

Parole Board Queensland

**NOTICE – NO BODY-NO PAROLE  
NO COOPERATION DECLARATION**

*Corrective Services Act 2006 s.175P*

In the matter of: CLIVE ANTHONY NICHOLSON (DOB: 30 January 1952)

**TO:** CLIVE ANTHONY NICHOLSON (C70149)  
Wolston Correctional Centre

**TAKE NOTICE** that on 12 July 2023 the Parole Board Queensland decided that you, being a No Body-No Parole prisoner, have not given satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.

**TAKE NOTICE** that the Parole Board Queensland makes a no cooperation declaration about you.

The reason the Board is not satisfied you have given satisfactory cooperation is the Board does not consider the information provided by you, in relation to the victim's location, to be truthful, credible or reliable.

*(The basis for the Board reaching the conclusion above is set out in the attached decision)*

You may not apply for a parole order under s.176 or s.180 of the *Correctives Services Act 2006* ('the Act') unless you are given a notice under s.175Q of the Act (notice of satisfactory co-operation).

You may, at any time, make a reconsideration application under s.175R of the Act.

Place: Brisbane  
Dated: 12 July 2023



Peter Shields  
Deputy President  
**Parole Board Queensland**

In the matter of

**CLIVE ANTHONY NICHOLSON**

**(Applicant)**

**SECTION 193A CORRECTIVE SERVICES ACT 2006**

<b>PROCEEDING:</b>	An application for parole
<b>DELIVERED ON:</b>	12 July 2023
<b>DELIVERED AT:</b>	Brisbane
<b>HEARING DATES:</b>	20 May 2022, 1 September 2022 and 14 December 2022.
<b>MEETING DATES:</b>	The Board met to consider the matter on 20 May 2022, 31 August 2022, 1 September 2022, 2 September 2022, 14 December 2022, 17 March 2023, 24 March 2023, 12 May 2023 and 12 July 2023.
<b>SENIOR BOARD MEMBER:</b>	Mr Peter Shields Deputy President, Parole Board Queensland.
<b>DECISION:</b>	<p>The Board has decided the Applicant, being a No Body-No Parole prisoner, has not given satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.</p> <p>Accordingly, the Board makes a no cooperation declaration about the Applicant.</p>
<b>COUNSEL:</b>	<p>Mr Tim Ryan KC appeared with Ms Katherine McGree as Counsel assisting the Board.</p> <p>Ms Erin Longbottom KC and Ms Laura Reece appeared for the Applicant.</p>
<b>SOLICITORS:</b>	Parole Board Queensland Legal Services Wallace O'Hagan Lawyers

### Introduction

- [1] A prisoner may apply for a parole order under s. 180 of the *Corrective Services Act 2006* (Qld) ('CSA'). After receiving a prisoner's application for a parole order, Parole Board Queensland ('the Board') must decide to grant the application, or to refuse to grant the application.<sup>1</sup>
- [2] Clive Anthony Nicholson ('the Applicant') has applied for a parole order under s. 180 of the CSA.
- [3] The Applicant is currently serving a term of life imprisonment,<sup>2</sup> having been convicted by a jury for the murder<sup>3</sup> of his wife, Julie Rose Nicholson ('the victim') on or about the 15th day of July 2003.
- [4] The body or the remains of the victim have not been located.
- [5] It is conceded on behalf of the Applicant that his application for a parole order falls to be determined under the 'no body-no parole' provisions of Chapter 5 of the CSA.<sup>4</sup>

### The first decision

- [6] On 13 July 2021, the Board found the Applicant had not cooperated satisfactorily in the investigation of the offence to identify the victim's location. That finding mandated a decision to refuse parole<sup>5</sup> ('the first decision').
- [7] The Applicant was successful in judicially reviewing the first decision before Davis J,<sup>6</sup> who ordered:
- (i) The decision of the Respondent made on 13 July 2021 to refuse the Applicant's application for parole be set aside.
  - (ii) The determination of the Applicant's application for parole be referred to the Respondent (the Board) for further consideration.
- [8] Consistent with the order of Davis J in *Nicholson v Parole Board of Queensland* [2021] QSC 325 ('Nicholson'), the Board has convened a differently constituted Board from that which decided the first application.

### The Legislative Framework

- [9] As the Applicant is serving a sentence of imprisonment for a homicide offence,<sup>7</sup> and the body or remains of the victim have not been located, the Applicant is a "no body no parole prisoner."<sup>8</sup>
- [10] Subsequent to the first decision, the relevant legislation regarding an application for a parole order by a no body-no parole prisoner was amended.<sup>9</sup> These amendments apply to the Applicant as his application for a parole order was made,<sup>10</sup> but not decided, before the commencement<sup>11</sup> of the amendments.<sup>12</sup>

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<sup>1</sup> *Corrective Services Act 2006*, s 193(1).

<sup>2</sup> Parole Board Record Book at p. 46.

<sup>3</sup> Criminal Code, sections 302 and 305.

<sup>4</sup> Outline of submissions on behalf of the Applicant at [2].

<sup>5</sup> *Nicholson v Parole Board of Queensland* [2021] QSC 325 at [1].

<sup>6</sup> *Nicholson v Parole Board of Queensland* [2021] QSC 325.

<sup>7</sup> *Corrective Services Act 2006*, s 175B.

<sup>8</sup> *Corrective Services Act 2006*, s 175C.

<sup>9</sup> *Police Powers and Responsibilities and Other Legislation Amendment Act 2021* (Qld).

<sup>10</sup> The application for parole is dated 8 October 2018, see Parole Board Record Book at p.1.

<sup>11</sup> The amendments commenced on 3 December 2021, being the date of assent.

<sup>12</sup> *Corrective Services Act 2006*, s.490ZE.

- [11] Pursuant to s. 193A of the CSA, the Board deferred the hearing of the application and requested a commissioner's report under s. 175M(2) of the CSA.
- [12] The commissioner's report was duly completed and signed by the commissioner's delegate on 4 May 2022. A copy of the commissioner's report, an addendum to the commissioner's report and all annexures to the commissioner's report were received by the Board and duly provided to the legal representatives of the Applicant, along with all other material to be relied upon by the Board.
- [13] Pursuant to s. 175N(2) of the CSA, upon receipt of the commissioner's report, the Board must give a no body-no parole prisoner a written notice<sup>13</sup> stating that the Board must consider whether to make a no cooperation declaration about the prisoner.
- [14] S. 175L of the CSA requires the Board to make a "no cooperation declaration" if the Board is not satisfied that a no body-no parole prisoner has given satisfactory cooperation.

**175L Parole Board may make no cooperation declaration**

If the parole board is not satisfied a no body-no parole prisoner has given satisfactory cooperation, the parole board must make a declaration under this division (a no cooperation declaration) about the prisoner.

- [15] The difference between the old and new regime, applicable to no body-no parole prisoners, was explained by Ms Longbottom KC, on behalf of the Applicant, in her outline of submissions dated 5 December 2022:<sup>14</sup>

"[7] The main difference between s. 175L and its predecessor - s 193A(2) - is that the latter provision required the Board to refuse the application for a parole order 'unless the [Board] is satisfied that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location'. Of present relevance, the effect of a 'no-cooperation declaration' is that the prisoner may not apply for parole under ss 176 or 180 unless the prisoner is given notice under s 175Q that the no-cooperation declaration is ended (s 175Q(c))." [footnotes omitted]

- [16] S. 175O of the CSA governs the decision by the Board as to whether a no body-no parole prisoner has given satisfactory cooperation:

**175O Deciding if satisfactory cooperation**

- (1) In deciding whether a no body-no parole prisoner has given satisfactory cooperation, the parole board -
- (a) Must have regard to -
    - (i) The commissioner's report about the prisoner; and
    - (ii) Any information the board has about the prisoner's capacity to give satisfactory cooperation; and
    - (iii) Any relevant remarks made by the court that sentenced the prisoner to the term of imprisonment the prisoner is serving for the homicide offence; and
    - (iv) If the prisoner asks the board to consider a transcript of a proceeding against the prisoner for the homicide offence -the transcript; and
  - (b) May have regard to other information the board considers relevant.

