



BELL GULLY



Sports Law Update

AUGUST 2008



Welcome to Bell Gully's *Sports Law Update*, a review of current legal issues in the sporting arena. In this bulletin we provide a digest of current issues that may be of interest to advertisers, sponsors, sporting bodies and others with an interest in the interface between sports and commercial interests.

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Bell Gully manages issues such as sponsorships, player contracts, financing, merchandising, disciplinary hearings and constitutional issues. Our clients include the country's leading sporting teams, players and organisations.

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Ambush marketing and the Olympics

With the Games of the XXIX Olympiad in Beijing underway, it is interesting to look at the efforts by the Beijing Organising Committee for the Games (BOCOG) to fight against ambush marketing and draw parallels with this issue in New Zealand, particularly in the lead up to Rugby World Cup 2011.

As one of the most-watched events on the sporting calendar, the Olympics provide advertisers with an opportunity to market goods and services to a worldwide audience. As a result, the International Olympic Committee and BOCOG have established a partnering programme that is designed to grant exclusive rights to advertising associated with the Olympics in particular product categories.

Consequently, we have been seeing advertisements from a range of the best-known consumer brands each noting that they are an official (worldwide) Olympic partner. Some of those in the first tier of main Olympic sponsors are long-time Olympic partners. Kodak backed the first modern Olympics in 1896 whilst Coca-Cola has been a sponsor since 1928. Others, such as Chinese computer brand Lenovo, are recent entrants. Amongst other things, such partnering arrangements enable the advertiser to use certain Olympic imagery in association with their advertising campaigns. As a result, each Olympic sponsor is seeking to improve its reach in a country with 1.3 billion people and double-digit growth as well as a world-wide television audience in the billions.

The opening of the Olympics also sees a rise in the number of advertisers who seek to capitalise on the publicity and claim a share of that worldwide audience by stealth, without being required to pay the sponsorship and other fees required to become an official Olympic partner. Whilst 'ambush marketing' in its simplest form is a direct attack by a competitor on the marketing efforts of a rival which has paid for and secured a berth as (say) the official supplier of widgets to the Olympics, in recent years ambush marketing efforts have been much more subtle. Therefore, rather than seek to attack the competitor head-on and directly undermine their privileged (official) position, rival widget suppliers may seek to use a variety of indirect means to coattail on the popularity of the Olympics. A list of some of the best-known examples of ambush marketing, many of which have centred around the Olympics, are a testament to the inventiveness of the advertisers and advertising agencies concerned. Some of those are seeking to get a free ride on the bow-wave of publicity surrounding the event itself, while others are looking to undermine the position of a competitor which has positioned itself as 'official' sponsor. In a New Zealand context, perhaps the most widely viewed example of ambush marketing came during a Bledisloe Cup match in Sydney in 2002 when play was disrupted by two streakers wearing nothing but a Vodafone logo.

In keeping with the efforts by other Olympic Organising Committees, BOCOG has implemented a detailed campaign which is designed to combat ambush marketing surrounding the Beijing Olympics. This campaign has included public requests that advertising agencies, as well as the Chinese business community, work to contribute to the success of the Olympics. The Chinese business community has also been asked to abide by all relevant laws and fair and honest advertising principles. In addition, the campaign urged Chinese businesses to protect the legal rights of the Olympic partners and sponsors and Chinese advertising agencies were requested not to create or establish false or unauthorised commercial links with non-Olympic partners or sponsors in publicising their products and services. Chinese businesses were also urged to work together with their clients to avoid using Olympic symbols for commercial ends without authorisation.

BOCOG has also recommended that, during the period from 1 August to 27 August 2008, there be no unauthorised use of images of athletes, coaches and officials participating in the Beijing Olympic Games and Chinese media publications were advised to carry advertisements of Olympic partners or sponsors on their Olympic channels, and not allow non-Olympic partners or sponsors to appear on the channels.

