SUPREME COURT OF QUEENSLAND

CITATION:	*Renwick v Parole Board Queensland* [2019] QCA 269
PARTIES:	**STEPHEN DALE RENWICK** **(appellant)** **v** **PAROLE BOARD QUEENSLAND** **(respondent)**
FILE NO/S:	Appeal No 3434 of 2019 SC No 13501 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2019] QSC 37 (Flanagan J)
DELIVERED ON:	26 November 2019
DELIVERED AT:	Brisbane
HEARING DATE:	23 August 2019
JUDGES:	Holmes CJ and Gotterson and McMurdo JJA
ORDERS:	**1. The appeal is dismissed.** **2. The appellant is to pay the respondent's costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the appellant was convicted on his own plea of guilty of being an accessory after the fact to manslaughter and sentenced to five years imprisonment, with a parole eligibility date – where the respondent Parole Board refused the appellant's parole application because it was not satisfied that the appellant had cooperated satisfactorily in the investigation to identify both the location and place of the victim's remains, pursuant to s 193A of the *Corrective Services Act* 2006 – where the appellant applied for a statutory order of review of the respondent's decision to refuse his application – where the primary judge dismissed the appellant's application – whether the primary judge erred in reading the definition of "victim's location" in s 193A(8) as entailing two discrete requirements, rather than synonymous and interchangeable terms – whether the primary judge erred in finding that the respondent did not fail to properly consider the appellant's cooperation after sentence *Corrective Services Act* 2006 (Qld), s 193A *Corrective Services (No Body, No Parole) Amendment Act*

2017 (Qld), s 4
Criminal Code (Qld), s 303, s 310

Karanfilov v Inghams Enterprises Pty Ltd [2001] 2 Qd R 273; [2000] QCA 348, applied
Kazal v Thunder Studios Inc (California) (2017) 256 FCR 90; (2017) 350 ALR 216; [2017] FCAFC 111, considered
Renwick v Parole Board Queensland [2019] QSC 37, considered
Watson v Marshall (1971) 124 CLR 621; [1971] HCA 33, considered

COUNSEL: J W Fenton with J Feely for the appellant
J M Horton QC, with M J Woodford, for the respondent

SOLICITORS: Fisher Dore Lawyers for the appellant
Crown Law for the respondent

[1] **HOLMES CJ:** In mid-2016, the appellant was convicted on his own plea of guilty of being an accessory after the fact to manslaughter (the unlawful killing of Timothy Pullen) and was sentenced to five years imprisonment, with a parole eligibility date of 20 January 2018. The respondent Parole Board of Queensland ("the Board") refused his application for parole by a decision made on 8 November 2018, on the basis that it was not satisfied (as s 193A of *the Corrective Services Act* 2006 requires) that he had cooperated satisfactorily in the investigation of the killing to identify Mr Pullen's location. His application for judicial review of that decision was dismissed, and he now appeals that judgment.

The legislation

[2] Section 193A of the *Corrective Services Act* was inserted into the legislation by s 4 of the *Corrective Services (No Body, No Parole) Amendment Act* 2017, which commenced on 25 August 2017. It provides, relevantly to the present matter, as follows:

> "**193A Deciding particular applications where victim's body or remains have not been located**
>
> (1) This section applies to a prisoner's application for a parole order if the prisoner is serving a period of imprisonment for a homicide offence and—
>
> (a) the body or remains of the victim of the offence have not been located; or
>
> (b) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.
>
> (2) The parole board must refuse to grant the application under section 193 unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.
>
> (3) For subsection (2), the cooperation may have happened before or after the prisoner was sentenced to imprisonment for the offence.

(4) After receiving the application, the board must, by written notice, ask the commissioner for a report about the prisoner's cooperation as mentioned in subsection (2).

(5) In its request, the parole board must state the day it proposes to hear the application (the ***proposed hearing day***).

(6) The commissioner must comply with the request by giving the parole board, at least 28 days before the proposed hearing day, a written report that states whether the prisoner has given any cooperation as mentioned in subsection (2) and, if so, an evaluation of—

(a) the nature, extent and timeliness of the prisoner's cooperation; and

(b) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and

(c) the significance and usefulness of the prisoner's cooperation.

