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File Title:	LACHLAN KEITH MURDOCH v PRIVATE MEDIA PTY LTD ACN 102 933 362 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

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Form 59  
Rule 29.02(1)

## AFFIDAVIT OF JOHN MICHAEL CHURCHILL

No. NSD673/2022

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

### LACHLAN KEITH MURDOCH

Applicant

### PRIVATE MEDIA PTY LTD & ORS

Respondents

Affidavit of: John Michael Churchill  
Address: Level 3, 32 Martin Place, Sydney  
Occupation: Solicitor  
Date: 19 December 2022

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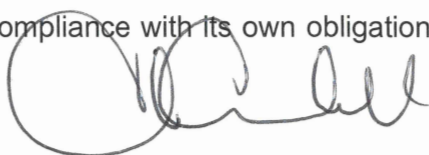
Filed on behalf of (name & role of party) Applicant  
Prepared by (name of person/lawyer) John Churchill  
Tel 02 9216 9816 Fax \_\_\_\_\_  
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Address for service Level 3, 32 Martin Place  
(include state and postcode) Sydney NSW 2000

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
5	Annexure "JC-29" being the letter from Marque Lawyers to John Churchill dated 12 December 2022.	19	27-29

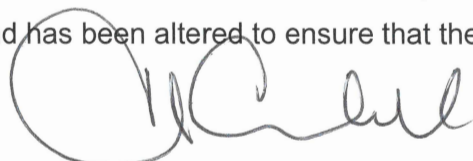
I **JOHN MICHAEL CHURCHILL** of Level 3, 32 Martin Place, Sydney, Solicitor say on oath:

1. I am the solicitor on the record for the Applicant in these proceedings.
2. Nothing that I say in this affidavit is intended to waive legal professional privilege.
3. I refer to and rely on the Affidavits filed in these proceedings sworn on 22 September, 6 October and 29 November 2022. I also refer to the Case Management Court Book prepared for the Case Management Hearings on 30 November and 1 December 2022 and the documents contained therein (**Court Book**).
4. The Respondents by way of service, provided a verified List of Documents in accordance with Order 8 made on 26 September 2022 at 6:25pm on 18 November 2022.
5. The Affidavit verifying the Respondents' List of Documents was sworn by William Jack Hayward, the Chief Executive Officer of Private Media Pty Ltd (the First Respondent) and he deposed that he was authorised to make the Affidavit on the Respondents' behalf. I refer to Mr Hayward's Affidavit, in particular paragraphs 2, 3, 4, 5 and 6. The total number of documents discovered by the Respondents in both Part 1 and Part 2 of the discovery amounted to 667, not including the attachments or annexures to some of those documents.
6. The immediate review of the documents was interrupted, due to some concerns that there may have been an inadvertent waiver of legal professional privilege and for that reason, the review of the Respondents' discovered documents did not commence until Monday 21 November 2022.
7. The comprehensive review of the documents discovered, was either interrupted or postponed, to ensure that the Applicant's compliance with its own obligations under the

timetable and orders made on 26 September 2022 was complied with and preparation took place for further case management and interlocutory hearings.

8. I had discussions with Ms Sue Chrysanthou SC about the documents that had been the subject of the discovery and their relevance and how they informed matters pleaded in the Statement of Claim.
9. After the re-posting of the Article on 15 August 2022, I received instructions to commence proceedings.
10. The conduct of the respondents in reposting the Article on 15 August 2022 has always formed a significant part of the Applicant's case, and has been pleaded in paragraph 5 of the Statement of Claim since the commencement of the proceedings. The real issues to be contested in this matter and resolved, will require the filing of an Amended Statement of Claim.
11. The evidence that is now available to the Applicant as a result of the discovery and the submissions made to the court on 30 November and 1 December 2022 by the Respondents have necessitated the amendments in Attachment B to the Interlocutory Application.
12. It is only through discovery, that the Applicant has been fully aware of the nature and extent of the conduct of the Respondents, which necessitated the re-pleading in the Amended Statement of Claim, particularly as the re-posting of the Article is now clearly in no way related to "media speculation" as asserted by Mr Fray, but rather as a part of a scheme as pleaded in paragraph 5A of the Amended Statement of Claim.
13. Prior to the provision of the Respondents' discovery, I was not aware of the active participation and planning by Mr Beecher and Mr Hayward in the decision to publish the Reposted Article. Mr Beecher is the Chairperson of Private Media. On 3 November 2022 he published an article entitled '*Eric Beecher's diary: I'm being sued by Murdoch*'. I became aware of that article when Ms Chrysanthou located it on Twitter and sent it to me on 7 December 2022. A copy of that article is annexed and marked **JC-25**.
14. Much of paragraph 5B in the Amended Statement of Claim previously appeared in paragraph 5 of the Statement of Claim and has been altered to ensure that the Reposted