Given the size of the audience and the amounts at stake, it remains to be seen whether during the four-yearly gathering of some of the biggest names in the sporting world, many with branding and other commercial arrangements unrelated to the "official" Olympic partners, calls to honour

advertising principles will be an effective curb on commercial opportunism and creative inventiveness.

Ambush Marketing – the New Zealand legislative response

In a New Zealand context, particularly with Rugby World Cup 2011 in mind, there has been a legislative move to curb ambush marketing. The Major Events Management Act 2007 (Major Events Act), which is partly based on similar English legislation which was developed as a legislative strike against ambush marketing in advance of the 2012 London Olympic Games.

Whilst Part 3 of the Major Events Act provides a mechanism for the permanent protection of certain emblems and words, prohibiting the unauthorised use of emblems and words relating to the Olympics and Commonwealth Games, the Act is primarily targeted at ambush marketing associated with major sporting events. As a result, the Major Events Act provides a flexible regime for sporting events to be declared “major events” with the result that the following are prohibited in relation to that major event:

- ambush marketing by representations of association with the major event;
- other forms of ambush marketing that intrude on a major event; and
- ticket-scalping

In order for the protections under the Major Events Act to be utilised, the event in question needs to be declared a “major event” by means of an Order in Council made on the recommendation of the Ministry of Economic Development after consultation with the Ministers of Commerce and Sport. A recommendation from the Minister of Commerce is subject to two sets of requirements. First, the Minister must be satisfied that the event organiser has the capacity and intention to use all practicable measures available under the existing law to prevent unauthorised commercial exploitation of the event. Secondly, the Minister must apply a type of national interest test by considering the number of participants and spectators to be attracted by the event, and whether it will generate significant tourism opportunities and other benefits (including economic benefits) for New Zealand.

The recommendation process should be reasonably clear-cut for events such as RWC 2011 or another Americas Cup defence and possibly even the 2010 World Rowing Championships. The more difficult question will be in relation to events which, whilst significant in terms of size and organisational requirements, have a lesser economic impact than top tier events. For example, would the 2009 Under 19 Mens Basketball World Championships to be held in Auckland qualify?

The objective of the prohibitions on representations of association with the major event are to prevent one of the most common forms of ambush marketing where an advertiser misleads the public into thinking that the advertiser is an authorised partner or sponsor or is otherwise associated with the major event. The two primary exceptions from the prohibitions on ambush marketing by association are (logically) authorisation by the major event organiser and freedom of speech exceptions such as for the purposes of news coverage and personal opinions made for no commercial gain.

A breach of the prohibitions on “association” under the Major Events Act is an offence leading to the imposition of fines. However, this does not prevent the event organiser also pursuing civil remedies either under the existing law or seeking a range of civil orders under the Major Events Act, including by preventing repeated infringements and seeking the delivery up of offending material.

The second major limb of ambush marketing addressed by the Major Events Act is that of “intrusion”. After the “clean stadiums” controversy affecting the hosting of the 2003 Rugby World Cup it is clear that legislation was needed to prevent commercial interests intruding on the attention of the audience for a major event. As a result, the Major Events Act enables the Minister of Economic Development to declare clean zones and clean transport routes associated with a major event. Clean zones and routes will cover the venue or venues for a major event as well as the major transport routes to and from the venue.

Once declared, the Major Events Act operates to prohibit the following activities without authorisation:

- street trading in a clean zone;
- advertising in a clean zone;
- advertising which is clearly visible from a clean zone; and
- advertising in a clean transport route.

Again, it is an offence to breach these restrictions and a breach can expose the offender to fines as well as civil remedies at the hands of the event organiser. There are also defences which are designed to protect existing businesses carrying out their ordinary business in accordance with "honest practices".

As a result, if it could be established that a business pays for, commissions or authorises the advertisement, a Bledisloe Cup-style streak at a major event would amount to an offence under the Major Events Act if the ground was declared a clean zone. For good measure, the Major Events Act also provides a separate offence of pitch invasion – thereby exposing the streakers themselves to liability for a fine or even a term of imprisonment.

