

# SUPREME COURT OF QUEENSLAND

CITATION: *Chen v State of Queensland (Queensland Health) [No 2]*  
[2024] QCA 63

PARTIES: **VICTOR HSI TAI CHEN**  
(appellant)  
v  
**STATE OF QUEENSLAND (QUEENSLAND HEALTH)**  
(respondent)

FILE NO/S: Appeal No 13440 of 2023  
Appeal No C/2021/26

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Industrial Court of Queensland – [2022] ICQ 15  
(O’Connor VP)

DELIVERED ON: 23 April 2024

DELIVERED AT: Brisbane

HEARING DATE: 11 March 2024

JUDGES: Morrison and Dalton JJA and Burns J

ORDER: **The costs of this appeal be paid by the appellant to the respondent, assessed on an indemnity basis.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – INDEMNITY COSTS – where the appeal was dismissed – where the appellant raised matters irrelevant to the appeal – where the appellant rejected two *Calderbank* offers made by the respondent – where the appellant was a litigant in person – whether the respondent should be awarded costs on an indemnity basis

*Chen v State of Queensland (Queensland Health)* [\[2024\] QCA 42](#), cited

COUNSEL: The appellant appeared on his own behalf  
H L Blattman KC, with P M Zielinski, for the respondent

SOLICITORS: The appellant appeared on his own behalf  
MinterEllison for the respondent

[1] **MORRISON JA:** I agree with Dalton JA.

[2] **DALTON JA:** On 26 March 2024 this Court delivered a judgment dismissing an appeal brought by Dr Chen from a judgment of the Industrial Court of Queensland.<sup>1</sup>

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<sup>1</sup> *Chen v State of Queensland (Queensland Health)* [2024] QCA 42.

The Industrial Court made an order that Dr Chen pay the costs of the appeal which it heard. To do so it was necessary for the Industrial Court to find that the appeal was vexatious or that it would have been apparent to Dr Chen that it had no reasonable prospect of success. The Industrial Court found that Dr Chen's appeal met these criteria and awarded costs against him.

- [3] Apparently unable to heed the lesson which this provided, Dr Chen reagitated issues, which appear to him to demonstrate broad injustice, on the appeal before this Court. He was unable to focus on either the criteria which are relevant to costs in the Industrial Court, or appellate error. He filed a written outline of argument which was three times the length allowed by the practice direction. Each page is closely typed and replete with italics, underlining and the use of bold font. Allegations are made against the respondent and its lawyers, and indeed, against Dr Chen's former barrister, which may have been relevant to an earlier application to restrain the respondent's lawyers from acting, but could not possibly have been relevant to the matters before this Court. Wider allegations were made of corruption and criminal offences which were irrelevant and, in circumstances where there is nothing beyond assertion shown, scandalous.
  
- [4] I cannot think that Dr Chen is unaware that these matters could have nothing to do with his costs appeal. Once again he made an appeal which was legally doomed to fail. While he is a litigant in person, his behaviour goes well beyond merely asserting wrong, or even hopeless arguments. He used this appeal to ventilate his grievances against the respondent about matters entirely irrelevant to the costs order made below. Of itself, I think his behaviour warrants an award of indemnity costs in this Court.
  
- [5] Independently, a basis for an indemnity costs award is shown in that he unreasonably rejected two *Calderbank* offers made by the respondent to discontinue this appeal on the basis that both parties would bear their own costs. The first such offer was made about a month after Dr Chen filed his appeal, and the second offer was made close to the time for hearing the appeal. The first offer explained in a detailed way why the appeal was bound to fail, and the second offer noted that by that stage the respondent had incurred legal fees exceeding \$30,000.
  
- [6] As noted in the decision which this Court delivered on 26 March 2024, "Generally speaking, a court will be slow to make an indemnity costs order against a litigant in person simply because the litigant advances arguments which a lawyer would know were doomed to failure. In such cases, a court usually looks to see whether there was something vexatious or contumelious about the behaviour of the litigant in person before making an order for indemnity costs." – [26]. Here, there is vexation in Dr Chen's behaviour beyond what could reasonably be expected from a litigant in person. As was said in the Industrial Court, Dr Chen is using these proceedings as a platform to attack the respondent in relation to broad and general grievances which have nothing to do with the legal points he raises.
  
- [7] I would order that the costs of this appeal be paid by the appellant to the respondent, assessed on an indemnity basis.
  
- [8] **BURNS J:** I also agree.