Article is a separate claim as opposed to a republication of the Article going to damages only.

15. Ms Chrysanthou foreshadowed the amendments at the case management hearing on 1 December 2022. This arose from submissions made on behalf of the respondents in relation to the view they had taken to discovery and interrogatories relating to matters post dating 29 June 2022.
16. Because of the operation of ss12A and 12B of the *Defamation Act*, I thought it prudent to issue a Concerns Notice in relation to the Reposted Article before making an application to file an Amended Statement of Claim. A copy of the Concerns Notice sent on 6 December 2022 is attached and marked **JC-26**.
17. On 7 December 2022 I received what purported to be a Further Particulars Notice under the Act. A copy of that letter is attached and marked **JC-27**.
18. On 8 December 2022 I responded to the 7 December letter. A copy of that response is attached and marked **JC-28**.
19. I received a letter responding to my 8 December 2022 letter on 12 December 2022. A copy of that response is attached and marked **JC-29**.
20. On 9 December 2022 I was served with further discovery by the respondents. The first respondent verified a new list of documents which has 201 more documents than the list served on 18 November. Each of the second and third respondents have now verified lists of documents.
21. I anticipate that the parties will exchange supplementary lists of documents, and a review of the new discovery and the privileged list will impact the applicant's attitude to the interrogatories and discovery that was the subject of dispute on 1 December 2022. For example, the newly served discovery may render some of the previously sought interrogatories unnecessary.

Sworn by the deponent  
at Sydney  
in New South Wales  
on 19 December 2022  
Before me:



Signature of witness

Elleni Criticos, lawyer with a current practising certificate

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)  
)  
)  
)



Signature of deponent

## Certificate Identifying Annexure

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

No. NSD673/2022

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD & ORS**

Respondents

This and the following 4 pages is the annexure marked "JC-25" now produced and shown to John Michael Churchill at the time of swearing his affidavit on 19 December 2022 before me



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Signature of witness

Elleni Criticos, lawyer with a current practising certificate



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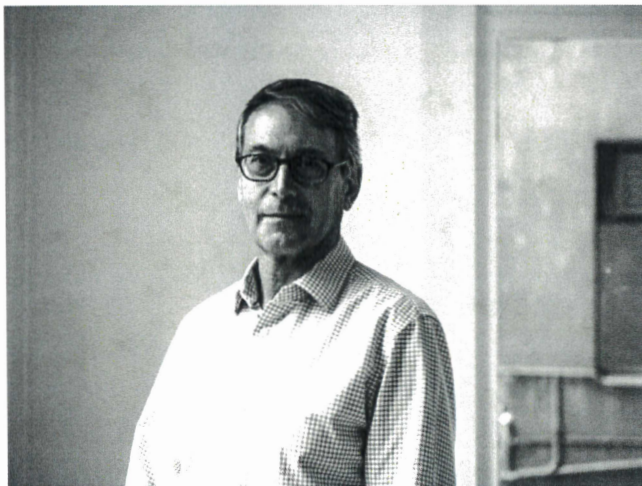


COLUMNS EDITOR'S PICKS MAGAZINE WORLD FREE SPEECH LAW MEDIA

# 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.

♦♦♦

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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 protection racket