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<sup>13</sup> Parole Board Record Book at p. 1087.

<sup>14</sup> Footnotes omitted.

- [17] The expression "cooperation" in relation to a homicide offence for which a no body no parole prisoner is serving a sentence of imprisonment is defined by s. 175B of the CSA:

**Cooperation**, in relation to a homicide offence for which a no body-no parole prisoner is serving a sentence of imprisonment, means the cooperation given by the prisoner –

- (a) In the investigation of the homicide offence to identify the victim's location; and
- (b) Before or after the prisoner was sentenced to imprisonment for the offence.

- [18] The expression "victim's location" is also defined by s. 175B of the CSA:

**Victim's location** means –

- (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 present application**

- [19] The hearing of the present application was deferred by agreement to 14 December 2022.
- [20] Prior to the hearing commencing on 14 December 2022, Mr Tim Ryan KC, Counsel Assisting the Board, provided a further outline of submissions dated 7 October 2022 ('FOS'), and Ms Erin Longbottom KC, on behalf of the Applicant, provided an outline of submissions dated 5 December 2022.

#### **Background**

- [21] Ms Longbottom KC on behalf of the Applicant, in her outline of submissions, summarised the background to this application as follows:

"[16] The background to the parole application is summarised in the first set of written submissions provided by Counsel Assisting and is not relevantly in dispute.<sup>15</sup> The Applicant seeks to supplement, but not substantively replicate, that summary by noting the overview of the material before the Board as outlined at [3] to [14], [16] to [33], [48] and [51] to [53] of *Nicholson*."

- [22] The background as referred to above, at [21], is replicated below:

*(Counsel Assisting submissions dated 19 May 2022)*

"[15] The material in the reports outline that:

- The deceased went missing in mid 2003.
- The Applicant, on 17 August 2003, provided a series of hand written letters to the Salvation Army which included, amongst other things, assertions that the deceased's body was taken to the Spit at Southport, wrapped in a plastic drop sheet and the placed into the water.

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<sup>15</sup> Exhibit 1 at [15].

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- At the Applicant's trial in the Brisbane Supreme Court in February 2006 no suggestion was advanced on his behalf by legal representative that the assertion in the handwritten letter about the location of the disposal of the body was in any way false, or should not be acted upon.
- On 2 November 2017, when Police attended the Wolston Correctional Centre and conducted an electronically recorded interview with the Applicant, he asserted that he had disposed of the deceased's body by placing it in the Southport Seaway and drew a sketch diagram of the location where he placed the deceased's body into the water.
- On 10 January 2019, the Applicant informed Police Officers, who interviewed him at his request, that he had buried the deceased's body in a shallow grave off a gravel road in the Cedar Grove area, near Beaudesert.
- On 23 January 2019, the Applicant accompanied Police Officers to the Cedar Grove area near Beaudesert. Although he was, with certainty, able to identify the gravel road along which he asserts he had travelled on the night, the Applicant was only able to indicate a location that he considered may have been the possible burial site, given the period of time that had elapsed. Attempts made by Police to confirm the presence of a corpse in that location have been unsuccessful."

*(Nicholson, [3] to [14], [16] to [33], [48] and [51] to [53]– footnotes omitted)*

- [3] Mr Nicholson was, in 2003, living with Mrs Nicholson and their young daughter in Southport.
- [4] Mr Nicholson was charged that:
- "On or about the 15th of July 2003 at Gold Coast in the State of Queensland, you murdered Julie Rose Nicholson."
- [5] At his trial in February 2006, Mr Nicholson did not contest that he had killed Mrs Nicholson. He raised the following in his defence:
1. At the time he did the act which killed his wife, Mr Nicholson did not intend to kill or do grievous bodily harm to her.
  2. He acted in self-defence.
  3. He acted under provocation.
  4. The act which killed was not a willed act.
- [6] The Crown case was that Mr Nicholson killed Mrs Nicholson by delivering a blow or blows with a hammer. That allegation was not in dispute at the trial.
- [7] In defence, it was argued that the hammer impacted Mrs Nicholson during a struggle. Therefore, the striking of her was not a willed act by him. Alternatively, it was argued that the blow or blows were delivered in defending an assault by Mrs Nicholson. In either of those scenarios, Mr Nicholson would not be guilty of murder and would not be guilty of manslaughter as the killing was not unlawful.

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[8] Alternatively, Mr Nicholson argued in defence to the charge of murder that the killing either occurred without intent by him to cause Mrs Nicholson's death or grievous bodily harm or, if he had that intent, he acted under provocation. In either of those cases, Mr Nicholson would be guilty of manslaughter, not murder.

[9] The jury convicted Mr Nicholson of murder and he was sentenced to life imprisonment.

[10] The Crown case was based substantially upon a series of letters which Mr Nicholson had written to various people, including police, before he was arrested and charged with Mrs Nicholson's murder. These letters were prepared at a time when Mr Nicholson was apparently contemplating suicide. It is unnecessary to analyse the letters in any depth. However, in the letters:

1. he admitted to killing Mrs Nicholson;
2. he said that he disposed of her body in the ocean off the Southport Spit;
3. he said he was going to kill himself. That contemplated him also entering the ocean;
4. he spoke of concerns for his young daughter who was then about three years of age.

[11] In one of the letters, Mr Nicholson spoke of hitting his wife with a hammer and:

"Then my stupidity really took hold. I wrapped Julie in the sheets and doona and [hid] her in the walk-in robe, made sure [Mr Nicholson's daughter] had gone back to sleep and dragged Julie down to the garage ... I put her into the back of my ute. At some point she was still breathing. But by the time I returned to tidy her up in the ute, she had stopped. ..."

Later:

"I should have called an ambulance, the police or someone but all I could think was being away from [Mr Nicholson's daughter]. Hence all the stories, lies, attempts to make it appear Julie had left...."

And later:

"So I continued to lie and stupidly build a case that Julie had deserted the family home and I should try for sole custody."

And later:

"On the night of the Tuesday when [Mr Nicholson's daughter] was asleep, I had wrapped Julie's body and took her to the Spit and wrapped in a plastic drop sheet and floated her into the water. ... I then went home, cleaned up the mess and later disposed of bloodstained sheets, hammer, etc at the tip with other rubbish from home."

[12] Mr Nicholson's reference to "stories" and "lies" referred to his activity between the time Mrs Nicholson was killed (about 15 July 2003) and the time the letters were written (17 August 2003). In that period, Mr Nicholson had made various statements to various people about his wife, including making a formal statement to police on

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9 August 2003. Many things that he said were untrue and were designed to lead police and others to believe that Mrs Nicholson was alive but had deserted the family.

[13] Before Mr Nicholson became eligible for parole, he was interviewed by police. That occurred on 2 November 2017. Detective Senior Sergeant Knight and Detective Senior Constable Brown told Mr Nicholson they were interviewing him as his parole was coming due and there were “no body, no parole” considerations. Mr Nicholson agreed to speak to police about Mrs Nicholson’s whereabouts.