The prohibitions on ticket-scalping make it an offence to sell or trade a ticket to a major event for a value greater than the original sale price of the ticket. This is straightforward enough, but also should serve as a reminder that even activities undertaken for a good cause, such as a charity auction of tickets to a major event, will need to seek authorisation from the event organiser.

One of the concerns about the offence provisions in the Major Events Act is the absence of a requirement that members of the public are reasonably likely to be misled. In this regard, the protections afforded to the organisers of major events and their authorised commercial partners can be seen to be more wide-reaching than those provided either under existing New Zealand laws, such as the Fair Trading Act 1986, or under some comparable "major events" protection measures implemented overseas. These concerns, coupled with issues about the practical likelihood of an event organiser seeking recourse to the armoury of weapons available to protect their commercial interests (and those of their authorised commercial partners) when they could have an enforcement officer appointed under the Major Events Act do the job for them. This could include obtaining search warrants and seizing offending materials. Effectively, it is suggested by some commentators that the organiser of a major event could launch such enforcement officers into the community in advance of a major event with few of the usual checks and balances which are applicable to the exercise of powers of search and seizure under other relevant legislation.

These criticisms have led to suggestions that elements of the Major Events Act represent a legislative sledgehammer to crack a problem where more refined tools are either available or could be mirrored. In their defence, the proponents of the Major Events Act argue that such an extensive weaponry is needed to combat the inventiveness of some would-be ambush marketers. In addition, that it is in the national interest to ensure that there are no repeats of the "clean stadium" debacle.

Naming rights

For those of us who can remember which city Lancaster Park is in or that Rugby Park, the Bull Ring and Yarrows Stadium are one and the same, the sale of naming rights seems to have quickly become an integral feature of our sporting landscape.

Aside from the input of local government, it has been the contributions made by corporate sponsors and the significant investment made by charities such as the Edgar Charitable Trust, which has made sporting complexes available in most communities.

What we're seeing in New Zealand reflects developments overseas where the business culture of the sports industry and competition for investment in the upgrading of facilities has resulted in the sale of naming rights to stadiums being an integral part of the business plan for most of the largest spectator sports.

As in the large overseas markets, a naming rights deal holds the possibility of a range of benefits for the sponsor, including the promise of repeated use of the sponsor's name in media coverage of the sport. This should be more cost-effective than traditional forms of advertising an association between the sport and the sponsor.

Again, local developments have tended to mirror the trends overseas where a move to a new stadium, such as the move from Wellington's Athletic Park to Westpac Stadium (aka the Caketin) or a redevelopment programme, such as the recently re-named AMI Stadium, has been the catalyst for the sale of naming rights. In some cases, particularly the redevelopment of existing grounds, the sale of naming rights may require some juggling between sponsors, such as where there may be a ground naming rights sponsorship arrangement and then, within the ground, separate sponsorship arrangements – such as those for individual stands or facilities. Similarly, some naming rights agreements include extensive arrangements requiring exclusive use of the sponsor's goods or services within the stadium. These may be as simple as exclusive pourage rights for the sponsor's brands at outlets within the stadium, or in the case of banks, exclusive rights to locate ATM machines within the stadium. In the case of London's O2 Arena, previously known as the Millennium Dome, the naming rights sponsor's branding opportunities include the stadium itself, individual attractions within the stadium such as a music venue and exhibition centre, and associated branding on the stadium's website.

Other issues that may need to be considered include whether the stadium owner or operator can require, as a term of any arrangements with broadcasters, that the broadcaster use the sponsor's name when referring to the stadium.

Also relevant, even in the absence of a declaration of a "major event" in the Major Events Act, is whether the holder of a particular tournament at the stadium may be able to insist on a "clean stadium" policy in order to ensure that the tournament naming rights sponsor does not risk competing advertisers intruding into the advertising benefits it might otherwise enjoy as a result of its sponsorship because of (say) the rights they enjoy in conjunction with their stadium sponsorship.