"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



phrase that reveals  
our changing  
attitudes to work  
Sarah Ogilvie

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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*

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**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD & ORS**

Respondents

This and the following 7 pages is the annexure marked "JC-26" now produced and shown to John Michael Churchill at the time of swearing his affidavit on 19 December 2022 before me



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Signature of witness

Elleni Criticos, lawyer with a current practising certificate

**JOHN CHURCHILL**

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6 December 2022

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Dear Sirs

**Proceedings NSD 673 of 2022 – Lachlan Keith Murdoch v Private Media & Ors****Amendment to claims**

I refer to the above named proceedings.

As you are aware, I act for Mr Lachlan Keith Murdoch (**Mr Murdoch**) who commenced proceedings against Private Media Pty Limited (**Private Media**), Bernard Keane (**Mr Keane**) and Peter Fray (**Mr Fray**) on 23 August 2022.

On 18 November 2022 the respondents gave discovery in the matter which notified my client of additional causes of action connected to the current claims. Further, in Court on 1 December 2022 counsel on behalf of the respondents made submissions that alerted me to a dispute between the parties as to the correct operation of s29A of the *Defamation Act* 2005.

I intend to make an application to amend the Statement of Claim and Originating Application in these proceedings to add the additional causes of action set out below.

The amendment application will include the joinder of Eric Beecher (**Mr Beecher**), Chairperson of Private Media and William Hayward (**Mr Hayward**), CEO of Private Media.

In order to ensure compliance with the *Defamation Act* (although it may perhaps be unnecessary), this letter is a Concerns Notice for the purpose of Part 3 Div 1 of the *Defamation Act* 2005 and its counterparts in the other states and territories.



## Publication – Reposted Article

On 15 August 2022 and thereafter, Mr Keane was the author of an article published on the Crikey website ([www.crikey.com.au](http://www.crikey.com.au)) (**Crikey website**) titled “*Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator*” (**Reposted Article**).

A copy of the Reposted Article is **attached**.

The Reposted Article remains available for publication (with a slight alteration of words) at url: <https://www.crikey.com.au/2022/06/29/january-six-hearing-donald-trump-confirmed-unhinged-traitor/>.

Notably the Reposted Article is “FREE TO READ” and therefore not behind Crikey’s usual paywall for subscribers.

Indeed since 15 August 2002 it has been heavily promoted on the Crikey website and, at the time of this notice, the Reposted Article has 115 comments. Further, Crikey has tens of thousands of subscribers.

The Reposted Article is and was heavily promoted and republished on Crikey social media including Twitter and Facebook as set out in paragraph 5 of the Statement of Claim in these proceedings (**SOC**). Some of those promotions were social media posts by Mr Hayward in which he linked the Reposted Article.

The content of the Reposted Article has been republished in other media articles around the world.

On 22 and 23 August 2022 the Reposted Article was advertised by Private Media, Mr Beecher and Mr Fray in the New York Times and the Canberra Times.

Private Media is liable as publisher of the Reposted Article by reason of its publication on the Crikey website, and the promotional steps pleaded in paragraph 5 of the SOC.

Mr Keane is liable as publisher of the Reposted Article as its author, and by reason of his promotion of it as alleged in paragraphs 5 and 20 of the SOC.

Mr Fray is liable for the publication of the Reposted Article as Editor-in-chief. Further, he is liable as publisher by his promotion of the Reposted Article in Crikey newsletters, the NYT ad, the Canberra Times ad and various interviews given by him about the Reposted Article on and after 15 August 2022, including as alleged in paragraphs 5 and 20 of the SOC.

Mr Beecher was part of a scheme with Mr Fray and Mr Hayward, whereby he planned and caused the publication of the Reposted Article on and from 15 August 2022 and planned and caused and participated in the promotion of the Reposted Article, including as alleged in paragraph 5 of the SOC. This makes him a publisher of the Reposted Article. Mr Beecher’s participation in the scheme has only become apparent by reason of the first respondent’s discovery in the proceedings.