[14] During the interview, Mr Nicholson maintained that he had taken Mrs Nicholson’s body to The Spit and placed her into the ocean on the western side of the land mass. Mr Nicholson drew a sketch showing the position where he had placed Mrs Nicholson in the water.

...

[16] It is unnecessary to descend into great detail as to the contents of the first cooperation report. In summary, DSS Knight:

1. noted the denials of killing that had been made by Mr Nicholson before the letters were discovered;
2. noted some of the content of the letters, in particular the assertion that Mrs Nicholson had been disposed of in the water at The Spit;
3. noted that at Mr Nicholson’s trial for Mrs Nicholson’s murder, the Crown prosecutor did not accept that Mrs Nicholson’s body had been disposed of in the way Mr Nicholson explained;
4. observed that in the interview on 2 November 2017, Mr Nicholson maintained that he disposed of Mrs Nicholson by placing her in the water at The Spit;
5. observed that a statement had been obtained from Queensland Police, State Emergency and Rescue Coordinator, Senior Sergeant James Whitehead who said that bodies of persons drowning or disappearing in the Southport Seaway are often located within three days of disappearance on the foreshore of South Stradbroke Island. SS Whitehead said that while that would have been expected of Mrs Nicholson’s body, there are possible explanations for her body never being recovered, including marine predation. He opined that it was unlikely that any remains of Mrs Nicholson would still be in the Seaway or the surrounding area.

[17] DSS Knight recorded the views of Detective Superintendent Hodgman who is a superintendent at the Homicide Investigation Unit:

“NICHOLSON wrote a hand-written letter to the investigating police officers in 2003, which claimed that the deceased’s body was placed into the water in the vague general area of ‘The Spit’ at Southport. NICHOLSON failed to provide any further useful information to assist in locating the deceased’s body until 2017, when interviewed at Wolston Correctional Centre. No evidence is available to suggest that NICHOLSON provided any information that afforded police any opportunity to conduct a search to recover the deceased’s body.

Police have been unable to recover [the] deceased’s remains.”



[18] DSS Knight recorded the views of Acting Detective Chief Superintendent Lawrence:

“During the investigation, NICHOLSON did not provide sufficient information to allow a search to be conducted for the deceased’s remains. The information contained within this document displays a lack of timely information, that could be considered sufficiently productive to assist in the recovery of the deceased’s body.

The information that was provided by NICHOLSON was incomplete, for the purpose of recovering the deceased’s body.

The information provided by NICHOLSON has not resulted in the location of [the] deceased’s body.”

[19] By way of summary of the significance and usefulness of Mr Nicholson’s cooperation, DSS Knight observed:

**“The significance and usefulness of the prisoner cooperation**

NICHOLSON has provided details relating to the location of the deceased’s body on two occasions.

*17 August 2003*

The first evidence of the location of the deceased’s body was provided within a hand-written letter dated 17 August 2003, NICHOLSON stated he placed the deceased’s body into the water in the general area of ‘The Spit’ at Southport.

The first version provided by NICHOLSON was very general, referring only to ‘The Spit’ which is a large body of water. Upon review of the original investigation and the evidence contained within the trial transcripts, there is no evidence of any water searches being undertaken by the original investigating police officers.

*2 November 2017*

NICHOLSON did not provide any further details until approached by police more than fourteen years later. NICHOLSON provided a sketch diagram to police, describing the location where he claimed to have placed the deceased’s body.

The information provided by NICHOLSON in 2017 did not afford any realistic opportunity to recover the deceased’s body.”

[20] In January 2019, Mr Nicholson, through his lawyers, contacted DSS Knight wishing to provide further information as to the whereabouts of Mrs Nicholson’s body.

[21] On 10 January 2019, Mr Nicholson was interviewed by DSS Knight and Detective Senior Constable Pordage. He told police that he had more information to give about the locality of Mrs Nicholson’s body and that the information was different to what he had given in November 2017. As to why he was now giving a different version, he explained:

“CN Um on the aar November 17 you came out here my daughter was going through her last year of high school HSC and was doing

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brilliantly well at school and I wanted no publicity nothing so I just perpetuated the myths of what had happened in the past.

CN Yep

CN On the basis of well there would be no publicity she can get on with her exams, she's done brilliantly she got into the double university degree that she wants partial scholarship and everything so and that's why this time round aar at the moment she is in Korea on a student exchange"

[22] Mr Nicholson explained to police that he had initially planned to place Mrs Nicholson's body in the ocean, but in the end, buried her in a hole about two feet deep at Cedar Grove which is near Jimboomba.

[23] As to why he did not place the body in the water, Mr Nicholson said:

"CN Um which I had it at that time driven to the to the Broadwater there was too many fishermen and stuff so I went home check my daughter make sure she was still asleep and then went out to um its out near Beaudesert where some years before I had been working on a builders property out the ...

CK Ok ok and sorry what happened out there you said ok so you went out to Beaudesert what happened down there

CN That's where this would have been at night are from an area called I believe it's um Cedar Grove then you follow it along over the railway track and down a dirt track um and then there's a rubbish a lot of scrub area um obviously who would dump their rubbish and stuff cause it reflected in my headlights

CK Hmhm

CN and that's where I then buried Julie's body" (emphasis added)

[24] Mr Nicholson was then asked a number of questions as to the location of the body and he gave general descriptions of the area. Of some significance, he mentioned motorcycle tracks and he said this:

"CN That you've um I had I don't know why but I have the impression that guys on MX bikes had been motorbikes had been going through that area

CK Sure

CN I don't know why that's just something stuck [in my] mind whether I've seen tracks on the road or people have described in prison where they've ride their dirtbikes going through the scrub or whatever

CK Ok" (emphasis added)

[25] Mr Nicholson said that his daughter had slept through the night and he offered this:

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“CN Made sure [Mr Nicholson’s daughter] was still asleep as I had said to are the legal aid people um when it all happened at home um and I told [Mr Nicholson’s daughter] to go to bed to get her quiet I went and got her some milk and a quarter of sleeping tablet that my mother had been giving because Julie had been using”

[26] On 17 January 2017, DSS Knight and DSC Pordage again visited Mr Nicholson in jail. Police showed Mr Nicholson some maps and asked further questions attempting to identify the area where Mrs Nicholson had been buried. Mr Nicholson said this:

“CK ...After looking at those maps is there anything else that you can tell us that is going to assist us in recovering Julies body?

CN As I said, I still have a feeling that around near all these bits of rubbish and stuff were on the right-hand, which we now take to the eastern side of the road, cause the road swings around almost due north. On the left-hand there was still a lot of gum trees and what-have-you through that area, it did not give you the impression that it was going to be redeveloped or anything in the near future because it’s just still on a dirt track. And if we looked at the sealed maps there the sealed road was till some distance on whether another kilometre or two kilometres I don’t know.

CK Alright, can I ask you this. Before you went out there in 2003 with Julies body in the back of your ute, prior to that when was, how much recent to that had you been out in this area?

CN I’d been at Cedar Creek back in the, I suppose it would have been 97 or 98, on the eastern side of Mt Lindsay Highway.

CK So that’s 5 or 6 years earlier

CN Earlier, but I hadn’t been on the western side of that Jimboomba road.

CK Ok, yep

CN I just knew that that’s there

CK So what you’re saying is that apart from the night in question, when Julies body was in the back of your ute, are you saying that you had not been out near that area, that Cedar Grove area, prior to that night?

CN Ever

CK Ever? Had you, did you ever after that night did you ever return to that site.

CN No

CK Ok, so that is the one and only time you’ve been

CN One and only time

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CK That is the one and only time and that was when you buried Julies body

CN Yes" (emphasis added)

[27] On 23 January 2019, DSS Knight, DSS Pordage and Detective Senior Constable Kidd arranged for Mr Nicholson to be released into their custody so he could be taken to the Cedar Grove area and attempt to identify the place where he buried Mrs Nicholson.

