

In the matter of  
**CLIVE ANTHONY NICHOLSON**

**(Applicant)**

**SECTION 193A CORRECTIVE SERVICES ACT 2006**

PROCEEDING:	An application for parole (Preliminary Issue for determination)
DELIVERED ON:	2 September 2022
DELIVERED AT:	Brisbane
HEARING DATES:	20 May 2022 and 1 September 2022
MEETING DATES:	The Board met to consider the matter on 20 May 2022, 31 August 2022, 1 September 2022 and 2 September 2022.
SENIOR BOARD MEMBER:	Mr Peter Shields Deputy President, Parole Board Queensland.
DECISION:	The Board shall accept all of the additional material sought to be adduced by Counsel Assisting.
COUNSEL:	Mr Tim Ryan appeared with Ms Katherine McGee as Counsel Assisting the Board . Ms Erin Longbottom QC and Ms Laura Reece appeared for the Applicant.
SOLICITORS:	Parole Board Queensland Legal Services Wallace O'Hagan Lawyers

## Background

- [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 15<sup>th</sup> 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 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 murder 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 is set aside.
  - (ii) The determination of the Applicant's application for parole is 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.

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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.

### **The present application**

- [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] Pursuant to s. 193A of the CSA, the Board deferred the hearing of the application and requested a commissioner’s report under section 175M (2) of the CSA.
- [11] 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 was 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.
- [12] After the decision of Davis J in *Nicholson*, and prior to the initial hearing on 20 May 2022, the Board provided the following *additional material* to the legal representatives of the Applicant. To be clear, this material was not before the decision makers of the first decision.<sup>9</sup>
- (i) Affidavit of the Applicant sworn 9 January 2004.
  - (ii) Decision of Atkinson J, *Re Clive Anthony Nicholson* [2004] QSC 480, delivered on 3 February 2004.
  - (iii) Outline of argument in the matter of Clive Anthony Nicholson and the Public Trustee of the estate of Julie Rose Nicholson.
  - (iv) Transcript of proceedings in the committal hearing, *Police v Alexandrew Geraud Richmond-Sinclair*, dated 3 September 2007.
  - (v) Transcript of proceedings of day two of the trial of *R v Alexandrew Geraud Richmond-Sinclair*, dated 3 September 2007.

### **The initial hearing on 20 May 2022**

- [13] The application was listed for an initial hearing on 20 May 2022. On this date the hearing was adjourned, with the consent of the parties, to allow for a further exchange of materials and outline of submissions. It was agreed the present application would be heard on 1 and 2 September 2022.

### **Preliminary Issue**

- [14] On 22 August 2022, as agreed between the parties, the Board received the outline of submissions on behalf of the Applicant (‘AS’). At paragraphs [4] to [7] of AS, Ms Longbottom QC outlined three (3) preliminary issues to be determined by the Board.

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

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

<sup>9</sup> Parole Board Record book at pages 651-668 and 714-762.

- [15] On 29 August 2022, as agreed between the parties, the Board received a further outline of submissions by Counsel Assisting. These submissions comprised two (2) parts, the first part responded to the preliminary issues raised by the Applicant in AS.

**The hearing of the preliminary issue on 1 September 2022**

- [16] At the commencement of the hearing on 1 September 2022, Counsel Assisting the Board tendered a document, which was marked Exhibit 3, titled, 'summary of the preliminary issues that are agreed and remain in dispute'. The document stated:

Set out below is an overview of the preliminary issues identified at [7] of the Applicant's submissions dated 22 August 2022 (**AS**) and addressed in the submissions of Counsel Assisting dated 29 August 2022 (**CAS**) that are agreed as between the Applicant and Counsel Assisting and the issues that remain to be decided by the Parole Board of Queensland (**Board**). This note uses the terms defined in the AS.

**PRELIMINARY ISSUES THAT ARE AGREED**

1. The Board is carrying out its statutory task afresh by reference to the material that was before the Board as at 13 July 2021 (**the original material**): AS [7] and CAS [16].
2. The steps and procedures adopted in arriving at the earlier decision are valid but not immutable: AS [7], CAS [20].
3. The original material may be supplemented if the 'other information' is relevant (s 175O(1)(b) of the Act) (**additional material**): CA [7] and [15(c)]; cf AS [6] and [7].
4. If the Board determines to accept the additional material sought to be adduced by Counsel Assisting, then procedural fairness dictates that the Applicant be given an opportunity to put on further information in response.