Another topical issue in the present economic climate is the issue of the implications of having granted naming rights to a failing brand. For example, what happens if stadium naming rights have been granted to a finance company which has fallen on hard times but has met its obligations in terms of payment of relevant sponsorship payments? In many cases, the sponsor will have ensured that it has the ability to terminate its sponsorship obligations as a result of actions on the part of the stadium owner which could have a material adverse impact on the image of the sponsor but those rights may not be reciprocal. Similarly, the stadium owner may be able to terminate the sponsorship deal in the event of non-payment and the final stages of insolvency of the sponsor, but possibly not during early stage events such as a moratorium on payments to depositors.

Some may see this as akin to the ethical behaviour dilemma referred to in this issue's article on behavioural issues and the impact on sponsorship.

Behavioural issues – impact on sponsorship

How many of us have flicked over the seemingly weekly reports, particularly in the more sensational elements of our news media, of bad behaviour by high-profile sports stars and thought nothing further of the implications for, as an example, the principle sponsor of the team in their chosen sport. Recently, the NRL, has gone so far as to suggest specific restrictions in player good behaviour codes in order to combat the apparently growing trend of its players being provoked into off-field incidents that almost immediately find themselves broadcast in the public domain via outlets such as YouTube.

Whilst such incidents can have an obvious detrimental impact on the brand image of the player concerned and their sport, increasingly such off-field activities are being seen as having commercial consequences for high-profile sponsorship arrangements. As a general statement, it is becoming increasingly common for sponsorship arrangements to include behavioural requirements not only for the sponsored entity (eg. a sporting code or team) but also the activities of individual players which might have a material adverse impact on the reputation of the sponsor or its products.

At first glance, it is not difficult to see that the brand image of a household product could suffer negative exposure as a result of the off-field antics of a high-profile player. But what about some of the more indirect sponsorship implications? For example, in recent days the naming rights sponsor of the team which has been withdrawn from this year's Tour de France because of the failed drug tests of two of its stars has hinted publicly that it will withdraw its sponsorship. However, one of the team's equipment suppliers, with a much less high-profile arrangement has stated that it will stop supporting the team and its athletes on the basis that it will not support those who discredit their sport and want to make sure that the public knows what they stand for as a business.

Charity gaming – sports funding

In New Zealand, gaming machines have been permitted to operate outside casinos since 1988. During that time, their number and popularity have grown considerably. There are now more than 21,000 such machines operating in this country. Together they account for gaming machine expenditure which is estimated by the Department of Internal Affairs (DIA) to have exceeded \$938 million for the year ended 30 June 2008 (a decline of just over one percent from the previous 12 months).

These gaming machines are all owned and operated by trusts that are bound by statute to direct funds to benefit the community. Accordingly, gaming trusts do not derive “profits” in the commercial sense. Instead, funds are used to benefit the community through a system of grants. Gaming trusts currently grant more than \$200 million per year to a mix of sporting, educational, health, arts and other charitable purposes. A similar amount is contributed to the Government in GST and duty.

Charity gaming is the life-blood of many sporting organisations. However, a number of recent consolidations within the ranks of the principal funders coupled with more stringent policing of sports funding by the DIA and gaming charities as well as the current economic climate are combining to make the funding equation more stringent.

In addition, the social impacts of gambling are such that the community demands that the benefits, in terms of the funding that it put back into the community by way of grant funding, outweigh the costs. As a result, the compliance regime that surrounds the use of funds from charity gaming to fund sports activities is aimed at maintaining the integrity of the grant funding mechanism and thereby the cost/benefit equation.

Two areas of constant tension in the gaming funding arena are those relating to ensuring that grants are confined to strictly amateur sport and the concept of “guaranteed” funding.

Grants for amateur sport

A recent reminder issued by the DIA about the requirement that gaming machine funds can only be granted to sport that is entirely amateur has caused a number of practical difficulties for competitions which are largely amateur but which may have a professional element. In particular, in the September 2007 edition of the publication *Gambits*, the DIA noted that an amateur team or an amateur player can be reimbursed for certain (limited) expenses but players training for a professional sport cannot be categorised as “amateur” and therefore cannot be reimbursed for training or living expenses.

