



Form 59
Rule 29.02(1)

AFFIDAVIT

No. of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

JACK DE BELIN

Appellant

**AUSTRALIAN RUGBY LEAGUE COMMISSION LIMITED (ACN 003 107 293) AND
ANOTHER**

Respondents

Affidavit of: **Anthony Graham Charles Gooch**

Occupation: **Solicitor**

Date: **7 June 2019**

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3454-1065-5757v1

Filed on behalf of (name & role of party) Jack de Belin, Appellant
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[Version 2 form approved 09/05/2013]

I, Anthony Graham Charles Gooch of 133 Merrivale Lane, Turramurra, NSW, 2074, Solicitor, say on oath:

1. I am a Principal in the firm of Macpherson Kelley Pty Ltd and have the conduct and carriage of this matter on behalf of the Appellant, Mr Jack de Belin.
2. The Appellant brought proceedings against the Australian Rugby League Commission Limited and the National Rugby League Limited (NRL) (collectively the **Respondents**) seeking to challenge a new rule 22A implemented into the NRL Rules on 11 March 2019, being matter number NSD 309 of 2019 (the **Proceedings Below**) (the **Decision**). The Appellant was unsuccessful in the Proceedings Below. Annexed hereto and marked "A" is a copy of the orders made and reasons for Judgment of Her Honour Justice Perry in the Proceedings Below on 17 May 2019. Annexed hereto and marked "B" is a copy of the Notice of Appeal filed in these proceedings and dated 7 June 2019.
3. The hearing of the Proceedings Below was expedited.
4. The background to this appeal includes as follows, with reference to Decision:
 - (a) the Appellant was charged with a criminal offence on 13 December 2018. He has pleaded not guilty and continues to maintain his innocence (see Decision para 3);
 - (b) when the Appellant was charged, the practice of the NRL was to permit players charged with criminal offences to continue to play in the NRL Competition pending the determination of the player's guilt or innocence by a Court (see Decision para 4);
 - (c) the new rule was implemented on 11 March 2019 with the effect of automatically preventing the Appellant from plying his trade as an elite level rugby league player in the NRL until his criminal offence had been determined by the Court or withdrawn (see Decision para 5); and
 - (d) it is common ground that the new rule is a restraint of trade which has been imposed on the Appellant (see Decision para 214);
5. The Appellant was unsuccessful in the Proceedings Below. Notwithstanding that the Appellant was unsuccessful, Her Honour found that the new rule 22A has had and will continue to have consequences for the Appellant including that:

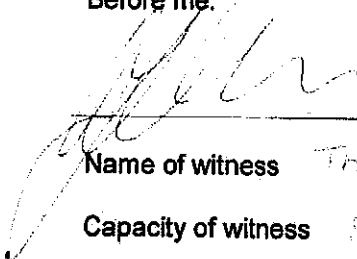
- (a) the restraint strikes at the essential interest of the Appellant being able to play in the NRL competition and being able to be selected for representative and other related competitions (see Decision at para 228(1));
 - (b) it is common ground that the Appellant could miss one or even two NRL seasons before his criminal charge is determined (see Decision at para 229);
 - (c) it is common ground that an NRL player's career at this level is relatively short (see Decision at para 229);
 - (d) it is important for elite rugby league players to continue to play in order to maintain their skills and their profile and reputation and their career trajectory, and if a player does not play for a year or two this may adversely affect his playing career (see Decision at para 229); and
 - (e) it is common ground that the Appellant is not permitted by his Playing Contract to play football for any other code outside the NRL competition (see Decision at para 230).
6. Subject to the hearing and determination of the appeal, the restraint upon his trade and the impacts upon the Appellant of the kind described in paragraph 5 above will continue until the charge against him has been determined by the court or withdrawn.
7. As at the date of this affidavit, the Appellant has been subject to the restraint on his trade for almost 3 months. The impact upon him of the restraint will be compounded with the effluxion of time while he is continued to be prevented from plying his trade between now and the hearing of his appeal.
8. If this matter is not expedited, and Mr De Belin is successful on appeal and the restraint of trade is declared to be invalid, then a large part of the impact of the restraint upon him and his ability to perform his trade will have already been inflicted. For example, if the matter is not expedited then by the time of any judgment in his favour, he will likely have been (improperly) restrained from playing for the entire 2019 NRL season, at the age of 29.
9. As at the date of swearing of this Affidavit, the NRL competition is currently in round 13 of 25 home and away rounds between all competing teams. The St George Illawarra Rugby League Football Club Pty Limited to whom the Appellant is contracted (and for whom he played prior to the imposition of the restraint) is one of the Clubs licensed by the NRL to participate in the NRL competition. The final round of the home and away rounds is scheduled to be completed on Sunday, 8 September 2019 with the final series

between the top 8 teams at the end of the home and away series then commencing on the following Friday, 13 September 2019.

- 10. In all the circumstances referred to above, the Appellant respectfully requests the Court make the orders sought in the Interlocutory Application.

Sworn by the deponent
 at Sydney
 in New South Wales
 on 7 June 2019
 Before me:

)
)
) Signature of Anthony Graham Charles
) Gooch
)



 Name of witness *THOMAS ADAM SMITH*
 Capacity of witness *SOLICITOR*

Certification under section 34(1) of the Oaths Act 1900 (NSW)

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable] #I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable] #I have confirmed the deponent's identity using the following identification document:

Signature of witness

 Identification document relied on (may be original or certified copy)