**PRELIMINARY ISSUES THAT ARE TO BE DECIDED BY THE BOARD**

5. Whether the Board should accept all, or some, of the additional material sought to be adduced by Counsel Assisting.

- [17] Further to exhibit 3, Counsel Assisting tendered a document, which was marked Exhibit 4, titled, 'List of Documents and Materials (Not before the Board for the purposes of 13 July 2021). Counsel Assisting described the documents and materials as falling into three (3) distinct categories, namely:

- (a) Documents referable to the Prisoner Cooperation Report dated 26 April

2022, namely:

- (i) Prisoner Cooperation Report dated 26 April 2022.<sup>10</sup>
- (ii) Addendum Prisoner Cooperation Report dated 5 May 2022.<sup>11</sup>
- (iii) Letter sent by DSS Chris Knight to NICHOLSON dated 10 December 2021.<sup>12</sup>

(b) Documents that do not deal with the substantive issues that the Board must decide, but are provided to simply ensure the completeness of the record, namely:

- (i) Attendance Notice to Clive Anthony Nicholson dated 3 May 2022.<sup>13</sup>
- (ii) Attendance Notice to Detective Senior Sergeant Chris Knight dated 3 May 2022.<sup>14</sup>
- (iii) Correspondence from Parole Board Queensland to Commissioner of Police without attachments dated 24 March 2022.<sup>15</sup>
- (iv) Transcript of Proceedings in the matter of Clive Anthony Nicholson, 9.59am on 20 May 2022.<sup>16</sup>

(c) The contentious documents, namely:

- (i) Affidavit of Clive Anthony Nicholson dated 9 January 2004.<sup>17</sup>
- (ii) Re Clive Anthony Nicholson [2004] QSC 480 dated 3 February 2004.<sup>18</sup>
- (iii) Outline of Argument in the matter of *Clive Anthony Nicholson and the Public Trustee as Trustee of the Estate of Julie Rose Nicholson (Deceased)*, undated.<sup>19</sup>
- (iv) Transcript of Proceedings of Committal, *Police and Alexandrew Geraud Richmond-Sinclair* dated 3 September 2007.<sup>20</sup>
- (v) Transcript of Proceedings of Day 2 of Trial, *The Queen v Alexandre (sic) Geraud Richmond-Sinclair* dated 21 July 2008.<sup>21</sup>

[18] There was no challenge by Ms Longbottom QC, on behalf of the Applicant, to the Board receiving the documents referable to the Prisoner Cooperation Report dated 26 April 2022 (at [17(a)] above). That is because pursuant to section 175M and 175O of the CSA, the Board is compelled to have regard to those documents.<sup>22</sup>

[19] Further, there was no challenge by Ms Longbottom QC, on behalf of the Applicant, to

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<sup>10</sup> Parole Record Book at 85-90.

<sup>11</sup> Parole Record Book at 91.

<sup>12</sup> Parole Record Book at 643-645.

<sup>13</sup> Parole Record Book at 763.

<sup>14</sup> Parole Record Book at 764.

<sup>15</sup> Parole Record Book at 765-766.

<sup>16</sup> Parole Record Book at 767-774.

<sup>17</sup> Parole Record Book at 651-661.

<sup>18</sup> Parole Record Book at 662-665.

<sup>19</sup> Parole Record Book at 666-668.

<sup>20</sup> Parole Record Book at 714-731.

<sup>21</sup> Parole Record Book at 732-762.

<sup>22</sup> Transcript of Proceedings dated 1 September 2022 at page 9.

the documents at [17(b)] above, as they are essentially administrative documents that go to complete the administrative record of the proceedings.<sup>23</sup>

[20] As to the contentious documents at [17(c)] above, Ms Longbottom QC on behalf of the Applicant, advanced the following submissions as to why the Board should be precluded from having regard to those documents:

- (a) The documents were available to the Board prior to the first decision<sup>24</sup> and there is no explanation<sup>25</sup> as to why the documents were not before the first decision maker.
- (b) It would be procedurally unfair for the Board to now receive the contentious documents.<sup>26</sup>
- (c) The situation of the Board relying on additional material bears some resemblance to applications in criminal and civil appeals, when a party seeks to adduce further, as opposed to, new and fresh evidence.<sup>27</sup>
- (d) That as it is not in issue that until 2019, the Applicant maintained that he disposed of the body of the victim in the Southport Spit. The contentious documents are simply the same iterations of that earlier account.<sup>28</sup>
- (e) The issues that the Board has to determine is what motivation the Applicant would have to lie about the Cedar Grove account, and the contentious material does not bear on that issue.<sup>29</sup>
- (f) The contentious material is not material that falls within the statutory description in s.1750 of the CSA.<sup>30</sup>

