

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## IMAM ALI ISLAMIC CENTRE V IMAM ALI ISLAMIC CENTRE INC (NO 2) [2020] VSC 136

Supreme Court of Victoria, McMillan J, 24 March 2020

Whether two non-parties previously parties to litigation involving an incorporated association were liable for costs.

**Key words: Costs, Victoria, Non-Party Costs, Whether Non-Parties ‘Real Parties’ To Litigation, Interest Of Non-Parties In Litigation, Informal Interest Insufficient To Enliven The Cost Discretion**

1. This was the costs decision following from the substantive decision in the case: see *Imam Ali Islamic Centre v Imam Ali Islamic Centre Inc* [2018] VSC 413 which can be viewed in this report series at: <https://eprints.qut.edu.au/132138/1/22.Imam%20Ali%20Islamic%20Centre%20v%20Imam%20Ali%20Islamic%20Centre%20Inc.pdf>.
2. There were two parts to the substantive proceeding. In the first proceeding (the trust proceeding), the plaintiff, Imam Ali Islamic Centre (Reg No 983405) (IAIC Canada), claimed that IAIC Australia held property on trust for its benefit. This was denied by IAIC Australia. After consideration of the method of funding of the Centre’s property, the Court declared the existence of a constructive trust to the benefit of IAIC Canada.
3. The second proceeding concerned a membership dispute between factions within IAIC Australia. Three individual plaintiffs, Mr Ali Dirani, Mr Said El-Khishin and Mr Souhail Fneich, sought declarations that they were the current members of IAIC Australia and that the second and third defendants in that proceeding, Mr Ali Al Bakiry (known as Mr Sami) and Mr Ahmad Yatim were not. It was also asserted that Mr Dirani was the Mutawalli (president) of IAIC Australia, and that Mr Sami and Mr Yatim had engaged in oppressive conduct. IAIC Australia, Mr Sami and Mr Yatim brought a counterclaim seeking declarations that they, and a number of their family members, were members of IAIC Australia, and that Mr Dirani, Mr El-Khishin and Mr Fneich were not. They also claimed that Mr Sami was the Mutawalli. Ultimately, the Court determined that the only current member of IAIC Australia was Mr Dirani, and orders were made removing Mr Sami and Mr Yatim as parties to the membership proceeding. Additionally, neither Mr Dirani nor Mr Sami were declared Mutawalli.
4. Costs are at the discretion of the court, unless as otherwise provided by an Act or by the rules of the court. The central principle in determining costs is to make an order that is fair and just between the parties. Ordinarily, costs follow the event such that a successful party is awarded costs in their favour. Success may be in the action as a whole or on particular issues. In this case, the court determined that a costs order should be made against IAIC

Australia in the trust proceeding (i.e. IAIC Australia should pay the costs of IAIC Canada). Costs in the membership proceeding were awarded at 50% to the plaintiffs and those costs were off-set by the costs of the remaining defendant, IAIC Australia, of and incidental to the discontinued oppression claims. However, it was held that orders should not be made against Mr Sami and Mr Yatim, although they were unsuccessful in the membership proceeding, as they had become non-parties. The court characterised them as not 'real parties' in the proceedings. Although each had an informal interest in the property at the centre of the dispute, this was an insufficient interest to give rise to an order for costs.

## IMPLICATIONS



This case illustrates the discretionary nature of cost awards.

## VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/vic/VSC/2020/136.html>

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