This issue arises because the test for “amateur” status under the Gambling Act 2003 differs from that under the income tax legislation. The test under the Gambling Act focuses on the nature of the team and the competition. This requires examination of the payments made to players and the team expenses paid by the club (or other body). The club or team must be affiliated to a national body and the sport must be played as part of a significant competition.

As a result, the DIA noted that, if players are paid to play or reimbursed for lost income while playing, then the team’s activities will not be authorised. A similar policy applies to players who are paid to train or compete.

Amateur teams can receive grants for such things as uniforms, team travel and training costs. Grant funding can also be used to reimburse players’ travel and accommodation expenses but not lost income.

The DIA also suggests that the fact that one or two professional players join an amateur team for a few games during a competition will not, of itself, make the team professional. However, those professional players can only receive the same limited expenses that are paid to the team’s amateur players.

Grant funding can also be used for club expenses including the coaching of amateur teams, and other expenses related to amateur teams such as ground maintenance and administration fees.

Players who are contracted to join representative teams, such as those picked by a national sporting body, may also retain their amateur status provided the payments they receive are confined to the reimbursement of expenses.

Other areas highlighted by the DIA which may be problematic for sporting bodies include:

- the separation required where a sporting body conducts both amateur and professional competitions;
- the requirement that professionals using grant-funded sports facilities (e.g. practice facilities) pay true market rates for that use;
- the restriction on grant funding being used for training programmes to prepare amateur players for a move to the professional side of the sport (e.g. a rugby academy programme).

Guaranteed Funding

For many sporting organisations, the constant cycle of grant funding applications and the uncertainty associated with this method of funding is a constant source of concern. Anecdotally, this has led to a growing number of managers of sporting organisations describing the principal role of management as becoming less concerned with the business of management of their chosen sport and increasingly characterised by the process of submitting grant applications. Having submitted the application, the manager is then unable to plan until they have been advised that the application has been succeeded and the funding will be made available.

This process has a certain “groundhog day” element to it, because the success of an application for funding of, for example, a particular tournament in one year is no guarantee that the same funder will provide a grant for a team to participate in the tournament in the following year.

The gaming charities themselves are faced with the difficult process of juggling a large number of applications for the funds that are available. Whilst the total pool of available funding has remained relatively static for a couple of years, grant applications are said to be increasing exponentially both in number and amount.

Some of the pressures that are generated by the uncertainty surrounding funding have given rise to a variety of different arrangements that are used by sporting organisations to try to develop greater certainty around the funding equation. These include:

- arrangements between sporting organisations and gaming machine venues designed to guarantee funding from the gaming charity whose gaming machines are hosted in the relevant venue;
- the provision of naming rights and other sponsorship-type benefits on the operator of gaming machines in return for grant funding – with the obvious concern that such sponsorship rights may gravitate towards high profile, well-attended (often televised) events to the exclusion of support for the grass roots development of the particular sport; and
- the establishment of so-called “end-user trusts” that are established as a charity and operate gaming machines but which are closely associated with a particular sport or even a sporting team, with the result that the grant funding provided by that trust is provided almost exclusively to the relevant sport or team.

A number of interested groups have voiced their concerns about the pressures being brought to bear on different participants in the funding equation and the structures that are being devised, largely to try to engender greater certainty into funding discussions. One of the principal concerns voiced by a number of parties is the scope for a breakdown in either the effectiveness of grant funding or the integrity of components of the process.

On one level, some of the schemes (which have been described by some commentators as complying with the letter but not the spirit of the law) do no more than provide the relevant sporting organisation with adequate comfort that, for example, an annual tournament will be funded on a similar basis year in-year out. However, there are also concerns that such structures may crowd out the ability of other sports to gain an equitable share (based on player participation) of the available pool of grant moneys, or that high performance programmes with a high public profile are receiving funding at the expense of grass roots activities. Ultimately, there may also be a risk that elaborate funding structures designed to suit the needs of individual sports may also have the perhaps unintended by-product of favouring a handful of individuals or businesses associated with the establishment or management of those structures.

