereaved relatives.

(ll) [REDACTED]

(mm) [REDACTED]

(nn) [REDACTED]

(oo) [REDACTED]

(pp) [REDACTED]

3. Porter repeats and relies on the matters set out in the preceding paragraphs as matters within his knowledge that have aggravated the hurt and harm occasioned to him by the publication of the Article.

4. Porter refers to and relies on the denial of identification in paragraph 4(e) of the Defence as a matter within his knowledge that has aggravated the hurt and harm occasioned to him by the publication of the Article. That plea is improper, unjustifiable and lacking in

bona fides given the matters pleaded in paragraph 2, above and the material already particularised in relation to identification.

5. Porter refers to and relies on the denial of the class identification imputations as being capable of being conveyed or in fact conveyed in paragraph 6(b) of the Defence as a matter within his knowledge that has aggravated the hurt and harm occasioned to him by the publication of the Article. That plea is improper, unjustifiable and lacking in bona fides.
6. Porter refers to and relies on the justification plea in paragraph 13 of the Defence as a matter within his knowledge that has aggravated the hurt and harm occasioned to him by the publication of the Article. That plea is improper, unjustifiable and lacking in bona fides given the matters pleaded in paragraph 2, above.
7. Porter refers to and relies on the contextual truth plea in paragraph 14 of the Defence as a matter within his knowledge that has aggravated the hurt and harm occasioned to him by the publication of the Article. That plea is improper, unjustifiable and lacking in bona fides given the matters pleaded in paragraph 2, above.
8. [REDACTED]
9. Porter relies on the ABC and Milligan's conduct of the litigation as matters aggravating his hurt and harm including:
 - a) their conduct in failing to address matters raised in correspondence in a timely manner or at all in circumstances where the ABC has substantial legal resources funded by Australian taxpayers;
 - b) not making proper admissions where appropriate;
 - c) ignoring or refusing reasonable requests in correspondence for information;
 - d) wrongly and disingenuously denying that the ABC is the model litigant for the purpose of the *Legal Services Direction 2017*; and
 - e) issuing press releases (or tweeting) about the conduct of the litigation.

Date: 4 May 2021



Signed by Rebekah Giles
Lawyer for the applicant

This pleading was prepared by Sue Chrysanthou SC and Rebekah Giles

Certificate of lawyer

I, Rebekah Ruth Giles, certify to the Court that, in relation to the reply filed on behalf of the Porter, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 4 May 2021



Signed by Rebekah Giles
Lawyer for the applicant