DE BELIN v AUSTRALIAN RUGBY LEAGUE COMMISSION LIMITED

NSD 309 of 2019

APPLICANT'S OUTLINE OF SUBMISSIONS

(WITH EVIDENCE REFERENCES ADDED 18 APRIL 2019)

A. Introduction

1. The Applicant, Mr Jack de Belin (**de Belin**) is 28 years old[1]. He is a professional rugby league player. His contract with the St George Illawarra Rugby League Football Club (**Club**)[2] to play in the National Rugby League Competition (**NRL Competition**) is for three years, expiring at the end of the 2020 football season[3].

2. The First Respondent, Australian Rugby League Commission Limited (**Commission**), is the administrator of rugby league football in Australia[4]; it engages and directs the Second Respondent, National Rugby League Limited (**NRL**), to operate and manage the NRL competition[5].

3. For present purposes the relevant contractual documents are as follows:-

   (a) agreement made in 2011 between the NRL and the Club, regulating its participation in the NRL Competition (**Club Licence Agreement**) [Ex A5 - R.J. Tassell Affidavit 19.3.19 Ex RT-2 p11];

   (b) agreement made in early 2017 between the Club and de Belin (**Playing Contract**) [Ex A5 p47];

[1] Gillis aff 19.3.19 (**Gillis**) [9(a)]
[2] Ex A5 p46 (Tassell aff 8.3.19 (**Tassell 1**) Annexure RT-3)
[3] Ex A5 p49
[4] Greenberg aff 2.4.19 (**Greenberg**) [6]
[5] Greenberg [8]

(c) the NRL Rules, consolidated to 5 March 2018 (**NRL Rules**) [Ex A5 p136] – these are the Rules which the Respondents have recently purported to amend;

(d) the NRL Code of Conduct, incorporated into the NRL Rules (**Code of Conduct**) [Ex A5 p175];

(e) the Collective Bargaining Agreement (**CBA**) between the NRL and the Rugby League Players' Association (**RLPA**) [Ex A5 p107]; and

(f) on the Respondents' case, de Belin's registration documentation, described in the Respondents' Defence as a "Registration Contract" [Ex A5 p95].

4. de Belin denies a criminal offence with which he was charged in December 2018 (**alleged offence**)[6]. At the first opportunity, on 12 February 2019, he pleaded not guilty to the alleged offence and has consistently maintained his innocence[7]. Until 11 March, the Commission and NRL have consistently permitted players charged with criminal offences to continue to play until their guilt or innocence has been determined in court[8].

5. Notwithstanding de Belin's plea of not guilty, yet in the absence of any evidence of misconduct on his part[9], the Commission and NRL made repeated public statements in late February to the effect that de Belin had engaged in *conduct* prejudicial or detrimental to the sport, warranting his suspension from the NRL Competition[10].

6. On Wednesday 27 February, de Belin was summoned to a meeting with the NRL's Chief Executive Officer, at which he was told that he should stand down voluntarily[11].

[6] Tassell 1 [4]; A5 p266
[7] Tassell 1 [4]
[8] Greenberg [68] Ex A5 p273, 274
[9] T/s 233/7-24
[10] Ex A5 pp 209, 210, 211, 214, 216-7; Ex A6 pp 11, 13, 23-24 (Tassell aff 19.3.19 (**Tassell 2**) Annexure RT-17); Ex A3 (Notice to Admit) paras 3, 4, 6-10; T/s 236/33-237/26.
[11] T/s 239/40-240/27.

7. On Thursday 28 February, the Commission and NRL jointly announced that de Belin had been banned from playing[12]. However, when pressed the following day to advise how and pursuant to what power de Belin had been stood down, the Respondents' solicitors advised de Belin's solicitors that he had not in fact been stood down[13]. Moreover, when the matter came before Rares J on 7 March, the Respondents announced in Court that de Belin had in fact not been suspended[14].

