When professional athletes change sports: Sport Development, Sanctity of Contract and Restraint of Trade in the NRL
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Teaching Note and Overview for Use in Class

Globally, there is increasing competition in the sport industry. Professional sport leagues and clubs compete for the discretionary time and income of spectators and loyal fans who attend games; purchase memberships, and associated merchandise; for advertisers and sponsors who provide financial and/in-kind support for their relationships with clubs and leagues; and for media partners who pay for the right to broadcast professional competitions. The professional sport landscape is becoming increasingly cluttered with new and existing leagues and clubs each vying for a larger market share. Further, governing bodies of sports responsible for the development of mass participation and talent to play in their professional sport clubs and leagues must also compete for their share of consumers to participate in their sports at the grass roots level. This case study provides insight into a current issue faced by sporting leagues—the movement of professional players to rival sport codes. As the case illustrates, the movement of professional players across sport codes can have a profound impact on the management of sport development, the management of player contracts and legal issues in restraint of trade.

This case is centered on the National Rugby League (NRL), the Australian professional league for the sport of rugby league and in particular, the high-profile athlete, Sonny Bill Williams (Williams), who moved from playing professional rugby league in Australia to play in a rival code—rugby union in France. His defection to rugby union occurred while he was still under contract with his NRL club, the Canterbury Bulldogs.
Although similar in name, rugby union and rugby league are sports with distinctly different codes. They differ by the size of field, the number of participants, strategies, and scoring. The game of rugby league has evolved over 100 years. It was founded in Huddersfield north England in 1895 after a dispute and split occurred between the original Rugby Football Union and its clubs over issues of financial compensation (Snyders, 2011). Initially, the breakaway league, Northern Union initially continued to play the game under the rules of the Rugby Football Union. However, law changes began to emerge and by 1907 subtle differences in game play between the Northern Union and the Rugby Football Union competitions could be seen. The Northern Union or rugby league competition (as opposed to the rugby union competition) comprised clubs allowing 13 instead of 15 players on the field at the same time, eliminated a rule called the “line-out”, and playing the ball was achieved by using a player’s heel instead of a “scrum”. Further, the way in which points are awarded was changed.

Rule changes in the sport of rugby league have continued over time, rendering rugby league and rugby union to be considered as two different or distinct codes of football (Hamilton, 2007). Rugby league has been described as being faster, more entertaining and spectator friendly (Cuneen, 2001; Gibson, 2008) than rugby union. Although the sports are now considered to be different, some key similarities in terms of player skill requirements still exist. Players in both codes need to possess acceleration, speed, evasive techniques to move around opposition, as well as general athleticism and the ability to pass the ball in a similar manner. In this way, it is possible, at least theoretically, for players to transfer their skills from one code to the other—as evidenced by the information in this case which tracks Williams’ move from rugby league to rugby union.
Athlete defection or transfer to other sports is not limited to rugby league and rugby union. However, this case highlights that athlete defection has been a particular problem for the NRL with defections to both rugby union and Australian rules football—where players have defected for a number of reasons, including the larger salaries in the rival sports. This case also references several other examples of elite professional athletes who have moved from rugby league to rival football codes such as Australian Rules football in the middle of their careers. Examples include NRL players, Karmichael Hunt and Israel Folau who moved to rival Australian rules football code, the Australian Football League (AFL) to play for new clubs in the Gold Coast and Western Sydney respectively (see for example, Balym, 2010; Johnston, 2010). While Williams’s case is particularly illustrative as he left his club to defect to rugby union mid-contract, the constant movement of players from the NRL highlights a broader issue of talent retention. In all cases the individuals themselves have been labeled as traitors. However, for the rival codes such as the AFL in the current discussion, enticing the players into their leagues appears to be successful from a marketing perspective. For the primary football code which in this case is the NRL, this talent drain highlights key issues that need to be addressed if the league is to maintain a high standard and remain financially viable.

This case could be used in either undergraduate or postgraduate studies in sport management, to cover a range of different topic areas. Specifically, this case would be suitable for units that address issues of sport development, and the consideration of player skill development programs and pathways. It would also be suitable for units that address sport and the law, and in particular player contracts. Further, public relations or marketing classes that emphasize the intersection of these fields with others may find the case useful by integrating
activities from the sport development and law sections that follow. The teaching note will assist instructors with ideas on how to integrate the case into each of these areas of study.

