SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Schultz* [2019] QSC 244
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **WILLIAM FREDERICK SCHULTZ** (respondent)
FILE NO/S:	BS No 4457 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	1 October 2019
DELIVERED AT:	Brisbane
HEARING DATE:	1 October 2019
JUDGE:	Davis J
ORDER:	**Orders in terms of the Schedule to these reasons.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent has been detained on a continuing detention order – whether the respondent continues to be a serious danger to the community – whether the respondent should continue to be subject to the continuing detention order *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13, s 27, s 29, s 30 *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396, followed *Attorney General for the State of Queensland v Schultz* [2018] QSC 275, related *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575, followed
COUNSEL:	J Rolls for the applicant T Zwoerner for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] The respondent is presently the subject of a continuing detention order made by Bowskill J on 26 November 2018 under the provisions of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act")[1].

[2] The Attorney-General applies, pursuant to s 27 of the Act for a review of the continuing detention order.

[3] Both parties urge:

(i) for the confirmation of the decision made on 26 November 2018 by Bowskill J that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act;

(ii) that the continuing detention order made on 26 November 2018 be rescinded;

(iii) that the respondent be released from custody on a supervision order.

Background

[4] The respondent is 72 years of age.

[5] Over a period from 1986 through to 2013, the respondent committed various sexual offences against children. He was sentenced to various terms of imprisonment.

[6] In 2014 the respondent was convicted of seven charges of indecent treatment of children under the age of 12 committed between 2006 and 2013. He was sentenced to a term of imprisonment and an earlier suspended sentence was activated. The respondent's criminal history is recorded in some detail by Bowskill J in her Honour's judgment imposing a continuing detention order.[2]

[7] The 2014 convictions were relied upon by the applicant to bring an application pursuant to Division 3 of the Act against the respondent. It was on that application that Bowskill J;

(i) found that the respondent was a serious danger to the community in that there was an unacceptable risk of him committing a serious sexual offence[3], if released from custody without an order under Division 3 of the Act;[4]

---

1 *Attorney General for the State of Queensland v Schultz* [2018] QSC 275.

2 At [10]-[13] and [15]-[16].

3 In context here being a sexual offence against a child.

4 At [29].

(ii) concluded that adequate protection of the community could not be ensured by release of the respondent on a supervision order;[5]

(iii) made a continuing detention order.

[8] The applicant now seeks a review of those orders pursuant to Part 3 of the Act.

Statutory provisions

[9] A pivotal section in the Act is s 13. It provides as follows:

> "**13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—
>
> (a) if the prisoner is released from custody; or
>
> (b) if the prisoner is released from custody without a supervision order being made.
>
> (3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied—
>
> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to justify the decision.
>
> (4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—
>
> (aa) any report produced under section 8A;
>
> (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
>
> (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

---

[5] At [29]-[30]; *Dangerous Prisoners (Sexual Offenders) Act* 2003 s 13(5)(b) and *Attorney General for the State of Queensland v Francis* [2007] Qd R 396.

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order—

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5) (a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[10] Under s 27, the onus is cast upon the Attorney-General to make application for review of a continuing detention order made under s 13(5)(a).

[11] Section 30 governs the determination of review applications. Section 30 is as follows:

> "**30 Review hearing**
>
> (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
>
> (2) On the hearing of the review, the court may affirm the decision only if it is satisfied—
>
> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to affirm the decision.
>
> (3) If the court affirms the decision, the court may order that the prisoner—
>
> (a) continue to be subject to the continuing detention order; or
>
> (b) be released from custody subject to a supervision order.
>
> (4) In deciding whether to make an order under subsection (3)(a) or (b)—
>
> (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
>
> (b) the court must consider whether—
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
>
> (ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.
>
> (5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.
>
> (6) In this section—
>
> ***required matters*** means all of the following—
>
> (a) the matters mentioned in section 13(4);
>
> (b) any report produced under section 28A."