8. Until the purported introduction of a new rule 22A (**New Rule**) into the NRL Rules on 11 March last, the Code of Conduct prohibited (in clauses 12 and 14) *conduct* detrimental or prejudicial to the interests of the NRL Competition[15]. In the case of de Belin, the Commission and NRL had no evidence of any such conduct[16].

9. Accordingly, it appears to be accepted by the Respondents that, until the purported introduction of the New Rule on 11 March, they had no power to stand down or ban de Belin from the NRL Competition by reason of his having been charged[17]. The New Rule (copy attached) seeks to change that position. Pursuant to it, the NRL has purportedly banned de Belin from playing until his criminal proceedings are finalised[18] (this may not be until next year[19] or beyond). The ban has been imposed unilaterally, automatically, without any hearing or right of appeal and without any adverse finding as to conduct; and it has directly and peremptorily prevented the Club and de Belin from performing their obligations owed to each other under the Playing Contract.

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[12] Ex A6 p7-8;Greenberg [116], EX R5 (TG4)
[13] Ex A5 p271.
[14] Ex A2 at 3/17, 5/47-6/2
[15] Ex A5 pp185-6
[16] T/s 233/7-24
[17] T/s 231/41-232/12
[18] Ex R2 p661
[19] As to date of charge (13 December 2018) Tassell 1 [4]; as to date of first appearance in the Local Court (112 February 2019) Greenberg [61]; as to Local Court time frames - Ex A 13; as to subsequent District Court time frames - Ex R1 Tab 3 p15.

10. Many of the statements made by senior officers of the Commission and NRL were misleading, the New Rule is unconscionable, it is in restraint of trade and it constitutes an unlawful interference with de Belin's contractual rights and obligations.

B. The Proceedings

11. By his Amended Originating Application and Amended Statement of Claim, de Belin seeks relief for contravention of s18 of the Australian Consumer Law (**ACL**) for misleading and deceptive conduct and of s21 of the ACL for unconscionable conduct. In addition, he seeks relief against the Commission and NRL for restraint of trade and tortious interference with his contractual relations with the Club.

C. Misleading conduct

12. The misleading conduct claim arises from events which pre-dated the introduction of the New Rule on 11 March 2019.

13. Section 18 of the ACL provides that a corporation must not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive. Trade or commerce includes any business or professional activity whether or not carried on for profit: ACL s2.

14. The Commission and NRL are corporations. Both engage in trade and commerce – the NRL's conduct of the NRL Competition involves large-scale, high budget advertising, sponsorship, production and revenue; and the business of the Commission is the control and administration of Rugby League in Australia, including the NRL and NRL Competition[20].

[20] Greenberg [6-8]

15. Conduct is misleading or deceptive if it has a tendency to lead into error: *Australian Competition and Consumer Commission v TPG Internet Pty Limited* (2013) 250 CLR 640 at [39]. The question whether conduct is misleading or deceptive or is likely to mislead or deceive is to be determined objectively, in light of the relevant surrounding facts and circumstances: see *Campbell v Backoffice Investments Pty Limited* (2009) 238 CLR 304 at [105]. Conduct is likely to mislead or deceive if there is a real (and not merely remote) chance or possibility that the conduct could induce error, although it is not necessary for an applicant to prove that error has in fact occurred: *Global Sportsman Pty Limited v Mirror Newspapers Limited* (1984) 2 FCR 82 at 87; *Australian Competition and Consumer Commission v Oticon Australia Pty Limited* [2018] FCA 1826 at [29].

16. Where representations are made by public statement, as here, it is the "dominant message" that may be crucial: *TPG Internet* at [45]; *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Limited* (2014) 317 ALR 73 at [42]; and it need not necessarily be the applicant who has been, or is likely to have been, misled: *Janssen-Cilag Pty Limited v Pfizer Pty Limited* (1992) 37 FCR 526 at 529-530; *Marks v GIO Australia Limited* (1998) 196 CLR 494 at [101]-[102].

17. Conduct directed to the public at large, again as here, must be judged by its effect on ordinary or reasonable members of the public (or relevant class of the public): *Campomar Sociedad Limitada v Nike International* (2000) 202 CLR 45 at [105]; *ACCC v Coles* at [43].

