SUPREME COURT OF QUEENSLAND

CITATION:	*Durrant & Anor v Von Schulz* [2001] QCA 345
PARTIES:	**BRISBANE CITY COUNCIL** (first respondent/not a party to the appeal) **JILLIAN ELIZABETH DURRANT** (second respondent/appellant) **v** **KARL VON SCHULZ** (first appellant/first respondent) **THERESIA VON SCHULZ** (second appellant/second respondent)
FILE NO/S:	Appeal No 8407 of 2000 DC No 756 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	7 September 2001
DELIVERED AT:	Brisbane
HEARING DATE:	14 June 2001
JUDGES:	McMurdo P, Thomas JA and Atkinson J Judgment of the Court
ORDER:	**1. Appeal allowed.** **2. Appellant to pay respondents' costs, if any, of the appeal (including the application for leave to appeal) to be assessed.** **3. Set aside the orders made in the District Court and instead dismiss the appeal in respect of the first respondent and allow the appeal in respect of the second respondent.** **4. First respondent to pay the appellant's costs of the appeal in the District Court relating to the issue of official traffic signs to be assessed.** **5. Appellant to pay the costs, if any, of the second respondent in the District Court on all remaining issues to be assessed.** **6. Set aside the orders made by the learned magistrate on 18 November 1999 in respect of the second respondent but confirm those orders in respect of the first respondent.**
CATCHWORDS:	TRAFFIC LAW – REGULATION OF TRAFFIC –

TRAFFIC SIGNS AND NOTICES - where respondent charged with contravention of an indication given by an official traffic sign – where *Traffic Act* 1949 (Qld) allows local government to regulate parking in a declared traffic area - whether the official traffic sign was adequately displayed under s 44B(3)(b) *Traffic Act* 1949 (Qld) – where appeal from primary judge's finding that the sign was not installed at the boundary of the central traffic area and the entering road

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES - where appeal as to the meaning of s 44B(3)(b) *Traffic Act* 1949 (Qld) and the words 'at every road entry' – where words must be given their ordinary meaning – where commonsense supports an expansive interpretation of the words – where the interpretation that will best achieve the purpose of the act is to be preferred – where general evidence that signs were placed at all entrances to the central traffic area - where traffic signs need not be placed precisely at or on the surveyed boundary of the traffic area

TRAFFIC LAW – PARTICULAR OFFENCES – OFFENCES RELATED TO USE OF THE VEHICLE - where infringement notice served on both respondents as owners of the vehicle – where evidence that the second respondent was the owner but not the driver of the vehicle – where owner is convicted under deeming provisions of s 98E *Justices Act* 1886 (Qld) – where the second respondent did not complete a known user declaration – whether in the absence of a declaration the presumption of guilt can be rebutted by clear accepted evidence that the owner was not the offender – in the absence of clear words to the contrary the presumption is rebuttable even without a completed declaration

Acts Interpretation Act 1954 (Qld), s 14A
District Court Act 1967 (Qld), s 118(3)
Justices Act 1886 (Qld), s 98D(2)(a), s 98E(1), s 98E(2), s 98E(3), s 98H (1)(c), s 98H(5)
Justices Regulation 1993 (Qld), s 6A
Traffic Act 1949 (Qld), s 5, s 9, s 12F, s 12F(1), s 44A(1), s 44B(1), s 44B(3)(a), s 44B(3)(b)

Attorney-General's Reference (No 1 of 1976) [1977] All ER 557, referred to
Baroness Wenlock v Riverdee [1988] 38 ChD 534, referred to
Carroll v Shillinglaw [1906] 3 CLR 1099, referred to
Jennings Industries Ltd v Commonwealth (1984) 57 ACTR 5, referred to
Project Blue Sky Inc v Australian Broadcasting Authority

(1998) CLR 355, referred to
Sharpe v Goodhew [1990] 96 ALR 251, referred to
Von Schulz v Durrant [2000] QCA 478, Appeal No 8407 of 2000, 21 November 2000, considered

COUNSEL: P J Lyons QC for the appellant
The respondents appeared on their own behalf

SOLICITORS: Brisbane City Legal Practice for the appellant
The respondents appeared on their own behalf

[1] **THE COURT:** The respondents were the registered owners of a Holden sedan which was parked for a continuous period in excess of two hours in Hope Street, South Brisbane between Fish Lane and Peel Street on 7 April 1998. A Brisbane City Council ("the Council") officer charged them both with contravening an indication given by an official traffic sign.[1]

[2] The *Traffic Act* 1949 (Qld) ("the Act") allows a local government under a local law to regulate parking in its area.[2] A local government may install official traffic signs indicating how parking is regulated[3] throughout a traffic area only if a local law has declared the traffic area and defined its boundaries[4] and "the sign is installed on the road at every road entry to the traffic area".[5] Such parking is regulated by enforcement under s 12F of the Act. The Council installed official traffic signs limiting parking to two hours within the Council's designated central traffic area.[6] The central traffic area includes the inner city area and portions of Mayne, Bowen Hills, Newstead, Fortitude Valley, Spring Hill, Milton, South Brisbane, Kangaroo Point and Woolloongabba. The area is highlighted in yellow in a map distributed by the Council which was a helpful exhibit in this appeal.