Mr Hayward was part of the same scheme and is also liable as a publisher of the Reposted Article for the same reasons as Mr Beecher. Mr Hayward’s participation in the scheme has only become apparent by reason of the first respondent’s discovery in the proceedings.



### Imputations of concern

The Reposted Article is defamatory of Mr Murdoch and carries the following defamatory imputations of and concerning him (or meanings not different in substance):

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.

### Serious harm

Mr Murdoch considers that the Reposted Article caused, or was likely to cause serious harm to Mr Murdoch's reputation within the meaning of s10A of the *Defamation Act* including for the reasons set out in the SOC and in particular the following reasons:

- 8.1 The extent of publication of the Reposted Article, republications of it including the Reposted Article and the grapevine effect.
- 8.2 The seriousness of the imputations carried by the Reposted Article.
- 8.3 That Murdoch is a well-known Australian and business person.
- 8.4 The allegations of criminality in the Reposted Article.
- 8.5 The sensational language used in the Reposted Article.

- 8.6 The comparison of Murdoch's alleged conduct in the Reposted Article to President Richard Nixon, who is widely believed to have been a criminal conspirator in the Watergate scandal.
- 8.7 The purported reliance on evidence presented in a House Select Committee to give weight and credence to the allegations in the Reposted Article.
- 8.8 The substantial promotion of the Reposted Article on the Crikey website, through its newsletter and on social media.
- 8.9 That the Reposted Article was available FREE TO READ and not limited to subscribers.
- 8.10 The many comments on the Reposted Article and the social media, which evidence the harm to Murdoch's reputation.
- 8.11 The publication of the Reposted Article on the Crikey website, which is still available for publication and continues to be published and cause harm to Murdoch's reputation.
- 8.12 The inclusion of Murdoch's given name in the Reposted Article.
- 8.13 The Google search results for Murdoch on 18 August 2022 included articles that refer to the Reposted Article and the SMH article.
- 8.14 The promotion of the Reposted Article in the SMH article, NY Times ad, Canberra Times ad, the Crikey website, newsletter and social media.
- 8.15 The promotion of the Reposted Article, including statements by Private Media, Keane and/or Fray to the effect that its content is justifiable and that Murdoch's complaints about its content are spurious, giving credence to its content.
- 8.16 The substantial promotion of the Reposted Article on 22 August 2022, which caused Murdoch to trend on Twitter by about 8pm on 22 August 2022.
- 8.17 A Google search of Murdoch's name on 22 August 2022 resulted in links to the Crikey website and the articles about Murdoch.
- 8.18 The substantial promotion of the Reposted Article on 23 August 2022, which caused Murdoch to trend on Twitter by about midday on 23 August 2022.
- 8.19 The conduct of Private Media, Keane and/or Fray in refusing to retract and apologise for the allegations about Murdoch in the Reposted Article.
- 8.20 The many comments on the Reposted Article and the social media posts, which evidence the harm to Murdoch's reputation.
- 8.21 The many adverse comments about Murdoch on social media referring to or arising from the Reposted Article.
- 8.22 The Reposted Article has been promoted and discussed in many other media publications since 15 August 2022 in Australia and elsewhere.
- 8.23 The Reposted Article is referred to and hyperlinked in Murdoch's Wikipedia entry, which is and will be widely read by persons (an average of 1210 persons daily) who have an interest in Murdoch.

