

In the matter of

**CLIVE ANTHONY NICHOLSON**

**(Applicant)**

**SECTION 193A CORRECTIVE SERVICES ACT 2006**

PROCEEDING:	An application for parole
DELIVERED ON:	13 July 2021
DELIVERED AT:	Brisbane
HEARING DATES:	7 June 2019 and 8 May 2020
MEETING DATES:	The Board met to consider the matter on 7 June 2019, 8 May 2020, 27 November 2020, 5 February 2021 and 28 June 2021.
SENIOR BOARD MEMBERS:	Mr Michael Byrne QC, President, Parole Board Queensland and Ms Julie Sharp, Deputy President, Parole Board Queensland.
DECISION:	The Board is not satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.
COUNSEL:	Mr Neville Weston appeared as counsel assisting the Board (previously Mr Adrian Braithwaite) Mr Jeff Hunter QC and Ms Laura Reece appeared for the applicant Mr Michael Nicholson appeared for the Queensland Police Service
SOLICITORS:	Parole Board Queensland Legal Services Wallace O'Hagan Lawyers Queensland Police Service Solicitor

## **Application for parole where the victim's body or remains have not been located**

- [1] Clive Anthony Nicholson ("the applicant") has applied for parole pursuant to s180 of the *Corrective Services Act 2006* (Qld) ("the Act").
- [2] The applicant is serving a sentence of life imprisonment for murder.
- [3] The applicant became eligible for parole on 25 August 2018.
- [4] The body or remains of the victim of the murder have not been located.<sup>1</sup>
- [5] As the offence of murder is a homicide offence within the meaning of s193A(8)(a)(ii) of the Act, the Parole Board Queensland ("the Board") must refuse to grant the application for parole unless it is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.<sup>2</sup>

### Application of s193A of the Act

- [6] Section 193A(7)(a) of the Act provides that, in determining whether the applicant has 'cooperated satisfactorily' in the investigation of the offence to identify the victim's location, the Board must have regard to:
  - (i) a written report of the Commissioner of Police stating whether the applicant has cooperated in the investigation of the offence to identify the victim's location and, if so, an evaluation of:<sup>3</sup>
    - a) the nature, extent and timeliness of the applicant's cooperation; and
    - b) the truthfulness, completeness and reliability of any information or evidence provided by the applicant in relation to the victim's location; and
    - c) the significance and usefulness of the applicant's cooperation; and
  - (ii) any information the Board has about the applicant's capacity to give the cooperation; and

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<sup>1</sup> *Corrective Service Act 2006* (Qld) s193A(1).

<sup>2</sup> *Ibid* s 193A(2).

<sup>3</sup> *Ibid* s193A(7)(a) read in conjunction with s193A(6) and s193A(2)

(iii) any relevant remarks made by the sentencing court that sentenced the applicant to the term of imprisonment the applicant is serving for the offence; and

(iv) if the applicant requests the Board to consider a transcript of a proceeding against the applicant for the offence ("the transcript").

[7] Further, s193A(7)(b) of the Act provides that the Board may have regard to any other information the Board considers relevant.

[8] When determining whether the applicant has 'cooperated satisfactorily' in the investigation of the offence, the Board is to give the phrase 'cooperated satisfactorily', as part of a statutory provision, the meaning that the legislature is taken to have intended it to have -

*'Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.'*<sup>4</sup>

[9] The Board formed the view that, in these circumstances, the legal meaning of 'cooperated satisfactorily' corresponds with the grammatical meaning of the phrase.

[10] The Board determined that the grammatical meaning of 'cooperated satisfactorily' may be derived with reference to the *Shorter Oxford English Dictionary*, which provides for the following definitions:

*'satisfactory' – 'sufficient, adequate; convincing'*.<sup>5</sup>

*'cooperate' – act jointly with another (in a task, to the end)'*.<sup>6</sup>

[11] Section 193A(3) of the Act provides that the cooperation may have happened before or after the applicant was sentenced to imprisonment for the offence.

#### Standard of Proof

[12] No onus is cast on the applicant or the Board in making the determination required by s193A of the Act. The decision-making process is not adversarial.

[13] Section 230 of the Act provides that the Board may conduct its business in the way it considers appropriate. The Board is to act fairly and with common sense,

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<sup>4</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998)194 CLR 355, 384 [78].

<sup>5</sup> Oxford University Press, *Shorter Oxford English Dictionary* (5<sup>th</sup> ed, Volume 2), 2674.

<sup>6</sup> Oxford University Press, *Shorter Oxford English Dictionary* (5<sup>th</sup>ed, Volume 1), 513.

and to inform itself by reference to relevant and probative information so as to draw conclusions on matters in issue to its comfortable satisfaction.

- [14] The Board is not required to be satisfied of any matter beyond reasonable doubt, or to apply the rule in *Briginshaw v Briginshaw*,<sup>7</sup> or the principles derived from that decision. However, the Board is cognisant of the seriousness of the consequences of the findings to be made under s193A and may, depending on the issue, express greater caution in evaluating the factual foundation for the conclusion to be reached on that point.