[3] The offence charged is an infringement notice offence.[7] An infringement notice was served on the respondents as owners of the vehicle.[8] The owner is then taken to have committed the offence even though the actual offender may have been someone else[9] but the owner must not be taken to have committed the offence if within 28 days after service of the infringement notice the owner makes and gives

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1 *Traffic Act* 1949 (Qld), s 12F. The term "official traffic sign" is defined in s 9 of the Act and it is not disputed that any relevant sign in this case was an "official traffic sign" under the *Traffic Act* 1949 (Qld).

2 Section 44A(1).

3 Section 44B(1)

4 Section 44B(3)(a).

5 Section 44B(3)(b).

6 It is not in dispute that a local law has declared the traffic area and defined its boundaries: s 44B(3)(a).

7 See *Justices Regulation* 1993, s 6A which provided that an infringement notice offence includes an offence against a local law. (Inserted by SL No 44 of 1997, s 4 commenced 7 March 1997; amended by 1999 SL No 286 s 4 Sch 2, commenced on 1 December 1999; omitted by 2000 SL No 275, s 35, commenced on 27 November 2000). *Justices Act* 1886 (Qld), s 98B then provided that "infringement notice offence" means an offence other than an indictable offence or offence against the person (prescribed by regulation to be an offence to which this Part applies). Section 98B was omitted by 1999 No 70, s 166, sch 1, commenced on 9 December 1999.

8 *Justices Act* 1886 (Qld), s 98D(2)(a).

9 Ibid, s 98E(1).

to the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle involved in the offence.[10] No such declaration was completed by either respondent.

[4] The respondents, who at all stages have been self-represented, contested their liability for the offence in the Magistrates Court on two bases. The second respondent gave evidence, which was accepted by the learned magistrate, that, whilst she was in the car with her husband when he parked it, she did not park or drive the car and does not have a licence; she wrote a letter to the Council to this effect but did not complete a known user declaration. She submitted she should not be held liable for an act she did not commit. Both respondents gave evidence that there were no official traffic signs regulating parking in the central traffic area displayed on roads between their home (which appears to have been in Greenslopes) and Hope Street, where they parked the car. The first respondent carefully inspected the area around his parking spot for parking signs; although there were parking signs on the opposite side of the road, there were no signs to indicate that it was unlawful to park in this spot.

[5] The learned magistrate noted that the respondents did not give the Council a declaration under s 98E(3) *Justices Act* 1886 (Qld) ("*Justices Act*"). She accepted the evidence of local laws officer Mr Robinson that the respondents' vehicle was parked in the central traffic area and that every street into the central traffic area has large signs stating "Brisbane Central Traffic Area 2P 7am to 6pm Monday to Friday and 8am to 12noon Saturday except as signed". Although the respondents did not see these signs, they are taken to have notice of them.[11] The first respondent was therefore guilty of the offence. The magistrate's reasoning continued that although the second respondent was not driving the car at the time it was parked, because she did not fill out a known user declaration within 28 days under s 98E(3) *Justices Act* she must be taken to be the driver. The beneficial provisions of s 98H(5) *Justices Act* can only apply if the owner has provided the Brisbane City Council with a known user declaration for the vehicle: s 98H(1)(c) *Justices Act*. As the second respondent had not provided a known user declaration, she was also guilty. For those reasons, the learned magistrate convicted each respondent and fined them $12.50 plus costs of court of $48.60 and professional costs of $300 with two months to pay in default imprisonment for one day.[12]

[6] The respondents unsuccessfully sought a rehearing in the Magistrates Court and then appealed to the District Court. Their notice of appeal did not clearly raise the issue of the second respondent's liability as owner of the vehicle; the primary issue in that appeal was whether the official traffic signs were adequately displayed under the Act. The learned judge allowed the parties to call further evidence on this issue. The respondents' joint affidavit concentrated largely on the positioning of the official traffic signs but also questioned how the second respondent could be liable when she was merely the owner, not the driver, of the parked car. The second respondent also questioned her liability as owner rather than driver in her closing

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10 Ibid, s 98E(3) and see also s 98H.

