Mental Health Review Board
Mental Health Act
(section 25, R.S.B.C. 1996, c. 288)

EXCERPTS FROM REASONS FOR DETERMINATION THAT ILLUSTRATE INTERESTING LEGAL ANALYSIS OF SUBSTANTIVE ISSUES AND/OR PROCEDURAL ISSUES

Key Issues:

- Disclosure of Case Note
- Unfair Prejudice by Late Disclosure

Date of Hearing: October 2020

Location of Hearing: Teleconference
Facility case presenter and Applicant participating from facility office phone lines
MHRB panel members participating from their respective office telephone locations
Applicant's legal counsel participating from his office phone line.

Panel Members: Heather Kulyk McDonald, Legal Member & Chair; Dr. Michael Rosenfeld, Physician Member, and Ms. Marie Ingram, Community Member

Case Presenter for the hospital, Psychiatrist: (the "Doctor")

Applicant: ("Applicant")

Legal Counsel for the Applicant: Mr. Nathan Lidder, for CLAS/MHLP

INTRODUCTION

The Applicant for review is 20 years old. He has been involuntarily detained under section 22 of the *Mental Health Act* (the "Act") since July 16, 2020. At that time, he was admitted to the hospital after police brought him there under section 28 of the Act, after his parents, with whom he resides, phoned the police to help in a situation involving the Applicant's aggressive behaviour in the home.

Two Form 4 certificates were filed by physicians to justify the Applicant's detention under the Act. Both Form 4s were completed on July 16, 2020, the date of the Applicant's admission to the hospital. The Doctor, the facility's case presenter at the hearing, completed a Form 6 on September 10, 2020, extending the Applicant's detention status until December 15, 2020. The information about the Form 4's and the Form 6 was obtained from the Form 7, the Applicant's application for a review panel hearing, completed by the applicant on September 17, 2020.

The Applicant applied under section 24 of the Act for a Mental Health Review Board (MHRB) panel hearing to review whether his detention should continue.

The MHRB is a three-person panel appointed under section 24.1 of the Act to decide the application for review. Under section 25(2) of the Act, the purpose of this review hearing was to determine whether the Applicant's detention should continue because the four criteria set out in sections 22(3)(a)(ii) and (c) of the Act continue to describe his condition. All four criteria must be met to continue his detention.

Due to the current global health crisis involving the Covid-19 virus, the review panel hearing in October 2020 took place by way of teleconference. All participants connected by telephone from their respective office, home or medical facility locations. The hearing was recorded by the panel chair.

DETERMINATION

Based on the evidence and submissions before us at the hearing, we unanimously decided the evidence proved, on a balance of probabilities, that all four criteria in section 22 of the Act continued to be met in the Applicant's case. These are our reasons for determination.

HEARING

Preliminary objection by the Applicant to the facility's case note as evidence in the detention review hearing

On the day before the October 2020 hearing, the Doctor completed a seven-page case note, and also attached a two-page letter from the Applicant's parents, both documents which she directed facility staff to send to the MHRB office. The documents were sent to the MHRB head office, although it is unclear precisely when facility staff sent them.

The evidence from MHRB email is that the MHRB head office forwarded the facility's documents to the panel through MHRB's confidential web portal, at approximately 9:15 a.m. on the hearing day. The hearing was scheduled to commence at 10:30 that morning. The panel chair, who had been looking for the case note the day before, up until close of business hours, determined that there was no email notice from the MHRB office, nor uploaded case note documents on the MHRB web portal, as of close of business day prior to the hearing.

The panel chair also regularly checked her emails and the MHRB confidential web portal on the morning of the hearing, but did not notice the MHRB head office email until 9:45am that morning. She then noticed an email notice, with a time of 9:15 a.m. that day, indicating that the facility's case note documentation was now uploaded and available on the confidential MHRB web portal She then obtained the documentation and reviewed it quickly, once. The physician panel member also noticed the MHRB

email and facility documentation sometime in the hour preceding the hearing. The community panel member did notice the MHRB email before the oral hearing, but, anticipating an objection by the Applicant's legal counsel to the introduction of the facility documentation, decided not to review the documentation on the MHRB web portal before the objection was dealt with at the hearing.