[28] Mr Nicholson directed police to various locations and his comments were recorded. A transcript of the relevant parts of the recording were before the Board. I will call this exercise "the site visit".

[29] During the site visit a property was identified and that was the subject of subsequent searching by police, including with the use of cadaver dogs. Nothing of significance was found.

[30] A further cooperation report was prepared by DSS Knight (the second cooperation report). He recorded the history of the various interviews with Mr Nicholson and then referred to the site visit. He recorded that there were inspections of various locations along Undullah Road between Cedar Grove and Ripley. He then reported:

"The only location of interest that was identified as a site where the victim's body may have been buried was identified at coordinates S 27.76254; E 152.84048. This is a private property located at 1495-1545 Ripley Road, South Ripley. Ripley Road is an extension of Undullah Road. The road changes name without an identifiable intersection."  
(emphasis added)

[31] DSS Knight then recorded that there was unsuccessful searching at 1495-1545 Ripley Road, and he referred to statements that had been obtained from Christine Paula Grealy, the owner of the property. Of some significance, Ms Grealy said that about 10 years before she made her statements (so therefore in about 2009) the property was developed. An area close to the road near the front gate was excavated to make a dam and the dirt which was extracted was used to construct a motocross training track. That was the only development on the property.

[32] DSS Knight also referred to various other information he had, including that cadaver dogs had failed to identify any evidence.

[33] By way of summary, DSS Knight said this in the second cooperation report:

**"Truthfulness, completeness and reliability of information or evidence provided by the prisoner in relation to the victim's location**

In the absence of locating the deceased's body at the location and place nominated by NICHOLSON, it is difficult to assess the truthfulness, completeness and reliability of the information he provided. From 2003 until November 2017, NICHOLSON maintained a version that the deceased's body had been disposed of in the seaway at the Southport Spit. NICHOLSON conceded in the interview conducted on 10 January 2019 that the information he provided on 2 November 2017 about the location of the deceased's remains was not truthful.

NICHOLSON's disclosures that he buried the deceased in the Cedar Grove area are a significant departure from his previous versions. No evidence exists that the Cedar Grove area had ever been raised by NICHOLSON as a burial site. There exists no reference to Cedar Grove within any of the trial transcripts.

To assist in identifying the alleged burial site, NICHOLSON was provided with maps and physically driven to the area to allow him a reasonable opportunity to locate the area he had described. All reasonable efforts to validate the truthfulness of NICHOLSON's claims have failed.

All information provided by NICHOLSON since 2003 has failed to result in the recovery of the deceased's body. It therefore cannot be considered complete or reliable.

**The significance and usefulness of the prisoner cooperation**

None of the information provided by NICHOLSON between 2003 and 2019 is considered significant or useful.

None of the information provided by NICHOLSON has resulted in any corroborative evidence to substantiate a site where the deceased's body was disposed.

Furthermore, on 10 January 2019 NICHOLSON stated that he had consciously provided false information by stating that he had disposed of the deceased at the Southport Spit. NICHOLSON proceeded to provide an alternative set of circumstances, claiming that he buried the deceased's body in bushland at Cedar Grove. Inquiries were conducted to explore the further information provided by NICHOLSON, which again failed to result in locating any supportive evidence."

...

- [48] Mr Nicholson told police that he had worked in the area on a builder's property and had been there a few years earlier. He said that when he couldn't dispose of Mrs Nicholson's body at The Spit because of the presence of fisherman, he headed to the Beaudesert area, an area he had been before. He said he had just never been on the western side of Jimboomba Road. The Board's finding that he went to a place he had never been is a very selective (at best) view of the evidence.

...

- [51] On 23 January 2019, the police spent hours travelling up and down roads in the Cedar Grove area with Mr Nicholson. Mr Nicholson gave information and discounted possible sites until the property at 1495 Ripley Road was identified. The exchange with police about this is:

"Police vehicle stopped on Undullah Road to closer inspect an area, as identified by NICHOLSON.

The area is enclosed by temporary fencing and is an overgrown disused motocross track.

NICHOLSON gets out of the vehicle with Police and inspected the area on foot.

The GPS coordinates of the area indicated by NICHOLSON are:

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S 27.76254

E 152.84048

NOTE: Subsequent inquiries have identified the location of this location as being on private property at 1495 Ripley Road, South Ripley.

Ripley Road is an extension of Undullah Road. The road apparently changes name without an identifiable intersection.

NICHOLSON discusses how the location has obviously been affected by the construction of a motocross track.

- They discuss that it's difficult to estimate how long ago the track was constructed

- NICHOLSON said that the area may have too much of a slope on it and may be too 'hilly'

Det KNIGHT asks NICHOLSON to describe the similarities of the location where they had just stopped and inspected, compared to his memory of the night when he buried the deceased's body.

NICHOLSON: 'So much of it fits the memories.'

KNIGHT: 'What parts of it...'

NICHOLSON: 'We've got this bit of a hill, as I've said all along, bit of a hill to the left-hand side. You've got this track that goes off at right angles. We've got this bit of a'

KNIGHT: 'Yep.

NICHOLSON: 'You've got this track that goes off at right angles, off this gravel road'.

KNIGHT: 'Yep.

NICHOLSON: 'It's a dirt track, it's not a fenced off property or anything.

Um, the distance that we walked in and then to be able to turn left that I indicated would be about correct for where I kind of feel that I buried Julie'.

KNIGHT: 'Uh hah'

NICHOLSON: 'But there's just again, there's just something there that in my heart I wish it to be true but there's just something there that just doesn't tick all the boxes for me. I just don't know what'.

NICHOLSON then re-iterates that the turn off and distance from the road do fit his memory.

They discuss that there has been some development at some stage for the motocross track.

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He then describes that the ground was hard, but there was no rock. The soil was dry and consistent with what he was observing on this occasion.

The Police vehicle then continue driving along Undullah Road, towards Ripley.

Police vehicle slows down as NICHOLSON discusses another location but dismisses it as a potential location for the deceased's body.

Police vehicle slows down as NICHOLSON discusses another location but dismisses it as a potential location for the deceased's body.

This location was not consistent with NICHOLSON' recollection due to some of the natural landscape features.

Police vehicle passes the 2nd cattle yards as they continue along the road in a north westerly direction.

Police vehicle travels back onto the bitumen stretch of Undullah/Ripley Road.

NICHOLSON acknowledged that of the areas that were observed over the day, the area surrounded by the temporary fencing on the motocross track is the most likely location that was identified.  
(emphasis added)

- [52] The second cooperation report does not suggest that Mr Nicholson positively identified the property at 1495 Ripley Road as the relevant site. DSS Knight was cross-examined at the Board hearing. As to the Ripley Road location, this exchange occurred with counsel then appearing for Mr Nicholson:

"All right. And ultimately, as you say, he settled on a spot that he - I'm not suggesting he was 100 per cent about, but this is the spot he was most confident on?---It was, yeah. That - yeah.

He expressed some doubts, though, didn't he?---Definitely, yeah."  
(emphasis added)

- [53] Mr Nicholson struggled to identify any site. He was clearly struggling to recall the area. He struggled with the change of terrain over the years, just as the Board thought that, logically, he would if he was genuinely attempting to locate the burial site. He couldn't remember a site with "any degree of certainty".