(7) In deciding whether the parole board is satisfied about the prisoner's cooperation as mentioned in subsection (2), the board—

(a) must have regard to—

(i) the report given by the commissioner under subsection (6); and

(ii) any information the board has about the prisoner's capacity to give the cooperation; and

(iii) the transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court; and

(b) may have regard to any other information the board considers relevant."

[3] The term "homicide offence" is defined by s 193A(8) by reference to offences created by the *Criminal Code*, including s 303 and s 310, which respectively create, and set the punishment for, the crime of manslaughter. A further definition in that subsection is material here. The term "victim's location" is defined as meaning:

"(a) the location, or the last known location, of every part of the body or remains of the victim of the offence; and

(b) the place where every part of the body or remains of the victim of the offence may be found."

The appeal grounds

[4] The grounds of this appeal are that the judge at first instance erred in failing to find errors of law on the part of the Board in its application of 193A(2). The first of the relevant errors by the Board is said to be that it misconstrued the definition of

"victim's location" in s 193A(8) as involving a two-stage test, requiring satisfactory cooperation to identify both the general location of the victim's remains and the particular place where they could be found. The second alleged error on the Board's part is a claimed failure to consider the appellant's cooperation occurring after the introduction of s 193A (and after he had been sentenced), contrary to s 193A(3) which specifies that the relevant cooperation may have happened before or after the prisoner was sentenced.

The background to the parole application

[5] The Board's reasons for its refusal of parole are to be found in its decision of 8 November 2018, and are repeated, in a more succinct form, in a Statement of Reasons provided on 14 January 2019. The decision sets out a history of events leading up to the parole application. Mr Pullen was killed in April 2012, and the appellant and his co-accused, Luke Kister, disposed of his body. On 12 July 2012, the appellant declined to be interviewed by police in relation to the matter. On 6 August 2012, he took part in an interview but denied any knowledge of Mr Pullen's blood found in Kister's utility. He also denied having travelled with Kister in that vehicle overnight or having made any trips with Kister to Collinsville, although mobile telephone records indicated their presence in that vicinity in April 2012. On 23 July 2013, he was charged with being an accessory after the fact to murder, and declined to take part in an interview. On 4 March 2015, he was charged with murder and again refused to take part in an interview.

[6] On 31 May 2016, the appellant pleaded guilty to the offence to being an accessory after the fact to manslaughter, that being the killing of Mr Pullen by persons named Lincoln and Oakley. The sentence hearing was adjourned to enable him to take the police to the location of Mr Pullen's remains. On 1 June 2016, he directed police through his legal representative to an area of remote bushland at Glenden Road, Newlands, near Collinsville. The area identified was searched but nothing of relevance was found.

[7] Two days later, the appellant was sentenced. At the sentence hearing, his counsel submitted on his behalf that when he took possession of Mr Pullen's body it was covered and he had at no stage looked inside the covering. He

> "… simply, then, was involved in removing Mr Pullen's body".

It was said that he had tried to identify the position where the body was left; it was some distance out of Mackay in bushland. Notably, there was no mention of the body having been dealt with in any way other than leaving it exposed to the elements. The appellant was then sentenced on the basis that he and Kister had dumped Mr Pullen's body in the bush, the judge observing that since it had been left in the open for four years, any attempt to find it was "speculative".

[8] On 11 June 2016, about a week after the appellant was sentenced, a further search involving police and SES volunteers was undertaken of the area the appellant had identified, without result. Then in his parole application made on 21 July 2017, the appellant referred to having had Mr Pullen's body in his possession, but again made no suggestion of any other dealings with it.

[9] However, on 26 September 2017 (after the commencement of s 193A on 25 August 2017), the appellant took part in a further interview with the police. On this occasion, he identified a new area about 200 metres west of the area previously

indicated, marking it on a map, and provided some details, not previously mentioned, of what was done with Mr Pullen's body. His account now was that it was wrapped in rubber matting and a cover, and was removed from the utility, doused in diesel fuel and set on fire. He and Kister remained at the fire until all was left was red hot coals. The newly identified area, as well as the area previously searched, were again the subject of a line search, with no evidence of Mr Pullen's remains found.