At the commencement of the hearing, Mr. Lidder, the Applicant's legal counsel, made a formal application that the facility case note, as well as the two-page letter from the Applicant's parents attached to the case note, be excluded as evidence in the detention review proceeding. In this regard, he referred to the disclosure provisions in the MHRB *Rules of Practice and Procedure* (August 28, 2018) (Rules) and the MHRB *Practice Directions* (January 31, 2020), characterizing them as stipulating a "24 hours notice bare minimum" requirement for facilities to give disclosure of their documentary evidence to the applicant for detention review and MHRB head office.

Mr. Lidder submitted that this time requirement is necessary to ensure that he and his client, the applicant, can review the facility's case, which is the case the applicant needs to rebut in the review proceeding. Mr. Lidder said that an appropriate time is needed to review facility documentation to determine whether the applicant may wish to call witnesses to rebut facility evidence. He said he was unaware until the morning of the hearing that his client's parents had submitted a two-page letter on which the facility intended to rely as evidence. He submitted that it is highly prejudicial to the Applicant's ability to present his case to even have the case note and parents' letter read aloud during the hearing by the case presenter (and not given as documents to the panel or the Applicant), because once that documentary evidence becomes part of the oral evidence on record at the hearing, the Applicant is then prejudiced by needing to deal with evidence for which he has not had sufficient time to prepare a case in rebuttal.

The Doctor apologized for the late arrival of the facility's documentation at the MHRB head office. She advised that she had given the document to the facility's administrative team within the 24-hour requirement, the morning before the scheduled hearing, but she would need to follow-up with that team to find out why the documentation did not arrive promptly at the MHRB office. The Doctor indicated she was not sure she would be able to present the facility's case without referring to her case note, which provided the history of the Applicant's psychiatric symptoms, treatment and care.

Mr. Lidder responded with his position that the Doctor should not be permitted to even look at the facility's documentation when presenting the facility's case. He stated that to allow her to do so would remove any incentive for the facility, or other facilities, to comply with the MHRB's disclosure requirements by ensuring that their documentary evidence is sent to the applicant and the MHRB 24 hours before a scheduled hearing. Mr. Lidder stated that if the Doctor thought she might have difficulties in presenting the facility's case without referring to the case note she herself had written, she and the panel ought to consider the extreme difficulty he and his client would have

in presenting the client's case without having appropriate time to review, discuss and prepare an adequate rebuttal to the facility's case note.

The panel chair explored with Mr. Lidder the option of taking a one-hour adjournment to allow him to review the facility's documentation with his client. The panel chair referred to the MHRB Rules [see Rule 2(3) and 4(3)] which indicate that a failure to comply with any of the Rules does not, in and of itself, invalidate a proceeding, and that the Board may waive or vary rules as it considers appropriate in the circumstances. She also noted that in some circumstances, the *Practice Directions* refer to a minimum of 30 minutes advance disclosure to a detention review applicant as sufficient to satisfy a facility's disclosure time requirement. The panel chair asked Mr. Lidder if, in the circumstances of this case, the prejudice to the Applicant could be cured by an adjournment, with the hearing reconvening later the same day.

Mr. Lidder replied that in "normal circumstances" he might agree that a same-day adjournment (that is, an adjournment with a reconvening of the proceeding the same day) might, in some cases, cure the prejudice that a detention review applicant experiences from late disclosure of a facility's case. He observed, however, that with Covid19, in-person hearings are not possible at this time and his client was already suffering prejudice from not having the benefit of presenting his case and challenging the facility's case, in-person. Further, the situation of back-to-back morning and afternoon MHRB virtual hearings (whether teleconference or Zoom) scheduled on the same day, resulted in the potential for prejudice not just to the applicant but to others, too. Mr. Lidder said that a one-hour adjournment in this morning hearing would push back, or delay, the time he would have available to prepare for an afternoon hearing. And, if the facility in the afternoon hearing had also delayed in providing its document disclosure, then there would be a compounding of the prejudice, with the next applicant for detention review also experiencing little, if any, time to prepare his or her case. Further, Mr. Lidder pointed out that he has other clients, in contexts other than detention review hearings, for which he must be available, in a timely way, to assist. Sometimes those clients are scheduled to meet him later on the same day of a scheduled MHRB hearing. To delay a morning MHRB proceeding by a one-hour adjournment could adversely affect those other clients with scheduled appointments that same day.