18. From the time de Belin was charged in December 2018[21] until 27 February last, the Respondents made public statements which (read separately or together) represented their position that de Belin had been involved in violence and in behaviour which had

[21] Tassell 1 [4]

brought Rugby League into disrepute, that he had committed an offence, and that he had behaved badly and poorly, such that his conduct would not be "swept under the carpet" but be sanctioned (inter alia) by suspension[22].

19. The representations should be considered in the context of the NRL Rules and Code of Conduct. Clauses 12 and 14 of the Code prohibit *conduct* by a player which is detrimental to or brings into disrepute or is prejudicial to or impairs public confidence in the NRL Competition or the game of Rugby League [Ex A5 pp185-6]. Thus, comments by senior executives of the Commission and NRL to the effect that de Belin's conduct and behaviour were bringing the game into disrepute and could not be tolerated could only be properly made if the Respondents had reached a conclusion that de Belin *had* engaged in some such misconduct or misbehaviour.

20. Yet, on 27 February the Chairman of the Commission conceded that neither he, the Commission nor the NRL was "in possession of any evidence that enabled (them) to form a view on this matter" [Ex A5 p266].

21. Critically, on 28 February 2019, the Chairman of the Commission and Chief Executive Officer of the NRLC held a joint press conference to announce the introduction of a new "policy", whereby a player charged with a serious indictable offence would "automatically be stood down", so that he could not play Rugby League until the completion of the criminal court process[23].

22. In that context, and on the same day, the Respondents made various statements that they would not tolerate violence against women, that de Belin had been banned from playing, that the change in policy meant that de Belin had to behave, that de Belin had become

[22] T/s 236/33-237/26; Ex A 5 pp 210, 211, 214, 216-7; Ex A6 pp 11, 13, 23-24; Ex A3 paras 3, 4, 6-10.
[23] Ex R5; T/s 269/4-14

the first player stood down under the NRL's new hardline stance on player behaviour and that de Belin would not play during the 2019 season[24].

23. These statements were misleading and deceptive. de Belin had not been banned or stood down; and he had not been found to have undertaken any wrongful conduct. On 7 March 2019, when these proceedings were listed for directions before Rares J, Senior Counsel for the Respondents informed the Court that, in fact, de Belin had *not* been stood down, but was free to play [Ex A2, Transcript 7.3.19 at 3/17, 5/47-6/2].

24. Perhaps the most stark instance of the Respondents' misleading conduct arises from the appearance of the Commission Chairman on National television on the evening of 6 March. In an interview with the ABC's "7.30 Report" programme[25], the Chairman confirmed that three players (undoubtedly intended to include de Belin) had been stood down from participation in the NRL Competition (this followed the joint press conference given by the Chairman and the NRL's CEO, during which they had announced that de Belin could not play until the completion of his criminal proceedings). As it emerged, this statement was entirely false.

25. The representations made before 28 February (called "Conduct Representations" in the Amended Statement of Claim (**ASoC**)) and those made on or after 28 February (called "Suspension Representations" in the ASoC) respectively were made in contravention of s18 of the ACL.

26. The representations were widely reported[26] and, given the position of the Respondents as administrators of the game of Rugby League, it is inevitable that members of the public, sponsors, players, club administrators and officers (including those of the Club)

[24] Ex A5 pp220, 231-2, 235, 273.
[25] Ex A 3 para 19.
[26] Ex 5 pp 209, 210, 211, 214, 216-7; Ex A6 pp 11, 13, 23-24; Ex A3 paras 3, 4, 6-10.

were, at the least, likely to have been erroneously misled into believing that de Belin had been stood down.

D. Unconscionable conduct

27. A corporation must not, in trade or commerce, in connection with the supply or acquisition of services, engage in conduct that is in all the circumstances unconscionable: ACL s21(1).