In light of the interest of a range of parties, including government officials, industry groups, various funding agencies, a number of sporting bodies including national sporting organisations and the media, it seems likely that some aspects of the funding equation are set to change. That change may be accelerated by the confirmation of the economic downturn and the practical reality that the difficult times being experienced by some parts of the economy, particularly the retail sector, mean that a number of avenues of commercial sponsorship are likely to become more difficult to obtain.

Sports shorts

America's Cup

There has been yet another twist in the legal saga surrounding the holding of the America's Cup. The New York Supreme Court, Appellate Division handed down a decision on 29 July, reversing a lower court decision and declaring a challenge by the Alinghi-sponsored Spanish yacht club, Real Federation Espanola de Vela (CNEV).

Seemingly, by overturning the earlier decision brought about by a challenge by Larry Ellison's Oracle-BMW syndicate, and reinstating CNEV as the official challenger in the next America's Cup, a significant legal victory has been handed to Alinghi.

Central to the Appellate Court's decision was its finding that CNEV was organised as a yacht club at the time of its challenge, the appeals panel wrote in the 3-2 decision.

At the heart of the Oracle-BMW legal proceedings was a play to determine the method, timing and venue for the next America's Cup challenge. By handing victory in the off-the-water contest to Alinghi, the Appellate Court enables CNEV to proceed to organise a multi-challenger series with CNEV as the "challenger of record". Amongst other things, the challenger of record is able to determine the type of boat to be used for the series.

The lower court hearing had declared Oracle-BMW as the challenger of record and required the America's Cup to be held in March 2009 in Valencia, Spain, or at another location chosen by Alinghi as a best-of-three, head-to-head series. Such a series would have been a departure from the traditional multi-boat competition to determine a challenger that had been a feature of past America's Cups.

Apart from seeking to reinstate the challenger series and thereby preserve the opportunity for 10 other teams to participate, Alinghi also appealed the earlier ruling because it sought to have a later race date.

Oracle-BMW is said to be taking legal advice and considering its next step. As a result it seems likely that there will be further legal skirmishing before any signs of activity on the water. Apart from the disruption to the teams, it seems hard to believe that the contestants would risk jeopardising an opportunity to capitalise on the most watched America's Cup ever, in Valencia, by continuing with an ugly and protracted legal fight.

Rugby: Air New Zealand Cup

The recent media reports on the New Zealand Rugby Union's review process of its flagship domestic competition, the Air New Zealand Cup, and the suggestion of a breakaway competition must seem very familiar to a number of our national sporting codes.

While it is understood that NZRU is about to unveil a new format for the Air New Zealand Cup, with a reduction in the number of teams for 2009, the media suggest that a group of provincial unions have proposed a 14-team trans-Tasman competition and a "Heineken Cup-style tournament" to replace both the Air New Zealand Cup and the Super 14. Such a proposal would appear to have significant implications for the NZRU's existing commitment to its Sanzar partners. Press reports suggest that the group of provincial unions formed an e-mail group and have reached a consensus on a number of common principals about the shape of professional rugby competition in the short to medium term.

The NZRU has publicly stated that it has no plans to break away from Sanzar and is currently looking at an expansion of the Super 14 with South Africa involved. There may however be a number of other catalysts for change, including a pending review of the Sanzar television rights contract, with Sanzar being required to present its product offerings in terms for international competitions beyond 2010 to News Limited by 2009. Also relevant will be a desire to address the risks presented by the

financial muscle of the European clubs and concerns being expressed about the strength of Northern hemisphere sides being selected to play international fixtures.

Some of the drivers influencing the discussions between the NZRU and provincial unions about the future shape of domestic competitions will be familiar to a number of other sports facing concerns about such issues as preparing for international competition, retaining audience attention and the spiralling costs of competition. A number of these factors have prompted changes to domestic netball competition and reviews of the competition structures of many of our major sporting codes.