### **Preliminary Matter**

- [15] The Board, at the request of counsel for the applicant, issued an attendance notice to Acting Inspector Knight to attend the hearing of the application on 7 June 2019. The purpose was to allow the applicant's legal representatives to ask Acting Inspector Knight questions about the reports he had prepared pursuant to s193A(6) of the Act on behalf of the Commissioner of Police ('the Commissioner').
- [16] The Commissioner objected to that course on the basis that the Board did not have power to allow questions to be asked of Acting Inspector Knight, under oath or otherwise, by an agent for the applicant.
- [17] The Board dismissed the Commissioner's objections, deciding that powers under the Act and the *Acts Interpretation Act 1954* (Qld) allow the Board to take evidence, whether on oath or otherwise.<sup>8</sup>
- [18] The Commissioner made an application in the Supreme Court for judicial review of that decision. The application was dismissed.<sup>9</sup>

### **Background**

- [19] On 24 August 2003, the applicant was charged with murdering his wife, Julie Rose Nicholson ('the victim') on or about 15 July 2003 at the Gold Coast. He pleaded not guilty to the charge and a trial was held between 6 February and 10 February 2006 in the Supreme Court. The jury found the applicant guilty of murder and he was sentenced to life imprisonment.
- [20] At the time of the murder the applicant and the victim were married and lived together at Southport with their three-year old daughter, Elizabeth.
- [21] The victim was last seen on 15 July 2003. In the days that followed her disappearance the applicant told a myriad lies to many people in attempting to cover up the killing. He invented stories of his wife's illness and then of her

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<sup>7</sup> (1938) 60 CLR 336.

<sup>8</sup> In the matter of Clive Anthony Nicholson, An Application for Parole, 19 June 2019.

<sup>9</sup> *Commissioner of Police Service v Parole Board Queensland & Anor* (2019) 3 QR 251.

abandoning him and their daughter, possibly to be with another man. The lies were elaborate and detailed.

[22] Evidence was given at trial by a number of people to whom the applicant had told such lies. For example:

Tanya Dalgleish, Kindergarten Proprietor

On 16 July 2003, the applicant signed Elizabeth in to kindergarten and later told Ms Dalgleish that his wife was sick. On that day, or the following day, the applicant elaborated saying words to the effect; *"Oh, you know, she's a nurse. Nurses make terrible patients, you know that. You know how stubborn she is, she doesn't want a doctor."*<sup>10</sup>

On about 28 July 2003, the applicant told Ms Dalgleish that the victim was not in fact sick but had run away from home and was possibly having an affair with a former military man living in New South Wales. He expressed concern that the victim would come and take Elizabeth from kindergarten. The applicant further elaborated his lies during *"lengthy chats"* with Ms Dalgleish, outlining the costs he expected to incur in obtaining custody orders and his plans for Elizabeth's future schooling.<sup>11</sup>

Ida Barr, the victim's mother

Ms Barr last spoke with her daughter at about 11.00am on 15 July 2003. It was a brief telephone conversation which ended with the victim saying that she would call her mother later on.<sup>12</sup> Ms Barr did not perceive her daughter to be upset during the call.<sup>13</sup>

When she had not heard from her daughter again, Ms Barr decided to call on Saturday, 19 July 2003. Elizabeth answered the phone and in the course of a conversation about clothes, the little girl told Ms Barr that *"Mummy's gone away and she's not coming back"*.<sup>14</sup>

The applicant then spoke with Ms Barr and told her that the victim had gone away to the Sunshine Coast and would be back on Sunday, the following day. He added the detail that he had bought the victim flowers and chocolates last Monday. Ms Barr phoned the applicant back after that conversation, concerned that something was wrong. The applicant assured her that the victim would be back on Sunday.

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<sup>10</sup> Trial Transcript, Parole File page 438.

<sup>11</sup> Ibid, pp. 437 – 436.

<sup>12</sup> Ibid, p.272.

<sup>13</sup> Ibid, p.271.

<sup>14</sup> Ibid, p.271.

Ms Barr rang the applicant each night thereafter and was variously told by the applicant:

- Elizabeth broke a gravy boat and the victim 'flogged' her;<sup>15</sup>
- The victim had withdrawn \$500 from a Westpac bank account, and a further \$550 from a service station;<sup>16</sup>
- The applicant was painting the bedroom for when the victim returned;<sup>17</sup>
- The applicant came home from work one day to find the victim's car back. He found evidence that the applicant had packed another suitcase and gone. The applicant further elaborated that he found a letter from the victim which he read to Ms Barr;<sup>18</sup>
- The applicant had found a card from a man called 'Richard' and he suspected the victim had gone back to him.<sup>19</sup>

[23] Those lies were exposed by the applicant's later confession to killing his wife, but also by forensic evidence. At trial, the jury heard that the applicant had attempted to hide forensic evidence of the killing by various means including painting and installing a shoe stand under which there was the indication of blood staining.

[24] On 23 July 2003, the applicant contacted police and reported the victim missing. The applicant stated that he had last seen the victim on the morning of 17 July 2003 when he left for work. The applicant told police that he noticed the victim was missing when he returned from work.

[25] Family and friends of the victim told police that her disappearance was out of character and it was unlikely she would leave her daughter.

[26] On 9 August 2003, the applicant provided a sworn witness statement to police<sup>20</sup> in relation to the disappearance of the victim. That statement included the following:

- (i) The victim had been upset about financial issues and argumentative with the applicant. He said she had been withdrawn from basic parenting tasks.
- (ii) On 16 July 2003, the applicant dropped their daughter to kindergarten and picked her up. Upon returning home the victim was withdrawn, and, as mentioned, leaving parenting tasks to the applicant. The applicant had been unable to contact her during the day.

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<sup>15</sup> Ibid, p.270.

<sup>16</sup> Ibid, p. 268 and p.266.

<sup>17</sup> Ibid, p.268.

<sup>18</sup> Ibid, p.267.

<sup>19</sup> Ibid, p.266.

<sup>20</sup> Statement of Clive Anthony Nicholson, 9 August 2003, Parole File, page 171-159.