[12] Section 30, in many ways, mirrors s 13. As to the Court's consideration, the central question is whether the prisoner "is a serious danger to the community in the absence of the division 3

order" and in that way, s 30(1) reflects s 13(1). The notion of a "serious danger to the community"[6] incorporates the concept of "unacceptable risk".[7] Like an application under s 13, "… the paramount consideration is the need to ensure adequate protection of the community", as can be seen from s 30(4)(a). There is no definition of "unacceptable risk", but in *Fardon v Attorney-General (Qld)*,[8] this was said:

> "225. The yardstick to which the Court is to have regard, of an unacceptable risk to the community, relevantly a risk established according to a high degree of probability, that the prisoner will commit another sexual offence if released, established on and by acceptable and cogent evidence, adduced according to the rules of evidence, is one which courts historically have had regard to in many areas of the law. The process of reaching a predictive conclusion about risk is not a novel one. The Family Court undertakes a similar process on a daily basis and this Court (Mason CJ, Brennan, Dawson, Toohey and Gaudron JJ) said this in *M v M* of the appropriate approach by the Family Court to the evaluation of a risk to a child:
>
> > 'Efforts to define with greater precision the magnitude of the risk which will justify a court in denying a parent access to a child have resulted in a variety of formulations. The degree of risk has been described as a 'risk of serious harm', 'an element of risk' or 'an appreciable risk', a 'real possibility', a 'real risk', and an 'unacceptable risk'. This imposing array indicates that the courts are striving for a greater degree of definition than the subject is capable of yielding. In devising these tests the courts have endeavoured, in their efforts to protect the child's paramount interests, to achieve a balance between the risk of detriment to the child from sexual abuse and the possibility of benefit to the child from parental access. To achieve a proper balance, the test is best expressed by saying that a court will not grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual abuse.'
>
> 226. Sentencing itself in part at least may be a predictive exercise requiring a court on occasions to ask itself for how long an offender should be imprisoned to enable him to be rehabilitated, or to ensure that he will no longer pose a threat to the community. The predictive exercise of an

---

[6] Sections 13(1) and 30(1).

[7] Section 13(2).

[8] (2004) 223 CLR 575.

assessment of damages for future losses is also a daily occurrence in the courts." (citations omitted)[9]

[13] In the leading case of *Attorney-General for the State of Queensland v Francis*,[10] the Court of Appeal observed:

> "Adequate protection of the community from the risk of violent sexual offending does not impose a standard that is capable of precise measurement or prediction. The Act does not contemplate that arrangements under a supervision order to prevent the risk of reoffending must be 'watertight'."[11]

[14] Both *Fardon* and *Francis* were cases concerned with the making of orders under s 13 of the Act, but for the reasons I have already explained, the statements of principle are equally apposite to a review under s 30.

[15] Section 29 of the Act provides as follows;

> "**29 Psychiatric reports to be prepared for review**
>
> (1) Unless the court otherwise orders at the hearing of any application under this Act, for the purposes of a review under section 27 or 28, the chief executive must arrange for the prisoner to be examined by 2 psychiatrists.
>
> (2) For subsection (1) and the purposes of a review, sections 11 and 12 apply with necessary changes.
>
> (3) Subsection (1) authorises examinations of the prisoner by the 2 psychiatrists.

Psychiatric Reports

[16] Dr Josephine Sundin examined the respondent in 2017. Dr Eve Timmins and Dr Scott Harden examined the respondent and provided reports in 2018. An analysis of the doctors' findings appears in the judgment of Bowskill J[12] and it is unnecessary to repeat what her Honour recorded there. None of the doctors have examined the respondent for the purpose of the present application.

Consideration

[17] An application for review of a continuing detention order must, by s 29, be preceded by an examination of the respondent by two psychiatrists "unless the court otherwise orders".

---

[9] See also *Attorney-General for the State of Queensland v Sutherland* [2006] QSC 268 at [29] and *Attorney-General for the State of Queensland v DBJ* [2017] QSC 302 and the cases analysed there.

[10] [2007] 1 Qd R 396.

[11] At [39].

[12] At [20] and [26]-[27].

[18] Here, there has been no fresh examination of the respondent. Experienced psychiatrists examined the respondent in 2017 and 2018 and found that adequate protection of the community from the risk of violent sexual offending could only be managed if he were placed in a suitable locked aged care facility. At that time, no such facility was available.