A number of those codes will be watching the developments in the rugby community with interest, no doubt hoping they can share some of the learning developed through the interaction between the NZRU, provincial unions and Sanzar.

Call to impose limits on Sky TV

Submissions earlier this year by TVNZ on a government review of broadcasting regulation to limit Sky TV's dominance of sports broadcasting appear to have the backing of Cabinet Minister Jim Anderton.

TVNZ's submission in May of this year to a Ministry of Culture and Heritage Ministry review said that sport is critical to our national identity and regulatory intervention was needed to prevent Sky TV penalising sports fans by allowing it to "hoard" big events and charge subscribers a "sports tax" for access to them. In its submission, TVNZ also suggested that Sky TV has a virtual monopoly on coverage of major events.

TVNZ's suggestions for arresting this situation included a proposal that Sky TV be split up into a number of separate businesses including one to make and buy programmes, and another to manage Sky TV's satellite transmission network.

About 720,000 householders subscribe to Sky, which has the rights to all major rugby test matches, cricket, soccer, racing, golf, basketball, rowing and athletics. TVNZ says that more than 80 per cent of all locally-produced television sports content is broadcast on Sky TV. Its submission called for rules to stop Sky TV buying exclusive rights to events of "national importance" – much like the "anti-siphoning laws" adopted in Australia in 1992, which enabled free-to-air television to get first rights to such events.

Progressive leader Jim Anderton called for legislation in 2001 to protect New Zealand's "icon events". In a recent public statement he appeared to endorse TVNZ's submissions. Specifically, Anderton noted that a generation of young Kiwis was growing up without watching live cricket and rugby because they could not afford pay-TV, resulting in a loss of rugby and cricket audiences and the knock-on effect of fewer children playing rugby and cricket.

Sky TV's submissions to the review noted its significant investment in pay-TV, which was made on the basis of existing legislation. It said that a change would threaten further investment by the company.

Stadium strategies

Discussions about sports stadiums seem to be a sure fire way to galvanise, and polarise, public opinions. Witness Auckland's Waterfront Stadium debacle in the lead-up to the Government decision to approve funding for the revamp of Eden Park and the present, hotly contested debate in Dunedin about the merits of upgrading Carisbrooke versus the proposed new Awatea Street Stadium.

It is refreshing to see that New Zealand is not alone in wrestling with these issues. Debate is raging in Sydney about the need for a state-wide stadium strategy in the face of an outbreak of stadium development proposals for replacements, additions, and renovations to stadium facilities - almost all of these proposals require some form of taxpayer funding. Government grants have been handed out for upgrades to a number of Sydney's best-known rugby league stadiums and numerous

renovations are said to be likely to complicate the irrational spread of football stadiums in the greater Sydney region.

This is on top of the amount ploughed into the under-utilised ANZ Stadium at Homebush Bay, the main venue for the Sydney Olympics. As an aside, the city of Montreal has recently celebrated a significant milestone, with the result that Montreal's Olympic Stadium needs a new nickname — the Big Owe no longer applies because the debt from the 1976 Olympics has finally been paid off, three decades after the Games.

The NSW state Government has been criticised for not having a venue management strategy. This is said to have been exploited by a number of sporting codes, including AFL and cricket.

The approach in New South Wales is being contrasted with that of the Queensland Government, which has recently funded a renovation of Brisbane's famous Gabba ground and included accommodation for additional teams to use the Gabba as their home ground, coupled with commitments from the teams themselves to do so. The Queensland Government also declined to fund a further stadium for AFL to compete with its facilities.

One of the seemingly unanswered questions arising out of the Waterfront Stadium debate relates to the need to better utilise existing facilities. The question becomes even more apparent when indoor facilities are examined. Apart from Dunedin's widely acclaimed Edgar Centre, many of our main centres lack multi-use facilities of adequate size and layout to meet the growing demands of users close to town centres and major transport hubs. Plans are underway for developments in Hamilton and Tauranga, and Wellington is about to get a new multi-use facility (Te Rauparaha Arena), albeit located in Porirua. However, Auckland appears to exemplify the problems of a shortage of well-planned multi-use facilities with ready access to transport.