**Further material and documents which were not before Davis J**

- [23] Sometime after the decision of Davis J in *Nicholson*, the Board obtained further material and documents, a copy of which was provided to the legal representatives of the Applicant.
- [24] The receipt and use by the Board of some of the further material and documents, was challenged by the legal representatives on behalf of the Applicant. That challenge was subject to a hearing on 1 September 2022.
- [25] On 2 September 2022, the Board decided it would accept the further material and documents. The Board provided the legal representatives for the Applicant with written reasons for its decision.

[26] The further material and documents include the following:

- (g) Affidavit of the Applicant sworn 9 January 2004.<sup>16</sup>
  - (i) In paragraph [9] of the affidavit, the Applicant deposes: "Following the death of my wife in or about July 2003, I placed her body into the seaway at Southport in the State of Queensland". [emphasis added]
- (h) Decision of Atkinson J, *Re Clive Anthony Nicholson* [2004] QSC 480, delivered on 3 February 2004.<sup>17</sup>
  - (i) In paragraph [2] of the decision, Atkinson J refers to paragraph 9 of the affidavit of the Applicant sworn 9 January 2004.
- (i) Outline of argument in the matter of Clive Anthony Nicholson and the Public Trustee of the estate of Julie Rose Nicholson.<sup>18</sup>
- (j) Transcript of proceedings in the committal hearing, *Police v Alexandrew Geraud Richmond-Sinclair*, dated 3 September 2007.<sup>19</sup>
  - (i) Whilst giving evidence in a committal hearing, the Applicant gave evidence under oath and agreed that he had told numerous lies after his wife went missing and he also accepted, "... her body was floating in the sea way off the Gold Coast".<sup>20</sup> [emphasis added]
- (k) Transcript of proceedings of day two of the trial of *R v Alexandrew Geraud Richmond-Sinclair*, dated 21 July 2008.<sup>21</sup>
  - (i) Whilst giving evidence in a trial, the Applicant gave evidence under oath where he accepted the previous evidence he had given under oath in the committal hearing, namely, that he had told numerous lies after his wife went missing. The Applicant also accepted the proposition, "... your wife's body was floating in a seaway on its way down the Gold Coast".<sup>22</sup> [emphasis added]

[27] The commissioner's report dated 4 May 2022 ('the third cooperation report'), concluded with the following opinion, by the commissioner's delegate, Detective Acting Chief Superintendent Denzil Clark:

"With consideration to the information presented in this current prisoner cooperation report and the past 2 reports (2018 & 2019) I found no evidence to support Nicholson has provided relevant or compelling evidence that would lead to the recovery of the deceased body. I see no evidence of Nicholson providing timely information to assist police recover the deceased body but do note admissions of previous untruthfulness by Nicholson about how he disposed of the deceased.

I am of the view Nicholson has failed to provide timely or reliable information which may have led to the recovery of the deceased."<sup>23</sup>

<sup>16</sup> Parole Board Record Book, at p. 651 to 661.

<sup>17</sup> Parole Board Record Book, at p. 662 to 665.

<sup>18</sup> Parole Board Record Book, at p. 666 to 668.

<sup>19</sup> Parole Board Record Book, at p. 714 to 731.

<sup>20</sup> Ibid p. 730.

<sup>21</sup> Parole Board Record Book, at p. 732 to 762.

<sup>22</sup> Ibid p. 760.

<sup>23</sup> Parole Board Record Book, at p.89.



**The hearing on 14 December 2022**

- [28] No person was required to give evidence or be subject to cross-examination at the hearing on 14 December 2022. Both Counsel Assisting and King's Counsel on behalf of the Applicant supplemented their respective written outline of submissions with oral submissions.
- [29] At the conclusion of the hearing the application was deferred by agreement to ensure compliance with s. 175N of the CSA. The Applicant was given until 10 February 2023 to provide any further written submissions or materials for the Board's consideration.
- [30] On 13 February 2023, the Board was notified by the Applicant's solicitor of their intention not to file any further submissions at this stage in the proceedings.<sup>24</sup>

**Representations made on behalf of the Applicant**

Critical question

- [31] Ms Longbottom KC, in her OOS on behalf of the Applicant, stated a critical consideration to be determined by the Board is the powerful motivation the Applicant now has, to tell the truth:<sup>25</sup>

"17. As Davis J outlined in Nicholson '... there is no direct evidence proving or disproving ...' either the 'Spit account or the Cedar Grove account' provided by the Applicant: 'Both are possible'. It follows that a critical question in determining whether the Applicant has given 'satisfactory cooperation' is what (if any) motivation he might have to lie now. Relevant to that question and the matters outlined at [15] above, Davis J found in Nicholson that '... the fact that Mr Nicholson has lied in the past is no answer to the submission that there is "a powerful motivation to tell the truth" with respect to the location of the victim's remains. That question should be resolved in the Applicant's favour because there was no benefit, and considerable risk, to the Applicant in providing the Cedar Grove account to the police.' [footnotes omitted]

- [32] Further submissions regarding the powerful motivation for the Applicant to now tell the truth, namely the Cedar Grove account, are contained in the OOS at [26], [27] and [28].

"26. It may be accepted that in determining credibility, lies previously told are relevant. But in the present context it is apt to emphasise that the fact that the Applicant has lied in the past is no answer to the submission that there is a powerful motivation for him to tell the truth now, namely the adverse consequences to the Applicant if the Board finds he has failed to give satisfactory cooperation. The Applicant can only gain from cooperating to the best of his ability now given the prospect of spending the rest of his life in prison.

27. Material in this respect, is the fact that it was the Applicant who initiated the meeting with police on 17 January 2019, when he revealed his previous explanation of the victim's location as a lie. Further, a document the Applicant provided, dated 2 January 2019, recorded that he did so in the belief that it would 'most likely [remove] any hope of parole in the future at all.'

28. Those matters take on a heightened significance when one considers the information before the Board as of 17 January 2019 with respect to the parole application. That information relevantly included a police statement of Senior Sergeant Whitehead, (referred to at [23]) which noted that there had been only one recorded recovery of a body part after a significant period in the area

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<sup>24</sup> Parole Board Record Book at p.1123.

<sup>25</sup> Exhibit 9.

identified by the Applicant. Given the inherent unlikelihood of finding the victim's remains in the Southport Seaway, the Applicant had everything to lose and nothing to gain from proffering the Cedar Grove account. That consideration cannot sensibly be reconciled with a conclusion that, armed with that knowledge, the Applicant elected to give a false account." [footnotes omitted]

[33] As to why the Applicant did not proffer the Cedar Grove account when interviewed by police on 2 November 2017, Ms Longbottom KC in her OOS at [31] refers to the explanation given by the Applicant in his interview with police on 10 January 2019:

"31. ...his daughter had been finishing her final year of high school and he wanted no publicity so that she could get on with her exams, that his concern had always been his daughter and he wanted the opportunity to give his daughter, niece and their families full disclosure and that he hoped that counselling would be arranged for his now adult daughter in anticipation of her mother's body being located." [footnotes omitted]

[34] Ms Longbottom KC concluded her written submissions on the truthfulness, completeness and reliability of the Cedar Grove account in her OOS at [34] and [35].

