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*ACPNS Legal Case Notes Series: 2020-161 Faamate & Ors v Congregational Christian Church In Samoa-Australia (Ipswich Congregation) & Ors.*  
[Working Paper]

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<http://www.austlii.edu.au/au/cases/qld/QCA/2020/263.html>

# 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.



## FAAMATE & ORS V CONGREGATIONAL CHRISTIAN CHURCH IN SAMOA-AUSTRALIA (IPSWICH CONGREGATION) & ORS [2020] QCA 263

Supreme Court of Appeal Queensland, McMurdo JA and Lyons SJA and Boddice J, 27 November, 2020

Who should bear the costs of an appeal concerning an internal dispute in a religious organisation involving many members personally, with misconduct related to the litigation

**Key words: Costs, Queensland, Appeal, Misconduct Related to the Litigation**

1. [\*Faamate & Ors v Congregational Christian Church in Samoa-Australia \(Ipswich Congregation\) & Ors\*](#) [2020] QCA 87 concerned whether an incorporated association, which was also a functioning church, should be wound up on the just and equitable ground. It was an appeal from [\*Faamate & Ors v Congregational Christian Church in Samoa-Australia \(Ipswich Congregation\) ABN 90 103 392 182 & Ors\*](#) [2019] QSC 194. The appeal was dismissed. The Association was still functioning, in that it continued to provide useful services to its community, and the history of non-compliance with the constitution and the Act did not necessarily point to the need for a winding up. The winding up of a solvent incorporated body is a remedy of last resort.
2. The successful parties argued that the general principle of a successful party being usually given its costs should apply. The unsuccessful party argued that this is tempered by the discretion of the Court, which should be exercised for a range of reasons in these circumstances.
3. The Court found that the case involved unusual circumstances, but finally focussed on two considerations (at [5]):

...that the resolution of this issue in their favour has an importance beyond this appeal. Its particular importance is in relation to the future conduct of this Association's affairs, because it was apparent from the respondents' persistence in defending this improper use of the Association's funds that conduct of that kind would be likely to reoccur, at least whilst Mr Reupena occupied his present position, if this Court did not express its disapproval. Secondly, the appellants' argument identifies not only a misconduct in the management of the Association's finances, but a misconduct which is related to the litigation.
4. The Court found that the costs order should be that the Association should have the entirety of its costs, to be paid as to one half by the appellants and as to the other half by Mr Reupena (the minister who led the group to inappropriately amend the association's constitution and make appointments to the management committee). The Court ordered that he should bear his own costs as should the other respondents to this appeal.

## IMPLICATIONS



Litigation costs involving Appeal Court proceedings are usually substantial. Where in internal disputes of an association, members are personally involved, this can be a substantial burden.

Costs are not awarded to punish an unsuccessful party. The primary purpose of an award of costs is to indemnify the successful party. If the litigation had not been brought, or defended, by the unsuccessful party, the successful party would not have incurred the expense which it did. As between the parties, fairness dictates that the unsuccessful party typically bears the liability for the costs of the unsuccessful litigation.

The Court can depart from the general principle that the victor is entitled to an award of costs in its favour. In this case, where parties “don’t come with clean hands” to the litigation, the Court may exercise its discretion to alter the application of the general principle.

## VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/qld/QCA/2020/263.html>

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