11 *Traffic Act* 1949 (Qld), s 44B(6), (7).

12 The learned magistrate noted the fine was $25 and ordered professional costs in the amount of $600 and costs of court in the amount of $97.20, but in making orders against each respondent halved those amounts.

address. The learned District Court judge allowed the appeal on 29 August 2000 because he was not satisfied beyond reasonable doubt that the official traffic signs had been placed at every road entry to the traffic area.[13] His Honour did not consider the second respondent's deemed liability for the offence under the Act.

[7] The appellant sought leave to appeal under s 118(3) *District Court Act* 1967 (Qld) as to the learned District Court judge's interpretation of the meaning of s 44B(3)(b) of the Act. Leave was granted on 21 November 2000 because "there is a question of law of some significance and importance to the local authority involved in this case"[14] conditional upon the applicant paying the costs of the hearings in the Court of Appeal in any event.

[8] There was no evidence before the magistrate or the District Court judge as to the route taken by the respondents in entering the traffic area from their home in Greenslopes to the parking spot in Hope Street. As the respondents deposed that they approached Hope Street from Park Road and Annerley Road, the appellant focussed attention on the entry to the central traffic area from Park Road West and Annerley Road. Mr Douglas Gates, Team Leader, Signs Administration for the Council deposed that he and his colleagues were responsible for the Council's placement of traffic signs; that traffic signs which indicate two hour parking limits in the central traffic area were placed at all entrances to the central traffic area, including a sign currently displayed on a post in Annerley Road, Dutton Park at the north western corner of its intersection with Tillot Street. That was the area upon which attention was focussed in the District Court and upon which his Honour concluded that the necessary sign was not installed "at" the boundary of the central traffic area. A photograph of the sign in its present location was tendered. As at 7 April 1998 and from 1981 until 26 February 2000, the sign was displayed on a post closer to the railway bridge than its present position, approximately 30-40 metres south of the roadway bridge.

[9] The tendered map showed that the railway bridge marked the boundary of the central traffic area where Annerley Road entered it. It should also be noted that Park Road West joined Annerley Road between the railway bridge and the displayed sign on the corner of Annerley Road and Tillot Street; a sign containing the same regulated parking information was displayed on the corner of Park Road West and Annerley Road for motorists entering the traffic area by this route.

[10] The significance of the Annerley Road entry diminished when the first respondent stated during his closing submissions in the District Court appeal that the respondents entered Annerley Road from Park Road to the east, an intersection north of the railway bridge and within the central traffic area; this statement was not inconsistent with the respondents' affidavit. But Mr Gates' and Mr Robinson's general evidence, that the required signs were placed at all entrances to the central traffic area, remained apposite. In order to have been driving towards Annerley Road along Park Road as the respondents claim, they must first have entered the central traffic area at some point. There is no evidence to contradict Mr Robinson's general evidence of compliance of signs at all other points of entry. The best evidence of non-compliance from the respondents' point of view is that concerning

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13 *Traffic Act* 1949 (Qld), s 44B(3).

14 *Von Schulz v Durrant* [2000] QCA 478; Appeal No 8407 of 2000, 21 November 2000 at 3.

the sign in Annerley Road. If that sign is held to comply with statutory requirements there is no evidence capable of displacing Mr Robinson's evidence in relation to any other sign at any other point of entry.

[11] The learned primary judge found that whilst an appropriate official traffic sign regulating parking in the central traffic area was installed on 7 April 1998 on Annerley Road between its intersection with Tillot Street and the commencement of the central traffic area, he was not satisfied beyond reasonable doubt that the sign was installed on the road at every road entry to the traffic area because this sign was not installed at the boundary of the central traffic area and the entering road.

[12] Section 44B(3)(b) of the Act relevantly provides:

> "(3) A local government may install an official traffic sign applying to parking throughout a traffic area only if –
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> …
>
> (b) the sign is installed on the road at every road entry to the traffic area."

The term "road entry" is not defined in the Act although the term "road" is given a very wide and general inclusive definition.[15] Subject to that definition and s 14A *Acts Interpretation Act* 1954 (Qld), the words of the sub-section must be given their ordinary meaning. An "entry" is the act of coming in.[16] The ordinary meaning of the phrase "on the road at every road entry" necessarily involves some degree of approximation. Were it otherwise, it would be necessary for a precise point to be identified by surveyors from which there could be no departure when installing official traffic signs. The learned primary judge recognised the folly of such a proposition in noting that in this case there was no evidence of impracticability, implying that his decision may have been different had such evidence been led. There are no clear words in the statute which support the interpretation given by his Honour and commonsense supports a wider view of the phrase "on the road at every road entry".