The Board's decision

[10] The Board identified the relevant cooperation given by the appellant as his efforts on 1 June 2016 to direct the police to the location and place where he said Mr Pullen could be found, and his discussion with police on 26 September 2017. It was not in issue that on 1 June 2016, the appellant had nominated both a location, and more specifically, a place, where he said that the body was left by him and Kister in April 2012. It was accepted that it was not a prerequisite to a finding of satisfactory cooperation that the body be found. However, the fact that no remains were found at the identified location made the appellant's versions less credible; and although there might be different explanations for the failure to locate the body, one of them was that the appellant had provided false information. The Board did not accept the appellant as a truthful witness and it was a question of whether it could accept the information he had given as true, having regard to other independent evidence.

[11] There was evidence to support the appellant's account as to the location where Mr Pullen's remains had been left; that consisted of mobile phone tower records which indicated that he was at the relevant time in a mobile phone reception area in a zone bounded by towers in the Newlands – Collinsville region. He and Kister had also been seen in Glenden, a town near Collinsville, and in its vicinity. But

> "… in terms of the particular place [the appellant] nominated (within the location that [he] identified) where Mr Pullen's body or remains may be found …",[1]

there was no independent evidence and the question was whether he was credible.

[12] The Board did not find the appellant credible, in the absence of any supporting information, because he had lied to police in his original denials of involvement and had later withheld important information from them. He was sentenced on the basis that the body was dumped, not that it was burned. At no time up until 26 September 2017 had he given any indication of the body having being cremated, so he had either lied when he said it was cremated, or previously deliberately withheld information that would have been crucial to any search. That was relevant to the Board's assessment of his credibility. The Board was not satisfied of the appellant's truthfulness or the completeness or reliability of the information provided by him as to the place where Mr Pullen might be found. Moreover, the cooperation was not timely; it was not until over four years after the killing of Mr Pullen that the appellant volunteered any information, and he did not give the critical detail of cremation until 15 months later. That had an impact on the nature of the searches conducted in 2016.

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1 Statement of Reasons, Parole Board Queensland, p 5 [at 15].

[13] In addition, the Board was required by s 193A(7)(a)(i) to have regard to the Queensland Police Service report which said that the information provided was limited, sometimes untruthful, provided years after the event and of little utility since it had not led to the finding of Mr Pullen's body. The Board accepted that conclusion.

[14] Given its findings and reasons, the Board was not satisfied that the appellant had satisfactorily co-operated for the purposes of s 193A(2), so that the parole application was refused.

The decision on the application for judicial review

[15] On the application for judicial review of that decision the appellant made, in essence, the same arguments that are advanced now. The first was that the Board erred in deciding that the appellant had to satisfy it that he had co-operated satisfactorily to identify both the location and the place where the body could be found. The proper construction of the definition of "victim's location" in s 193A(8), it was contended, was that "location" and "place" were synonymous and interchangeable terms. The word "and" should be read as having disjunctive effect, but in any case the location and place where the body was to be found were the same thing.

[16] The primary judge rejected that submission, observing that the rational presumption was that the legislature intended different words to have different meanings, particularly where they appeared in different limbs of the same provision. His Honour concluded that on an ordinary and natural reading, the two limbs of the definition encompassed discrete concepts which formed conjunctive requirements. Referring to different definitions given by the Macquarie Concise Dictionary of the words "location" and "place", as respectively referring to

> "a tract of land located, or designated situation or limits"

and

> "a particular portion of space, of definite or indefinite extent",

his Honour reached the following conclusion:

> "…'location' refers to where the victim's remains are in a general sense, and 'place' refers to specifically where, within that location, the remains may be found".[2]

The legislature did not, contrary to the appellant's submission, intend the words to be synonymous and interchangeable, and the Board had not erred in applying a two-stage test. That approach was also in accordance with the policy behind the enactment of the provision, which as described in the Explanatory Notes,[3] had an intention of making parole release for prisoners contingent on satisfactory cooperation in the investigation of the offence to identify the victim's location, thereby giving an incentive to assist in the recovery of the victim's remains.

[17] The second argument, as here, was that the Board, having found that the appellant had not satisfactorily co-operated because he did not reveal that the body was

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2 *Renwick v Parole Board Queensland* [2019] QSC 37 [at 30].

