

# worldsportslawreport

**FEATURED ARTICLE**  
**09/08**



cecile park publishing

Head Office UK Cecile Park Publishing Limited, 17 The Timber Yard, Drysdale Street, London N1 6ND  
tel +44 (0)20 7012 1380 fax +44 (0)20 7729 6093 info@e-comlaw.com  
[www.e-comlaw.com](http://www.e-comlaw.com)

# International transfers to new sports: Sonny Bill Williams case

Australian Canterbury Bulldogs rugby league player, Sonny Bill Williams, attracted media headlines when securing a transfer to a French rugby union club whilst four years remained on his contract, resulting in the matter coming before an Australian court. Claude Harran, a Lawyer with Kelly Hazell Lawyers, examines the court's consideration of whether contractual terms preventing participation in other forms of professional sport constitute a restraint of trade, the difficulty in serving court documents due to jurisdictional issues and the court's failure to address Williams' challenge to rugby league's salary cap.

What usually attracts media attention with the signing of a new superstar is the amount of their remuneration. In the case of Sonny Bill Williams, his signing with French Rugby Club Toulonnais SA (Toulon), attracted attention for all the wrong reasons (but still included interest in his salary). At the time of signing with Toulon, Sonny Bill was contracted to the Australian Rugby League (ARL) team, the Canterbury Bulldogs, with four years still remaining on his five year contract. In 2007, Sonny Bill signed a contract with the Bulldogs that would see him remain at the Sydney based club until 2012. Sonny Bill had in fact originally signed a contract with the Bulldogs in 2002 as a sixteen year old, and the signing of his contract in 2007 could be construed as Sonny Bill paying the Bulldogs back for the faith the Bulldogs had shown in him as a sixteen year old. The situation raised much speculation in relation to the individual freedoms that Sonny Bill was otherwise entitled to and the legal entitlements of the Bulldogs. The Bulldogs firmly believed that the loss of Sonny Bill was serious enough to take the fight to the Courts.

Before leaving for France, Sonny Bill was said to have received legal advice that would allow him to leave the Bulldogs and the National Rugby League (NRL) competition as administered by the ARL, by challenging the competition salary cap. There are previous obiter comments of the Australian Federal Court that a salary cap would only be considered legal if it could be shown that it is in the interests of the players and the public generally<sup>1</sup>. The benefit to the players and the public is usually couched in terms that suggest that a salary cap promotes a more equal competition. Furthermore, it is suggested that the implementation

of a salary cap ensures greater financial and on field viability of all clubs within the competition.

Disappointingly, at no stage did Sonny Bill or his legal team present at any of the Court hearings, meaning that this allegation remains moot and left for another day. In Sonny Bill's absence, the Bulldogs and ARL brought an injunction application against Sonny Bill in order to prevent him from playing with Toulon until such time as his contractual obligations with the Bulldogs had been resolved. The Bulldogs and ARL also brought an action against Toulon for inducing Sonny Bill to breach his contract with the Bulldogs and Mr Khoder Nasser, purported agent for Sonny Bill, for aiding and abetting Sonny Bill to breach clause 3.1(t) of the NRL standard player contract. In their injunction application, the Bulldogs and ARL sought an order:

‘(a) Restraining Sonny Bill Williams from participating in any football match or matches in any code other than the matches referred to in subclause 3.1(s) of the contract, without the prior written consent of the Bulldogs and ARL...’

The first issue to be considered is whether the relationship between the Bulldogs and Sonny Bill can be construed as one of employer-employee. There is little doubt that the contract between the Bulldogs and Sonny Bill is one of employer and employee. In the injunction application by the Bulldogs<sup>2</sup>, Austin J identified that as a result of the Bulldogs signing Sonny Bill up under the standardised NRL Playing Contract, that this was clearly an employer-employee relationship.