- 8.24 On about 18 August 2022, Private Media posted a Tweet referring to the Reposted Article being included in Murdoch's Wikipedia entry.
- 8.25 Since about 16 August 2022, Private Media and its servants or agents, have promoted the Reposted Article via social media and newsletter, in order to seek subscribers for the Crikey website, including by offering discounts on the subscription fee as part of those promotions.
- 8.26 The publication of the First Concerns Notice on the Crikey website above which set out the Imputations about Murdoch.
- 8.27 The hateful comments by members of the public that have followed social media posts promoting the Reposted Article by Private Media, Keane, Fray and Michael Bradley.
- 8.28 The offensive stickers about Murdoch advertised for sale by The Shot, including a sticker alleging that LACHLAN MURDOCH IS AN UNINDICTED CO-CONSPIRATOR, the profits from which are being donated in support of Crikey's "*legal defence fund*".
- 8.29 The fact that over 5,800 people donated to the legal defence fund against Murdoch.
- 8.30 The comments on the Reposted Article that have increased to 115, and the comments on all of the other material on the Crikey website promoting the Reposted Article and attacking Murdoch in relation to it.
- 8.31 The likely adverse impact on his reputation amongst the general public who will likely believe by reason of the Reposted Article that he participated in illegal or criminal conduct in relation to the 2020 presidential election.
- 8.32 The adverse impact on his reputation amongst the general public who believed by reason of the Reposted Article that he participated in illegal or criminal conduct in relation to the 2020 presidential election.
- 8.33 The likely adverse impact on his reputation amongst employees of companies with which he is associated who likely will find it less attractive to work for those companies due to the allegations made against him.
- 8.34 The adverse impact on his reputation amongst employees of companies with which he is associated who have found it less attractive to work for those companies or expressed concerns due to the allegations made against him.
- 8.35 The readership of the Reposted Article, which is ongoing given it is still published and promoted, and is over 63,000 readers.
- 8.36 The ongoing promotion and dissemination of the Reposted Article to tens of thousands of readers, especially via social media.
- 8.37 The immediate (and erroneous) belief by readers of the Reposted Article that Murdoch was named in the evidence before the Senate House Committee investigating January 6.
- 8.38 The ongoing harm caused to his reputation because each of Private Media, Keane and Fray promote the Reposted Article as a piece of public interest journalism. This lending it credit and weight.
- 8.39 The ongoing failure on the part of each of Private Media, Keane and Fray to publicly state that the allegation of co-conspirator about Murdoch is not true.



- 8.40 The ongoing claim by each of Private Media, Keane and Fray that Murdoch complaining about the Reposted Article and seeking an apology was an illegitimate act of intimidation.
- 8.41 The exponential increase in Twitter comments about the applicant on 15, 22 and 23 August 2022.

### Next steps

Given the circumstances, and to the extent necessary, Mr Murdoch will seek an abridgement of time under s12B(3) of the *Defamation Act*, including because of the ongoing proceedings, and because the respondents have never indicated any genuine intention to make amends to Mr Murdoch, and are unlikely to do so now.

He otherwise reserves his rights.

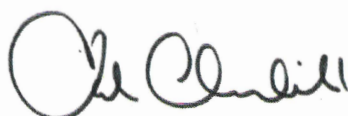
In the meantime, we require the respondents, Mr Beecher and Mr Hayward and any relevant employees, officers and agents to preserve, and not destroy or delete, documents of all kinds including all electronic material, videos, photographs, emails, media releases, text messages, phone records and social media communications concerning our client, the Reposted Article, the imputations and their subject matter. This includes ensuring that any messages on encrypted messaging systems such as Signal, if they have been set to “disappear” to screenshot.

Please confirm in your response that you accept that this letter constitutes a Concerns Notice under the *Defamation Act 2005*.

Please also urgently confirm, by **4pm today, Tuesday 6 December 2022**, that you accept that provision to Michael Bradley of Marque Lawyers of this letter satisfies the requirement in the *Defamation Act* that the Concerns Notice has been “given” to each of the named recipients. Otherwise, I will be required to communicate directly with the recipients (being clients of Mr Bradley’s in the dispute) to give the Concerns Notice to them directly. I would prefer to avoid that course if possible.

I look forward to your prompt response.

Yours sincerely



John Churchill

Enc

## 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 JUN 29, 2022



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

*This article was first published on June 29 but taken down the next day after a legal threat from Lachlan Murdoch. We have decided to republish the article now, in order to clarify recent media reports about that legal threat.*

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.