3 Explanatory Note, *Corrective Services (No body, No Parole) Amendment Bill* 2017, p 1.

burned until September 2017, had failed to consider, as s 193A(3) required, cooperation before and after he was sentenced. The appellant submitted that the Board's reliance on his omission to disclose the cremation, made before the commencement of s 193A, would have the effect of making him permanently ineligible for parole. If the legislature had intended to render an applicant ineligible because of conduct prior to the passage of the law, that would have been said in clear terms.

[18] The primary judge concluded, though, that the Board was required to consider the appellant's cooperation before and after he was sentenced, and did so. His Honour observed also that nothing prevented the Board from having regard to post-sentence cooperation in assessing pre-sentence cooperation.

The appellant's submissions on the first ground of appeal

[19] In this court, the appellant submitted again that the terms "location" and "place" were interchangeable and synonymous, both referring to physical space. In determining whether the word "and" between the limbs of the definition was to be read as having a disjunctive or conjunctive effect, regard was to be had to the context and purpose of the relevant provision: *Kazal v Thunder Studios Inc (California)*.[4] The purpose of the statute in the present case was not to punish but to provide relief to someone involved in an unlawful killing who had done all they could to locate the body. Consequently, no two-stage test of the kind applied by the Board and approved by the primary judge was intended. Because the two expressions, "location" and "place" were one and the same, once the appellant had identified the last known location of the body, he was required to do no more.

[20] It was further argued that the primary judge erred by reading "place" as a reference to

> "… where, *within* that location, the remains may be found". (Italics added)

There was, it was said, no justification for reading into the provision a requirement that the place be "within" the location, because the provision did not use the preposition "within". "Place" did not necessarily connote a more limited area than "location" or indicate that the former would be comprised within the latter.

[21] Finally, it was said that the primary judge, by referring to the presumption that the legislature intended different words to have different meanings, was giving deference to a supposed unstated intention of the legislature; which, it was said, was contrary to authority. Reference was made to *Watson v Marshall*[5] in which Walsh J said that

> "… in the interpretation of an Act which affects personal liberty, supposition as to the intention of the legislature has no place and … the function of the Court is limited to interpreting and giving effect to its will as expressed in the statute."[6]

Conclusions on the first ground

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4 (2017) 350 ALR 216.
5 (1971) 124 CLR 621.
6 At 629.

[22] There was, in my view, no error in the primary judge's application of the presumption that the legislature intended different words, in this case "location" and "place", to have different meanings. *Watson v Marshall* is not to the point. That case dealt with whether a provision which allowed admission and detention in a hospital of an individual with apparent psychiatric symptoms also impliedly authorised that person's being taken and conveyed to the hospital. In that context, Walsh J alluded to the inappropriateness of supposition as to what the legislature might have intended, in interpreting an Act affecting personal liberty. The concern there was with the absence of express words to warrant curtailment of a right, not the different meanings of express words.

[23] The primary judge here applied a well-recognised rule of construction.[7] More fundamentally, it is the duty of the court to give a provision meaning and effect.[8] Whether the definition were read disjunctively or conjunctively, that could hardly be achieved if the second limb of the definition were construed, as the appellant would argue, as superfluous; as adding nothing to the first limb. The primary judge properly sought to construe the provision so that both its limbs were given effect. His Honour's interpretation of the definition as referring, in the term "location", to where the remains were in a general sense, while "place" referred to specifically where they might be found, gave the provision a rational meaning.

[24] Applying the principle in *Kazal*, the statutory context in which the definition appears is one in which the relevant intent is to locate victims' remains. That intention is more likely to be better achieved by a construction of the definition in which "and" has a conjunctive effect requiring satisfaction of both limbs, so that more, rather than less, information is required of the candidate for parole. There is no necessary sequence to the satisfaction of the two limbs, so the definition is better described as involving a test with two elements, rather than as a "two-stage" test. So, for example, the identification of the relevant place may of itself indicate the location.