In addition to the Bulldogs bringing a claim, the ARL were permitted to be separately represented due to the ARL having a substantial commercial interest in

the contract. The ARL's commercial interests related to its ability to use player images to promote the game of rugby league. The fact that the ARL has the ability to be separately represented and the implementation of a standardised contract limits the individual rights of Sonny Bill to effectively negotiate a contract in his favour. The standardised playing contract does not necessarily act as a set of minimum rights, but rather represents the terms and conditions of the agreement. As a consequence, Sonny Bill arguably only has the ability to negotiate the amount of his remuneration and the duration of the contract and has his rights to any commercial value of his image assigned to the ARL<sup>3</sup>. Nevertheless, Sonny Bill allegedly signed a contract with the Bulldogs for \$400,000.00 per season for five years. The relevant clause sought to be relied upon in the injunction application by the Bulldogs was clause 3.1 of the standard player contract which stipulates:

**3.1 General Obligations**

The Player agrees to:

(t) not, without the prior written consent of the Club, which the player acknowledges will only be given with the consent of the NRL, participate in any football match of any code other than matches referred to in subclause 3.1(s)<sup>3</sup>.

To be successful in an interlocutory injunction application the applicant is required to demonstrate three things<sup>4</sup>:

**There is a serious question to be tried**

On the evidence presented, Austin J was of the opinion that there was at least a reasonable apprehension that Sonny Bill:

- did not intend to play for the Bulldogs even though he had agreed to do so until 2012; and

**The case highlights how the law can be used in a strategic manner to bring another party to the negotiating table**

- intended to breach clause 3.1(t) of the NRL standard player contract by playing for Toulon.

In finding that there was at least a serious question to be tried as to the Bulldogs claim for relief, the judge relied heavily on the arguments that clause 3.1(t) was not an unreasonable restraint of trade. The judge furthermore, also made reference to the circumstances relating to negative covenants and seems to have equated restraint of trade with negative covenants. This is a crucial consideration, as a restraint of trade only operates to prevent a party from being engaged by another where the contract has terminated. A negative covenant applies during the life of the contract and therefore ought to be treated differently to a restraint of trade. Later in his judgment, Austin J acknowledges that the fact that the contract was continuing was an important consideration in determining where the balance of convenience lay. Thus, in one strain of reasoning, the emphasis is based upon a principle invoked when the contract has terminated and then later reliance is placed upon the existence of a continuing contract. Although reference to a reasonable restraint of trade may have suggested a termination of a contract, the reasoning applied by Austin J would in all likelihood apply equally, even within the context of a negative covenant and a continuing contract.

**Irreparable harm**

That the applicant would suffer irreparable harm for which damages would not be adequate compensation. The line of argument raised in this context is the issue surrounding the loss to a rugby league club of its star player. Santow J, in *St George District Rugby League Football Club v Tallis, Santow J*, 28 June 1996,

unreported, BC9602844, had the following to say in relation to this argument: "The loss to a football club of a potential star attraction is inherently likely to result in pecuniary loss in terms of patronage, membership subscriptions and innumerable other incidental matters".

Austin J accepted this assertion and felt that it applied equally in this case. The extent of Austin J's reasoning was not limited to the purely commercial concepts and he took into account evidence that the Bulldogs had embarked upon a recruitment process that involved recruiting players to complement the skills of Sonny Bill. The Bulldog's claimed that Sonny Bill was their best player and that there was no adequate substitute for him. The Bulldogs had therefore built their future success around Sonny Bill. These indirect commercial arguments were then re-enforced by the assertions that Sonny Bill was an important component of the Bulldogs marketing activities. Supporting evidence provided by the Bulldogs by way of affidavit provided grounds upon which Austin J was prepared to accept that Sonny Bill was crucial to the business operations of the Bulldogs and that as a result of his departure, the Bulldogs would suffer loss of ticketing, merchandising and sponsorship revenue.

**Convenience**

The balance of convenience weighs in favour of the granting of relief. Determination of the balance of convenience in this case involves balancing the risk of loss and damage to the Bulldogs if the injunction is not granted against the hardship and other loss to Sonny Bill if the injunction is granted. In finding that the balance weighed in favour of the Bulldogs, Austin J considered the following

three matters to be of value in his assessment. First, the Bulldogs had made an undertaking as to damages. Second, the Bulldogs, upon good legal advice, provided a further undertaking to the Court under which the Bulldogs would continue to make payments to Sonny Bill under the contract until such time as the court was able to decide the case. This was a sound strategic offer as it meant that if the injunction was granted, Sonny Bill would not suffer any financial hardship. Finally, to complement the previous point, the Bulldogs indicated to the court that if Sonny Bill were to make himself available for selection, that the Bulldogs would select him. Again, the argument of leaving Sonny Bill in the position of being idle was combated by the assertion that he would be selected.

