

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	24/04/2025 9:37:17 AM AEST
Date Accepted for Filing:	24/04/2025 10:22:54 AM AEST
File Number:	NSD689/2023
File Title:	BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule
Respondents

Affidavit of: **Lucy Williams**
Address: Level 31, 1 O'Connell Street, Sydney NSW 2000
Occupation: Solicitor
Date: 23 April 2025

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Filed on behalf of (name & role of party) Peter Bartlett, addressee (subpoena recipient) to subpoena filed by the Appellant on 22 April 2025
Prepared by (name of person/lawyer) Lucy Williams and Julia Hewitt
Law firm (if applicable) K&L Gates
Tel +61 2 9513 2341 Fax +61 2 9513 2399
Email lucy.williams@klgates.com; julia.hewitt@klgates.com
Address for service Level 31, 1 O'Connell Street, Sydney NSW 2000
(include state and postcode)

I, Lucy Williams, solicitor affirm:

1. I am a partner of K&L Gates, the solicitors for Peter Bartlett, addressee (subpoena recipient) to the subpoena filed by the Appellant on 22 April 2025 addressed to him in these proceedings.
2. This affidavit is made in support of Peter Bartlett's interlocutory application dated 23 April 2025 seeking to set aside the Appellant's subpoena to give evidence addressed to Peter Bartlett filed 22 April 2025.
3. At 7.11pm on 22 April 2025, I sent an email to the Appellant's solicitor, Monica Allen. A copy of the email is annexed to this affidavit and marked "A".
4. At 8.27pm on 22 April 2025, I received an email from Ms Allen. A copy of the email and its attachment is annexed to this affidavit and marked "B".
5. Annexed to this affidavit and marked "C" is a copy of a request for leave to issue subpoena made by Ms Allen on behalf of the Appellant.


Affirmed by the deponent
at Sydney
in New South Wales
on 23 April 2025
Before me:



Signature of witness

Julia Hewitt
Solicitor

)
)
)
)
)


Signature of deponent

"A"

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This is the annexure marked "A" referred to
in the affidavit of Lucy Williams affirmed
before me on 23 April 2025
Signature 

Hewitt, Julia

From:	Williams, Lucy	Name of witness	Julia Hewitt
Sent:	Tuesday, 22 April 2025 7:11 PM	Capacity of witness	Solicitor
To:	'monica.allen@blackbaylawyers.com'	Address of witness	Level 31, 1 O'Connell Street, Sydney NSW 2000
Subject:	Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors		

Dear Monica

We have received instructions to act for Mr Bartlett in respect of the subpoena to produce documents addressed to him dated 17 April 2025 and in respect of the subpoena to give evidence addressed to him which has been provided unsealed on the basis that it will be formally served on him when sealed by the Registry.

Tom Blackburn SC will appear at the listing before Justice Perram tomorrow on Mr Bartlett's behalf.

We propose to inform the court tomorrow that Mr Bartlett intends to bring an application to either oppose the issue of the subpoena to give evidence or set it aside if sealed / issued, on the grounds that there is no legitimate forensic purpose for it and it is a fishing expedition.

Kind regards

Lucy

K&L GATES

Lucy Williams
Partner
K&L Gates
Level 31, 1 O'Connell Street
Sydney NSW 2000, Australia
Phone: +61 2 9513 2487
Fax: +61 2 9513 2399
Mobile: +61 404 809 128
lucy.williams@klgates.com
www.klgates.com



"B"

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This is the annexure marked "B" referred to in the affidavit of Lucy Williams affirmed before me on 23 April 2025

Hewitt, Julia

Signature

From: Monica Allen <monica.allen@blackbaylawyers.com>
Sent: Tuesday, 22 April 2025 8:27 PM
To: Williams, Lucy
Cc: Victoria-Jane Otavski
Subject: RE: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: Subpoena to Give Evidence - Peter Bartlett.pdf

Name of witness Julia Hewitt
Capacity of witness Solicitor
Address of witness Level 31, 1
O'Connell Street, Sydney NSW 2000

This Message Is From an Untrusted Sender

You have not previously corresponded with this sender.

Dear Lucy

Thank you for your email.

Please find **attached** by way of service a sealed copy of the Subpoena to Give Evidence addressed to Mr Bartlett.

Kind regards

Monica Allen

Special Counsel



P 02 8005 3077

M 0432 977 939

monica.allen@blackbaylawyers.com

www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.

Liability limited by a scheme approved under Professional Standards Legislation.

