

## NOTICE OF FILING

### Details of Filing

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File Title:	BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250 & ANOR
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.

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IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

No. NSD701/2024



**BRUCE LEHRMANN**

Appellant

**NETWORK TEN PTY LTD and another**

Respondents

## **SECOND RESPONDENT'S OUTLINE OF SUBMISSIONS**

### **Application for Security for Costs**

#### **A. Introduction**

1. Ms Wilkinson supports Network Ten's application pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**) and r. 36.09 of the *Federal Court Rules 2011* (Cth) (**FCR**) that Mr Lehrmann provide security for the Respondents' costs of and incidental to defending the appeal proceeding (**Application**).
2. Ms Wilkinson joins in and adopts Network Ten's outline of submissions filed 19 September 2024 in whole, including parts A-D.
3. Ms Wilkinson files this separate outline to assist the Court in understanding how she impacts this appeal, and this outline should be read in conjunction with and adopting the definitions in Network Ten's outline of submissions filed 19 September 2024.

#### **B. Background**

4. On 7 February 2023, the appellant commenced the proceeding below against both Network Ten and Ms Wilkinson. Ms Wilkinson was separately represented and relevantly filed her own defence on 1 March 2023.
5. The Court below found that Ms Wilkinson's decision to be separately represented and file her own defence was reasonable: *Lehrmann v Network Ten Pty Limited* (Cross-claims) [2024] FCA 102 (**Cross-Claims judgment**).

6. The Cross-Claim judgment found that Network Ten was liable to indemnify Ms Wilkinson for her reasonable costs incurred as to which there has been an ongoing dispute with Network Ten, see *Lehrmann v Network Ten Pty Limited (Costs)* [2024] FCA 486 at [63]-[69] and the final sentence of [38] of the affidavit of Malia Saunders affirmed 21 June 2024.

**C. Additional matters relevant to security**

7. Ms Wilkinson's notice of contention filed on 19 June 2024 addresses three broad topics: justification; statutory qualified privilege; and damages. The second and third topics only arise if the appellant is successful in his argument in relation to the justification defence. The matters of contention in relation to justification are costs that should properly be subject to an order for security, as are the contentions regarding the third topic, damages, which are also directly responsive to the grounds of appeal.
8. An issue has been raised as to whether security should be awarded for the contentions raised by Ms Wilkinson in relation to her s30 defence. However, that does not need to be resolved given that Network Ten does not appear to be seeking any amount for security that includes the matters raised by Ms Wilkinson in her notice of contention.
9. As against Ms Wilkinson, the appeal as to justification has even lower prospects of success.
10. In relation to the amended notice of appeal ground 1:
  - (a) Ms Wilkinson pleaded recklessness as to lack of consent in the alternative to the particularised case of knowledge of lack of consent in paragraph [12.11] of her defence;
  - (b) Ms Wilkinson's counsel made express written (see especially at [112]-[115], [475]-[479]) and oral submissions (see especially at T2000-2001, 2326-2331), consistent with the findings of the Court, in the alternative if Ms Higgins' version of events were not accepted; and
  - (c) The appellant successfully objected to Ms Wilkinson's senior counsel cross-examining him on justification and most other matters: *Lehrmann v Network Ten Pty Limited (Cross-Examination)* [2023] FCA 1477. This means that to the extent his appeal relies upon a failure to cross-examine him it must fail in respect of Ms Wilkinson.

11. In relation to ground 2, Ms Wilkinson agreed in her defence that an imputation of rape was carried, which was not substantially different to the appellant's imputations. The parties agreed before trial that the factual issue in dispute on justification was "Whether the Applicant raped Brittany Higgins in Parliament House in 2019?" The appellant having agreed to frame the factual issues in dispute on justification in this way, this ground of appeal has no merit.
12. As set-out above, Ms Wilkinson will likely be liable for significant costs irrespective of the indemnity from Network Ten in respect the proceedings below and this appeal. Unlike Ms Wilkinson, it does not appear from the evidence that the appellant has any outstanding or incurred costs liability in respect of his legal costs of the proceedings below because of the basis upon which he lawyers agreed to be instructed.

19 September 2024

Sue Chrysanthou

Barry Dean

Counsel for the Second Respondent