"34. The following aspects of the material before the Board lend further support to the credibility of the Cedar Grove account:

- (a) The Applicant's explanation as to why he decided not to dispose of the body at the Spit (due to fisherman being present);
- (b) The Applicant's explanation as to why he left his young daughter at home; and
- (c) The fact that the Applicant had been to Cedar Grove before the night he disposed of the body. [footnotes omitted]

35. Having regard to the powerful motivation for the Applicant to tell the truth, the jeopardy in which the Applicant placed himself by proffering the Cedar Grove account when the Spit account was inherently plausible, and the consistency of the Cedar Grove account, the Applicant submits that the Board [ought] to be satisfied of the genuineness of the latter account. To impugn the Applicant's present cooperation with reference to his past lies is to defeat the purpose of the no body no parole provisions, materially to encourage individuals who have initially either refused to nominate a location or lied about the location of a body." [footnotes omitted]

[35] As to the cooperation provided by the Applicant, at [13] of her OOS, Ms Longbottom KC submitted:

"13. ... the Applicants cooperation ought not be measured against a standard of perfection. It should not be concluded, for example, that the Applicant has failed to provide satisfactory cooperation simply because the use to which the information provided was put turned out to have been unlikely to achieve the desired outcome. As the Honourable Attorney-General, Yvette D'Ath remarked in introducing the *Corrective Services (No Body No Parole Amendment Bill)* on 23 May 2017:

'Where the body may have decomposed to the point where it is no longer recoverable or the body, as part of the offence, may have been completely disposed of or has since been interfered with by animals or environmental interference, the framework in the bill seeks to determine from the prisoner the last known location and place of the victim's remains. That is, the Bill contemplates those cases where it is an impossibility for the body to, in fact, be recovered .' " [footnotes omitted]

[36] During the hearing Ms Longbottom KC made the following, further submissions on behalf of the Applicant:

- (i) "[If the Board is to make] adverse findings about [the Applicant] with respect to his motivation, with respect to his credit, the Board will fall into error unless there is a strong probative basis on the material to reach that conclusion."<sup>26</sup>
- (ii) The grave consequences of a no cooperation declaration for the Applicant informs the level of cogency of the evidence that would have to be found to make findings against him in terms of credibility.<sup>27</sup>
- (iii) The decision of the Board cannot be legally unreasonable.<sup>28</sup>
- (iv) There is no proper basis for which the Board could draw a *Jones v Dunkel* type inference against the Applicant for his failure to give the Cedar Grove account in 2003.<sup>29</sup>
- (v) Lies previously told by the Applicant do not answer or provide a probative basis to draw an adverse inference against the Applicant, in relation to his failure to provide the Cedar Grove account in 2003.<sup>30</sup>
- (vi) The Board needs to take a principled approach to the interrogation of what inferences can be drawn in respect to lies previously told by the Applicant.<sup>31</sup>
- (vii) The question the Board has to ask itself is: what benefit could Mr Nicholson have gained - accepting that he's lied for benefit - what benefit could be gained by coming forward with a new account (the Cedar Grove account) at a time where he accepts that it's likely to have an adverse impact on his parole application and has the capacity to be tested in a way that on the evidence before the Board, the Southport Seaway account couldn't be.<sup>32</sup>
- (viii) The assessment of credibility has to be grounded in the material that is before the Board.<sup>33</sup>

#### **Position of Counsel Assisting**

[37] The position of Counsel Assisting, as stated in the final paragraphs of his FOS, is that upon a proper analysis of the totality of the material the Board would be unable to accept that the Cedar Grove Account is true. Further, a careful analysis of all of the other relevant considerations does not, on balance, support a finding that the Applicant has provided satisfactory co-operation for the purpose of Chapter 5 Division 2.

[38] Counsel assisting in his FOS, submitted that in assessing whether the Applicant has given satisfactory co-operation, it is relevant for the Board to have regard to the following:<sup>34</sup>

- (a) That the Applicant is the only person who truly knows the deceased person's location because of the circumstances of the killing.
- (b) That the lack of timeliness of the provision of the Cedar Grove account limits the opportunity for the veracity and/or reliability of the Cedar Grove account to be confirmed or discounted. The

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<sup>26</sup> P. 9 of transcript of proceedings dated 14 December 2022 ('Transcript')

<sup>27</sup> Ibid.

<sup>28</sup> Ibid p.10.

<sup>29</sup> Ibid p.17.

<sup>30</sup> Ibid p. 17-18

<sup>31</sup> Ibid p. 19.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid p. 24.

<sup>34</sup> Ibid [85].

timeliness (or in this case the lack thereof) of the co-operation looms as a significant consideration.

- (c) That the Cedar Grove account is incomplete to the extent that the Applicant has not explained why he withheld it in 2003. For that reason, the Board's capacity to fully assess the truthfulness and reliability of the Cedar Grove account is diminished.
- (d) That it is open on the material to conclude that the Applicant is motivated to facilitate his release, but it does not follow that the material only supports a finding that the Applicant is motivated to give genuine co-operation.
- (e) That the Southport Seaway account may be false. The possibility also remains that the Southport Seaway account and the Cedar Grove account are both false.
- (f) That there is an absence of any evidence independent of the Applicant's Cedar Grove account that confirms that such account is truthful or reliable.
- (g) That the weight that can be given to the credibility of the Cedar Grove account is attenuated by the Applicant's previous inconsistent sworn assertions and the Applicant's demonstrated ability to construct elaborate untruths means that the degree of detail to the Cedar Grove account is not, of itself, an indicator of its reliability .

[39] During the hearing Mr Ryan KC, as counsel assisting, made the following further submissions:

- (i) Any assertion by the Applicant that the Cedar Grove account is true cannot simply be accepted at face value and requires proper scrutiny.<sup>35</sup>
- (ii) The assertion that the Applicant's only possible motive to provide the Cedar Grove account is to tell the truth should not be accepted without proper scrutiny.<sup>36</sup>
- (iii) The Board should not draw any adverse inference against the Applicant because the material in relation to the issue of motive remains uncertain.<sup>37</sup>
- (iv) The Board should not draw any adverse inference against the Applicant about the failure to give the Cedar Grove account in 2003.<sup>38</sup>
- (v) In relation to the affidavit sworn by the Applicant on 9 January 2004, at the time there was no obligation on the Applicant to depose to the details about the disposal of the victim's remains.<sup>39</sup>
- (vi) The obligations of a witness to tell the truth in court are not qualified by reference to whether testifying in chief or cross-examination.<sup>40</sup>
- (vii) The Applicant on 25 October 2018 as part of the preparation of his Parole Board Assessment Report, repeated the Southport seaway account. That account was given only about two and a half months before the Applicant gave the Cedar Grove account on 10 January 2019.<sup>41</sup>

#### **Important Principles applied by the Board in its decision making**

[40] The process of the Board's decision making under s. 193A of the CSA is not adversarial. No onus is cast on the Applicant or the Board in making the determination.<sup>42</sup>

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<sup>35</sup> Transcript p. 25 - 26.

<sup>36</sup> Transcript p. 26.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Transcript p. 28.

<sup>40</sup> Ibid.

<sup>41</sup> Transcript p. 29.

<sup>42</sup> As applied by the Board in the decision of Renwick made on 8 November 2018.

- [41] Accordingly, the Board is not bound to apply the rule in *Briginshaw v Briginshaw*,<sup>43</sup> or the principles derived from that decision, in the same way as a court would be, in coming to its decision.
- [42] S. 230 of the CSA provides that the Board may conduct its business, including its meetings, in the way it considers appropriate (subject to Chapter 5, Part 2, Division 4 of the CSA).<sup>44</sup>
- [43] The Board is to consider for itself whether it is satisfied the Applicant has cooperated satisfactorily, and the findings of fact will be those that the Board considers necessary for it to make its decision in this regard. In doing so, the Board is to act fairly (including as to processes), with common sense, and to inform itself by reference to relevant and probative information so as to draw conclusions on matters in issue to its comfortable satisfaction. The Board is to be cognisant of the seriousness of the findings to be made, including with regard to the gravity of the consequences of its decision under s. 193A of the CSA, and may, depending upon the issue, express greater caution in evaluating the factual foundation for the conclusion to be reached on that point.<sup>45</sup>
- [44] As Davis J stated in reviewing the first decision, "whether the Board is "satisfied" of satisfactory cooperation is a matter of judgement for the Board."<sup>46</sup>
- [45] It is not a pre-requisite to a finding of 'satisfactory cooperation' that the victim's remains be found.<sup>47</sup>
- [46] The Applicant did not give evidence during the hearings. That is the Applicant's right. The Board has not made any adverse finding against the Applicant because he did not give evidence.
- [47] The Board has not drawn a *Jones v Dunkel* type inference, or any other adverse inference, against the Applicant for his failure to give the Cedar Grove account in 2003.