28. Unconscionability is a statutory standard; the statutory language in s21(1) and the non-exhaustive list of factors in s22(1) indicate that the boundaries and content of the equitable doctrine of unconscionability are not limiting features: *Australian Competition and Consumer Commission v Medibank Private Limited* [2018] FCAFC 235 at [233], [239].

29. Conduct that is otherwise unconscionable may not be explained away as a "business judgment"; to do so would be to place too narrow a focus for the purposes of ss 21 and 22: *Medibank* at [267].

30. Consideration of all the relevant circumstances is required for s21; and the matters outlined in s22(1) should not be considered separately; nor are they exhaustive.

31. The conduct of the Commission and NRL since de Belin was charged has been egregiously unfair and unreasonable – and unconscionable – towards him.

32. The unconscionability of the Respondents' dealings with de Belin are at once manifested by a number of paramount considerations:-

    32.1 In publicly representing (prior to 28 February) de Belin to be a player whose misconduct and misbehaviour was "killing the game" and an "embarrassment to the NRL" [Ex A5 p209], bringing the game into "disrepute" [Ex A5 p210], and warranting a "clear decisive position" and "consequences" after 28

February [Ex A5 pp214, 217], the Respondents ignored their own Rules and Code of Conduct. Such statements were not – and could not have been – properly made, knowing that (a) any punishable breach of the NRL's own Code of Conduct required a finding of misconduct and (b) the Respondents had no evidence of such misconduct [Ex A5 p266].

32.2 The ensuing public statements (on and after 28 February[27]) that de Belin had been stood down/banned so that he could not play were arrogant, knowingly inaccurate and, indeed, contrary to the NRL's own Rules and Code of Conduct. By their solicitors' letter of 1 March and Counsel's statement in Court on 7 March, the Respondents conceded that they had made no decision to stand down de Belin; of course, they had no power to do so[28].

32.3 The introduction of the New Rule and its application to de Belin (on 11 March) were unfair and unreasonable in the extreme, because they –

32.3.1 immediately but indefinitely prevented de Belin from pursuing his chosen trade as a footballer (as set out at paragraphs 43-55 below);

32.3.2 immediately but indefinitely prevented the performance by de Belin and his Club of their respective obligations under his existing Playing Contract (as set out at paragraphs 56-62 below);

32.3.3 were contrary to a lengthy history and policy (and acceptance and acknowledgement by the Respondents, clubs and players) that a player charged with though not convicted of a criminal offence, but against whom no finding of misconduct or breach of the Code had been made, was permitted to continue to participate in the NRL Competition;

[27] Ex A5 p220, 231-2, 235, 280; Ex A3 para 19.
[28] T/s 231/41-232/12.

32.3.4 were introduced without the consent of or proper consultation with the RLPA, contrary to the terms and intent of the CBA;

32.3.5 provided no opportunity to de Belin to be heard with respect to, or to appeal against, his ban.

33. While the criteria specified in s22(1) are to be considered and evaluated as a whole, those which are pertinent to these proceedings overwhelmingly indicate unconscionability on the part of the Respondents. At the outset, the relative bargaining positions of the parties [**s22(1)&(2)(a)**] were and are completely disparate. de Belin was in no position to bargain with the Respondents at all – his ban and the interference with the performance of his Playing Contract and his trade have been imposed upon him by the Respondents unilaterally and without negotiation or even an opportunity to present a contrary case. While it is the exercise of the unequal bargaining power (and not its mere existence) which requires consideration: *Paciocco v Australia and New Zealand Bank Limited* (2016) 258 CLR 52 at [294], that exercise has in this case been unilateral, high-handed, disregarding of the player's interests, contrary to the time-honoured manner by which such matters had previously been treated and was imposed without recourse to any right of challenge to the decision. Significantly, s22(1)(a) is underpinned by concepts of "fairness and equality", as well as the "asymmetry of power": *Medibank* at [244][29]. Here, the Commission and NRL exercised their one-sided bargaining power unfairly and unequally.