Mr. Lidder observed that the MHRB's Rules and *Practice Directions* have been in place for some time. He stated that in the four years he has been representing detention review applicants, the problem of late document disclosure by some facilities has been an on-going problem. He submitted that unless the MHRB enforces its own Rules and *Practice Directions*, some facilities will continue to take the position that there is no harm done by failing to comply with timely disclosure, because they will expect MHRB panels to simply grant same-day adjournments so that applicants can undertake last-minute document review and consideration of how to prepare their cases.

Once more, Mr. Lidder pointed out that it is very unfair to expect that a detention review applicant or legal counsel will be able to contact witnesses and arrange for their attendance on the same day of a hearing. He said that to find witnesses and arrange for their attendance on the same day of a hearing is logistically not practical, and even more impossible in the context of back-to-back MHRB hearings on the same day, also in light of the need for legal counsel to meet with other clients, in other matters, with appointments also scheduled that same day.

The Doctor then asked if it might be possible to reschedule the hearing for another day. Mr. Lidder objected to that proposal. The panel chair explained to the Doctor that while such a solution might well be appropriate in legal contexts other than those of an emergency nature in detention review hearings (such as non-urgent labour relations or workers' compensation cases), it was not usually going to be acceptable to applicants for detention review. Given the various busy work schedules of the physician, case presenter, legal counsel, and panel members, it might take a week or even longer before a detention review hearing could reconvene. To grant a lengthy adjournment, even if only for a week, would completely defeat the purpose of an applicant's case, which generally requests immediate discharge from detention status.

Mr. Lidder also clarified, in response to a query by the community panel member, that it would not be appropriate to allow the Doctor to have her case documentation handy to refer to, only occasionally from time to time, to confirm specific dates, for example. He said that he might agree to that proposal if the hearing were in-person, where it would be clearly visible to everyone that the case presenter was only very occasionally glancing at facility documentation for the purposes of refreshing memory about dates. However, in a telephone conference hearing, a case presenter might be relying heavily on their documentation in giving their oral testimony, with no one aware of it.

The panel chair adjourned the teleconference hearing for fifteen minutes while the panel conferred in private on the Applicant's procedural application. The parties and legal counsel disconnected from the teleconference during this period, and re-connected to the teleconference after the adjournment.

The panel's unanimous decision was to allow Mr. Lidder's procedural application on behalf of the detention review Applicant. We indicated we would provide reasons for our decision in our final Reasons for Determination. They now follow.

First, we emphasize that our ruling should not be considered as a precedent necessarily applicable in future detention review hearings. Each case must be considered in light of its particular circumstances. In his submissions, Mr. Lidder acknowledged this point. He noted that his application was based in the context of a teleconference hearing in which the late disclosure also included evidence from the Applicant's parents to which rebuttal witnesses might need to be considered, and in the context of back-to-back MHRB review hearings that same day. We note that Mr. Lidder was correct that in this

case, as at least one of the participants in our hearing had another MHRB hearing that same day. Our community panel member was, indeed, scheduled for another detention review hearing at 2 p.m., that day. An hour adjournment to deal with the facility's late disclosure in this case would have interfered with the panel member's ability to participate in the afternoon hearing. This was because this hearing, including the panel's determinations on the merits of the matter, did not conclude until 2 p.m. in any event, without the hour-long adjournment proposed by the panel chair as a potential solution to late disclosure issue. So, the MHRB afternoon hearing would have been delayed for an hour, at least, if an adjournment had been granted. While we did not ground any part of our decision to allow the procedural application on the effect an adjournment would have had on the community panel member's participation in the afternoon MHRB hearing, we now mention it as an example that illustrates Mr. Lidder's concerns about the effect of same-day adjournments to deal with late disclosure by a facility. An hour-long adjournment to deal with late case note disclosure can have a seriously negative "ripple" effect on other persons, including other detention review applicants, other facilities, panel members, legal counsel, and other clients of legal counsel who may have appointments scheduled that same day.