#### Discussion

- [48] As Davis J observed in *Nicholson*, there is no direct evidence proving or disproving that the Applicant disposed of the victim's remains at the Southport Spit or Cedar Grove. The view of Davis J was both are possible.<sup>48</sup> The further material and documents which were not before Davis J do not alter that position.
- [49] Counsel Assisting the Board, in his FOS accepted, "there is considerable detail in the Cedar Grove account,"<sup>49</sup> and, " ... the Board would also not hold against the Applicant that he was unable to positively identify the place where the body was buried."<sup>50</sup> Both of those submissions are readily accepted by the Board.
- [50] The Board acknowledged that Detective Senior Sergeant Knight conceded in cross examination that the Applicant was consistent in the information he provided in their various discussions in January 2019 concerning the Cedar Grove account.
- [51] In contrast with the Cedar Grove account, from 17 August 2003 up to 25 October 2018, the Applicant consistently stated he had disposed of the victim's remains at the Southport Spit:
- (i) On 17 August 2003 in handwritten letters.<sup>51</sup>

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<sup>43</sup> [1938] 60 CLR 336.

<sup>44</sup> As applied by the Board in the decision of Renwick made on 8 November 2018.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Nicholson v Parole Board of Queensland* [2021] QSC 325 at (39).

<sup>47</sup> *Renwick v Parole Board of Queensland* [2019] 2 QR 645; [2019] QCA 269 at (10) .

<sup>48</sup> *Nicholson* at [85].

<sup>49</sup> FOS at [24].

<sup>50</sup> *Ibid* at [25].

<sup>51</sup> Parole Board Record Book at p. 1021.

- (ii) In the affidavit of the Applicant sworn on 9 January 2004,<sup>52</sup> later relied upon and referenced in the decision of Atkinson J.<sup>53</sup>
- (iii) Under oath at a committal hearing in the Brisbane Magistrates Court on 3 September 2007.<sup>54</sup>
- (iv) Under oath at a trial before Wilson J, in the Supreme Court on 21 July 2008.<sup>55</sup>
- (v) On 2 November 2017 when interviewed by Detective Senior Sergeant Knight.<sup>56</sup>
- (vi) In his interview on 22 August 2018 which forms part of the Parole Board Assessment Report.<sup>57</sup>

[52] In response to a question from the Chair of the Board, Ms Longbottom KC accepted that in now advancing the Cedar Grove account, the Applicant had lied in his affidavit sworn 9 January 2004, when he deposed:

"Following the death of my wife in or about July 2003, I placed her body into the Seaway at Southport in the State of Queensland. To the best of my knowledge, my wife's body has not been located."<sup>58</sup>

[53] Ms Longbottom KC also accepted the Applicant had lied under oath when giving evidence in the committal hearing and the trial of *Alexandrew Geraud Richmond-Sinclair*, that the victim's body was floating off the sea way at the Gold Coast.<sup>59</sup>

[54] The powerful motivation for the Applicant to now tell the truth, namely the Cedar Grove account, also existed on 2 November 2017, when the Applicant maintained that he had disposed of the body of the victim by placing her in the Southport Seaway, during his forty-seven (47) minute recorded interview with Detective Senior Sergeant Christopher Knight and Detective Senior Constable Warwick Brown, at the Wolston Correctional Centre.

[55] During the hearing on 14 December 2022, Ms Longbottom KC on behalf of the Applicant, accepted that the powerful motivation for the Applicant to tell the truth, existed under the previous legislation.

[56] The Board has listened to the recorded interview of 2 November 2017.<sup>60</sup> It is clear from the recording the Applicant took part in the conversation of his own free will. The questioning by the police is non-leading. There is no harrying of the Applicant by the police. The answers given by the Applicant appear to be considered and in response to the questions asked. The prisoner appeared to engage well and have a good rapport with Detective Senior Sergeant Knight and seems relaxed. The prisoner provided a detailed account of how he disposed of the victim's remains at the Southport Spit. When asked to do so, he provided a handwritten drawing<sup>61</sup> of the relevant area where he had disposed of the victim's remains at the Southport Spit.

[57] A reason given by the Applicant as to why he reiterated the Southport Spit account in his recorded interview on 10 January 2019 was out of concern for his daughter:

" ... my daughter was going through her last year of high school HSC and was doing brilliantly

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<sup>52</sup> Parole Board Record Book at p. 652.

<sup>53</sup> Parole Board Record Book at p. 663.

<sup>54</sup> Parole Board Record Book at p. 730.

<sup>55</sup> Parole Board Record Book at p. 760.

<sup>56</sup> Parole Board Record Book at p. 506.

<sup>57</sup> Parole Board Record Book at p. 38 and 39.

<sup>58</sup> Transcript p. 17.

<sup>59</sup> Transcript p. 21 - 22.

<sup>60</sup> Parole Board Record Book at pages 505 to 533, contain the transcript of the recording. The transcript is a good guide to the conversation but on occasion is inaccurate.

<sup>61</sup> Parole Record Book at p. 534.

well at school and I wanted no publicity nothing so I just perpetuated the myths of what had happened in the past."<sup>62</sup>

[58] The Board accepts that the Applicant does express a continued devotion to his daughter in both the recorded interviews of 2 November 2017 and 10 January 2019. However, the fact remains the Applicant chose to take part in the interview with police of his own free will on 2 November 2017 and having listened to the interview it is difficult to understand why, if the Applicant held the concerns expressed in [57] above, he simply did not express that to the police, or decline to take part in the interview.

[59] During the recorded interview on 2 November 2017, the Applicant is garrulous at times in relation to his daughter and openly discusses his daughter's cat having to be put down,<sup>63</sup> his daughter's schoolies trip to Japan,<sup>64</sup> his daughter's 18th birthday party,<sup>65</sup> purchasing a vehicle for his daughter<sup>66</sup> and his daughter now having the mother she should have always had.<sup>67</sup> Against that context, it is difficult to understand why the Applicant did not simply explain to the police his concerns for his daughter undertaking her HSC and his concerns for her privacy.

[60] During the hearing on 14 December 2022, Ms Longbottom KC, on behalf of the Applicant, argued the police had taken the Applicant 'off guard' when they attended upon him on 2 November 2017, and refers to a statement made by Detective Senior Sergeant Knight to the Applicant, " ... *I know I've got you off guard.*"<sup>68</sup>

[61] Further, Ms Longbottom KC refers to the affidavit sworn by the Applicant on 6 June 2019 as part of the context for the Board to analyse that particular account (the Southport Spit account). Ms Longbottom KC refers to paragraph [11]:

"11. I received no notice of police coming to talk to me about the location of the deceased's body prior to their attendance on me at the Wolston Correctional Centre in November 2017. I was caught unaware by their attendance and so kept to the version of the deceased's body being put into the Southport seaway."<sup>69</sup>

[62] As stated in [56] above, it is clear from the content of the recording the Applicant took part in the record of interview on 2 November 2017 of his own free will. The Applicant knew he was under no obligation to talk with the police and even stated that he wasn't surprised at their attendance upon him:

CN: So um I just can't you being here doesn't surprise me because of the legislation.