- (iii) On 17 July 2003, the applicant again dropped their daughter to kindergarten. Later in the morning, the victim rang him and said "*I am going up the coast for a couple of days and you can look after Elizabeth.*" He noticed the victim's car, a suitcase and some clothing were gone. She could not be contacted by phone.
  - (iv) From 18 to 21 July 2003, the applicant continued to try to contact the victim without success. He told family and friends that the victim had been depressed and had left him and their daughter of her own volition.
  - (v) When he returned from work on 21 July 2003, the victim's car was in the garage but most of her personal effects were gone, along with more suitcases. There was a handwritten note referring to the couple's failing marriage and the victim's lack of strength to save it. The note concluded with "*I would like to tell you more, but I have to go*".
  - (vi) The applicant continued trying to call the victim on 22 July 2003.
- [27] On 15 August 2003, police executed a crime scene warrant at the residence at Southport, shared by the applicant, the victim and their three-year old daughter. That search revealed blood smears on the lid of the washing machine, the laundry basket, a light switch and the garage floor.
- [28] The same day, the applicant declined to participate in a formal interview with police in relation to the suspected homicide of the victim.
- [29] On 16 August 2003 the applicant had a conversation with the victim's nephew, Nicholas Cowen, outside Mr Cowen's workplace. The applicant was upset, telling Mr Cowen that the police interviewed him and were "*giving him a bit of a hard time*".<sup>21</sup> He told Mr Cowen the police had found blood at the house but that the victim had had a nose bleed. Significantly, the applicant asked Mr Cowen for money saying he wanted two days to "*cool off*" and that:

*I don't know what to do. I spoke to my solicitor and I'll get 15 to 20 years if convicted; if I told them where the body is I will get eight; and further*

*I can't go to gaol. I can't spend a day without Elizabeth.*<sup>22</sup>

- [30] The applicant told Mr Cowen that police had found "*that Whelan guy and he is not a suspect anymore*", referring to the man he had indicated the victim may have run away with. He also said Elizabeth would be better off with Theresa, the victim's niece and Elizabeth's Godmother. The applicant denied killing the victim.<sup>23</sup>

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<sup>21</sup> Ibid, p.360.

<sup>22</sup> Ibid, p.360.

<sup>23</sup> Ibid, p.359.

[31] The following day, 17 August 2003, the applicant provided a bundle of letters to staff at a Salvation Army hostel. The letters were to be distributed to various people including investigating officers, his solicitor and family and friends. Those letters gave accounts of the killing (raising various defences) and informed that he had disposed of the victim's body at the Southport Spit. There were clear indications of the applicant's suicidal ideation at the time. Of those letters the trial Judge said this in summing up the evidence to the jury:

*Before I come to the elements of the offence of murder and the alternative available on the indictment of manslaughter and questions of self-defence, provocation, accident and willed act, let me draw your attention to the substance of the accounts of the killing given by the accused in letters he wrote in mid August 2003 about a month after the death. You might think that they were composed at a time when the accused was contemplating suicide and that one or more of them was written for the benefit of prosperity.<sup>24</sup>*

*In the letter dated 16 August to Williamson and Ingram this appears:*

*"A moment's anger, self-defence, loss of temper, probably releasing all my pent up emotions have destroyed two lives and damaged others."*

*In the letter dated 17 August, the one which has assumed most significance of the arguments before you, "My Statement of Record" this:*

*"When I went to go to bed Julie started again about my mother not helping, her mother prepared to help, et cetera, et cetera, et cetera. At some point the argument became very heated and because I was trying to remain calm and reasonable this only seemed to enrage her further. She looked around for I thought something to throw at me to get me to react. I had a hammer and screwdriver and tins of paint, drop sheets alongside the wall under the window and she grabbed the hammer and came at me. I don't know exactly what happened but suddenly I got the hammer in my hand and she was staggering backward onto the bed with blood on her hair and down her back. I just stood there staring. At some point Elizabeth came in and I told her to go back to her room as mummy was having a bad nose bleed and I needed to help mummy. Then my stupidity really took hold. I wrapped Julie in the sheets and the doona and hid her in the walk-in robe, made sure Elizabeth had gone back to sleep and dragged Julie down to the garage. I could not believe what I had done and was panicking. There was no way I could get Julie into her car so I put her into the back of the ute. At some point she was still breathing, but by the time I tried to tidy her up in the ute she had stopped. All I could think of was going to gaol and more importantly losing Elizabeth and Elizabeth was being without her parents. I do remember looking at Julie asking why, why, why."*

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<sup>24</sup> Summing Up, 10 February 2006, Parole File, page 50. Note: The Board assumes the word "prosperity" is a transcription error, and should be "posterity".

A little later on:

*"When Elizabeth was asleep I wrapped Julie's body and took her to The Spit and wrapped in a plastic dropsheet floated her into the water. I don't know the time but she floated out to sea. I then went home, cleaned up the mess and later disposed of the bloodstained sheets, hammer, et cetera, at the tip with other rubbish from the home. Later I thought of her clothes and threw out some, changed others and dumped others at the Lifeline store."<sup>25</sup>*

[32] That is a short extract of the letters which are lengthy and detailed. They repeatedly urge for Elizabeth to be taken care of and give detailed instructions for dealing with finances and assets. They demonstrate the applicant's suicidal intention perhaps most starkly in this passage to investigating officer Scott Ingram:

*I hope you find Julie soon so as Ian (Williamson) put it 'everyone can have closure'.*

*At least for a while Julie and I will again share the ocean we loved. I remember Elizabeth's first trip to the beach and how we both laughed and laughed at her reaction to the waves and the hugh [sic] sandpit. How we loved watching her... But Elizabeth did so love the beach and her milkshake afterwards ... I have now robbed her of both parents – One by way of accident. One by way of broken heart."<sup>26</sup>*

[33] Other evidence in the trial regarding the location of the victim's remains came from Peter Cowen, the victim's brother. He visited the applicant in custody three times in the months leading to Christmas 2003. During the second visit the applicant was tearful when the following exchange took place:

*We can't discuss it. We can't talk about it. My solicitor said I can't speak to anybody about it, only him. I can't tell you what really happened until it's all over.*

*All my mother wants to know is where did you put Julie?*

*I can't tell you. But I'll keep my promise.<sup>27</sup>*

[34] During Mr Cowen's third visit the applicant said this:

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<sup>25</sup> Ibid, p.49.

<sup>26</sup> Letter Clive Anthony Nicholson to Scott Ingram, Parole File page 148-145.

<sup>27</sup> Trial transcript, Parole File, page 322.

*I'll most probably be convicted of/for manslaughter because there is no body, and all the evidence they've got is forensic and circumstantial. I'll probably get six to eight years. By the time I go to trial it will be eighteen months to two years. With time served and time off for good behaviour...I should only serve three to four, so Elizabeth will only be eight or nine.<sup>28</sup>*

- [35] The applicant has not made any further disclosures to Mr Cowen or any other member of the victim's family.
- [36] The first time the applicant spoke to authorities about the location of the victim's remains was on 2 November 2017; 15 years after the murder.
- [37] The police attended upon the applicant in prison on 2 November 2017 for the purpose of advising him of the 'no body, no parole' legislation and offering him an opportunity to provide further information that might assist to locate the victim's remains. The applicant told police that he was aware of the legislation.<sup>29</sup> He maintained that the remains were disposed of at the Southport Spit into the ocean.
- [38] Not only did the applicant maintain that account, he provided additional detail, outlined below.
- [39] The police again attended upon the applicant on 10 January 2019 after receiving a phone call from his solicitor advising the applicant had further information to provide. On that occasion the applicant provided a completely different account of the victim's location. He told police that he buried the remains at a location and place at Cedar Creek.
- [40] Further detail was provided by the applicant on 17 January 2019 with reference to maps and aerial photographs.
- [41] On 23 January 2019 the applicant accompanied police to the area and spent considerable time locating the place where he was confident the remains had been buried.
- [42] A search was conducted by police, using two cadaver dogs, on 1 February 2019. No remains were located.

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<sup>28</sup> Ibid, p.321.

<sup>29</sup> Transcript of No Body, No Parole Hearing, 8 May 2020, page 32.

## Commissioner's Cooperation Reports

- [43] The Board must have regard to the report of the Commissioner of Police ('Commissioner's Report') given under s193A(6) of the Act in answering the questions of cooperation.<sup>30</sup>
- [44] In this case, two Commissioner's Reports were provided to the Board. The first dated 26 November 2018, and the second dated 25 March 2019 after the applicant provided further information to police.

### The First Commissioner's Report - 26 November 2018

- [45] The applicant was interviewed by police on 2 November 2017 in preparation for the Commissioner's Report.
- [46] The applicant was informed of the 'no body, no parole' provisions of the Act and asked whether he had spoken to police "*specifically in an interview scenario about where the body is or was?*". There are numerous statements made by the applicant in that interview that highlight that he knew of the legislation and its purpose.<sup>31</sup>
- [47] The applicant said that police had never asked about the location of the body, "*but I did give a whole lot of written information just before I handed myself in.*"<sup>32</sup> That was clearly a reference to the letters provided to the Salvation Army on 17 August 2003 outlining the victim's burial at sea. At that time the applicant told police, "I was ready to knock myself."<sup>33</sup>
- [48] The applicant told police he understood the 'no body, no parole' provisions to require satisfactory cooperation to identify the victim's location. The applicant said:

*Well I gave that at the very beginning of the investigation 14 years ago.*<sup>34</sup>

- [49] Details were volunteered by the applicant, for example that he remembered walking through sand having driven to the end of The Spit on the eastern side of the ocean and parked in a particular area near a protected bay.<sup>35</sup> He also drew a diagram for police marking the location where the victim's body went into the water.<sup>36</sup> He was unable to provide detail as to what happened to the victim's body once he had placed it in the sea saying:

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<sup>30</sup> *Corrective Services Act 2006* (Qld) s193A(7)(a)(i)

<sup>31</sup> Transcript of interview with Clive Anthony Nicholson, 2 November 2017, Parole File, pages 87 and 86.

<sup>32</sup> *Ibid*, p.91.

<sup>33</sup> *Ibid*, p.83.

<sup>34</sup> *Ibid*, p.87.

<sup>35</sup> *Ibid*, p.81 and p.72.

<sup>36</sup> *Ibid*, p.71.

*I don't know it was so dark it ah from the little distance that you could see um it appeared to semi float but then all I did was jump back in the ute go back home to my daughter because she was asleep.<sup>37</sup>*

- [50] The applicant pointed out that he had no more than three speeding tickets prior to killing his wife and that the situation was unlike anything he had experienced before. He added that he and his wife had previously talked about being cremated and having the ashes spread at sea.<sup>38</sup>
- [51] The Commissioner's Report acknowledges that while the applicant provided a greater level of detail regarding the victim's location, due to the passage of time, there was no opportunity for police to undertake a fruitful search.
- [52] As to the truthfulness, completeness and reliability of the applicant's account regarding the victim's location, the Commissioner's Report highlights various positions taken at trial regarding the applicant's account.
- [53] The Crown did not accept the applicant's account that he wrapped the victim's body and put her in the seaway. The Prosecutor pointed to evidence of the applicant purchasing rope and cutting blades from his employer, although it could not be said how those items might have been used in an alternative scenario.
- [54] The applicant's counsel at trial argued the account of disposing of the body in the seaway was not contradicted by anything discovered in the course of the investigation. He reminded the jury of correspondence referring to him joining his wife in the ocean presumably by suicide.
- [55] The trial Judge was "puzzled" at the prosecution position given a lack of any contradiction in the evidence. For example, Detective Sergeant Williamson had given evidence regarding access to the seaway and of a spring tide at the relevant time. Such a tide has the water travelling at its fastest.<sup>39</sup>
- [56] A statement was provided by the Queensland Police State Emergency and Rescue Coordinator, Senior Sergeant Whitehead on 9 May 2018 regarding the likelihood of the victim's remains being recovered if disposed of in the seaway. That statement informs the Board:
- (i) There have been a number of incidents of people drowning or disappearing in the Southport Seaway and immediate surrounding area;
  - (ii) Not all such missing persons' remains have been located;

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<sup>37</sup> Ibid, p.80.

<sup>38</sup> Ibid, p.88.

<sup>39</sup> Parole File, page 231 and pages 247-246.

- (iii) Those that have been located were found within three days on the eastern foreshore of South Stradbroke Island between the Seaway and Jumpinpin Passage;
- (iv) Marine predators are prevalent and many recovered bodies have shown signs of marine predation;
- (v) In this case, based on historical action, the victim's body would have been expected to come ashore to the north of the Seaway a short time after disposal. Various factors might explain why that did not happen; for example, marine predation, the body was taken out beyond the longshore current or weather events contributed to the body being dispersed;
- (vi) Given the passage of time, it is unlikely any remains would still be in the seaway or surrounding area.

[57] Key points made in the first Commissioner's Report in relation to the applicant's cooperation in identifying the location and place of the victim's remains were these:

- (i) There is no evidence of any water searches being undertaken as part of the original investigation;
- (ii) Detailed information regarding the location where the applicant disposed of the victim's body into the sea was not provided until 2 November 2017;
- (iii) No productive search is possible now given the passage of time, particularly in light of Senior Sergeant Whitehead's statement;
- (iv) It is difficult to assess the reliability of the applicant's account given that the victim's remains have not been located.

#### The Second Commissioner's Report – 25 March 2019

[58] The applicant's parole hearing was scheduled for 10 January 2019. Prior to that, at the request of the applicant's legal representatives, the hearing was postponed to allow him to provide further information to police regarding the location and place of the victim's remains.

[59] On 10 January 2019, Detective Senior Sergeant Knight and Detective Sergeant Pordage interviewed the applicant in prison. The applicant provided a completely different account of the disposal of the victim's body, as follows:

- (i) The applicant took the victim's body to the Southport Spit but changed his mind and drove to Cedar Grove;

- (ii) The body was wrapped in a sheep skin mattress cover, a bed sheet and then in a tarpaulin ground sheet;
  - (iii) The applicant travelled along the Mount Lindsay Highway from Jimboomba towards Beaudesert, before turning off to the right into Cedar Grove;
  - (iv) He was unable to name roads but described travelling past a sand quarry and turning right into an area where rubbish had been dumped;
  - (v) At that location, the applicant dug a hole about two feet deep and buried the body, placing a timber pallet on top of the grave.
- [60] Police returned on 17 January 2019 with maps and aerial imagery and the applicant marked them to indicate the location and place of the victim's remains.
- [61] On 23 January 2019, the applicant accompanied police to the Cedar Grove area for the purpose of identifying the victim's location.
- [62] The applicant told police he was "*ten out of ten*" sure that the place of the victim's remains is off Undullah Road. The burial site was identified by coordinates and established to be a private property.
- [63] The property owner provided a statement including that she had conducted excavation work at the site about 10 years ago, and constructed a dam and motorcross track. She conducted the work with her son and did not notice anything suspicious during excavation or construction.
- [64] A search of the relevant area was coordinated. On 1 February 2019 a grid search was conducted and two cadaver dogs were utilised. No remains were located.
- [65] The second Commissioner's Report makes the following observations about the applicant's cooperation in identifying the location and place of the victim's remains:
- (i) The applicant now says that he lied about disposing of the victim's body in the Southport Seaway;
  - (ii) The new account is a "*significant departure*" from his earlier, and long maintained, version;
  - (iii) All reasonable efforts were made by police to validate the truthfulness of the new account to no avail.

## No Body, No Parole Hearing – 8 May 2020

- [66] Detective Senior Sergeant Knight ('DSS Knight') was examined by Counsel Assisting the Board, and cross-examined by Senior Counsel for the applicant on 8 May 2020.
- [67] DSS Knight of the Homicide Investigation Unit was the lead officer in the investigation into the new account given by the applicant on 10 January 2019. He was also the author of both Commissioner's Reports.
- [68] DSS Knight noted that on 2 November 2018, the applicant was "*quite forthcoming*" in giving some "*very detailed information*", including a sketch, of the place where he disposed of the victim's body out to sea.<sup>40</sup>
- [69] The applicant had not been given prior warning of the police visit on 2 November 2018 and DSS Knight accepted that he had been caught off guard.<sup>41</sup> DSS Knight confirmed that was the first time the applicant had been provided with documentation regarding the 'no body, no parole' legislation.
- [70] DSS Knight said that further investigation was conducted to establish if there was any utility in a search by Water Police. In the event no search was undertaken.
- [71] On 7 January 2019, prior to the scheduled hearing on 10 January 2019, the applicant's solicitor phoned DSS Knight and advised that the applicant wished to provide further information regarding the location and place of the victim's remains. DSS Knight and another officer attended the prison and "*gave him the floor*", inviting the applicant to tell them whatever he wanted to. It was then the applicant told police his previous account was false and he had, in fact, buried the victim's body at Cedar Grove.
- [72] The applicant gave more detail regarding the victim's location with reference to maps during a subsequent interview on 17 January 2019. DSS Knight determined that a removal order was necessary so that the applicant could accompany police to better identify the location he had described.
- [73] Much of the evidence focussed on how the applicant came to identify the area that was later searched by police on 23 January 2019, and how that search was conducted. DSS Knight confirmed that it took a number of hours for the applicant to settle on a place he was confident about. Even then, the applicant expressed some doubts.<sup>42</sup>

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<sup>40</sup> Transcript of Hearing, 8 May 2020, page 7.

<sup>41</sup> Transcript of Hearing, 8 May 2019, page 23.

<sup>42</sup> Transcript of Hearing, 8 May 2019, page 21.

[74] GPS coordinates recorded on 23 January 2019 formed the basis for the search of about a three-quarter acre of land on 1 February 2019. DSS Knight was not present for that search but gave evidence of what he knew had been done. That included the use of cadaver dogs.

[75] DSS Knight's evidence was that a cadaver dog search involves the perforation of the ground using a metal rod approximately one foot in length. DSS Knight said that in this case he understood the search to involve perforation of the ground every foot, to foot and a half, across the quarter acre.<sup>43</sup> He agreed that there were numerous factors that might affect the success of such a search. Those factors included how the body was wrapped, the extent of decomposition, how deep the grave and the possibility of flooding in the area.<sup>44</sup>

[76] DSS Knight also confirmed that soil had been removed to build a dam on the property since 2003. Soil removed for that purpose was used to build up terrain on other parts of the land for a motocross track. DSS Knight said that from the road "you could probably see that the – the – something had been done in the area" but not necessarily recognise it as a motocross or BMX track.<sup>45</sup>

[77] DSS Knight conceded that given the passage of time, limitations associated with the cadaver dog process and factors that might affect the natural environment, it is possible the victim's remains are at the place identified by the applicant.<sup>46</sup>

[78] The applicant did not give evidence at the hearing.

### **Statement of Sergeant Warren Gates**

[79] At the conclusion of the hearing, the Board sought a statement from the officer(s) who conducted the cadaver dog search on 1 February 2019. That was in recognition that DSS Knight had done his best to describe the process undertaken, however he was not present and is not an expert in that field.

[80] Sergeant Gates is an experienced dog handler and the dogs used for this search have successfully located skeletal and decomposed remains in operational searches.

[81] The area searched at 1495-1545 Ripley Road, South Ripley was dry and solid making it "near on impossible" to probe the ground to aerate it. Probing was attempted where possible, however it was extremely difficult.

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<sup>43</sup> Transcript of Hearing, 8 May 2019, page 18.

<sup>44</sup> Transcript of Hearing, 8 May 2019, page 19.

<sup>45</sup> Transcript of Hearing, 8 May 2019, page 34.

<sup>46</sup> Transcript of Hearing, 8 May 2019, page 27.

[82] Two dogs “were deployed to the nominated area off lead and a systematic search was conducted over the entire area.” Sergeant Gates did not observe the dogs display typical indications of the presence of “target odour.”

[83] Sergeant Gates listed factors that can affect locating human remains including soil type, depth of the corpse and any wrapping around it, as well as decomposition and weather conditions.

## **Submissions**

[84] The Board called for submissions from Counsel Assisting and Senior Counsel for the applicant to assist the Board in approaching the task under s193A(2) of the Act. Given the applicant’s stark change of account as to where he disposed of the victim’s remains, and that they have not been located, the most troubling aspects of that task are in determining truthfulness and reliability.

### Submissions of Counsel Assisting the Board

[85] Counsel Assisting submits that by the applicant acknowledging that the account he previously gave is untruthful his credibility is “severely challenged from the outset.”<sup>47</sup> He points to the lies told by the Applicant after he had killed his wife, and the contents of the letters meant to be forwarded to police, his solicitor and others. Those letters include the applicant’s original account of disposing the body.

[86] Counsel Assisting points out that account was given at a time when the applicant was apparently contemplating suicide and he intended to be reunited with the victim at sea. Further, that account was maintained at trial and during the first interview with police on 2 November 2018.

[87] The applicant gave a detailed account consistent with his previous account during that interview with police. The level of detail is demonstrated by the applicant correcting a point made by one officer and providing unprompted detail. Counsel Assisting submits there is no reason for the Board to doubt that account, other than that the applicant now says it is false.

[88] On the other hand, it was submitted that the second account of a burial at South Ripley lacks convincing detail and corroborating evidence. Given that and the applicant’s lack of credibility, Counsel Assisting submits “the Board would be unable to be satisfied that the prisoner has satisfactorily cooperated in locating the remains of the victim.”<sup>48</sup> And further:

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<sup>47</sup> Counsel Assisting Submissions, paragraph 5.

<sup>48</sup> Counsel Assisting Submissions, paragraph 11.

*As in Renwick<sup>49</sup> the Board is not in a position, because of the doubts it must have about the prisoner's reliability, to determine whether his account is true or false and hence whether it amounts to cooperation. Accordingly, the Board must refuse to grant parole.<sup>50</sup>*

#### Submissions of Counsel for the Applicant

[89] Counsel for the applicant urge the Board against that approach which is said to place an onus on the applicant which can only be discharged if the Board is satisfied beyond reasonable doubt that he has cooperated satisfactorily. It was submitted that the Board must be satisfied – on balance – that the applicant has cooperated “satisfactorily”. Dictionary definitions of ‘satisfactorily’ do not connote a standard of excellence, rather standards of adequacy or acceptability.