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 — and that he intended all along to lead them in the march until prevented by his own driver (whom, Hutchinson claimed to have heard was physically attacked by Trump). She also says her boss, Meadows, said that Trump believed protesters were right to call for the hanging of then vice-president Pence for refusing to overturn the result on January 6.

Trump's crimes go beyond attempting to subvert the election outcome and now extend to inciting an armed mob to march on the Capitol to physically prevent the confirmation of the outcome — a mob he intended to lead himself, and whose murderous intent he thought was appropriate.

But despite claims that Trump and his circle are shocked at Hutchinson's testimony — he is now trying to downplay her role, despite her occupying a key position in the functioning of his inner sanctum — will this confirmation of Trump's unhinged nature and enthusiasm for an armed mob dent his popular support or political support within the Republican Party?

If you're a Trump supporter at this point, it's unlikely any revelation about him will shift your allegiance. For many of his fans, the image of him trying to wrest the steering wheel of his limousine in order to drive it to lead the march is exactly the one they already have of him — a man determined to break any rule necessary to take charge. It is the very transgressive nature of Trump's actions that, far from alienating his supporters, bind them ever more closely to him — they serve as a demonstration of his commitment to deliver for them, no matter what the cost, even if he tramples on democracy and the rule of law, and costs people their lives.

And politically, large parts of the GOP remain in thrall to Trump. Despite [claims that his influence](#) has downgraded from outright control to merely being the most potent voice, and the rise of [an even more extreme "MAGA" movement](#) that doesn't take its direction from Trump, his endorsement is still eagerly sought by Republicans and his criticism feared. He remains, far and away, [the preferred choice](#) of Republican voters for the 2024 presidential election.

Comparisons with Watergate or any previous political scandal in the US are meaningless. Trump might share profound personality flaws and psychotic characteristics with Richard Nixon, but Nixon — a congressman, then twice elected vice-president and twice elected president — was an establishment political figure.

He felt entitled to break the law, but his actions were those of a paranoid terrified of what information he didn't have and that others had within the conventional system of American politics, despite his landslide reelection in 1972. And his actions in covering up Watergate and trying to contain the damage from it so alienated senior members of his party that they turned against him. His resignation — imagine Trump ever resigning — brought the immediate crisis of Watergate to a close, if not the enduring damage it did to government.

None of these applies to Trump. He thinks nothing of the destruction of American democracy itself. Far from avowing "I'm not a crook", Trump boasted he could murder people in broad daylight and his supporters would still love him. His election loss didn't bring to an end the crisis he inflicted on the American political system, it simply propelled it into a new and perhaps just as dangerous phase.

And Nixon didn't have the support of the world's [most powerful media company](#), which continues — even in the face of mountains of evidence of Trump's treachery and crimes — to peddle the lie of the stolen election and play down the insurrection Trump created.

If Trump ends up in the dock for a variety of crimes committed as president, as he should be, not all his co-conspirators will be there with him. Nixon was famously the "unindicted co-conspirator" in Watergate. The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.

ABOUT THE AUTHOR

**Bernard Keane**

POLITICS EDITOR @BERNARDKEANE

Bernard Keane is Crikey's political editor. Before that he was Crikey's Canberra press



**Jan 6 hearings: can Trump supporters be returned to the American fold?**

[Read More >](#)



**Trump declares war on electoral process as the right prefers chaos over order**

[Read More >](#)





**Certificate Identifying Annexure**

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

No. NSD673/2022

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD & ORS**

Respondents

This and the following 1 page is the annexure marked "JC-27" now produced and shown to John Michael Churchill at the time of swearing his affidavit on 19 December 2022 before me



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Signature of witness

Elleni Criticos, lawyer with a current practising certificate

Our reference MB/13921  
Phone +61 2 8216 3006  
Email michaelb@marquelawyers.com.au

7 December 2022

John Churchill  
Level 3, 32 Martin Place  
Sydney NSW 2000

By email: [jmc@johnchurchill.com.au](mailto:jmc@johnchurchill.com.au)