**Sport Development**

In recent years, there has been increased attention paid to establish and improve the pathways and systems to maximise sport development (e.g., Green, 2005; Hylton & Bramham, 2008). Governments in many countries see benefits for optimising sport development and support such development through targeted funding initiatives (e.g., Green & Collins, 2008). To attract funding, sport policy frameworks demand sport organisations pay more attention to providing effective processes to increase opportunities for individuals to participate in sport and more effectively retain athletes transitioning them to higher levels in their respective sports (e.g., Hylton & Bramham, 2008; Green & Collins, 2008; Vail, 2007).

According to Hylton and Bramham (2008) “those engaging in sport development must be in the business of devising better and more effective ways of promoting interest, participation, or performance in sport” (p. 4). Thus, sport governing bodies are paying close attention to the ways in which they devise systems, specific for their sport and their culture, that optimise the recruitment, retention and nurturing of athletes to high levels of sport performance (Green, 2005; Numerato, 2008; Vail, 2007).

Further, sport management scholars have also sought to better understand the way in which elite sport development programs should be implemented (de Bosccher et al, 2009; Sotiriadou & Shilbury, 2009). It is clear from the research that sport development cannot exist
without the foundation sport development programs. These programs include appropriate policy frameworks, coaching, facilities, talent identification and associated systems within sports that build skill and develop talent—so that elite programs can capitalise on the fundamental building blocks that assist in developing their athletes through formative years.

This case study demonstrates that for some sports, there is an increasing ability for athletes to transfer from playing at the elite level of one sport to play an alternate sport at the elite level with little “extra” skill development. In this case, Williams transferred from playing professional rugby league for the NRL club, the Canterbury Bulldogs to an alternate football code—professional rugby union where he plays in France with Toulon Football Club. In other examples provided in the case, students will see that athletes from NRL clubs are also transferring to rugby union and AFL clubs. Students should note that the fundamental systems that developed Williams’ rugby league skills actually contributed to the development of his skill and talent for rugby union. In this case, the sport of rugby union acquired the star player Williams for very little investment in terms of his development.

This is an important and salient teaching point. For governing bodies that invest considerable resources to sport development systems and pathways, there is an expected, and often assumed return on that investment—that talented athletes will be retained in their sport and play at the professional levels. After all, when sports are able to offer a high quality product through development of talented players able to perform at high standards of play in their professional competition leagues they are able to glean a return on their investment—through increased numbers of spectators, loyal fans, sponsors and advertisers, and broadcast media rights.
**Sport Development Class Activity: Role Play.** In order to assist students to examine the sport development issues that this case highlights, it might be useful for the instructor to arrange students into two groups. One group of students should be instructed that they are the sub-committee that report to the board of the ARL on the impacts of the Williams case on the future of sport development in the ARL. The ARL is the national governing body for rugby league in Australia and is responsible for sport development nationally. It delivers national sport development programming through state associations and clubs. The group members must prepare a report and deliver it to the class who will play the role of the ARL board members.

The second group of students should be instructed that they are the sub-committee who are to report to the International Rugby Board (IRB) on the impacts of the Williams case on sport development for the future of rugby union. The IRB is the world governing body of the Game of Rugby Union and delivers coordinated sport development programming through their member unions around the globe (IRB, 2010). The group members must prepare a report and deliver it to the class who will play the role of the IRB board members.

Outcomes from the class activity role play are likely to highlight the tensions between the two sport codes that led to their divide over 100 years ago with students suggesting policies and practices designed to prevent defection. Yet, with popularity increasing among athletes for transferal of their talent to other codes national sport organizations responsible for athlete development now need to embrace such athlete flexibility. Students should be encouraged to develop policies and practices that plan for possible athlete movement, particularly for sports that may be prone to higher quantities of athlete transferal. For example, development of policies and practices to support athlete flexibility and acknowledgement that involvement in some sports at
an early age may provide increased diversity into other sports in later years could provide benefits for those sports for increased participation at grass roots levels. The following section provides questions that might emerge from class role play. Sport Development: Questions arising from the case. The case study would also be appropriate for a written assignment that follows on from the class activity. The questions included below are designed to build upon each other for a comprehensive overview of issues of sport development policy and implementation.

1. The Australian Sports Commission provides funding for the ARL to develop and conduct sport development activities. Provide examples of sport development activities and programs that the ARL undertake. You may need to visit the ARL Development website (www.arldevelopment.com.au) to assist in developing your answer to this question.

2. Professional NRL players continue to defect to other sports, just as players defect to the NRL. In light of the investment in sport development programming, is player defection something that ARL Development should be concerned about? Why or why not?

3. Should professional athletes who have benefited from funding and support through sport (whether through the ASC, the AIS, or their own sport’s development systems) be required to donate their time, money, or expertise to the system in which they have developed? Why or why not?

4. Although developers strive to see a return on their sport through the professional leagues, how do policies impact players’ rights and ability to dictate career choices?
5. ARL Development has decided to introduce a scheme to ensure professional players contribute to sport development. They have asked you to develop the scheme. What would such a scheme include, and how would it be implemented?

6. What responsibilities do professional leagues such as the NRL have to sport development in their respective sports?

7. From the perspective of the AFL or rugby union whose sport has benefitted by acquiring professional rugby league players, what are the advantages and disadvantages of luring NRL players?

8. The NRL has been more than willing to accept players from Europe, Asia, Africa and throughout Oceania due to their playing ability. This simultaneously eliminates a position that could be filled by an athlete developed by Australia and contradicts the notion that all players should give back to the system. How should this dichotomy be reconciled?

9. If players were forced to contribute financially or donate time to the Australian system, would this exacerbate the problem of players leaving? Faced with this additional tax, would more elite players elect to play overseas?

Sport and the Law

From a legal standpoint, the crux of this case study is the issue of sanctity of contract and restraint of trade. Specifically, to what extent can a contracted player break his contract to sign with another club, even if the deal is overseas or in a different professional sporting league.
Beyond this, further questions emerge in relation to what extent certain aspects of a league structure – violate a players rights.

As the case study details, Williams entered into a “National Rugby League Playing Contract.” This contract comprised of salary drawn from the Canterbury Bulldogs as well as third party agreements or "TPAs" as they are known. Essentially, TPAs were to come in the form of endorsements negotiated by the Canterbury Bulldogs organisation. The issue was tried in the Supreme Court of New South Wales (Equity Division) and a decision was rendered August 8, 2008, in the case of Bulldogs Rugby League Club Ltd & anor v. Williams & ors [2008] NSWSC 822.

As was noted in the court’s decision, the Canterbury Bulldogs agreed to use best endeavors to obtain TPAs for Williams, estimated to be worth about $50,000 per season. It is unclear to what extent these guarantees were made in the contract language as we are not privy to it.

There were five criteria upon which the Court evaluated the contract and which can thus be pointed to as the legal reasoning for compelling the player to perform his duties under an employment contract or have their ability to trade and thus meet the criteria for a successful injunction. The Court decided that the Canterbury Bulldogs' attempts to enforce the contract were not an unreasonable restraint of trade, finding that:

(a) signing with another club may result in injury to the player and hence prevent him from fulfilling his obligation under the contract;
(b) the recruitment strategy of the Canterbury Bulldogs had been based upon Williams being available to play for it in the NRL competition and, according to the evidence, without Williams being available there is an impact upon the Canterbury Bulldogs' ability to compete in the NRL;

(c) the Canterbury Bulldogs' invested considerable amounts of money and resources in promoting the image of its players, including in particular Williams, in order to encourage support and sponsors for the Canterbury Bulldogs as a club in the NRL competition;

(d) substantial remuneration had been and continued to be paid to Williams in consideration for his exclusive and special services as a rugby league player, remuneration that could otherwise have been directed to the recruitment of other players;

(e) securing the services of Williams contributed to the goodwill, patronage, membership subscriptions, pride, prestige and standing of the Canterbury Bulldogs, particularly given that the first defendant has "star attraction"

Essentially, this points to five criteria used by the Court beyond the common law doctrine of breach of contract to determine whether a player should be permitted to breach his contract for services and be allowed to play elsewhere.

As an in-class activity, students could first be asked to determine how they would decide the case before discussing the Court’s criteria. Given that this case was already heard, a separate mock trial could be created based on the issue of restraint of trade. Students would be encouraged to take opposite sides of the debate and argue the sanctity of contract issue.
Instructors could provide key decisions from Australia and other countries surrounding key issues of league structures. In addition to the Hill verdict mentioned in the case, the U.S. Supreme Court’s ruling in American Needle v. NFL could be used to illustrate how business affairs of a league have been handled. Further, the Freeman McNeil v. NFL case could be used to discuss labor issues and player rights (Note: as a result of this case, NFL players were given leverage in negotiations to earn greater free agency for the first time). In a sports law class, this potential case could be argued along with other monopolistic features of a sports league including the draft, age limits, and maximum salaries.
References


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Case Study

The word spread fast across Canterbury supporters. Sonny Bill Williams has left the club? Where did he go? Why did he leave? Rumors were whispered from one fan to another. “He just left his mates in the middle of the night.” “Toulon will be paying him five times more!” As Williams flew to France, the Australian press eviscerated his decision, criticizing his timing, loyalty, and playing contributions. Legal accusations flew from both the National Rugby League and from Williams. Over the course of one red-eye flight, an international sporting controversy erupted over the sanctity of a contract, restraint of trade, and national sport development. The legal ramifications could have a significant impact on the structuring of leagues, rights of players, and national sport developers.

1.0 Key Figures

1.1 Background on NRL

The National Rugby League (NRL) is one the most popular sports in Australia, consisting of fifteen clubs in Australia and one in New Zealand. As a premier producer of rugby league, the NRL has been operating since 1908 featuring some of the world’s top athletes. With the NRL representing the top level of competition in Australasia, each of the clubs in the federation includes lower level clubs to develop players and coaches, while providing playing opportunities for members (www.nrl.com.au).
The league consists of sixteen clubs, with fifteen clubs residing in Australia, and one club in New Zealand. The clubs play in a 26-week regular season consisting of 24 matches and 2 byes, followed by a finals series. A salary cap has been in place in professional rugby league since 1990 in order to maintain equity and parity among clubs in the league. The NRL and Rugby League Players Association (RLPA) agree on the salary cap through a Collective Bargaining Agreement (CBA). The salary cap serves two functions: to assist in the “spreading of talent” to ensure that there is parity in the league, and to ensure that the clubs do not spend more money than they can afford which would lead to the financial instability of clubs. Clubs are allowed to sign a roster of 25 players, with a cap of $4.1 million per season. The NRL is active in policing the salary cap to maintain parity within the league. There is often contention among players as the salaries in professional rugby league are much less than those in rival codes of football including rugby union and Australian rules football (Masters, 2010).

The NRL has fined violators of the salary cap, stripped a club of competition points, and forced a club to play with a reduced salary cap for the following season for two serious infractions. In 2010 the Melbourne Storm (the only club that resides in the state of Victoria) were found to be in breach of the salary cap. The NRL penalised Melbourne Storm for breaching salary cap rules in three ways. It penalised the Melbourne Storm by cancelling the accrual of premiership points for season 2010; voided past premiership titles; and fined the club $500,000 as well as demanding the return of $1.1 million in prize money (Smith, 2010).

Scholars have noted that a salary cap can be problematic for the retention of top level players (Vincent & Eastman, 2009). The NRL has seen the exodus of professional level players such as Matthew Rogers, Wendell Sailor, Lote Tuqiri, Andrew Walker, Berrick Barnes, and Ryan Cross who all switched over for much more lucrative contracts playing in the rival football
code, rugby union. Further, there are examples of NRL players who have moved from rugby league to the rival football code of Australian rules football to play in their professional competition. Karmichael Hunt and Israel Folau both signed lucrative deals to move to new clubs in the AFL.

While the NRL players do have collective bargaining rights, the salary cap number has traditionally been non-negotiable. Further, clubs restrict the earnings of players through endorsement deals, limiting them to $50,000 with the club collecting any payments in excess of this amount. The primary revenue streams for NRL clubs include ticket sales and television revenues. With most clubs residing in Sydney and Melbourne, the average attendance for years 2006-2008 is 16,484, 16,577, and 16,321, respectively (http://stats.rleague.com). Television rights held by Channel 9 and Fox Sports generate approximately $100 million in annual rights fees (Chessell, 2010). However, with this broadcasting deal expiring in 2012, insiders have projected that the new deal may exceed $1 billion (Rothfield, 2010).

1.2 Sonny Bill Williams

While playing junior rugby league in Auckland, New Zealand, Sonny Bill Williams, a New Zealand native and natural athlete, was spotted and offered a contract by the National Rugby League (NRL) club, the Canterbury Bulldogs. Williams’s original contract was to represent the Canterbury Bulldogs in the junior rugby league grades, from which he progressed through the sport’s development programs, ultimately representing the Canterbury Bulldogs in the professional NRL competition as an 18 year old in 2004.

A versatile player, capable of playing two positions, second-rower and centre, Williams was touted as a future rugby league great. He seemed to be on track to fulfill this promise as he
was named to the BBC’s 2003 World XIII, earning the International newcomer of the Year Award in 2004, and being nominated for the Dally M Rookie of the Year Award in the same year. Despite these early successes, Williams’s career was plagued with injury and off-field indiscretions which restricted his playing time for the Canterbury Bulldogs. These indiscretions led to some contention between the Canterbury Bulldogs and Williams, and were also considerations in player contract negotiations and details drawn up between the Canterbury Bulldogs and Williams. Throughout his career, Williams resisted many lucrative offers from various Super League (the rugby league competition in the United Kingdom) clubs, and had instead remained loyal to the Canterbury Bulldogs. The offers coming from other leagues and codes were much higher than his contract with the Bulldogs given the salary cap restrictions posed on the NRL.

In March 2007, Williams signed a five year contract with the Bulldogs worth approximately $450,000 annually (inclusive of salary and corporate endorsement dollars). After having a relatively successful, but still injury prone season in 2007, Williams was nominated for the “Second-Rower of the Year” award. In September, 2008, 18 months into his five year contract, Williams spectacularly walked out mid-contract to play outside centre for French Rugby Union Club, Toulon. While not unprecedented, most of the defections to rival sports have occurred at the end of the players’ contracts with their respective NRL clubs, and each has been handled openly with the clubs involved, the league itself, and the media.

2.0 The Legal Battle

Williams’ departure left NRL CEO David Gallop and the league’s legal club with a difficult task at hand. As a lawyer, Gallop knew that he had to act fast as if one player was able
to walk out on their obligations mid-contract, then this would open the door for others. A mass exodus of talent would diminish the value of the league in terms of gate receipts, broadcasting rights, and sponsorship deals, not to mention create a considerable strain on the loyal supporters of the NRL and its professional clubs in the league competition. Therefore, Gallop knew that he would have to take a hard stance in pursuing Williams. This case could serve as a benchmark for future disputes between athletes and sport clubs. A closer look at the complex web of legal issues reveals many important elements subject to debate.

2.1 Complicating Factors

Gallop knew that the standard player contract did not include an out-clause and therefore believed that the sanctity of the contract could be upheld through the legal system. However, Gallop realised that there were two factors that could complicate the matter: Williams was switching to a different sport, and switching to a different country. Gallop was unsure of how the case would play out given the complexities of international law. Further, Williams was not just defecting to a different league of the same sport—where in that case, there would be one International Federation or governing body through which the NRL could seek a remedy. In contrast, he was defecting to a different sport entirely. Thus, while Gallop could contact the governing body of rugby league and ask it to rule on the case at hand, given rugby league and rugby union are two different sports in their own right, and there is no relationship between the leagues or governing bodies, Gallop was unsure what this would achieve. After much contemplation, Gallop decided that he would have nothing to lose by contacting the International Rugby Board (IRB) to see if it could step in to prevent Williams from taking the field for Toulon. Gallop called the IRB director to try and convince him to not allow Williams to play.
Clearly, the contractual stability is important to both sports, and thus if the IRB did not support the NRL on this, it would be condoning a form of international piracy. However, the IRB responded by stating that a contract with a different sport was outside of the jurisdiction of the IRB. Further, the IRB stated that “the club is entitled to take any player they see fit”. Gallop was frustrated when he got off the phone. He was disappointed and angered by the response to the situation, and was even more worried about the precedent that this situation would set for future defections.

2.2 Breach of Contract

Ultimately, Gallop and the Canterbury Bulldogs’ executives decided to focus on getting the courts to rule on the sanctity of the player contract. They also wanted to pursue reparations from Williams to make up for lost revenues and the likelihood that the Canterbury Bulldogs club would suffer on the field as a result of his departure. Gallop wanted to make sure that he had all bases covered in trying to pursue Williams. The events were simply described to the media as one where Williams broke his contract with the Bulldogs in search of a more lucrative contract in France.

As Williams had already fled to France, questions of where to file the lawsuit arose. While the contract was with the Canterbury Bulldogs, an NRL club in Australia, the departure to France potentially complicated enforcement of any court ruling. Issues arose surrounding the enforcement of a potential injunction. Even if an Australian court ruled that the contract had been breached, the court could not compel Williams to leave the French club. The Australian courts had no jurisdiction in France and likewise, the Canterbury Bulldogs had no standing to
bring a lawsuit in a different country. Williams’ gambit ensured that there would be no immediate legal remedy to prevent his assimilation into the Toulon squad.

While there may not be an immediate solution to the situation, the NRL does have precedent for winning a breach of contract suit. Just a year earlier, the Federal Magistrates Court had ruled in favor of Griffith University against an instructor who had failed to give proper notice before taking a position at a different school. In *Griffith University v Leiminer* (FMCA 1045, 28/7/08), the court fined Michelle Leiminer $500 for leaving prior to the six month requirement as defined in her union employment contract. Although Griffith University technically won the case, the court noted that the University did not experience financial harm (in fact, it profited by $15,000 from her departure) and recognized Leiminer as the “less powerful” of the two parties.

In contrast, the Canterbury Bulldogs and the NRL could demonstrate financial losses through decreased ticket sales, smaller television audiences, and dwindling interest in the league. Williams’ departure could result in a competitive disadvantage on field, and a loss of membership subscriptions, ticket sales, merchandise sales, and sponsorship revenue. The Bulldogs had based much of their recruitment around the assumption that Williams would be playing for the club for the duration of his five-year contract. Other players had been recruited specifically to work with and compliment the skills and strengths of Williams; thus, no one else on the Bulldogs’ roster could sufficiently step in for Williams given his versatility in two positions: second-row forward and centre. In addition to the on-field benefits, Williams was an integral part of the club’s marketing strategies. For example, Williams’ name and likeness were used as an integral part of the proposals that the club pitched to potential sponsors. Beyond these
economic concerns, Williams completed only one out of the contracted five years, while Leiminer departed only a few months before her allowable exodus.

Breach of contract claims also became relevant during the attempted creation of a sporting rival in the Australian Super League. Led by Rupert Murdoch in 1997, the Super League was formed as part of a strategy to consolidate rugby league (NRL and other associations of league rugby throughout the world) television rights. The Super League would annex clubs from various leagues, including the Brisbane Broncos of the ARL (the forerunner to the NRL), to create an additional competition. Plans of this rival league would reduce the number of top level professional rugby league clubs playing in the original competition which increased competition between the two leagues for players and clubs. As clubs and players signed with the Super League, the ARL filed breach of contract lawsuits. In total, 163 players who were under ARL contracts signed a deal with the Super League. The trial judge ruled that the players and clubs were in violation of their contract and had breached their duties. Rather than contest through appeals, the ARL and Super League negotiated an agreement that merged the two leagues and created the NRL. (News Limited & ors v. Australian Rugby Football League Ltd, FCA 870 (4 October 1996)). (For more details on the Super League War, see McGaughey & Leisch, 2002).

2.3 Restraint of Trade

As the NRL plotted its moves, Williams and his advisor, Khoder Nasser, plotted out a distinctly different legal strategy. Although the contract was not completed in full, Nasser and Williams believed that the entire structure of contracts in the NRL represented a restraint of trade. Nasser communicated through the media that they would argue a restraint of trade had occurred if the NRL or the Bulldogs proceeded with any court action. Specifically, Williams’s
argument would be based on the salary cap and restrictions on third party agreements imposed by the NRL. Unlike other salary caps that are set based on a percentage of league revenues, the NRL salary cap is set arbitrarily based on the prior year’s salaries and contracts. The NRL and its clubs are therefore not obligated to share a percentage of their revenue with the players, even though the revenue streams available to the NRL were increasing, especially given the increase in broadcasting rights associated with pay-tv.

Included in Williams’s contract with the Bulldogs was standard contract language that restricted the player from entering into Third Party Agreements (TPAs) or endorsements. Three of the top six players on each club in the NRL are allowed to earn up to $50,000 from sponsorship leveraging, but there is a cap of $150,000 per club. Although Williams received the maximum $50,000 in endorsement salary, Nasser argued that the contract restrictions prohibit Williams from controlling his own image and collecting on his marketability. Further, these marketing deals are beyond the normal scope of business for a player or a club. By prohibiting Williams from pitching products, Nasser alleged that the NRL contracts were illegally limiting his employment opportunities and earning potential. Instead, the clubs were able to collect unlimited profits from licensing the images and likenesses of their employees without having to share a majority of those funds. Additionally, corporations have balked at this structure, noting that prohibiting them from entering into endorsement deals with players also restricts their earning potential (Jackson, 2010).

Although this clause is subject to collective bargaining, Australian courts have historically sided with players when challenges to the contract structures have arisen (Koch, 2008). Based on labor laws, unions can bargain away certain rights (such as the right to greater endorsement opportunities) in return for more favorable employment conditions. So long as both
parties agree to the restrictions, most clauses are legally acceptable. However, in 1991, Terry Hill challenged the notion of a player draft. While entry drafts had been in place for a number of years, Hill’s lawsuit effectively ended the practice by successfully arguing that player movement had been unfairly restricted. In this case, the court ruled that the draft was an unreasonable restraint of trade. In response to this decision, the draft was eliminated, leaving questions as to the legality of other league mechanisms that may restrain trade in an attempt to create balance among clubs (Koch, 2008).

3.0 Sport Development

Meanwhile, at the ARL headquarters, other decisions were being made relating to sport development. Specifically, ARL Development is a non-profit company formed by the ARL and NRL to develop the grassroots of the sport from introductory level up to the age of 18 years. ARL Development works within the pre-existing development framework established by Clubs and State Leagues to augment existing programs and establish new development initiatives (ARL Development, 2010). These initiatives include a range of programs that combine to form a well-developed pathway for development of athletes to reach the professional competition (the NRL) of the sport. Development program initiatives include modified programs for beginners, targeted groups such as women and minority groups which are delivered via various schools, in after school programs, as well as through many community-based rugby league clubs throughout the country. In addition to developing rugby players, these programs promote awareness for the sport amongst fans and encourage healthy lifestyles for participants who do not become professional athletes.
Like most sports in Australia, the ARL is a club-based system that has clear structures of sport funding, programming and delivery throughout Australia. The sport is structured in such a way so that the ARL Development facilitates state rugby league associations and their respective regional associations and member community clubs to deliver the sport programs in a coordinated effort around the nation. These sport development programs and pathways form the fundamental basis for skill development and talent identification in the sport so that players can progress to the elite (professional) levels of the sport to play in the NRL competition.

In 2008-2009, the Australian Sports Commission distributed $1,091,000 to rugby league through the ARL (Australian Sports Commission, 2009). Of that money, $195,869 was allocated for expenditure on Australian Institute of Sport programming and scholarships; and $216,000 was allocated for expenditure on Sports Development. A further $680,000 was allocated to a category called “other” which “Includes funding through the National Talent Identification and Development program, Indigenous Sport program, Disability Sport program, National Officiating Scholarship program, Elite Coach Development Program, Sport Leadership Grants for Women, Women in Sport Framework and special initiatives” (p. 148). This data suggests that the majority of funding that rugby league has received (86%) is dedicated to sport development.

However, there was a larger problem. With the shock departure of Williams, and the departure of many other of its star athletes over the years, the club at ARL Sport Development was beginning to wonder about the return on their investment in Sport Development. Is NRL just a training ground for the development of skill for other sports? It has been common practice in the AFL for example, to employ rugby league experts to assist them in developing skills in tackling (Kotton, n.d). Indeed, the ARL Development club had encouraged many of their sport
development officers to assist their rival code members in developing tackling skills based on the techniques used in rugby league. In states such as Victoria, where the rival code of AFL has a stronghold in the participation market, the utility of combining resources and finding common ground between the two rival sports seemed to be somewhat positive. However, the board of ARL Development was beginning to question this strategy.

With the increasing defection of players to rival codes, the ARL Development club felt that its investment in sport development was being “stolen” by other codes of football. Using skills developed in rugby league to move to rival codes and to gain greater rewards, players fail to “pay back” the sport that developed their talent in the first place. In response, the Operations Manager for ARL Development brought to the boards’ attention an issue raised in the “Shaping Up” report—a review of Australian sport that was presented to the Australian Sports Commission in 2000 (Shilbury & Kellett, 2010). The Shaping Up report suggested that Australian sport should set up a system whereby athletes would pay monies back to their sports once their career earnings reached a certain level—much like the University student loans accounts (HECS) are structured. In this way, sports would be guaranteed that all of their investment in sport development would at least be recognised and rewarded when athletes gained financially from the result of such development.

However, more recently in the 2009 review of Australian Sport which became known as the Crawford Report (Commonwealth of Australia, 2009), a key recommendation was that:

- the Australian Government should not introduce a HECS style contribution scheme for graduates of the existing Australian Institute of Sport, state and territory institutes and academies of sport or the new Australian Institutes of Sport (AIS), but rather it should
introduce a scheme that requires graduates from these institutions to donate time and or expertise to the Australian sport system (p. 50).

Although these suggestions could assist in developing future rugby league players, they also have the potential to exacerbate the problem of players departing to play in other countries. By lessening the financial incentive to play in Australia either through a taxation policy of money or time, the ARL may inadvertently drive more players away. Other complications might include the participation and taxation of foreign players, including Sonny Bill Williams. Clubs would be able to acquire these players at a lower cost than hiring a native (given the taxation), and may elect to increase playing opportunities for international competitors. In turn, this could have an impact on interest and participation in the sport, creating a cycle that leads to fewer opportunities for Australian athletes.

The ARL Development club spent some time deliberating over what this might mean for their sport, and how it might devise a system that ensures professional players will contribute back to sport development. It believed that tangible benefits for the players and the country could be created by developing programs that capitalize on the skills and interests of both parties. As the ARL deliberated on potential structures, it examined the overall purpose of the Sports Commission, who the programs would benefit, and how the professional leagues (NRL and beyond) could contribute.

4.0 Conclusion

The sudden departure of Sonny Bill Williams exposed a number of conflicts within the Australian sport system. The professional leagues are caught between generating profits to fund the rest of the club’s developmental and participatory activities and striving to compete
financially for top talent with other international leagues. In an attempt to reconcile these competing priorities, the NRL’s salary cap ensures that clubs can accomplish the former but prevents the latter. In addition to an undesirable structure, the cap and endorsement restrictions may also be illegal.

Williams’ exit highlights an equal conflict for players. Since most athletic careers are short, players constantly feel the need to extract market values for their services. Balancing contract length and dollars represents a tradeoff of security versus salary maximization. When opportunities arise in the midst of a current deal to enhance both the contract years and wages, players are faced with difficult decisions about reconciling their careers with the games they play. Athletes with prospects in multiple sports face additional compromises as they balance efforts towards each sport.

For sport developers, athletic leagues represent an essential aspect of a region’s culture, reflected in how the games are played and structured (Australian Sports Commission, 2009). In Australia, values of sport participation and opportunity for all are evident in the club structure and treatment of professional athletes. However, these highly commendable attributes are tested as sport evolves, becoming more international and blending cultural attributes from other societies. This challenge was met by the NRL as the league successfully staved off the creation of the Super League. However, the newest challenge is to compete internationally, while maintaining quintessential Australian values. Player defections, the legal system, and the role of sport in society must be addressed if developers are to provide the benefits of sport to the nation.

4.2 Key Questions
After each party sifted through the facts and major issues and decided upon their positions, key questions remained unanswered:

1. How should Sonny Bill Williams departure be handled by the Canterbury Bulldogs and the NRL?

2. In a scenario such as this, how does one balance the sanctity of a contract with the individual’s desire to break the deal? Further, if Williams had simply retired from the NRL, would he still be in violation of the contract?

3. Do the NRL Salary Cap and endorsement restrictions present an unreasonable restraint of trade?

4. Is the broader issue of departing talent better addressed by the NRL or Australian Sport Developers? How would each address the issue? Would the goals and outcomes differ?

5. How should the Australian athletes repay the ARL for their development costs in such a way that does not deter additional players from changing codes or leagues?
References