In considering the hardship that could be experienced by Sonny Bill, Austin J commented that the only hardship that Sonny Bill would endure was to forgo his contract with Toulon and cancel any contracts he had entered into.

Austin J was also influenced by the fact that there is authority for the proposition that the court will place little or no weight on hardship suffered by a defendant where the defendant is responsible for bringing about their hardships<sup>5</sup>. In this case, the hardship is suggested to have been created by Sonny Bill as a result of his decision to break his contract with the Bulldogs.

### The effect of the injunction

Much was reported in the media surrounding the fact that service of any court documents on Sonny Bill was difficult. As part of his consideration to award the injunction, Austin J first had to determine that Sonny Bill had been successfully served. Prior to this injunction application, the

Bulldogs and ARL had made an application to the Court for an order for substituted service. The Court ordered that substituted service could take place by serving the documents at five addresses listed for Toulon, leaving copies at the address of Sonny Bill in Sydney, leaving copies at the registered address of Sonny Bill's company and sending text messages to Sonny Bill and his agent's mobile telephone numbers. Austin J was satisfied that the substituted service order was substantially complied with and that Sonny Bill had been served with the Court documents. This was not the end of the consideration to be given to the fact that Sonny Bill was located overseas and whether therefore the Court had the jurisdiction to award the injunction. The Bulldogs and ARL raised and supported three arguments in this regards which were accepted by the Court. Firstly, the Court had the jurisdiction to order an injunction in respect of a person's actions conducted abroad<sup>6</sup>. Secondly, a Court should not contemplate that its orders will be disobeyed because the person is located outside Australia and therefore not order the injunction. Finally, the Court was requested to have regard to the fact that Sonny Bill had assets in Australia.

The recognition of assets in Australia has far reaching consequences in this circumstance. It was accepted upon the evidence presented to the Court that Sonny Bill owned property in Sydney and that therefore it was open to the Bulldogs and ARL, were Sonny Bill to play for Toulon in contravention of the injunction, to apply for sequestration under the relevant court rules. A further consequence of disobeying the injunction was that Sonny Bill would be in contempt of Court. This, however,

was of limited use to the Bulldogs because it is very unlikely that Sonny Bill would have been arrested for contempt of Court while playing anywhere outside of Australia. The contempt of Court disincentive only had real bite if Sonny Bill ever re-entered Australia, which would mean that he could be arrested.

In response to the Court's decision, the Bulldogs and Sonny Bill came to a settlement purportedly worth \$750,000. The disappointing aspect of this case is that the issue surrounding the legal validity of the salary cap remains for open to be argued on another day. This disappointment aside, the case highlights how the law can be used in a strategic manner to bring another party to the negotiating table, but also how a threat to challenge the foundations of a competition (namely the salary cap) may or may not limit the extent of the damages sought to be recovered by the club. Was the suggestion that Sonny Bill would challenge the salary cap a ploy to limit his liability? We will never know.

---

**Claude Harran** Lawyer  
 Kelly Hazell Lawyers, Melbourne  
[charran@kellyhazell.com.au](mailto:charran@kellyhazell.com.au)

1. Adamson v NSWRL 27 FCR 535.
2. Bulldogs Rugby League Club Ltd & Anor v Williams & Anor [2008] NSWSC 822.
3. Opie, H and Smith, G., 'The Withering of individualism: Professional Team Sports and Employment Law' (1992) 15, University of New South Wales Law Journal 337 - 338.
4. Australian Broadcasting Corporation v O'Neill (2006) 229 ALR 457.
5. John Fairfax Publications Pty Ltd v Brit [2006]NSWSC 995.
6. Humane Society International Inc v Kyodo Senpaku Kaisha Limited (2005) 232 ALR 478.



# cecile park publishing

Head Office UK Cecile Park Publishing Limited, 17 The Timber Yard, Drysdale Street, London N1 6ND  
tel +44 (0)20 7012 1380 fax +44 (0)20 7729 6093 info@e-comlaw.com  
[www.e-comlaw.com](http://www.e-comlaw.com)

Registered number 2676976 Registered address 141 Wardour Street, London W1F 0UT VAT registration 577806103

## e-commerce law & policy

Many leading companies, including Amazon, BT, eBay, FSA, Orange, Vodafone, Standard Life, and Microsoft have subscribed to ECLP to aid them in solving the business and legal issues they face online.