From: Williams, Lucy

Sent: Tuesday, 22 April 2025 7:11 PM

To: Monica Allen

Subject: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

You don't often get email from lucy.williams@klgates.com. [Learn why this is important](#)

Dear Monica

We have received instructions to act for Mr Bartlett in respect of the subpoena to produce documents addressed to him dated 17 April 2025 and in respect of the subpoena to give evidence addressed to him which has been provided unsealed on the basis that it will be formally served on him when sealed by the Registry.

Tom Blackburn SC will appear at the listing before Justice Perram tomorrow on Mr Bartlett's behalf. We propose to inform the court tomorrow that Mr Bartlett intends to bring an application to either oppose the issue of the subpoena to give evidence or set it aside if sealed / issued, on the grounds that there is no legitimate forensic purpose for it and it is a fishing expedition.

Kind regards

Lucy

The logo for K&L GATES, featuring the text "K&L GATES" in white, bold, sans-serif capital letters on a dark blue rectangular background.**Lucy Williams**

Partner

K&L Gates

Level 31, 1 O'Connell Street

Sydney NSW 2000, Australia

Phone: +61 2 9513 2487

Fax: +61 2 9513 2399

Mobile: +61 404 809 128

lucy.williams@klgates.comwww.klgates.com

This electronic message contains information from the law firm of K&L Gates. The contents may be privileged and confidential and are intended for the use of the intended addressee (s) only. If you are not an intended addressee, note that any disclosure, copying, distribution or use of the contents of this message is prohibited so please delete this email and notify us promptly. We use virus scanning software but exclude all liability for viruses or similar in any attachment, you should use industry standard virus scanning of this and all email.

NOTICE OF FILING AND HEARING**Filing and Hearing Details**

Document Lodged: Subpoena to Give Evidence - Form 43A - Rule 24.13(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 6:18:18 PM AEST
Date Accepted for Filing: 22/04/2025 3:03:40 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Interlocutory Hearing
Time and date for hearing: 01/05/2025, 10:15 AM
Place: Please check Daily Court List for details



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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Form 43A
Rule 24.13(1)(a)

Subpoena to Give Evidence

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Peter Bartlett,
c/- MinterEllison
Collins Arch , 447 Collins Street
MELBOURNE VIC 3000

You are ordered to attend to give evidence. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is [date]. (See Note 1)

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

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Issued at the request of the Appellant, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, NSW 2000

Email: monica.allen@blackbaylawyers.com

**Details of subpoena**

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 1 May 2025

Time: 10.15 am

Place: Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.



Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Applications in relation to subpoena

5. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

6. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



No. NSD 689 of 2023

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

Second Respondent:	Nick McKenzie
Third Respondent	Chris Masters
Fourth Respondent	David Wroe

"C"



Federal Court of Australia

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Request for Leave to Issue Subpoena (Form NCF7)

Federal Court Rules 2011 – Rule 24.13

Subpoenas and Notices to Produce Practice Note (GPN-SUBP)

This is the annexure marked "C" referred to in the affidavit of Lucy Williams affirmed before me on 23 April 2025
Signature

- Cross boxes where applicable
- Clearly print or type all answers
- Please prepare one Request for Leave to Issue Subpoena for each addressee
- Attach an extra page if you need more space for any of the details requested

1. Details of the proceeding

1.1 Title of proceeding:

Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

1.2 Proceeding number:

NSD689 of 2023

Name of witness Julia Hewitt
Capacity of witness Solicitor

Address of witness Level 31, 1
O'Connell Street, Sydney NSW 2000

2. Details of person making the Request

2.1 I am: ☐ a party to the above proceeding:

☒ the Lawyer for:

The Appellant

2.2 Contact details of person making the Request:

(a) Name & Position
[if applicable]

Monica Allen

(b) Organisation/Firm:

BlackBay Lawyers

(c) Telephone:

61 2 8005 3077

Mobile

:

(d) Email:

monica.allen@blackbaylawyers.com

(e) Address:

Level 17, 20 Martin Place, Sydney, NSW 2000

(f) Signature:
[an electronic signature can be used, provided this is done by or at the direction of the person completing this Request]

Date:

16 April 2025

3. Request for leave ("Request")

3.1 (a) Is the Request urgent?

☐ No

☒ Yes

OR (b) Is an abridged period of service sought on the addressee (short service)?

☒ No

☐ Yes

If "yes" to either 3.1 (a) or (b), briefly explain the urgency and/or basis for short service being requested:

Hearing commences on 1 May 2025.