34. The New Rule and consequent ban were and are not reasonably necessary for the protection of the legitimate interests of the Respondents [**s22(1)&(2)(b)**]. The reasons

[29] At [244], Beach J identifies paragraphs (b), (d), (e), (f), (i) and (k) of s22 as also underpinned by the concepts of fairness and equality.

for this are set out at paragraph 54 below, where the resultant unlawful restraint of trade is addressed.

35. Undue pressure was exerted upon and unfair tactics used against de Belin in relation to the Respondents' provision of the NRL Competition within which he might participate and the provision of his playing services for that purpose [**s22(1)&(2)(d)**]. On 27 February 2019, de Belin was told by the CEO of the NRL, Mr Greenberg, that he should voluntarily stand down[30]. Had de Belin stood down voluntarily, he would necessarily be in breach of his obligations to the Club under their Playing Contract. Needless to say, de Belin did not give in to the NRL's pressure. On the very next day, the Commission and NRL announced the introduction of a policy and proposed rule applicable to de Belin, in consequence of which he had been (or would be) stood down. The barrage of anti-de Belin statements in the media, the discriminatory nature of the New Rule when introduced, the failure of the Commission and NRL even to attempt to negotiate with de Belin the cessation of his right to work and the indeterminate nature of the ban placed upon him, all involved the use of unfair tactics by the Respondents.

36. The Respondents' conduct was not at all consistent with its conduct in similar transactions [**s22(1)&(2)(f)**]. Until 11 March 2019, players charged with criminal offences (but whose conduct had not been established) had consistently been permitted to continue playing unless and until convicted [Greenberg Affidavit 2.4.19 para 68; Ex A5 p273, 274]. There is no doubt or dispute about this. The new policy announced on 28 February and the New Rule introduced on 11 March were announced in a blaze of publicity as a "change in policy over player behaviour" [Ex A5 p216, 235].

37. Under **s22(1)&(2)(h)**, the Court should consider the requirements of any relevant industry code. Self-evidently, the relevant industry code until 11 March 2019 was

[30] T/s 239/40-240/27.

constituted by the NRL Rules and Code of Conduct. As earlier outlined (at para 19 above), provision was made in the Code by which the NRL was able to address questionable conduct by players. Where an allegation of misconduct was made against a player, the Rules laid down a regime whereby a finding of misconduct on the balance of probability was necessary [Rule 8, Ex A5 p156] following the issue of a "Breach Notice" and an opportunity for a response [Rule 10(1), Ex A pp159-60]; and any adverse determination could be the subject of an appeal [Rule 10(4), Ex A 5 p160]. The procedure applied where the proposed (or imposed) penalty was the suspension of a player [Rule 9(8) at A5 p157-8]. These were the "requirements of (the) applicable industry code" until 11 March when the NRL introduced the New Rule and made it immediately and automatically applicable to de Belin and his Playing Contract.

38. In terms of **s22(1)&(2)(j),** the Playing Contract in clause 3.1(g) incorporates the NRL Rules [Ex RT-3 p49]. Thus, if the New Rule were valid, it would constitute a change to the terms and conditions of the Playing Contract in circumstances in which the Commission and NRL were entirely *unwilling* to negotiate those new terms. At no time was de Belin invited to make any submission to the Commission/NRL as to why any change to the long-held policy and to his Playing Conduct with the Club ought not be made to apply retrospectively (he had already been charged) to him and his contract. Moreover, when de Belin entered into the Playing Contract (which was in the NRL's standard form) and agreed to the terms and conditions of registration, it may reasonably be inferred that it was the (objectively determined) intention of the parties that the player could and would not be stood down from playing unless the NRL were satisfied of his misconduct and he received procedural fairness. All of that will have changed (if the New Rule be valid) in the absence of negotiation with the parties most affected.