CK: Sure and that is the truth.

CN: And again some people here will say ah as soon as I found out it was the police I should have just walked away you know.

CK: Hmm.

CN: You know what this place is like.

CK: Yep.

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<sup>62</sup> Parole Record Book at p. 554.

<sup>63</sup> Parole Record Book at p. 529.

<sup>64</sup> Parole Record Book at p. 531.

<sup>65</sup> Parole Record Book at p. 530.

<sup>66</sup> Ibid.

<sup>67</sup> Parole Record Book at p. 531.

<sup>68</sup> Parole Board Record Book at p. 505.

<sup>69</sup> Parole Board Record Book at p. 51.

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- CN: Um but again that's not me which is also why I was also a crown witness which is why I am at this centre and not at Woodford.
- CK: Okay.
- CN: Because I was a crown witness for a death in custody up there.
- CK: Okay.
- CN: In Woodford.
- CK: Okay.
- CN: Um and as the officers said well why and I said well I know it sounds silly and you know all the rest of it as a practising Christian I had to look at the Bible to see what that said.
- CK: HmmHmm.
- CN: And it goes back to [UI] which basically says if you are asked under oath you have to give it and then you go to Matthew and it says in there [UI] under oath and he knew what was coming as a man as a human. Therefore, that's why when I was at Woodford and asked to be a Crown witness and knowing um what that entailed I had no choice but to say yes I will be a crown witness.
- CK: Hmm.
- CN: I do recall that the general manager from there, their psychiatrist all came and saw me.
- CK: Hmm.
- CN: I was being held in the DU away from the general body and to say do you know where you are going to be going? And I said what and they said you are going to be going to be going to Walston where are the child and the paedophiles and people are and you're protecting a child. And I said you know I said you know everybody is guilty of something and walk a mile in another man's shoes.
- CK: Hmm.
- CN: And as Christ said let he who is without sin cast the first stone.
- CK: Hmmhmm.
- CN: So that's why I was Crown witness in that instance even though it has put me here with people that I don't want to know what they are here for because of the reasons why I'm here.
- CK: Yeah yep. I get that. Yeah.
- CN: Um so that's basically where it's up to at the moment.

[emphasis added]

[63] The reference to 'Crown witness' by the Applicant in the recorded interview on 2 November 2017, can only be a reference to the evidence the Applicant gave in the committal hearing and trial of *Alexandrew Geraud*



*Richmond-Sinclair*. That evidence given by the Applicant, under oath, was that he had disposed of the victim's remains at the Southport Spit.<sup>70</sup>

[64] In his affidavit sworn 6 June 2019, the Applicant deposes to the reason for him now telling the truth (the Cedar Grove account), was because he did not want to lie under oath,<sup>71</sup> presumably by maintaining the Southport Spit account:

"12. I have thought more about matters and decided to tell the truth. I knew there was a prospect that I would decide to give evidence on oath as a result of my application, and I do not want to lie under oath. I instructed my lawyers to contact police so that I could provide further information to try to locate the deceased's body."

[emphasis added]

[65] The deposition referred to above, is in direct conflict with the evidence the Applicant had given, under oath, in the committal hearing and the trial of *Alexandrew Geraud Richmond-Sinclair*, that he had disposed of the victim's remains at the Southport Spit.

[66] It is an inescapable conclusion that the Applicant has either lied under oath when giving evidence in court, twice, or when swearing his affidavit on 6 June 2019.

[67] It is accepted by Ms Longbottom KC on behalf of the Applicant that in determining credibility, lies previously told by the Applicant are relevant.<sup>72</sup>

[68] The Board accepts the making of a no cooperation declaration may be a powerful motivation for the Applicant and a potential reason for the proffering of the Cedar Grove account. But that motivation alone is not enough in the circumstances of this application for the Board to consider the Cedar Grove account to be truthful, credible or reliable.

#### Mandatory considerations under s. 1750 of the CSA

[69] In deciding whether the Applicant has given satisfactory cooperation, the Board has had regard to the commissioner's reports dated 3 December 2018, 25 March 2019 and 4 May 2022, their annexures and addendum.

[70] There is no information before the Board about the Applicant's capacity to give satisfactory cooperation. The Applicant was legally represented and there have been no submissions made or reports tendered concerning the capacity of the prisoner to give satisfactory cooperation.

[71] The sentencing remarks of the court that sentenced the prisoner form part of the Parole Board Record book. There are no relevant remarks made by the court.

[72] The Applicant has not asked the Board to consider a transcript of a proceeding against him for the homicide offence, but the relevant transcript forms part of the Parole Board Record Book.

#### **Human Rights Considerations**

[73] The Board is statutorily required to decide whether to make a no cooperation declaration about the Applicant.<sup>73</sup>

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<sup>70</sup> Parole Board Record Book at pages 730 and 760.

<sup>71</sup> Parole Board Record Book at p. 51.

<sup>72</sup> *Renwick* at [29].

<sup>73</sup> *Corrective Services Act 2006*, s.175K(a).

- [74] The making of a no cooperation declaration about the Applicant would conceivably impose a limit or limits on certain of the Applicant's human rights.<sup>74</sup>
- [75] In response to the preliminary decision,<sup>75</sup> the legal representatives for the Applicant, in an email dated 9 May 2023,<sup>76</sup> contend the human rights of the Applicant which may be limited by the making of a no cooperation declaration are: freedom of movement;<sup>77</sup> right of peaceful assembly;<sup>78</sup> the right to liberty;<sup>79</sup> the right to humane treatment when deprived of liberty;<sup>80</sup> and the right to a fair hearing.<sup>81</sup>
- [76] The Board has considered the human rights that may, or necessarily will, be impacted by the making of a no cooperation declaration and has considered whether the decision would be compatible with human rights.<sup>82</sup>
- [77] The Board has throughout these reasons been cognisant of the severity of the limitations which would operate as a consequence of a declaration made under s.175L of the CSA. The Board understands that such a declaration deprives the Applicant of the opportunity to apply for parole other than in the circumstances identified in sections 175R to 175U of the CSA.
- [78] The Board, accordingly, has considered whether making a declaration under s.175L of the CSA is supported and is objectively justified having regard to the relevant human rights of the Applicant.
- [79] The Board, in reaching a decision, has concluded that the limitation of human rights by the decision is reasonably and demonstrably justified, in accordance with section 13 of the *Human Rights Act 2019* (Qld).<sup>83</sup>

#### Decision

- [80] The Board does not consider the information provided by the Applicant in relation to the victim's location to be truthful, credible or reliable.<sup>84</sup>
- [81] The Board has decided the Applicant has not given satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.
- [82] Accordingly, the Board makes a no cooperation declaration about the Applicant.

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<sup>74</sup> *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 at [130].

<sup>75</sup> Parole Board Record Book at pages 1124 – 1155.

<sup>76</sup> Parole Board Record Book at pages 1169 – 1170.

<sup>77</sup> *Human Rights Act 2019* (Qld), s.19.

<sup>78</sup> *Ibid* s.22.

<sup>79</sup> *Ibid* s.29(1).

<sup>80</sup> *Ibid* s.30(1).

<sup>81</sup> *Ibid* s.31(1).

<sup>82</sup> *Ibid* s. 58(5).

<sup>83</sup> *Ibid* s.8(b).

<sup>84</sup> Consistent with *Renwick* at [31], it would be surplusage for the Board to consider the timeliness of the cooperation, having formed the view the information provided by the Applicant in relation to the victim's location was not truthful, credible or reliable.