[19] By this review, the parties seek to have the respondent released on a supervision order to a locked aged care facility that has now become available. Drs Timmins and Harden, while they have not recently examined the respondent, have provided new comments, the effect of which is that they confirm their earlier opinions as to risk, but consider the accommodation which is now available as suitable to reduce the risk to acceptable levels. Both consider that a term of 10 years is suitable for the supervision order as the respondent's risk, unsupervised, is unlikely to diminish.

[20] In those circumstances, I will order, under s 29(1), that the requirement for further psychiatric examination of the respondent be dispensed with.

[21] The next question is whether the respondent should continue to be detained or should be released on supervision. That question is determined by reference to whether the adequate protection of the community can be ensured by the making of a supervision order. It is necessary to examine the reasons of Bowskill J.

[22] The evidence before her Honour showed;

(i) the respondent has a clinical diagnoses of paedophilia;[13]

(ii) the respondent is suffering significant cognitive impairment;[14]

(iii) the respondent's risk of sexually reoffending was described as "moderate to high" by Dr Timmins and "high (well above average)" by Dr Harden;

(iv) the respondent is incapable of residing otherwise than in a fully supported accommodation,[15] or, according to Dr Harden, "a suitable locked aged care facility".

[23] It was against that background that her Honour made a continuing detention order in the course of which her Honour said;

> "[28] There have been substantial and comprehensive efforts made to find a suitable secure dementia unit in an aged care facility for Mr Schultz. These are outlined in the affidavit of Ms Woolnough, a delegate of the Public Guardian, filed on 27 September 2018; and updated in the affidavits of Ms Meacham, another delegate of the Public Guardian, filed on 26 October 2018 and 22 November 2018. As summarised by Ms

---

[13] The opinion of Dr Timmins and Dr Harden; paragraphs [26] and [27] of the judgment.

[14] [22] and [23] of the judgment.

[15] [24].

> Meacham in her most recent affidavit, applications have been made on Mr Schultz's behalf to 21 aged care providers since the end of August. To date, no aged care provider has approved a placement for Mr Schultz. Mr Schultz remains on the waiting list with three aged care facilities, which have accepted his application for a placement, but there are no current or pending vacancies.
>
> [29] Having regard to all of the material, I am satisfied that Mr Schultz presents an unacceptable risk of committing a serious sexual offence, being a sexual offence against a child, if released from custody without an order under s 13 of the Act. Further, I am satisfied that the adequate protection of the community could not be ensured by the release of Mr Schultz subject to a supervision order under s 13(5)(b), unless he was to be released to a secure dementia unit. As there is no such secure unit available to take Mr Schultz, I am satisfied that it is appropriate to order that Mr Schultz be detained in custody for an indefinite term for his control, care or treatment. Although the medical evidence seems to indicate that treatment is not a realistic possibility for Mr Schultz, I accept that it is appropriate to make the order in the broadest, and most flexible terms contemplated by the Act.
>
> [30] The court has been informed that enquiries will continue to be made to try to find a place for Mr Schultz in a suitable secure facility, by the State Reintegration Coordinator within the High Risk Offender Management Unit of Queensland Corrective Services Unit. Counsel for the Attorney-General also indicated that, should a place become available for Mr Schultz, such that release subject to a supervision order may be a viable option, an application would be made in a timely way under s 27 of the Act, for review of the continuing detention order made today. It is noted that whilst s 27(1A) provides a maximum time period, during which the hearing of the first review must be completed, that section provides no minimum time before an application for review could be made."

[24] The current evidence is that the respondent's risk has not changed. However, there is now suitable accommodation available. This accommodation is described as an aged care facility in the South East Queensland area ("the property") that is willing to accommodate the respondent in a secure dementia unit, and has been assessed as suitable by the High Risk Offender Management Unit ("HROMU"). The property is a locked facility with doors which are controlled by staff or by means of a pin code. The respondent would be accommodated in a secure dementia unit within the property, which is further secured by two doors with pin code and key lock access restrictions. All meals are provided by onsite carers and staff. The respondent will not be able to leave the Dementia Unit unless approved by HROMU in advance, in which case the respondent would be under escort by staff, or in the case of emergency, in which case HROMU would be notified immediately.

[25] The present psychiatric opinion is that the secure facility will keep the respondent from children. Access to children is a risk factor.