[13] One of the purposes of the Act is to allow local government to regulate parking within their local government area.[17] To do this it is desirable to make reasonable efforts to ensure that motorists know of the regulated parking scheme when entering the area. In positioning the signs, a local government authority would ordinarily consider issues such as safety and effective communication with motorists so that an element of discretion is necessary as to the best placement of the signs. The

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15 Section 9 of the Act states "road includes any road, street, highway, alley, avenue, lane, thoroughfare, track, carriageway, footway, or subway, whether surveyed or unsurveyed (and all bridges, viaducts, culverts, grids, approaches, crossings, and other things appurtenant thereto) open to or used by the public or to which the public have or are permitted to have access whether on payment of a fee or otherwise, and also includes –

(a) any road, street, footway, track or highway dedicated to the public or declared or proclaimed to be a road, street, footway, track or highway under any Act and any ferry or ford; and

(c) any place declared by regulation to be a road for the purposes of this Act."

16 Australian Concise Oxford Dictionary, Melbourne, Oxford University Press, 2nd ed, 1992 "1(a) the act or an instance of going or coming in"; The Macquarie Dictionary 2nd revised ed, The Macquarie Library 1991 "1. An act of entering; entrance. 2. A place of ingress or entrance, especially an entrance hall or vestibule."

17 *Traffic Act* 1949 (Qld), s 5 Part 6A (s 44A to s 44N).

interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation;[18] this supports an interpretation of s 44B(3)(b) which allows for the discretion and approximation necessary to orderly regulate parking.

[14] It cannot have been the intention of the legislature that the section have the unlikely result that official traffic signs are valid only if placed precisely at or on the surveyed boundary of the traffic area, assuming such a point is identifiable: *Project Blue Sky v Australian Broadcasting Authority*.[19] The interpretation given to s 44B(3)(b) by the learned trial judge would make unworkable the provisions of the Act as to regulated parking in traffic areas.

[15] In any case, the word "at" is commonly used in an approximate way.[20] A person is "at the door" whether the person leans against a closed door, or against the side of an open doorway or is on either side of an open or closed doorway. Just as the words "wait at the corner" are not limited to meaning "wait at the mathematically precise point where the two streets intersect", nor is the word "at" in s 44B(3)(b) of the Act limited to meaning that the official traffic sign must be displayed on the road precisely on the surveyed boundary where the road meets the traffic area. This more expansive interpretation of the word "at" is also consistent with that given to the phrase "at a hospital" as including the precincts of the hospital and hospital carpark.[21] We can see no reason to interpret the expression "at every road entry to the traffic area" in the limited way adopted by his Honour.

[16] The official traffic sign was about 30-40 metres south of the boundary of the central traffic area and was displayed so that motorists could see it immediately before entering the area. Its current position on the scaled map suggests it is now no more than 100 metres south of the boundary of the central traffic area. Motorists entering the traffic area would travel that short distance in moments. The sign was and is installed on a road sufficiently proximate to the road entry to be "at" the road entry within s 44B(3)(b) of the Act. The learned judge therefore had no reason to doubt the general evidence of Mr Robinson accepted by the learned magistrate and the further general evidence of Mr Gates that official traffic signs were displayed at every road entry to the traffic area. The appeal against the first respondent must be allowed.

[17] The second respondent was not the driver of the car and has only been convicted because of deeming provisions under the *Justices Act*. Leave to appeal was not given on this point and it would have been of assistance to the Court to have had the benefit of careful argument from both parties on this issue. The second respondent did not file a notice of contention but she is unrepresented and we would not disadvantage her on that basis. She had the benefit of a judgment in her favour from the District Court and we are satisfied it would be unfair to deprive her of that

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18 *Acts Interpretation Act* 1954 (Qld), s 14A.

19 (1998) 194 CLR 355, 390-391.

20 The Australian Concise Oxford Dictionary, Oxford University Press, Melbourne, 2nd ed, 1992 gives the meaning of "at" as "**1.** expressing position, exact or *approximate*".
The Macquarie Dictionary, 2nd revised edition, The Macquarie Library Pty Ltd, 1991 notes that the word "at" is "a particle specifying a point occupied, attained, sought or otherwise concerned, as in place, … and hence used in many idiomatic phrases expressing circumstantial or *relative* position, degree or rate, action, manner." *(our emphasis)*

21 *Attorney-General's Reference (No 1 of 1976)* [1977] 3 All ER 557, 559.

without considering the merits of a reasonable argument able to be advanced in her favour.