Industry experts suggest that new greenfields facilities will require areas in excess of four hectares to house the facility, parking and associated services. As a result, the price of the land alone may be out of the reach of most sporting codes and funding agencies in many of our larger centres. Economics and better planning for community use and access may require a re-think about the use of either existing stadiums or better utilisation of community-owned land in the CBD. Perhaps a few more cargo sheds at port facilities could be re-used for the surrounding community.

A Waterfront Stadium Mark II anyone?

Sonny Bill Williams

The fact that Sonny Bill Williams has taken up a contract to play rugby in France in itself is not unusual. In recent times, we have witnessed an exodus of professional rugby and rugby league players to Europe where leagues pay players at rates significantly higher than they would expect to receive in Australasia.

What was not expected, however, are the lengths to which the National Rugby League and the Bulldogs Leagues Club have gone to enforce contractual obligations which each of them had with Williams.

The facts of the case are well known. Williams had a five year contract with the Bulldogs. After one season he secretly left Australia, evaded attempts by the Bulldogs and the New South Wales Supreme Court to contact and serve documents on him, and took up a contract with the Toulon Rugby Club in France. Williams' contract with the Bulldogs included a restraint preventing him from playing any form of football code for any other team during the term of his contract.

The court granted the injunction, but it did not have the initial effect sought by the NRL and the Bulldogs, as Williams played in a game in France on the same day. However, the basis on which the court made the injunction against Williams demonstrates the lengths the courts will go to to enforce what it terms the "sanctity of contract".

In the context of professional sports contracts, two pertinent points arise from the case. First, the court identified that, on the evidence before it, there was a high probability that Williams intended to breach his contractual responsibilities. However, a fact new to the general public is that the Bulldogs argued the contract with Williams was still "on foot" – meaning that the Bulldogs were willing to continue to pay Williams and to select him to play if he returned.

In essence, this meant that no argument could be made that, by making an injunction, the court would be ordering Williams to return to Australia and perform his employment contract - something which the courts have a stated reluctance to do - as such an order is akin to slavery (a view Cristiano Ronaldo would support).

The second matter is around the "special nature" of Williams' employment with the Bulldogs. The court specifically identified the potential negative repercussions for the Bulldogs if he suffered an injury playing for Toulon, and that the Bulldog's recruitment strategy and its ability to compete in the NRL was hampered by his absence. The court recognised the Bulldog's sponsorship was heavily based on Williams, the salary cap limited the Bulldog's ability to pay other players to play in his position, and his "star attraction" all indicated that the restraint preventing him from playing another code or for another team was reasonable.

The inevitable conclusion is that, in respect of the exodus of players offshore, the courts have delivered professional sports clubs a strong decision from which they can argue for the retention of their marquee players who might seek to break their contracts

However, Williams' actions breaching his contract and avoiding court processes mean that some element of deceit on the part of the departing player would probably need to be demonstrated.

An interesting aspect to this whole case (although not mentioned at all in the judgment) is the prospect of Williams challenging the NRL's salary cap as being, in itself, a restraint of trade. In the context of a proceeding for the grant of injunction, the salary cap had no relevance. However, a challenge of this sort has the real prospect of displacing the entire basis upon which the NRL (and professional sports organisations in Australia) engage players, but might be a de facto way of equalising salaries paid for professional sports Down Under. Such salary cap issues are unlikely to arise in New Zealand. When a salary cap was agreed to between the New Zealand Rugby Union and the Rugby Players Association approval was sort, and granted, by the Commerce Commission for a period of five years (although, due to the potential changes in the Air New Zealand cup competition, this might need to be reviewed).

In breaking news, yesterday the Bulldogs accepted a \$750,000 cash settlement in return for the release of Sonny Bill Williams, effectively bringing the case to an end.

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