[26] A supervision order allowing the respondent's accommodation in the facility proposed will provide adequate protection of the community.

[27] Consistently with the physiatrists' current evidence I will set a term of 10 years for the supervision order.

[28] In the circumstances, I:

(i) confirm the decision made by Bowskill J on 26 November 2018 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003;

(ii) rescind the continuing detention order made on 26 November 2018;

(iii) release the respondent from custody subject to the requirements in the order attached as a schedule to these reasons until 2 October 2029.

SUPREME COURT OF QUEENSLAND

SCHEDULE TO:	*Attorney-General for the State of Queensland v Schultz* [2019] QSC 244
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **WILLIAM FREDERICK SCHULTZ** (respondent)

SCHEDULE

THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.29(1) of the Dangerous Prisoners (Sexual Offenders) Act 2003 ("the Act"), the requirement for psychiatric examination of the respondent by two psychiatrists be dispensed with.

2. Pursuant to s.30(1) of the Act, the decision made on 26 November 2018 that the respondent, William Frederick Schultz, is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act be affirmed.

3. Pursuant to s.30(5) of the Act, the continuing detention order made on 26 November 2018 be rescinded.

4. Pursuant to s.30(3)(b) of the Act, the respondent be released from custody on 2 October 2019 and be subject to the following requirements until 2 October 2029.

The respondent must:

General terms

1. report to a Queensland Corrective Services officer at the Queensland Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of his release from custody, and at that time, advise the officer of his current name and address;

2. report to, and receive visits from, a Queensland Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;

3. notify a Queensland Corrective Services officer of every change of his name, place of residence or employment at least two (2) business days before the change happens;

4. be under the supervision of a Queensland Corrective Services officer for the duration of this order;

5. comply with a curfew direction or monitoring direction;

6. comply with any reasonable direction under section 16B of the Act given to him;

7. comply with every reasonable direction of a Queensland Corrective Services officer that is not directly inconsistent with a requirement of this order;

8. not commit an offence of a sexual nature during the period of this order;

9. not commit an indictable offence during the period of this order;

Residence

10. not leave or stay out of Queensland without the permission of a Queensland Corrective Services officer;

11. reside at a place within the State of Queensland as approved by a Queensland Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;

12. not reside at a place by way of short term accommodation including overnight stays without the permission of a Queensland Corrective Services officer;

Contact with victims

13. not have any direct or indirect contact with the victims of his sexual offences;

Requests for information

14. respond truthfully to enquiries by a Queensland Corrective Services officer about his activities, whereabouts, associates and movements generally;

Disclosure of plans and associates

15. if directed by a Queensland Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by the Queensland Corrective Services officer, who may contact such persons to verify that full disclosure has occurred;

Alcohol and other substances

16. abstain from the consumption of alcohol and illicit drugs for the duration of this order;

17. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Queensland Corrective Services officer;

18. disclose to a Queensland Corrective Services officer all prescription and over the counter medication that he obtains;

19. take prescribed drugs as directed by a medical practitioner;

Treatment and counselling

20. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Queensland Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

21. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending this supervision order and/or ensuring compliance with this order;

22. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Queensland Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

Children

23. not establish or maintain any supervised or unsupervised contact with children under 16 years of age, including undertaking any care of children under 16 years of age, except with prior written approval of a Queensland Corrective Services officer;

24. advise a Queensland Corrective Services officer of any repeated contact with a parent of a child under 16 years of age;

25. not visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a Queensland Corrective Services officer;

26. not visit public parks without the prior written approval of a Queensland Corrective Services officer;

27. obtain the prior approval of a Queensland Corrective Services officer before attending the premises of any shopping centre;

28. not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written approval of a Queensland Corrective Services officer;

29. not collect any material that contains images of children, and dispose of such material if directed to do so by a Queensland Corrective Services officer;

Mobile phones and other devices

30. obtain the prior written approval of a Queensland Corrective Services officer before accessing a computer or the internet;

31. supply to a Queensland Corrective Services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

32. not access child exploitation material or images of children on a computer or on the internet or in any other format;

33. allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Queensland Corrective Services officer; and

34. advise a Queensland Corrective Services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use, and this includes reporting any changes to mobile phone details.