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ACPNS Legal Case Notes Series: 2020-168 Campara v Australian Islamic Society of Bosnia Herzegovina Inc.

[Working Paper]

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<http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/1739.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.



CAMPARA V AUSTRALIAN ISLAMIC SOCIETY OF BOSNIA HERZEGOVINA INC [2020] NSWSC 1739

Supreme Court of New South Wales, Gleeson J, 4 December 2020

A declaration and costs decision in relation to the invalid removal of Incorporated Association committee members.

Key words: Incorporated Associations, New South Wales, Meetings, Membership, Dispute, Resolutions, Declaration, Costs

1. This matter involved the 2019 committee members of the Australian Islamic Society of Bosnia Herzegovina (the Association), an association incorporated under the *Associations Incorporation Act 2009* (NSW) (the Act).
2. Soon after their election, committee members divided over an issue involving B, who was also employed by the Association as the Imam of the Association's Mosque in Smithfield and was its public officer. The issue involved the transparency of the Association's affairs and, in particular, whether funds collected by the Association and donated to an organisation known as the Mesihat, of which B was the President, in order to be forwarded to an organisation in Bosnia known as the Rijaset, had been applied by the Mesihat for that purpose.
3. A, a member of the committee, was particularly vocal on the issue and B refused to provide information about the use of the Association's funds. A and B were removed from office by a resolution of the committee. However, the committee had no power to remove a committee member.
4. After disputing the removal, A was again removed at a committee meeting for which he did not receive notice. A notice received later stated that he was to be expelled as a member of the Association. Other members were also removed from the committee.
5. While awaiting hearing of the matter the parties were able to largely agree on a settlement of the matter, but approached the Court for a declaration of certain issues and costs orders.
6. The Court has a wide discretionary power to make declarations under s 75 of the *Supreme Court Act 1970* (NSW) provided three requirements are satisfied, being:
 - (1) the question must be a real and not a hypothetical or theoretical one;
 - (2) the plaintiff must have a real interest in raising it; and
 - (3) there must be a proper contradictor.

7. The Court found that they were satisfied about these requirements. It declared that committee members had been invalidly removed, that their replacements' appointments were also invalid, and set out a process for an AGM to be convened.
8. As to costs, the Court decided to make no order. Parties bore their own costs. Both parties made suitable offers to resolve the matter, and it was settled before the issues came before the Court. Further, B, once purportedly removed from the committee, had no involvement in any subsequent resolutions of the committee which were invalid, or in making decisions on behalf of the Association to defend the proceedings, since he was no longer a committee member.

IMPLICATIONS



When seeking to expel committee members or members of an incorporated association, it is critical that the relevant Act and the constitution are carefully considered, and due process followed. Mediation by an independent party can often be helpful in charting a way forward when there is conflict.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/1739.html>

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