Counsel for applicant put it this way:

*In terms of an assessment of performance, a “satisfactory” grading is generally reserved for the centre of the bell curve, that is to say: not a fail, but not a credit or distinction, either.*

[90] It was emphasised that the legislation contemplates “cases where it is an impossibility for remains to be recovered.” In those cases the purpose of the legislation is “to determine from the prisoner the last known location and place of the victim’s remains.” In the applicant’s case, Counsel submits:

*To damn his present cooperation with reference to his past lies is to defeat the purpose of the provision, to encourage individuals who have initially either refused to nominate a location or lied about the location of a body.*

[91] Counsel points to a number of factors that should be taken into account in the applicant’s favour insofar as reliability is concerned:

- (i) The prospect of spending the rest of his life in prison is strong incentive to cooperate to the best of his ability;
- (ii) The applicant has been consistent in respect of his account of burying the victim’s remains;
- (iii) The applicant hoped that counselling would be arranged for his daughter in anticipation of her mother’s body being located;

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<sup>49</sup> *Renwick v Parole Board Queensland* [2019] QCA 269.

- (iv) The applicant mentioned seeing or hearing some indication of motorbikes going through the area where a motocross track had, in fact, been built and can be seen from the road.

[92] That last point appears to come from the applicant's interview with police at Wolston Correctional Centre on 10 January 2019.<sup>51</sup> That is when the applicant first disclosed that he had buried the victim's remains, rather than sending the body to sea. In that interview, the applicant said:

*"... I don't know why but I have the impression that guys on MX bikes had been motorbikes had been going through that area..."*

*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 (sic) their dirt bikes going through the scrub or whatever."<sup>52</sup>*

[93] The applicant also said that he had reference to a RACQ Atlas of Australia map from the education unit in prison some years ago – *"it's gotta be 10, 15 years old"*. Further, the applicant had consulted a 2015 *"trucker's guide"*, or atlas, in the last few days, possibly to prepare for his interview with police.<sup>53</sup>

[94] As to the search, Counsel for the applicant points to inconsistencies between the evidence of DSS Knight and Sergeant Gates regarding the cadaver dog search. Counsel submit:

*...given the passage of time, the changes to the area, and the hardness of the ground, the discovery of the remains by that method (and no other) was no better than a remote possibility.*

[95] And further:

*If what is required is that the Board be satisfied that the applicant cooperated in a way that can be described as "acceptable" or "adequate", then having regard to the nature of the exercise undertaken, which involved the lengthy and difficult task of recalling and identifying what the applicant says is the correct location, then he should be found to have cooperated satisfactorily within the meaning of section 193A.*

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<sup>51</sup> Transcript of interview with Clive Anthony Nicholson, 10 January 2019, Parole File, page 624.

<sup>52</sup> Ibid, p.626.

<sup>53</sup> Ibid, p.635 and p.624.

## Discussion

[96] The Board accepts that the legislation contemplates cooperation after sentence for a homicide offence, with the “fundamental policy” of encouraging cooperation even if that is long after the offence. It is also accepted that such encouragement foreshadows new accounts (for the first time, or in contradiction of an earlier account) being given long after a homicide where there are no reasonable prospects of finding remains. Assessing truthfulness and reliability in such circumstances is a difficult task.

[97] In this case the applicant has given an account entirely different from that given in August 2003 (and maintained through to November 2017). Despite significant endeavours no remains have been located. Those factors alone do not resolve the issues for the Board one way, or the other. They are relevant to assessing the applicant’s credibility. In *Renwick v Parole Board Queensland*, Holmes CJ said this:

*As to the second alleged error, the Board appropriately regarded it as necessary, in considering whether there had been satisfactory cooperation by the appellant, to determine whether the information he provided was credible. In determining his credibility, lies previously told by him were relevant.<sup>54</sup>*

[98] It is right to say that the applicant’s admission that his previous account of a burial at sea was a lie puts his credit in issue. What the Board is then left with is, on the one hand, a long-held account that is ostensibly plausible but said by the applicant to be a lie. And on the other, an implausible account in relation to which the Board cannot find credibility to any degree of satisfaction.

[99] On his own account, and as a matter of common sense, at the time he was disposing of the body the applicant was panicked having never found himself in that situation before. It was night-time and he had left his beloved three-year old daughter at home, alone and asleep in the house at Southport. Elizabeth had woken earlier around the time of the killing.

[100] In those circumstances, the Board considers it implausible that the applicant would have driven his ute carrying the dead body of his wife, to an unfamiliar area a long way from home. The applicant told police that prior to the night he buried his wife’s body in 2003 he had never been to that place; “ever”.<sup>55</sup>

[101] It is also implausible that 15 years later, taking into account the applicant’s lack of familiarity with the area, his state of mind at the time he buried his wife in the night time and the significant changes to the bushland terrain over the years,

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<sup>54</sup> [2019] QCA 269 at [29].

<sup>55</sup> Transcript of interview with Clive Anthony Nicholson, 17 January 2018, Parole File, page 580.

that he could, with any degree of certainty, nominate the burial site. The fact that the QPS did what they could to search that area is indicative of a motivation to return victims to their families rather than of a belief in the applicant's account.<sup>56</sup>

[102] The Board does not accept the submission made on the applicant's behalf that his reference to hearing or seeing some indication of motorbikes going through the area where a motocross track had, in fact, been built advances his position.

[103] The applicant could not have seen such indication since the track was not built until many years after the murder in 2003. It may be that the applicant heard some indication in discussions with other prisoners, perhaps with reference to the 2015 'trucker's map' of the area. However, any assistance he gained from that in identifying the location on 17 January 2019 (at the prison) or on 23 January 2019 (in the area), is dubious. While the location has particular features now, it is undoubtedly starkly different in appearance to the area the applicant would have seen (in the dark and under pressure) in 2003.