39. Notwithstanding that the player agrees in his contract to abide by the NRL Rules which permit their amendment [rule 2, Ex A pp140-1], that is but one consideration in the Court's determination as to whether conduct has been unconscionable; **s21(1)&(2)(k)** does not provide any over-riding warrant for conduct that is otherwise unconscionable; it does not stand alone, but is merely one of the numerous considerations to which the court may have regard when determining statutory unconscionability. As Beach J reiterated in *Medibank* at [244], paragraph (k) is underpinned by concepts of fairness and equality. For the reasons explained – and because the New Rule unilaterally removes de Belin's right to procedural fairness – the conduct of the Commission and NRL towards de Belin could hardly be regarded as demonstrative of fairness and equality.

40. Whilst the Court might consider that the matters addressed above suffice to establish a lack of good faith [**s22(1)&(2)(l)**], it may not be necessary to go so far. Nor is it necessary to identify any "high level of moral obloquy" on the part of the Respondents in order to sustain a complaint of unconscionable conduct under the ACL: *Medibank* at [242]-[243].

41. In summary:

    (a) the Respondents conduct a professional rugby league monopoly in Australia such that they have been able to implement the New Rule without any negotiation with the player;

    (b) the amendment to the Playing Contract is not reasonably necessary to protect the Respondents' commercial interests and are contrary to public policy;

    (c) the Respondents have conducted a continuing public campaign involving misleading and deceptive conduct and sought to put pressure upon de Belin to have him stood down, despite having no existing legal basis to do so;

(d) the New Rule would unilaterally and automatically ban de Belin without a hearing or appeal and would do so retrospectively, in that it would operate upon a contract which had long since been finalised and executed;

(e) the New Rule would be implemented contrary to the terms and intent of the CBA;

(f) in seeking to pressure de Belin and in engaging in knowingly false statements, the Respondents had not acted in good faith.

42. The implementation of the New Rule is the culmination of a course of conduct engaged in by the Respondents which was undoubtedly calculated to achieve the standing-down of de Belin. Furthermore, the Respondents are preventing de Belin's capacity to undertake his trade and are interfering with his Playing Contract. That course of conduct, culminating in the New Rule, was and is unconscionable.

E. Restraint of trade

43. The Applicant is employed by the Club to play Rugby League football, for a term of three years [Clauses 1.1, 2.1 Playing Contract, Ex A5 pp48-9]. Obviously enough, the obligations of the player to fulfill his tasks and of the Club to provide him the opportunity to do so are fundamental. The New Rule directly prevents de Belin from performing his trade and the Club from having the benefit of it. It does this by specifying:-

(a) in sub-clause (3) that a player charged with a serious criminal offence (de Belin) is automatically subject to a "No-Fault Stand Down Condition" (defined to mean, relevantly, a condition which gives rise to the standing down of the player "*on the no-fault provisional basis provided for under Rule 22A(3)*"[31]); and

[31] In fact, there is no "condition" basis provided by sub-rule (3).

(b) in sub-clause (6) that, where the player was charged with the serious criminal offence *prior to* the commencement of the Rule, the "No-Fault Provisional Stand Down Condition" applies automatically from the date of commencement of the rule[32].

In fact, the effect of the New Rule is in no sense "provisional" – it applies to de Belin automatically and retrospectively (his contract commenced in 2017).

44. It is now well settled that the doctrine of restraint of trade may operate in the case of sports persons who derive income from the sport they play: *Buckley v Tutty* (1971) 125 CLR 353 at 371-372; *Hughes v Western Australian Cricket Association (Inc)* (1986) 19 FCR 10 at 49.

45. In point of principle, where rules of an organisation impose a restraint of trade on players, the governing body must satisfy the Court that the restraint is no greater "*than is necessary for the adequate protection of the interests of the governing body"*: *Buckley v Tutty* at 376, 378; *Adamson v New South Wales Rugby League Limited* (1991) 31 FCR 242 at 247, 289, 297; *Hughes* at 50-1.

46. The interference with that trade may be restrained by the Court as *"contrary to the public welfare that a man should unreasonably be prevented from earning his living in whatever lawful way he chooses"*: *Buckley v Tutty* at 380.

