Executive Council
of Australian Jewry Inc.

STATEMENT
31 December 2018

Rabbis found to have committed criminal contempt

Three senior rabbis who acted as judges of the Sydney Beth Din and a fourth rabbi who acted as its Registrar, and whose conduct Justice Sackar of the Supreme Court of NSW found constituted a criminal contempt of court, have had their appeal dismissed by a majority of the Court of Appeal of NSW. The majority comprised the Chief Justice of NSW and the President of the Court of Appeal. A third judge dissented from the ruling.

The case was *Ulman v Live Group Pty Ltd* [2018] NSWCA 338. Justice Sackar's judgments were delivered in Live Group Pty Ltd & Anor v Rabbi Ulman and Ors [2018] NSWSC 393 (29 March 2018) and Live Group Pty Ltd and Anor v Rabbi Ulman and Ors [2017] NSWSC 1759 (14 December 2017).

The matter emanated from a commercial dispute between two companies whose principals were observant members of the Jewish faith. The two companies had entered into a commercial agreement which included a clause that in a case of dispute, the matter shall be brought to the "Chief Dayan" of Sydney who will hear the matter and his decision will be final.

Following a dispute, the principal of one of the companies was personally summonsed together with other members of his family to the Sydney Beth Din and required to submit to its jurisdiction. When that person refused, the Beth Din threatened religious sanctions (not being counted in a *minyan*, not being called to the Torah during services, not being offered any honour in the synagogue) unless the person submitted to the jurisdiction of the Beth Din.

The Chief Justice and the President largely agreed with the decision at first instance of Justice Sackar that such threats impeded a person's unconstrained access to the civil courts and thus the conduct had a real tendency to interfere with the administration of justice generally. The conduct therefore amounted to a criminal contempt of court, although the contempt was found not to be "contumacious", and the Court of Appeal reduced what it described as the *"manifestly excessive"* amount of the fines and cost orders imposed on the rabbis by Justice Sackar. Justice McColl delivered a minority dissenting judgement in which Her Honour considered that the conduct was in essence the threat of religious sanctions by a religious body for a religious transgression and therefore did not amount to illegitimate pressure in the circumstances.

There remains the prospect that the Rabbis will seek special leave to take the matter to the High Court and therefore any comments made are necessarily provisional, pending the outcome of any such application.

At the outset it must be emphasised that it is a matter of grave concern that religious leaders of the Jewish community have been found to have engaged in conduct that amounts to a criminal contempt. That is simply intolerable.

The Rabbis have contended that they have merely sought to preserve and uphold traditional Jewish law and that in a country that prides itself on religious freedom they ought to be entitled to do so. However, while the Beth Din (and for that matter, any religious leader) is generally to be commended for upholding the liberty of religious belief and practice, it is entirely inappropriate and indeed injudicious for the Beth Din to seek to impose Jewish law by the threat of serious religious-social sanctions on someone who insists upon having their rights in a commercial dispute determined by the Australian civil court system rather than by the Beth Din. It is one thing to accept that Halacha requires the resolution of commercial disputes between consenting observant Jews to be before Rabbis acting as judges at a Beth Din. It is a very different thing for such Rabbis to exercise a discretionary power to threaten a person who, for whatever reason, chooses not to observe any such tradition. The Supreme Court of New South Wales has now confirmed that such conduct is unlawful, and indeed criminal.

Unless and until the High Court rules otherwise, the Rabbis should, with unmitigated contrition, now accept the limits of their jurisdiction and that their conduct was inappropriate and indeed unlawful.

This is not, as the Rabbis contend, an attack on religious freedom. As Justice Sackar observed and as the Court of Appeal agreed:

> *Whilst there is no doubt religious freedoms are vital and important in a democracy, they must be balanced against every citizen's right to approach a court or to insist upon a secular court resolving any alleged commercial dispute between citizens……This finding is not a restriction on their religious freedom, it is a restriction in our democracy of any person holding and acting upon the view a civil court is the appropriate place for the determination of commercial disputes between Jews, or for that matter gentiles.*

Subject to any decision of the High Court, it is entirely unacceptable for a Beth Din in Australia to take a contrary view and seek to impose its jurisdiction by the threat of religious sanctions on members of the community who do not wish to resolve their commercial disputes with other Jews before a Beth Din. It is of course open to any person or relevant entity to agree voluntarily to have their dispute resolved by a nominated tribunal, including a Beth Din. But that must be done in accordance with the mechanisms provided by Australian law, and not be imposed by a Beth Din under the threat of sanctions.

Of equal concern, are the observations of Justice Sackar (undisturbed by the Court of Appeal) that raise grave concerns about the governance and accountability of the Sydney Beth Din to the community. The Court noted that as at January 2015, the ASIC

records disclose that the Sydney Beth Din is simply a partnership between its two senior rabbis. Justice Sackar said the Sydney Beth Din "*is an organisation that wishes, indeed demands, the respect and reverence from its parishioners and adherents, and yet appears to be a law unto itself*".

It is plain that the Sydney Beth Din lacks adequate governance or accountability structures that might have avoided the present intolerable circumstances. A proper governance review and reform of the Sydney Beth Din is a critical priority for the community. That must happen if the good name and standing of the Sydney Beth Din is to be restored within the Jewish and the wider community.

Indeed, all religious bodies in the Jewish community in Australia should review the adequacy of their mechanisms of governance and accountability in light of these judgments.

The ECAJ has followed the proceedings with deep concern, and will comment further once the time for applying for special leave to appeal to the High Court has expired or alternatively once such an application and, if applicable, such an appeal, has been determined.

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