[21] During her submissions Ms Longbottom QC accepted that the credibility of the Applicant and lies previously told by the Applicant are relevant for the consideration of the Board.<sup>31</sup>

[22] In response, Counsel Assisting referred to the contentious documents as evidencing the Applicant's willingness to advance the Spit version on oath on three (3) occasions and the assessment then of any subsequent version advanced on oath must be materially relevant.<sup>32</sup>

[23] Counsel Assisting also submitted the contentious material is reliable as there was no submission on behalf of the Applicant that the affidavit sworn on 9 January 2004 was not sworn by the Applicant, and the evidence given under oath at the committal hearing on 3 September 2007 and the trial on 21 July 2008, was not given by the

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<sup>23</sup> Transcript of Proceedings dated 1 September 2022 at page 9.

<sup>24</sup> Transcript of Proceedings dated 1 September 2022 at page 10.

<sup>25</sup> Transcript of Proceedings dated 1 September 2022 at page 10.

<sup>26</sup> Transcript of Proceedings dated 1 September 2022 at page 11.

<sup>27</sup> Transcript of Proceedings dated 1 September 2022 at page 11.

<sup>28</sup> Transcript of Proceedings dated 1 September 2022 at page 12.

<sup>29</sup> Transcript of Proceedings dated 1 September 2022 at page 13.

<sup>30</sup> Transcript of Proceedings dated 1 September 2022 at page 15.

<sup>31</sup> Transcript of Proceedings dated 1 September 2022 at page 16 and 18.

<sup>32</sup> Transcript of Proceedings dated 1 September 2022 at page 24.

Applicant.<sup>33</sup>

- [24] Finally, Counsel Assisting submitted the issue of procedural fairness that was raised on behalf of the Applicant can be met, in the event the Board decides to receive the contentious material, by directions which give the Applicant sufficient opportunity to respond in whatever way they deem fit with anything they wish to be placed before the Board, to then be considered by the Board.<sup>34</sup>

### **The Statutory Framework**

- [25] At paragraphs [8] to [13] Ms Longbottom QC outlines the statutory framework relevant to the present application.

8. Subsequent to the earlier decision, the 'no body-no parole' provisions in Chapter 5 of the Act were amended.<sup>35</sup> Those amendments, which came into force on 3 December 2021<sup>36</sup> apply to (sic) because the parole application was made, but not decided before the commencement of the Amendment Act.<sup>37</sup>

9. Chapter 5, Division 2 of the Act applies if a 'no body-no parole prisoner' applies for a parole order under s 180 (s 175K(a)).<sup>38</sup> Section 193A requires the Board to defer the hearing of the application and request a commissioner's report under s 175M(2) where, as here, neither s 193A(2) or (3) apply (s 193A(4)). Upon receipt of a commissioner's report, the Board must give the no body-no parole prisoner a written notice stating, amongst other matters, that the Board must consider whether to make a no-cooperation declaration about the prisoner (s 175N(2)).

10. Section 175L provides in that regard that:

#### **'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. '

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<sup>33</sup> Transcript of Proceedings dated 1 September 2022 at page 21.

<sup>34</sup> Transcript of Proceedings dated 1 September 2022 at page 25.

<sup>35</sup> The amendments were introduced by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2021* (Qld) (Amendment Act).

<sup>36</sup> Being the date of assent, see s 15A of the *Acts Interpretation Act 1954* (Qld): cf the provisions mentioned in s 2 of the Amendment Act.

<sup>37</sup> See s.490ZE of the Act. The parole application was made on 8 October 2018. The effect of the orders of Davis J is that there was no decision in relation to the parole application because that decision was set aside.

<sup>38</sup> See the definition of 'no body-no parole prisoner' in s 175C of the Act.