47. In *Greig v Insole* [1978] 1 WLR 302, a ban on cricketers who signed with Kerry Packer's World Series of Cricket from playing Test and county cricket was held to be an unreasonable restraint of trade. In finding that the ban was not reasonable to protect the

[32] There is no provision defined as a No-Fault Provisional Stand Down Condition.

cricket establishment from the economic threat of rival competitions, Slade J (at 354) concluded that:

> *"First and foremost, to deprive, by a form of retrospective legislation, a professional cricketer of the opportunity of making his living in a very important field of his professional life, is in my judgment prima facie both a serious and unjust step to take."*

48. In Australia (and apart from in *Buckley v Tutty*), Hunt J in *Beetson v Humphreys* (unreported, Supreme Court of NSW, 30 April 1980) held that a new NSW Rugby League (a predecessor organisation to the respondents) rule restricting rugby league players from criticising refereeing or league decisions was not a reasonable restraint of trade, in that it went beyond what was reasonably necessary to protect the legitimate interests of the organisation.

49. The decision of Toohey J in *Hughes* is significant. His Honour held that a ban from playing club cricket imposed on cricketers who had agreed to play cricket in South Africa was an unreasonable restraint of trade. In finding that the rule imposing the ban went beyond what was reasonably required to protect the interests of cricket's governing body, Toohey J concluded (at 51-2) that a rule which imposed a ban on a player could not be sustained where it applied: (1) for an indefinite period of time; (2) by automatic disqualification; (3) without opportunity to be heard or right of appeal; and (4) where it had retrospective operation: *Greig v Insole* at 352. Toohey J (at 52) also recognised as important the public interest which lies in "having every opportunity to see first class cricketers in action".

50. This is just such a case – the New Rule offends each of the criteria which were considered by Toohey J to constitute a restraint of trade which invalidated the rule.

51. If effect were to be given to the New Rule, it would result in the immediate suspension of de Belin such that he cannot, by the terms of his contract with the Club, exercise his trade as a Rugby League player.

52. The Applicant is already 28 years old[33]. The suspension will mean that he is unable to maintain or improve his skills as a professional rugby league player for the length of the suspension[34]. If his criminal charges do not conclude until next year (as is likely), the restraint imposed by the Respondents' New Rule will have the effect of ending or substantially impairing his career and ability to earn money under a future playing contract in the NRL or elsewhere[35]. The New Rule constitutes a substantial restraint of trade that is invalid and contrary to public policy, including adherence to the terms and intent of the CBA.

53. The New Rule is contrary to the CBA made between the NRL and the Players' Association, in that the Association has neither agreed to it nor been adequately consulted with respect to it[36]. It would be against public policy to permit the New Rule to operate in the absence of compliance with the NRL's commitment to the Association which represents NRL players (including de Belin)[37].

54. Undoubtedly, the New Rule involves an indefinite and absolute restraint upon de Belin to pursue his chosen trade. As such, it is impermissible at law, unless the Respondents demonstrate that the restraint imposed by the New Rule is no greater than reasonably necessary. The material filed by the Respondents in no sense demonstrates that the New

[33] Gillis [9(a)].
[34] Gillis [14]-[15]; T/s 241/7-8
[35] Gillis [16]; Lythe aff 8.3.19 [13]; T/s 241/7-8.
[36] T/s 300/18-29
[37] Lythe [3-5]

Rule, applying as it does to de Belin's existing contract with his Club, is reasonably necessary to protect the Respondents' legitimate interests:-

54.1 at the outset, much of the Respondents' evidence is inadmissible; it consists of second- and third- hand hearsay reports of what others may or may not have been thinking about Rugby League and its participants;

54.2 at its highest, the evidence may establish that administrators and some sponsors and supporters have concerns about the reputation of Rugby League and about player misconduct (and, perhaps, de Belin); but it does not demonstrate that the restraint of trade and interference with the Player Contract imposed by the Commission and NRL from above is reasonably necessary to protect their interests;

54.3 critically, the evidence does not demonstrate that the New Rule is reasonably necessary for that purpose.

55. The New Rule should be declared invalid and the Respondents should be restrained from giving effect to the New Rule as it applies to de Belin.