[104] The level of detail provided by the applicant in his current account, and the question of what motivation he might have to lie now have been carefully considered.

[105] The extent of the detail does not assist the applicant's credit given the evidence of his capacity for elaborate lies in the past. For weeks following the murder, the applicant told many lies involving intricate details, for example of buying flowers and chocolates.

[106] As to motivation, Counsel for the applicant submits, inter alia, that 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.

[107] In his submissions to the Board dated 3 May 2021, the applicant enclosed a document dated 2 January 2019 written after he had attended Mass in custody. He states, inter alia, that he would take police to the location he buried his wife. The document states that he was unable to do that when police first approached him because his daughter was in her final year of exams. Now that his daughter was overseas, the applicant wrote that he could no longer continue to avoid additional grief to her or others. The applicant asked that counselling be arranged for his daughter upon her return.

[108] The Board accepts that the consequences of an adverse finding in these proceedings are a powerful motivation to tell the truth. The Board also accepts the deep love and concern the applicant has for his daughter. However, the

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<sup>56</sup> Transcript of No Body, No Parole Hearing, 8 May 2020, page 22.

applicant has told elaborate lies in the past to obfuscate the truth and the account he gives now is not credible as outlined above.

[109] The Board notes that the applicant's account of disposing of the victim's body in the seaway came at a time when he was contemplating suicide<sup>57</sup> and motivated to provide closure for her family.

### **Applicant's further submissions**

[110] Upon the Board forming a preliminary view adverse to the applicant, several submissions were received.<sup>58</sup> The Board considered those submissions, in particular a lengthy submission dated 3 May 2021, at a meeting on 28 June 2021.

[111] The applicant raised a number of issues relating to the Board's process in reaching its preliminary view, and disputes certain details in testimony of witnesses cited by the Board above. He also emphasises the importance of his faith and concern for his daughter when it comes to consideration of his motivation to tell the truth now. The lengthy submissions have been carefully considered by the Board and while all issues will not be addressed specifically, they can be addressed broadly, as follows:

#### [111.1] Standard of proof

- (i) The applicant submits that the process has been adversarial because of reference to "*negative evidence and influences*" and the use of "*potentially highly prejudicial terminology*", and further that "*any positive evidence etc has been apparently ignored*".
- (ii) The Board considered all evidence before it in reaching its preliminary, and now final, decision. Not all pieces of evidence have been mentioned in the decision because it is not practical to do so, and because the purpose of the document is to explain the reasons for the Board's decision.

#### [111.2] Timeliness of cooperation

- (i) The applicant submits that the Queensland Police Services had opportunities, and a responsibility to approach him on various occasions between his confession in 2003 and the first interview in relation to these proceedings in 2017. Clearly, the QPS bore no responsibility, at any stage, to approach the applicant to seek the truth of the location of the victim's remains. It was always open to the applicant to contact the police.

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<sup>57</sup> In his parole interview, the applicant said he had attempted suicide prior to turning himself in: Parole File, page 544.

<sup>58</sup> On 25 March, 2 April, 27 April and 3 May 2021.

[111.3] Relevance of faith and concern for the applicant's daughter

- (i) The Board noted the applicant's numerous submissions regarding the significance of his faith and taking an oath on the Bible to tell the truth. While the Board has no reason to doubt those matters, it is of note that in the hearing the applicant was invited to give evidence, and could have done so under oath, but declined.
- (ii) The applicant's submissions relating to the relevance of his concern for his daughter, as it relates to his motivation to tell the truth are outlined in paragraph [107] above.

[111.4] Satisfactory cooperation

- (i) The applicant asks the Board to note the circumstances of his first interview with police including that he did not have prior warning of the visit or time to prepare. The circumstances of the interview with police on 2 November 2017 are dealt with at paragraphs [45] – [50] of the decision, and at [96] where it is acknowledged that the applicant was caught by surprise.
- (ii) The Board also notes that the applicant was concerned about his daughter at that time given she was in Australia and might be subject to unwanted media attention. That does not alter the Board's conclusion.

[111.5] Truthfulness, completeness and reliability

- (i) The applicant submits the Board has been unduly influenced by the use of the word 'lie' and further, has been adversarial by reference to examples of lies he told before confessing to the murder of his wife.
- (ii) An important part of the Board's task is in assessing credibility, and the inclusion of examples of lies the applicant told other people and authorities is proper and necessary in providing reasons for the decision. The details set out in the decision are taken directly from the testimony of various witnesses in the applicant's trial.
- (iii) The Board accepts the evidence outlined in the decision, noting that that the applicant contests a number of the details of that evidence. It is important to note that the task for the Board is not a re-hearing of the evidence.

[111.6] The process of searching for the location of the victim's remains

- (i) The Board considered submissions made by the applicant regarding the process undertaken by police to search for the location of the victim's remains. In particular, the applicant objects to describing the police having undertaken "*significant endeavours*" in paragraph [97] above.

- (ii) Difficulties faced by investigators in searching for the remains have been considered and addressed. The Board maintains of the view that police did what they could, given the passage of time, to identify the victim's location.

[111.7] Legitimacy of the section 193A

- (i) The applicant submits that the No Body, No Parole provisions in section 193A of the Act are discriminatory and have the result of imposing a second punishment for his crime of murder.
- (ii) The purpose of the No Body, No Parole provisions is not to punish a person a second time, but to bring comfort and closure to families and love ones of victims where possible. The Board has applied the legislation as it must.

**Conclusion**

[112] Having carefully considered the factual circumstances of the present case and all material received in accordance with s193A(7)(a) and (b) of the Act, the Board has decided that it is not satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.