3.2 Are the other parties to the proceeding aware of this Request? ☒ No ☐ Yes

3.3 Has the Request (or a similar request) previously been raised with or addressed by the Court? ☒ No ☐ Yes

If "yes" to 3.3, provide details:

3.4 Is it intended that the subpoena will be issued for service outside Australia [ie. Outside of the jurisdiction]? ☒ No ☐ Yes

If "yes" to 3.2, set out where, outside Australia the subpoena is to be served:

3.5 Name of person to be subpoenaed ("Addressee"):

Peter Bartlett

3.6 I request leave of the Court to issue a subpoena requiring the Addressees to:

- ☒ Attend at Court to give evidence (Form 43A, r 24.13(1)(a) of the *Federal Court Rules*); or
- ☐ Produce a document or thing (Form 43B, r 24.13(1)(b) of the *Federal Court Rules*); or
- ☐ Attend at Court to give evidence and produce a document or thing (Form 43C, r 24.13(1)(c) of the *Federal Court Rules*),

I request leave for the following reasons:

The Appellant seeks leave to issue subpoenas to give evidence to:

- a. Mr Dean Levitan; and
- b. Mr Peter Bartlett,

in connection with matters arising from the affidavit of Mr McKenzie affirmed on 14 April 2025. That affidavit contains numerous assertions regarding documents allegedly provided to him by Ms Danielle Scott, and related discussions involving the Respondents' solicitors, Messrs Levitan and Bartlett.

Mr McKenzie deposes that he received materials and information from Ms Scott and Ms Roberts, some of which were privileged to the Appellant. While Mr McKenzie claims to have believed that the material was *not privileged*, he does not identify the specific documents to which that belief applied, nor is there any evidence that the belief was informed by legal advice or verified with the Respondents' solicitors. His belief is vague, unsubstantiated, and unsupported by any reasonable steps of inquiry.

Mr McKenzie further gives evidence about meetings and discussions he had with Messrs Levitan and Bartlett, including a meeting on 14 March 2021 at the home of Ms Roberts, which both solicitors attended. He also deposes to attending a subsequent dinner in Sydney on an unspecified date with Ms Roberts, Ms Scott, and Mr Levitan. Although Mr McKenzie asserts that the dinner was not for the purpose of sharing information or material relevant to the case, and that he does not recall any such disclosures being made (see [61]), the fact of the meeting and its participants is not in dispute.

The importance of their evidence has been reinforced by recent disclosures from the Respondents' solicitors, MinterEllison. In correspondence dated 15 April 2025 (**annexed**), MinterEllison confirmed the existence of a contemporaneous file note authored by Mr Levitan, said to have been prepared for the dominant purpose of providing legal services in this litigation. That note records the 14 March 2021 meeting at the home of Ms Roberts, attended by Mr Levitan, Mr McKenzie, Ms Roberts, and Ms Scott.

The Respondents now claim privilege over that document, which is directly relevant to the key issues of waiver and the use of privileged information. Significantly, the document was not produced in response to a Notice to Produce issued on 15 February 2022, which was pressed in Court the following day. No documents were produced at that time. Its existence has only now been disclosed – more than three years later – in response to the Appellant's current application. That delay raises serious questions as to the conduct of the Respondents and reinforces the necessity of oral evidence from Messrs Levitan and Bartlett to determine what occurred, what was said, and what was understood at the meeting, particularly in relation to the handling of privileged material.

The proposed subpoenas are limited to oral testimony only. The request is urgent due to the imminent hearing date (1 May 2025), and it is not practicable to obtain the relevant information by other means (e.g. document production or interrogatories), given the importance of testing Mr McKenzie's evidence under cross-examination. The communications and interactions at issue were either oral, conducted via encrypted messaging platforms (e.g. Signal), or involved matters of knowledge and understanding (such as legal privilege), which are not amenable to production notices or non-party discovery. The evidence goes directly to key factual issues and satisfies the requirement for a legitimate forensic purpose.

In the circumstances, there is a clear and legitimate forensic purpose for seeking to compel the attendance of these witnesses to give evidence, and the application satisfies the requirements for leave under *GPV-SUBP*.

The Appellant is also prepared, if the Court considers it appropriate, to serve, in advance of the hearing, outlines of evidence identifying the anticipated subject matter of each witness's evidence.

3.7 I request that the subpoena be made returnable:

☐ Before the hearing - preferred return date:

☒ At the hearing of the matter *[if known]* on:

1 May 2025

3.8 ☒ **Attached** is the draft subpoena (*Form 43A, Form 43B or Form 43C, r 24.13 of the Federal Court Rules 2011*)

For Court Use only

Considered/Issued by:

(Judge)

(Signature)

Comments:

☐ Accept

☐ Reject

☐ Other: