ISSUE 3
Newsletter of
Mullins & Mullins
Lawyers and Notary




# Contracts with Minors: Are they enforceable?

In Queensland, contracts entered into by minors are governed by the common law. The common law presumes that an adult has legal capacity to enter into contractual relations, whilst a minor (a person under the age of 18 years) has no legal capacity. Therefore contracts made with minors are generally not legally enforceable, however, certain exceptions exist. This article will investigate sport related agreements involving minors and indicate when minors are required to fulfill their contractual obligations.

## Types of Sporting Agreements

The majority of sporting agreements that minors enter can be divided into three types:

1. The membership contract (eg. admission to a sporting club or association);
2. The playing contract or participant agreement; and
3. The sponsorship, endorsement or management contract.

This article will address types 2 and 3 only.

## The Playing Contract or Participant Agreement

Sport participants contract with clubs, coaches or administering bodies to compete in events. Under these contracts, participants are paid for competing. Contracts of this kind are enforceable on a minor where a minor is earning a livelihood competing in sporting events. These contracts *of* service must be for the benefit of the minor and be similar to an employment or apprenticeship contract. This is determined by looking at all of the terms of the contract.

An enforceable contract *of* service is illustrated in the case of *Roberts v Gray*. A minor who was a billiards professional entered into an agreement to accompany an adult on a joint billiards tour. The adult was

awarded damages when the minor failed to satisfy the agreement. The court held that the agreement was a contract made for the minor's instruction as a billiards player and akin to an apprenticeship contract. The minor was to receive the benefit of education in billiards from the adult.

Therefore player agreements with clubs, coaches or administering bodies can be binding and enforceable on a minor if they are a contract *of* service.

## The Sponsorship, Endorsement or Management Contract

These types of contracts are known as contracts *for* services. They are contracts made between the adult and the minor where services are exchanged for the benefit of both parties. While these contracts are generally not binding on a minor the following exceptions exist:

1. Where a minor enters into a contract through a separate company or trust. This exception will not be discussed.

2. When a contract is for knowledge, goods or services which are necessary for the support of the minor's life eg. education, food or medical services.

This exception is illustrated by the case concerning the famous boxer Les Darcy. Darcy, a minor, (but a professional) engaged a solicitor to assist him in obtaining a passport. The solicitor successfully sued Darcy for his fees. In this case a passport was deemed a "necessary of life" for Darcy, therefore the retainer between the solicitor and Darcy was enforceable against Darcy.

Hence a contract for services will be binding and enforceable on a minor where it is necessary for the support of the minor's life. Whether the subject of a sponsorship, endorsement or management contract is a "necessary" will depend on a modern interpretation of the minor's requirements.

3. Where a parent/guardian signs the contract on behalf of the minor, the contract will be binding and enforceable on the parent/guardian if:

a. The contract bestows the principal obligation of the contract on the minor;

b. The contract is not voidable at the option of the minor; and

c. The parent/guardian indemnifies the other contracting party against non-performance by the minor (merely guaranteeing the minor's performance is not sufficient).

Conformity with these conditions can be avoided if the parent/guardian is made a co-contractor. Therefore if the contract satisfies the above conditions or the parent/guardian is a co-contractor, the parent/guardian will be liable for the loss incurred by the other party.

*Continued on page 2.*

## Minors in Sport

*Continued from page 1.*

### Compensation for the Breach

The Courts will not grant specific performance for the breach of a contract *of* service or contract *for* services therefore a minor cannot be forced to perform any physical obligations under the contract. However, damages will be awarded. The quantity of damages will depend on the contract's terms including outlays or obligations already performed.

### The Situation in other Jurisdictions

The situation in Victoria presents a similar common law predicament as in Queensland.

Under the *Minors' Contracts (Miscellaneous Provisions) Act 1979* in South Australia a contract which is unenforceable because it is made by a minor shall remain unenforceable unless ratified in writing on or soon after turning 18. Where a parent/guardian becomes a guarantor of a minor's contract they will be bound to the extent to which they would be bound if the minor had been an adult.

In New South Wales the legal capacity of minors is more advanced. The *Minors (Property and Contracts) Act 1970* prescribes that unless a minor is so young as to lack understanding of the significance of a civil act (eg. entering a contract), the civil act is presumptively binding and enforceable. The Act stipulates that the civil act must be for the minor's benefit. Similar provisions exist to that in S.A. when a parent/-guardian becomes a guarantor of a minor's contract.

We advise that where possible, there should be a stipulation in contracts that parties submit to the jurisdiction of NSW to assure legal certainty.

### Conclusion

In Queensland, the general rule is that minors do not have a legal capacity to enter into contracts therefore sporting contracts made with minors are not enforceable. However, these contracts are enforceable if they fall within the ambit of one of the following exceptions; a contract *of* service or a contract *for* necessaries.

Further, a contract made by a parent/guardian on behalf of the minor can be enforceable if certain conditions, mentioned previously, are satisfied or the parent/guardian is made a co-contractor.

A final comment on the reverse situation. It is important to note that the common law allows a minor to enforce a contract against the other party. However, this has the effect of ratifying the contract and making it enforceable against the minor.



Part 2

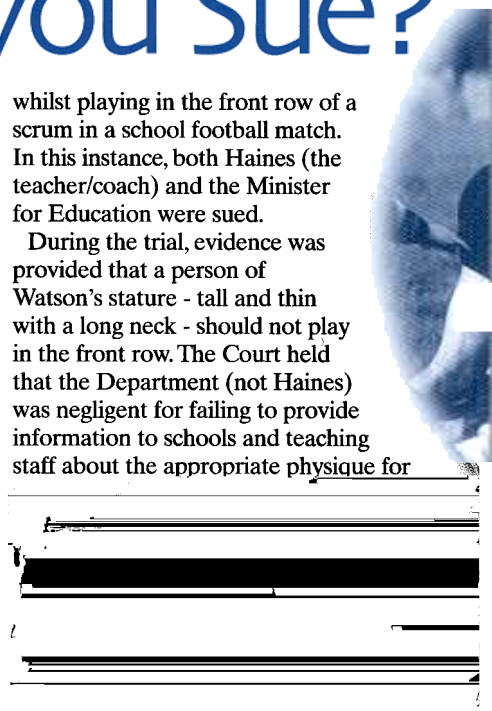
# Who do you Sue?

In our previous Sports Newsletter we highlighted the fact that when a person is injured it is important not to confine an action to just the actual wrongdoer. Part 1 showed that sporting clubs, associations and ground administrators are potentially liable for injuries caused to sport participants. This article addresses another area of potential liability, that is, the duty of care owed by coaches and trainers to sporting participants.

There exists the presumption that coaches and trainers are reasonably competent to fulfil their duties. Not surprisingly, case law contradicts this presumption. In *Robertson v Hobart Police and Citizens Youth Club* a twelve year old girl was injured when she fell awkwardly whilst performing a manoeuvre on the trampoline. The Court held the Youth Club negligently liable for the injuries sustained by Roberston because it failed to give her proper instructions on executing the manoeuvre, particularly on landing safely.

Another example of liability arising from the coaching of sport participants is the matter of *Watson v Haines* where Watson was injured whilst playing in the front row of a scrum in a school football match. In this instance, both Haines (the teacher/coach) and the Minister for Education were sued.

During the trial, evidence was provided that a person of Watson's stature - tall and thin with a long neck - should not play in the front row. The Court held that the Department (not Haines) was negligent for failing to provide information to schools and teaching staff about the appropriate physique for



This case is important because it shows the operation of the law of negligence. Haines owed a duty of care to Watson. the content of

# Pregnant athletes

More females are participating in sporting activities throughout pregnancy. For example, former Australian netball captain Michelle den Dekker led Australia in the 1995 World Netball Championships while four months pregnant.

This raises questions about the potential legal liabilities of those involved with sport. For pregnant athletes questions arise as to their right to participate, their right to privacy and what would happen if they or their unborn child were injured. For other players there is the issue of their right to participate to the best of their ability unhindered. For officials and coaches issues arise in relation to their duties to the athlete. The law of tort and anti-discrimination are applicable in this situation.

### The law of tort

The principles of negligence provide that where it is possible to foresee that the acts or omissions of an individual or organisation could cause harm to a female player who is pregnant or to an unborn child, the law requires that everybody act in a reasonable way to avoid causing that injury. It may be reasonable to expect that a female participant in sport could be pregnant. Also, it is reasonable to expect that administrators, coaches and others should conduct themselves in a manner which takes into account the possibility that a female player may be pregnant.

In the case of *Lynch v Lynch* a child successfully sued her mother for pre-natal injury claiming that the actions of her mother were negligent. This case arose out of a motor vehicle accident, but the same argument may be used where a child is born with injuries resulting from the mother's involvement in sport. The court said that a child can sue because there is a duty of care owed to the unborn child, and that this duty can be breached by pre-natal neglect or carelessness causing injury.

### Anti-discrimination law

Both Commonwealth and State legislation make it unlawful to discriminate directly or indirectly against a female on the basis of pregnancy. The person against whom a discrimination claim is made cannot defend his/her position by saying there was no intention to discriminate.

The implications of these two areas of law to the following persons are as follows:

### The Pregnant Player

The pregnant player is under no obligation to inform her coach or team players of her condition. However, an athlete who fails to advise she is pregnant and then suffers an injury to herself and her unborn child could be held to be negligent for exposing herself to avoidable risk. A pregnant player should

ıwe a duty of care to sport participants. Conceivably coaches and trainers could be egligently liable for any of the following:

Inadequate coaching, for example failing to provide proper instructions on how to play a game

- Failing to ensure that the sport participant is in appropriate physical condition.
- Inciting violence
- Victimisation or bias
- Wrongful suspension or expulsion
- Providing incorrect information on treating an injury or failing to treat an injury
- Not permitting or not forcing a player to retire if injured
- Providing illegal or legal drugs in an unauthorised manner.

The sport participant must also be aware that an action can be brought against a sporting club or association through which coaches and trainers act as agents or servants. Therefore a sporting club or association will be vicariously liable for the representations of their coaches and trainers (unless, with respect to professional sports, the coach or trainer is acting outside the duties of their employment contracts.)

This principle of vicarious liability was highlighted in *Canterbury Bankstown Rugby League Football Club v Rogers.* The NSW Court of Appeal found that both the Canterbury Club and Bugden, a professional player, were liable for the injury caused to Rogers during a league match. In his decision, Justice Mahoney discussed the influence of the coach as an employee of Canterbury giving directions to Bugden. These directions were received through a "rev up" before the match and consisted of telling the players to do whatever was necessary to stop players from the other team. His Honour found that the coach's actions and Bugden's action, (incited by the coach) which caused the injury, were within the scope of their employment since they were promoting the best interests of Canterbury.

The implications of the above cases are that the coach or trainer owes a duty of care to sport participants. The coach or trainer will be held liable for the injuries of the sport participant if they negligently breach that duty. Further, the sporting club or association who has engaged the services of the coach and trainer can be vicariously liable for their actions.

Therefore independent coaches and trainers should personally insure themselves for negligent representations and acts. It is also advisable that sporting clubs or associations should ensure that their public liability insurance covers negligent representations and acts that may be committed by their volunteer or employed coaches and trainers.

# the Law

obtain expert medical advice and ensure that she understands the risks she faces in participating in sport and review her condition at regular intervals with her doctor.

### Other Players

All individuals participating in sport, are obligated to conform with the rules and regulations of their sport. A player is potentially liable in negligence for any act that falls outside these boundaries and causes an injury. A player's pregnancy will not influence the determination of negligence, but may effect the extent of injuries that result.

### The coach

A coach must select the player who is the most capable. The capabilities of the pregnant player need to be assessed like any other player. To not select a player due to her pregnancy without considering its effect on her ability to perform would be discriminatory. Where a player becomes pregnant following selection, a reassessment of the player's ability relative to the task requirements would be justified. All assessment should be in consultation with medical advice.

Coaches and others who give pregnant athletes advice on how to train must be careful that they are not placing themselves in the position of medical experts. They should not speak outside their scope of knowledge as they could face legal action for negligent advice.

### The sports administrator

An important issue for administrators is that of limiting their liability. Agreements which seek to waive liability in respect of pregnancy or are signed by pregnant women alone are likely to be discriminatory. Therefore any agreement should ensure participants are aware of the risks of playing the sport (whether pregnant or not) and implement steps to be taken in the interests of ensuring safe participation in the sport. An agreement could take the form of a by-law or policy which all players agree to comply with on becoming a member. The policy should recommend that a player disclose any condition that may affect her performance including pregnancy, and require that any person with such a condition seek and follow medical advice in relation to their ongoing participation in sport. Other general conditions or terms of membership should include a provision that players participate at their own risk and include a general release/disclaimer against the organisation and possibly an indemnity. Although liability for negligence cannot be avoided, an agreement in writing puts both parties on notice as to their obligations to each other and the unborn child.

### Conclusion

Ultimately, the individual athlete must weigh up the benefits of competing during pregnancy with any perceived risk of injury to herself or her child. Administrators and coaches need to ensure they establish clear policies on how to limit their legal liabilities while ensuring pregnant women are not restricted from enjoying their sport.

Information from the Australian Sports Commission's (ASC) publication *Pregnancy, Sport and the Law* has been reproduced with the permission of the ASC.

## Editorial

*by John Mullins*

We attempt to cover a wide range of sports law issues in M&M Sport.

In this edition we go from betting to pregnancy to taxation.

We have received a great response to our editions to date and if you have any particular issues you would like discussed, phone, fax or E-mail us and we will attempt to cover these in later editions.

Australia's recent success in Pakistan, the Commonwealth Games, the Bledisloe Cup, Pat Rafter's US Open victory and many other recent successes around the world, have placed sport well and truly on the front pages.

At home we are seeing the hosting of world class events such as Indy, 2000 World Figure Skating Championships, Goodwill Games 2001 and the ANZ Players Championship.

These events are massively important in economic terms injecting huge amounts into the Queensland economy. In addition, the worldwide broadcast of these events acts as a huge advertisement for tourism in Australia and particularly in Queensland. These events and many others are supported by the Queensland Events Corporation.

The Queensland Events Corporation was established by the Queensland Government in 1989.

Its charter is to create economic activity and lift the national and international profile of Queensland through the hosting of major events throughout Queensland. This is a very interesting example of the Government, through supporting sport and world class sporting events driving economic and employment growth.

I would again like to acknowledge the excellent contribution of Elizabeth Sheehan, Simon Hayes and Matthew Stapleton, young members of our professional staff, to M&M Sport.


M&M
Mullins & Mullins
LAWYERS AND NOTARY

Level 22 Central Plaza One
GPO Box 2026, Brisbane Q 4001
345 Queen Street, Brisbane Q 4000
Phone: (07) 3229 2955
Fax: (07) 3229 8075
Email: mullins@tpgi.com.au




*Postscript: The information contained herein whilst accurate is of a general nature. If you have any queries in relation to the information contained herein we ask that you consult the partners or solicitors of Mullins & Mullins with whom you usually deal. If you have any comments regarding our newsletter we would like to hear from you.*



# TAB - The Right Ticket?

The Melbourne Cup sees the majority of Australians try their luck with a bet. Many are "once a year" punters who are unfamiliar with the everyday runnings of the TAB and its rules. Accordingly, it is an appropriate time to look at some cases involving bets with the TAB.

The first case involves the rule that the bet recorded on the ticket is the bet which will be deemed placed. After the 1995 Melbourne Cup, a punter ended up in the New South Wales Supreme Court of Appeal on this issue. The ticket issued by the TAB did not accurately record the bet placed, and the receipt was not checked before the race. The punter had correctly selected the winning trifecta on the race, worth several thousand dollars. Unfortunately, the bet which was recorded was not that which he had intended.

Despite evidence showing that he had correctly filled out the ticket, the onus was still upon him to check the ticket following the bet. The Court held that the bet which was recorded was valid and he was unsuccessful in his action to re-claim the money.

Another Queensland case involved the correct weight being declared on the wrong three horses. Once correct weight was declared the TAB had an obligation to pay out on those three numbers, despite placings of 2,3 and 4. Despite the fact that the mistake soon came to light, once weight was declared the TAB had no other option. With the assistance of modern technology this is unlikely to occur again, but it is a demonstration of the strict provisions which govern the TAB.

# Taxation of sporting grants

The date for public comment on Draft Taxation Ruling TR 98/D4 relating to taxation of sportspersons closed on 30 June and the ruling will shortly be released in final. This ruling, whilst dealing with all forms of receipts received by sportspersons attracted most criticism for the determination in relation to voluntary payments.

### What is a Tax Ruling?

Tax rulings are issued by the ATO and represent the Taxation Commissioner's interpretation of the law in relation to certain issues. This draft Ruling relates to the taxation of receipts and other benefits obtained from the involvement in sport. The Ruling provides guidelines for determining whether these benefits are assessable.

### Voluntary Payments - The Commissioner's Ruling

The issue of voluntary payments is considered in terms of those which are "periodic" or those that are "one off".

Voluntary payments will be considered to be income where:

1. Made under an agreement or arrangement to provide periodic, regular or recurrent payment;
2. Received in circumstances where the sportsperson has an expectation of receiving the payment as part of periodic, regular or recurrent payments, and accordingly the sportsperson is able to rely on the payments for his or her regular expenditure; or
3. Part of a periodic, regular or recurrent payments made in substitution of income.

Financial grants paid by a third party (such as the Government or sponsors) are said to contain the above characteristics. They provide financial support to the sportsperson in meeting ongoing living and sport related expenses and are a substitute for income the athlete would otherwise earn.

"One Off" voluntary payments are to be considered on a case by case basis by asking, "How and why it came about that the payment or gift was made ?". The payment will be assessable income if the recipient is an employee, is engaged in the provision of services or carries on a business or business like activity in respect of those sporting activities. The payment will be income even if the payment is in relation to past employment(such as funds from a testimonial match or dinner).