ECLP, was nominated in 2000 and again in 2004 for the British & Irish Association of Law Librarian's Legal Publication of the Year.

**A twelve month subscription is £420 (overseas £440) for twelve issues and includes single user access to our online database.**

## e-commerce law reports

You can now find in one place all the key cases, with analysis and comment, that affect online, mobile and interactive business. ECLR tracks cases and regulatory adjudications from around the world.

Leading organisations, including Clifford Chance, Herbert Smith, Baker & McKenzie, Hammonds, Coudert Brothers, Orange and Royal Mail are subscribers.

**A twelve month subscription is £420 (overseas £440) for six issues and includes single user access to our online database.**

## data protection law & policy

You can now find in one place the most practical analysis, and advice, on how to address the many problems - and some opportunities - thrown up by data protection and freedom of information legislation.

DPLP's monthly reports update an online archive, which is an invaluable research tool for all those who are involved in data protection. Data acquisition, SMS marketing, subject access, Freedom of Information, data retention, use of CCTV, data sharing and data transfer abroad are all subjects that have featured recently. Leading organisations, including the Office of the Information Commissioner, Allen & Overy, Hammonds, Lovells, BT, Orange, West Berkshire Council, McCann Fitzgerald, Devon County Council and Experian are subscribers.

**A twelve month subscription is £390 (public sector £285, overseas £410) for twelve issues and includes single user access to our online database.**

## world online gambling law report

You can now find in one place analysis of the key legal, financial and regulatory issues facing all those involved in online gambling and practical advice on how to address them. The monthly reports update an online archive, which is an invaluable research tool for all those involved in online gambling.

Poker, payment systems, white labelling, jurisdiction, betting exchanges, regulation, testing, interactive TV and mobile gaming are all subjects that have featured in WOGLR recently.

Leading organisations, including Ladbrokes, William Hill, Coral, Sportingbet, BskyB, DCMS, PMU, Orange and Clifford Chance are subscribers.

**A twelve month subscription is £520 (overseas £540) for twelve issues and includes single user access to our online database.**

## world sports law report

WSLR tracks the latest developments from insolvency rules in football, to EU Competition policy on the sale of media rights, to doping and probity. The monthly reports update an online archive, which is an invaluable research tool for all involved in sport.

Database rights, sponsorship, guerilla marketing, the Court of Arbitration in Sport, sports agents, image rights, jurisdiction, domain names, ticketing and privacy are subjects that have featured in WSLR recently.

Leading organisations, including the England & Wales Cricket Board, the British Horse Board, Hammonds, Fladgate Fielder, Clarke Willmott and Skadden Arps Meagre & Flom are subscribers.

**A twelve month subscription is £520 (overseas £540) for twelve issues and includes single user access to our online database.**

- Please enrol me as a subscriber to **e-commerce law & policy** at £420 (overseas £440)
- Please enrol me as a subscriber to **e-commerce law reports** at £320 (overseas £440)
- Please enrol me as a subscriber to **data protection law & policy** at £390 (public sector £285, overseas £410)
- Please enrol me as a subscriber to **world online gambling law report** at £520 (overseas £540)
- Please enrol me as a subscriber to **world sports law report** at £520 (overseas £540)

**All subscriptions last for one year. You will be contacted at the end of that period to renew your subscription.**

Name

Job Title

Department  Company

Address

Address

City  State

Country  Postcode

Telephone  Fax

Email

**1** Please **invoice me**  Purchase order number

Signature  Date

**2** I enclose a **cheque** for the amount of

made payable to 'Cecile Park Publishing Limited'

**3** Please debit my **credit card**  VISA  MASTERCARD

Card No.  Expiry Date

Signature  Date

VAT No. (if ordering from an EC country)

Periodically we may allow companies, whose products or services might be of interest, to send you information. Please tick here if you would like to hear from other companies about products or services that may add value to your subscription.

priority order form

FAX +44 (0)20 7729 6093

CALL +44 (0)20 7012 1380

EMAIL [dan.towse@e-comlaw.com](mailto:dan.towse@e-comlaw.com)

ONLINE [www.e-comlaw.com](http://www.e-comlaw.com)

POST Cecile Park Publishing 17 The Timber Yard, Drysdale Street, London N1 6ND