Dear Mr Churchill

**Lachlan Keith Murdoch v Private Media Pty Ltd & Ors – NSD673/2022**

1. We refer to your client's purported concerns notice dated 6 December 2022.
2. We do not consider that the purported concerns notice complies with sub-section 12A(1)(a)(iv) of the *Defamation Act* 2005 (NSW), in that it fails to particularise adequately the information required by that sub-section.
3. This letter is a further particulars notice pursuant to section 12A(3) of the Act.
4. Please provide particulars of the basis on which your client says that serious harm was caused to his reputation by the Reposted Article (as defined in the purported concerns notice), as distinct from harm caused to his reputation by any material published about him prior to the publication of the Reposted Article.
5. If you need more than 14 days to provide these particulars, as required by section 12A(4) of the Act, please let us know.

Yours sincerely



**Michael Bradley**  
Managing Partner

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

No. NSD673/2022

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD & ORS**

Respondents

This and the following 2 pages is the annexure marked "JC-28" now produced and shown to John Michael Churchill at the time of swearing his affidavit on 19 December 2022 before me



\_\_\_\_\_  
Signature of witness

Elleni Criticos, lawyer with a current practising certificate

**JOHN CHURCHILL**

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

TELEPHONE 02 9216 9816 MOBILE 0413 98 66 77 EMAIL [jmc@johnchurchill.com.au](mailto:jmc@johnchurchill.com.au)

8 December 2022

Mr Michael Bradley  
 Managing Partner  
 MARQUE Lawyers Pty Ltd  
 Level 4, 343 George Street  
 Sydney NSW 2000

**Email:** [michaelb@marquelawyers.com.au](mailto:michaelb@marquelawyers.com.au)

**Copy:** [phyllidab@marquelawyers.com.au](mailto:phyllidab@marquelawyers.com.au); [laureng@marquelawyers.com.au](mailto:laureng@marquelawyers.com.au)

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



**Certificate Identifying Annexure**

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

No. NSD673/2022

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD & ORS**

Respondents

This and the following 2 pages is the annexure marked "JC-29" now produced and shown to John Michael Churchill at the time of swearing his affidavit on 19 December 2022 before me



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Signature of witness

Elleni Criticos, lawyer with a current practising certificate

Our reference MB/13921  
Phone +61 2 8216 3006  
Email michaelb@marquelawyers.com.au

12 December 2022

John Churchill  
Level 3, 32 Martin Place  
Sydney NSW 2000

By email: [jmc@johnchurchill.com.au](mailto:jmc@johnchurchill.com.au)

Dear John

**Lachlan Keith Murdoch v Private Media Pty Ltd & Ors – NSD673/2022**

1. We refer to your letter of 6 December 2022 (**Purported Concerns Notice**), our letter of 7 December 2022 (**Further Particulars Notice**) and your response of 8 December 2022.
2. Our Further Particulars Notice was clear in its terms. Our clients have never, prior to receiving your Purported Concerns Notice on 6 December, had notice that your client intended to sue them in relation to the publication of 15 August 2022. Your client has expressly disavowed doing so, in his statement of claim in the current proceedings against our clients (excluding Mr Beecher and Mr Hayward).
3. Our clients are entitled, pursuant to the provisions of the *Defamation Act 2005* (NSW), to understand the claim now being made against them, including the particulars of the serious harm your client says he has suffered by reason of the publication.
4. Our Further Particulars Notice sought particulars of this serious harm, a qualitatively distinct matter from the material set out in the statement of claim in the current proceedings. Your response, unfortunately, does not advance matters at all, as it is a generalised assertion only.
5. In light of your response, our clients will proceed on the basis that the case on serious harm (including as to causation) will rise no higher than the matters set out in your letter.
6. Subject to the provision of proper particulars of serious harm as we have requested, our clients will give consideration to the Purported Concerns Notice and, as we have said, respond in due course. Our clients have rights under the *Defamation Act*, which they wish to exercise.

MAR  
QUE

Yours sincerely

A handwritten signature in black ink, appearing to read 'MB', with a long, sweeping horizontal line extending to the right.

**Michael Bradley**  
Managing Partner