11. 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'.<sup>39</sup> 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)).
12. The matters governing the decision about whether a no body-no parole prisoner has given satisfactory cooperation are outlined in s 175O of the Act, which relevantly provides as follows:

**'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.'
13. 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 to mean the cooperation given by the prisoner:
  - (a) in the investigation of the homicide offence to identify the victim's location;<sup>40</sup> and
  - (b) before or after the prisoner was sentenced to imprisonment for the offence.

[26] Counsel Assisting at paragraphs [36] to [38] of his further outline of submissions describes the above outline of the statutory framework as, "not controversial", and

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<sup>39</sup> See also the Explanatory Notes to the Amendment Act at p.8 in relation to the triggering provisions for a no-cooperation declaration in s 175K of the Act.

<sup>40</sup> See the definition of 'victim's location' in s 175B of the Act.



in addition submits:

36. If a No Cooperation Declaration is made four consequences follow:
  - a. the Act mandates that the Board refuse the application for a parole order: s 193A(1) and (2);
  - b. the Applicant may not apply for a parole order unless the Board gives him a notice that he has given satisfactory cooperation under s 175Q (“a Cooperation Notice”): ss 176B and 180(2)(d);
  - c. the Applicant may apply and ask the President or Deputy President to call a meeting of the Board to reconsider the decision to make the No Cooperation Declaration: s 175R(2); and
  - d. the President or Deputy President may, at any time, call a meeting of the Board to reconsider the making of the No Cooperation Declaration: s 175T.
  
37. If a Cooperation Notice is given, the Board must consider the prisoner’s application for parole under s 193 (the general provision for deciding parole applications). The Act does not contain any provision which permits the Board to reconsider its decision once a Cooperation Notice is given
  
38. For completeness, the Human Rights Act 2019 (Qld) does not apply to this application for parole. This is because s 108(2)(a) of that Act operates to exclude its application.

### **The Functions and the Powers of the Board**

- [27] Section 217 of the CSA states the functions of the Board are –
- (a) To decide applications for parole orders, other than court ordered parole orders; and
  - (b) To perform other functions given to it under this Act or another Act.
- [28] Section 218 of the CSA states the powers generally of the Board are to do anything necessary or convenient to be done in performing its functions under this or another act.
- [29] Section 23(1) of the *Acts Interpretation Act 1954* provides:
- (1) if an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, as occasion requires.
- [30] In *Nicholson*, Davis J said this about the proper exercise of powers by a decision maker:<sup>41</sup>

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<sup>41</sup> *Nicholson v Parole Board of Queensland* [2021] QSC at [72] to [74], footnotes omitted.

- [72] Ultimately, what a decision-maker must consider is a question identified by the proper construction of the provisions granting the power. What is, or is not relevant, is determined upon the proper construction of the statute.
- [73] There is, in my view, no general proposition that a decision-maker must consider and engage in a reasoned way with all assertions and submissions made by a person potentially affected by a decision. The authorities are to the contrary of that proposition. In the absence of a statutory command (expressed or implied) to consider particular matters (or not consider others), it is for the decision-maker to determine what is relevant or not relevant to the decision-making process and it is up to the decision-maker to determine the weight to be given to matters considered relevant.
- [74] The decision-maker must make the decision or exercise the power within the limits of the statutory grant. This obliges the decision-maker to exercise the power for the intended purpose. Where a decision-maker asks himself or herself the wrong question, or embarks upon a consideration beyond, or contrary to the legislation, jurisdictional error will have occurred.

### Discussion

- [31] The question to be determined by the Board in this present application is stated by Ms Longbottom QC, at paragraph [3] of her submissions to be, “whether the applicant has given ‘satisfactory cooperation’ in the investigation of the homicide offence to identify the victim’s location”.
- [32] Whether the Board is “satisfied” of satisfactory cooperation is a matter of judgement for the Board.<sup>42</sup>
- [33] Whether the Applicant has “cooperated satisfactorily” must involve an assessment by the Board of the credibility of information given by the Applicant “in the investigation of the offence to identify the victim’s location”. In *Renwick v Parole Board of Queensland*,<sup>43</sup> the Court of Appeal considered s 193A and held:

“[29] As to the second alleged error, the Board appropriately regarded it as necessary, in considering whether there had been satisfactory cooperation by the appellant, to determine whether the information he provided was credible. In determining his credibility, lies previously told by him were relevant. In that regard, it was evident that he had lied either in the claim

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<sup>42</sup> *Nicholson v Parole Board of Queensland* [2021] QSC 325 at [40].