[25] The appellant may be right to say that the addition of the word "within" is an unjustified gloss on the section. It has, in my view, the potential to add an unwarranted limitation to the provision's application, because it is conceivable that the place where the body might be found would not be within its last known location. As an example of how that might be, in the course of the appellant's argument before us, Gotterson JA posited the case where a body was disposed of into a river, so that while its last known location was the disposal point, it was likely to be found elsewhere, some way downstream. But the fact that the preposition "within" cannot be read into the second limb of the definition does not alter the correctness of his Honour's conclusion that its first and second limbs embraced, respectively, the general and the specific.

[26] It is quite clear that the Board was not purporting to read any requirement that the "place" be within the "location" into the definition. Its reference to the place's being within the identified location related solely to the facts of this case, in which it

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7 See *Statutory Interpretation in Australia*, 8th Edition, DC Pearce & RS Geddes, LexisNexis Butterworths, Australia, 2014 at 4.6, citing *Scott v Commercial Hotel Merbein Pty Ltd* [1930] VLR 75: *O'Sullivan v Barton* [1947] SASR 4; *Bell v Day* (1886) 2 QLJ 180 and *Construction, Forestry, Mining and Energy Union v Hadgkiss* (2007) 169 FCR 151.

8 *Karanfilov v Inghams Enterprises Pty Ltd* [2001] 2 Qd R 273 at 290.

was reasonably to be inferred that the place where the remains might be found was within the location identified by the appellant.

The appellant's submissions on the second ground of appeal

[27] As to the second alleged error, the appellant argued that the Board had wrongly reasoned that the omission to disclose that the body had been burnt before s 193A came into effect was sufficient grounds to deny him parole. It had used the omission to negate the cooperation which the appellant had given by revealing that the body had been burned, although that revelation had been made at the first opportunity after the passage of s 193A. By disregarding that revelation, the Board had committed jurisdictional error, and the primary judge had erred in failing to so find.

[28] The error identified in the notice of appeal and in written submissions was the failure to consider cooperation given after the passage of s 193A and after sentence, in the form of the September 2017 information that the body had been burned. However, in oral submissions the appellant's position appeared to shift at times to an argument that it was the June 2016 cooperation which had been disregarded, as rendered unsatisfactory by the later revelation of cremation. The same movement from the original argument seems to have occurred before the primary judge; hence his Honour's reference to the permissibility of the Board's considering post-sentence cooperation in assessing pre-sentence cooperation.

Conclusions on the second ground

[29] As to the second alleged error, the Board appropriately regarded it as necessary, in considering whether there had been satisfactory cooperation by the appellant, to determine whether the information he provided was credible. In determining his credibility, lies previously told by him were relevant. In that regard, it was evident that he had lied either in the claim that the body was cremated or by the lie by omission of any mention of cremation and, indeed, creation of the impression at sentence that the body had been dumped. The lie by omission and misrepresentation would be material because the information was crucial to any search to be undertaken.

[30] As a result, the Board concluded, reasonably, that it could not be satisfied of the appellant's

> "… truthfulness, and the completeness and reliability of the information [he had] given."[9]

That was not to regard the previous omission to give information as per se precluding a favourable decision but, permissibly, to regard it as going to the question of credit. The Board was not in a position, because of its doubts as to the appellant's reliability, to determine whether the account of cremation was true or false, and hence whether it amounted to cooperation.

[31] In relation to the pre-sentence disclosures, in June 2016, the Board was not satisfied of satisfactory cooperation because the remains had not been found in the place then identified by the appellant and it did not regard him as credible. Its further observations as to timeliness were surplusage once that conclusion was reached, but there seems no reason, as the primary judge observed, that it could not reasonably

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9 Statement of Reasons, Parole Board Queensland, p 7 [at 32].

have regard to the September 2017 information in assessing the completeness and usefulness of the June 2016 information.

[32] The difficulty for the appellant was that the Board could not be satisfied that the threshold question of satisfactory cooperation could be met in relation to either of the June 2016 and September 2017 disclosures, because it was unable to be satisfied of the truth of either.

[33] The Board did not commit the claimed error of failing to have regard to cooperation given after sentence, and the primary judge made no error in deciding accordingly.

Orders

[34] I would dismiss the appeal and order the appellant to pay the respondent's costs.

[35] **GOTTERSON JA:** I agree with the orders proposed by Holmes CJ and with the reasons given by her Honour.

[36] **McMURDO JA:** I agree with Holmes CJ.