F. Interference with contractual relations

56. The gravamen of the tort is the respondent's intention to induce or procure the breach of contract in the knowledge that such a breach will interfere with the applicant's contractual rights: *Allstate Life Insurance Co v Australia and New Zealand Banking Group Limited* (1995) 58 FCR 26 at 43; *Daebo Shipping Co Limited v The Ship Go Star* (2012) 207 FCR 220 at [89]. The requirement for knowledge and intention is readily satisfied in this case, where the Playing Contract is in a form which was dictated by the Respondents themselves.

57. Interference with the rights of parties under an existing contract may only be justified if shown to be no more than reasonably necessary for the protection of some actually existing superior legal right: *Zhu v Treasurer of New South Wales* (2004) 218 CLR 530 at [161]-[163].

58. Under clause 3.1(a) of the Playing Contract, de Belin is under an obligation to play rugby league for the Club in the NRL Competition[38]. Similarly, clause 3.6 obliges the Club to use its best endeavours to provide an opportunity to de Belin to play the game[39].

59. Under the NRL Rules until 11 March, de Belin could only be suspended from playing for conduct in breach of the NRL Rules. It is common ground that he has not been shown to have engaged in any such conduct[40].

60. On 26 and 27 February 2019, the NRL requested the Club to stand down de Belin[41] and requested him to stand down voluntarily (no doubt under threat of suspension)[42]. Had de Belin been stood down or stood himself down, there would have been an immediate breach of the Playing Contract. The NRL's conduct in making those demands amounted to actionable interference with contractual relations.

61. Fundamentally, the New Rule amounts to actionable interference with the contractual relations between de Belin and the Club. Although the Playing Contract provides that the NRL Rules may be amended, this will not avail the Respondents when the New Rule is void as being in restraint of trade. Moreover, the intention of the parties to the Playing Contract – objectively determined – could not have been that the operation of the contract would come to a halt because the NRL changed the NRL Rules intending that outcome,

[38] Ex A5 p49.
[39] Ex A5 p56.
[40] T/s 233/7-24
[41] Ex A6 p22
[42] T/s 239/40-240/27

without any conduct or fault on the part of the player and so as to require the Club continuing to pay the player in the absence of any misconduct on his part.

62. The standing down of de Belin, and the ban imposed by the New Rule, have manifestly caused damage to him by depriving him of the opportunities to display his football skills and thus preserve and enhance his playing reputation (and, in turn, future contracts).

G. Relief

63. Declarations ought be made that the Commission and NRL have engaged in misleading and deceptive conduct in contravention of s18 of the ACL. In consequence, they ought be required to remove statements on the NRL website to the effect that de Belin was properly stood down or banned or suspended and corrective advertising ought be ordered to the same effect.

64. Similarly, a declaration ought be made that the Commission and NRL have engaged in unconscionable conduct towards de Belin, in contravention of s21 of the ACL. Injunctions ought be granted to restrain reliance by the Commission and NRL upon the New Rule as it applies to de Belin. Damages should be awarded pursuant to s236.

65. It should be declared that the New Rule constitutes an unreasonable restraint of trade; the rule should be declared void (pursuant to s22 of the *Federal Court of Australia Act, 1976* or under the general law) and de Belin should be awarded compensation for that restraint.

66. The Respondents have tortiously interfered with de Belin's Playing Contract. Their tortious interference should be restrained and they are liable in damages for tort.

67. Moreover, de Belin should be awarded damages which include compensation for hurt and distress, which may be readily inferred from the treatment he has received at the hands of the Respondents; and he should be awarded aggravated damages. Furthermore, exemplary damages are appropriate to be awarded in the present case for the high-

handed, unilateral and contumelious manner in which the Respondents have dealt with de Belin since mid-February 2019.

8 April 2019

18 April 2019 (addition of references to evidence)

Martin Einfeld
(02) 8226 2333
einfeld@stjames.net.au

Barry Dean
(02) 9132 5720
dean@153phillip.com.au