<sup>43</sup> (2019) 2 QR 645.

that the body was cremated or by the lie by omission of any mention of cremation and, indeed, creation of the impression at sentence that the body had been dumped. The lie by omission and misrepresentation would be material because the information was crucial to any search to be undertaken.”<sup>44</sup> (Emphasis added)

[34] As referenced by Ms Longbottom QC for the Applicant, at paragraph [12] of her submissions, the matters governing the decision about whether a no body-no parole prisoner has given satisfactory cooperation are outlined in s 1750 of CSA.

[35] Section 1750(1)(a) mandates what the Board **must** have regard to. (Emphasis added)

[36] Whereas section 1750(1)(b) provides that the board, “**may** have regard to other information the board considers relevant”. (Emphasis added)

[37] In *McQueen v Parole Board Queensland*,<sup>45</sup> Brown J stated the following in relation to the use of the word “may” in considering section 341 of the CSA:

[103] The use of the word "may" can connote a discretion<sup>46</sup> but can also be used to confer a power which may be exercised in particular circumstances.<sup>47</sup> As to the latter Earl Cairns in *Julius v Lord Bishop of Oxford*<sup>48</sup> stated:

"They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is resposed, to exercise that power when called upon to do so."

[104] According to Herzfeld and Prince:<sup>49</sup>

"It is not the case that "may" changes its meaning, in some cases meaning "may or may not" and in others meaning "must". Rather, in all cases, the word confers a permission or authority and the question of construction is whether that is impliedly coupled with a duty or not. If not, the word confers a discretion. If so the word "may"

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<sup>44</sup> *Nicholson v Parole Board of Queensland* [2021] QSC 325 at [41].

<sup>45</sup> [2022] QSC 27.

<sup>46</sup> *Samad v District Court of New South Wales* (2002) 209 CLR 140 at [32] per Gleeson CJ and McHugh J. See also s 32CA(1) of the Acts Interpretation Act which states "In an Act, the word may, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion." Note however that as per s 4 of the Acts Interpretation Act this is subject to a contrary intention in the statute. C.f. *R v Holley: ex parte Attorney-General (Qld)* [1997] 2 Qd R 407 at 433.

<sup>47</sup> *Finance Facilities Pty Ltd v Federal Commissioner of Taxation* (1971) 127 CLR 106.

<sup>48</sup> *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 discussed by the Court in *Ward v Williams* (1954-55) 92 CLR 505-506.

<sup>49</sup> Thomas Prince and Perry Herzfeld, *Interpretation* (Lawbook & Co, Second edition, 2020) at 4.230.

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confers, not a discretion, but a power which must be exercised in certain circumstances: in those circumstances, in substance, the "may" becomes "must".

[105] The meaning to be adopted depends on the context and circumstances of the power.

[38] In the present application the contentious material listed in paragraph 17(c) is relevant in assessing whether the information provided by the Applicant is credible.

[39] That is because the additional material includes actual evidence provided by the Applicant either sworn<sup>50</sup> or under oath<sup>51</sup> of how he disposed of the body of the victim in the "seaway at Southport"<sup>52</sup>.

[40] The additional evidence is contrary to the evidence deposed to by the Applicant on 6 June 2022, that he had disposed of the body of the victim at Cedar Grove<sup>53</sup>.

[41] Therefore the additional material is relevant material to be considered by the Board, along with the material before the original decision-maker, as to whether the Applicant has given 'satisfactory cooperation' in the investigation of the homicide offence to identify the victim's location.

[42] As to any procedural unfairness which has been occasioned to the Applicant by the Board receiving the additional material not before the original decision maker, the draft directions agreed to by the parties<sup>54</sup> are sufficient to ensure any future consideration of the present application is procedurally fair.

**Decision on the Preliminary Issue**

[43] The Board shall accept all of the additional material sought to be adduced by Counsel Assisting.

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<sup>50</sup> Parole Board Record Book, (affidavit of the Applicant) at pages 651 – 654.

<sup>51</sup> Parole Board Record Book, (sworn evidence of the Applicant) at pages 714 – 731 and 732 – 762.

<sup>52</sup> Paragraph [9] of the Applicant Affidavit sworn 9 January 2022 as contained in Parole Record Book at [652].

<sup>53</sup> Parole Board Record Book, (affidavit of the Applicant) at pages 50 – 52.

<sup>54</sup> Transcript of Proceedings dated 1 September 2022 at page 4.