[18] The second respondent was the owner but not the driver of the vehicle which was parked in contravention of s 12F of the Act by the first respondent. That offence was an infringement notice offence under Part 4A *Justices Act*.[22] The infringement notice was served on her as an owner of the vehicle.[23] Sections 98E relevantly provides:

> "**98E.(1)** If –
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> (a) an infringement notice office involving a vehicle happens; and
>
> (b) an infringement notice for the offence is served on the person who owns the vehicle at the time of the offence;
>
> the owner is taken to have committed the offence even though the actual offender may have been someone else.
>
> **(2)** If the actual offender is someone else, subsection (1) does not affect the liability of the actual offender, but –
>
> (a) the owner and the actual offender cannot both be punished for the alleged offence; and
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> (b) if an infringement notice penalty is paid or a penalty is imposed on 1 of them for the offence – a further penalty must not be imposed on or recovered from the other person for the offence.
>
> **(3)** However, the owner must not be taken to have committed the alleged offence if, within 28 days after service on the owner of an infringement notice or summons for the offence, the owner makes and gives to the administering authority an illegal user declaration, a know or unknown user declaration or a sold vehicle declaration for the vehicle for the offence.
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> …"

Thus she "is taken to have committed the offence even though the actual offender may have been someone else" (s 98E(1)). If she made and gave to the Council a known user declaration within 28 days (s 98H) she could not be taken to have committed the alleged offence (s 98E(3), but as she did not complete such a declaration, ss 98E(3) and 98H(5) have no application. The issue then is whether, in the absence of any of the declarations set out in s 98E(3), the presumption in s 98E(1) is able to be rebutted by clear accepted evidence that the owner was not the offender. It does not seem that this point has been previously considered at appellate level either in this Court or the District Court.

[19] An offence under s 12F(1) of the Act is punishable by 40 penalty units or six months imprisonment. It is a penal provision which must be construed strictly. Section 98E(1) *Justices Act* does not clearly and unequivocally state that the presumption that the owner is taken to have committed the offence is conclusive or irrebuttable but for the circumstances set out in s 98E(3) or s 98H(5). In the absence of the clearest words to that effect, it should not be so construed. A strict approach can be seen even in the construction of statutes which expressly provide

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22 See fn 7.

23 *Justices Act* 1886 (Qld), s 98D(2)(a).

that something is to be conclusive evidence of a particular issue.[24] Stronger words than those in s 98E(1) would be necessary in order to preclude a person from defending himself or herself against such a prosecution. Furthermore, the terms of s 98E(2) would seem to be capable of direct application to the present case with the first respondent being identified as "the actual offender" and the second respondent being identified as an "owner". The concluding words of that subsection are, "if … a penalty is imposed on one of them for the offence – a further penalty must not be imposed on or recovered from the other person for the offence."

[20] In this case the magistrate accepted the uncontested evidence that the second respondent was not the offender and the evidentiary presumption established by s 98E(1) *Justices Act* was overturned. The second respondent should not have been convicted of the offence for which, on clear, uncontested evidence, the first respondent was solely responsible; the Magistrates Court order as to the second respondent cannot stand. The order made by the learned magistrate which effectively divided the penalty between the respondents therefore unduly favoured the first respondent but the Council has not appealed from that order and it does not seem to us that in those circumstance this Court should now alter it.

[21] Consistent with the terms of the grant of leave, the appellant is obliged to pay the respondents' costs, if any, of the appeal and of the hearings in the Court of Appeal. The first respondent should pay the appellant's costs of the District Court appeal relating to the issue of the placement of official traffic signs. The appellant should however pay the second respondent's other costs, if any, in the District Court appeal.

ORDERS:
Appeal allowed; appellant to pay respondents' costs, if any, of the appeal, to be assessed; set aside the orders made in the District Court and instead dismiss the appeal in respect of the first respondent and allow the appeal in respect of the second respondent; first respondent to pay the appellant's costs of the appeal in the District Court relating to the issue of official traffic signs to be assessed; appellant to pay the costs, if any, of the second respondent in the District Court on all remaining issues to be assessed; set aside the orders made by the learned magistrate on 18 November 1999 in respect of the second respondent but confirm those orders in respect of the first respondent.

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[24] *Carroll v Shillinglaw* [1906] 3 CLR 1099, 1108, 1124; *Baroness Wenlock v Riverdee Co* [1888] 38 ChD 534; *Jennings Industries Ltd v Commonwealth* (1984) 57 ACTR 5, 26-28; *Sharpe v Goodhew* [1990] 96 ALR 251, 265-267;