

SUPREME COURT OF QUEENSLAND

CITATION: *McVicker v Australian Broadcasting Corporation [No 2]*
[2026] QCA 204

PARTIES: **ROBERT McVICKER**
(appellant)
v
AUSTRALIAN BROADCASTING CORPORATION
(respondent)

FILE NO/S: Appeal No 5895 of 2025
DC No 1542 of 2022

DIVISION: Court of Appeal

PROCEEDING: Further Orders – Costs

ORIGINATING COURT: District Court at Brisbane – [2025] QDC 182 (Jarro DCJ)

DELIVERED ON: 16 October 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Brown JA, Bradley JA, Doyle JA

ORDERS: **1. That the appellant pay the respondent’s costs:**
(a) for the period between 18 December 2025 and 3 June 2026, as assessed on the standard basis; and
(b) for the period on and after 4 June 2026, as assessed on an indemnity basis.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the appellant was unsuccessful on appeal – where the respondent seeks its costs on an indemnity basis on and from the date on which a *Calderbank* offer made by it to the appellant expired – whether the appellant’s conduct in not accepting the *Calderbank* offer was unreasonable – whether indemnity costs should be awarded

Calderbank v Calderbank [1975] 3 WLR 586; cited
Roberts v Prendergast [\[2013\] QCA 89](#), cited

COUNSEL: No appearance for the appellant
L E Barnett SC, with J J Forbes, for the respondent

SOLICITORS: Mills Oakley for the appellant
ABC Legal for the respondent

- [1] **THE COURT:** This Court provided judgment on 22 September 2026 granting Mr McVicker (the appellant) leave to appeal the decision of the learned primary judge but dismissing his appeal. The only controversy that remains between the parties is as to costs.
- [2] The appellant accepts that costs of the appeal should follow the event and that he be ordered to pay costs of the appeal on the standard basis. That is uncontroversial up until 4 June 2026. The respondent however contends that as a result of its making the appellant a Calderbank offer by a letter dated 27 May 2026, the appellant should pay its costs after 4 June 2026 on an indemnity basis as the appellant acted unreasonably in not accepting its offer which expired on 3 June 2026. We accept that submission.
- [3] By the letter of 27 May 2026, the terms of the respondent's offer included:
- “a. within 7 days of both parties executing the Deed, [the appellant] will file with the Queensland Court of Appeal a Form 68 Memorandum of Agreement to Dismissal of Appeal, in the form set out in Schedule 1 to this letter, in accordance with rule 762 of the *Uniform Civil Procedure Rules 1999* (Qld), providing for the Appeal Proceeding to be dismissed with no order as to costs;
 - b. within 14 days of [the appellant] filing the Form 68 Memorandum of Agreement to Dismissal of Appeal, the [respondent] will remove the Amended Publication from its website (www.abc.net.au);
 - c. the [respondent] will undertake not to reinstate either the Publication or Amended Publication on its website (www.abc.net.au);
 - d. each party will bear its own costs of the Appeal Proceeding;
 - e. the [respondent] and [the appellant] will comply with all costs orders made in the District Court Proceeding, including any order made by Judge Jarro after the Deed is executed;
 - f. the terms of settlement are confidential;”
- [4] The relevant principles to determining whether indemnity costs should be awarded where a party does not accept a Calderbank offer are well established and require the Court to consider a number of circumstances.¹
- [5] The appellant contends that he did not act unreasonably as his case was not an inarguable one and was run efficiently, that the only benefit of the offer was as to the costs of the appeal and that the offer only permitted 7 days for acceptance, which was not a reasonable period. The first two matters may be accepted. However while the appellant's appeal was not inarguable, he should have by the time the offer was made appreciated that his prospects of success were poor, given the comprehensive judgment of the primary judge below and in light of the Offer to Make Amends which had been made by the respondent. Further, the period of 7 days was a reasonable time given that submissions had been exchanged by that time. There was no alleged error of legal principle. The appellant was in effect seeking to argue on appeal that the primary judge had erred in his application of principle, in not construing how the

¹ *Roberts v Prendergast* [2013] QCA 89 at [12].

subject article would be read by an ordinary reasonable reader in the way that the appellant had submitted to the court below, in determining that the article did not give rise to defamatory imputations and that the Offer to Make Amends raised a defence under the *Defamation Act 2005* (Qld). The appellant was well aware that the respondent was strongly asserting that the judgment below was correct and that no error had been made.

- [6] Further, the Calderbank offer did not simply offer a benefit as to costs, with each party to bear their own costs, but also offered to remove the subject article completely and provide an undertaking that it not be reinstated, which in effect was part of the relief sought by the appellant by his prayer for injunctive relief. The offer was in clear terms. Seven days (of which five were business days) was a reasonable time for the appellant to assess the offer made.
- [7] In the circumstances, the appellant's conduct, in not accepting the offer, was imprudent and unreasonable. An order should be made in the terms sought by the respondent.

Orders

- [8] The orders of the Court are:
1. That the appellant pay the respondent's costs:
 - a. for the period between 18 December 2025 and 3 June 2026, as assessed on the standard basis; and
 - b. for the period on and after 4 June 2026, as assessed on an indemnity basis.