We accept the Doctor's explanation that she did complete her case note within 24 hours of the hearing, and that she expected the facility's documentation, including the two-page letter from the Applicant's parents, to be promptly transmitted to the MRHB and to the Applicant's legal counsel. Unfortunately, as the Doctor has now learned, it is not sufficient, to comply with MHRB Rules and *Practice Directions*, for the case presenter to finish preparation of facility documentation within 24 hours of a scheduled detention review hearing. It is the facility's responsibility to ensure that the documentation reaches the MHRB office and the Applicant (or their representative) within the timelines specified in the Rules and *Practice Directions*. Otherwise, the facility's case presenter is at risk of a procedural ruling as in this case, whereby the case presenter will not be entitled to even glance at their documentation, nor will the panel members consider it as evidence in the proceeding. The case presenter may need to present the facility's case on the basis of memory alone, as the Doctor proceeded to do, most capably, as it turned out.

Rule 1 of the MHRB Rules states that the purpose of the Rules is to provide a "fair, just, accessible and understandable process" for parties to proceedings under the Act. It also states that MHRB may use flexible adjudicative procedures to further the purpose of the Rules and that MHRB may issue practice directions to provide information "or set requirements for" MHRB practice and procedure.

Thus, the first of the Rules refers to an overall purpose of fair, just, accessible and understandable detention review application and hearing processes.

Rule 2(3) states that MHRB may waive or vary any of the Rules as it considers appropriate in the circumstances in order to ensure a "fair, just, accessible and understandable determination of the proceeding." This flexibility, as a means of

ensuring overall fairness, justice, accessibility and comprehensibility, is echoed in Rules 4(1) and 4(3). Rule 4(1) says that participants must comply with the Rules and *Practice Directions* "unless the Board or panel orders or directs otherwise." Thus, the *status quo* is compliance, unless there is an order or direction to the contrary. Rule 4(3) states that a failure to comply with any of the Rules does not invalidate a proceeding, which highlights the flexibility and discretion accorded to an MHRB panel to fashion justice according to the particular circumstances of each case.

Rule 15 deals with a facility's disclosure obligations. Rule 15(8) refers to the disclosure of a "case note" which is defined as a written summary of the evidence it intends to present at a hearing. Rule 15(8) says that a case note must be presented to the panel and to the patient representative or self-represented patient (an applicant for detention review) no later than 30 minutes before the commencement of the hearing. However, Rule 15(9) states that when all or part of a hearing proceeds by electronic means pursuant to Rule 19, the facility must make every effort to prepare and deliver a copy of the case note to the MHRB, and any other participant who will not be attending in person at the hearing, no later than 24 hours prior to the scheduled hearing.

A teleconference hearing is not an in-person hearing but rather a hearing that proceeds "by electronic means." Accordingly, Rule 15(8) requires a facility to make "every effort" to prepare *and deliver* the case note to the MHRB and to the applicant for detention review, within 24 hours of the scheduled hearing.

The current MHRB *Practice Directions* were updated on January 31, 2020. *Practice Direction – Case Note* states, in part, as follows:

> The case note must be disclosed to the patient or their representative *as early as possible and no later than 24 hours before the start of the hearing.* In *exceptional circumstances* – for example, in remote communities with limited access to physicians or in cases of last-minute patient transfers – the case note may be disclosed no later than 30 minutes before the start of the hearing. The case note must be disclosed to the panel before the start of the hearing.
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> When all or part of a *hearing proceeds by way of electronic means, the facility must make every effort to disclose a copy of the case note to the Mental Health Review Board [Board] and any participant no later than 24 hours* before the scheduled hearing.
>
> **Failure to comply with case note requirement**
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> A case note is a required document under the Board's *Rules of Practice and Procedure*. *A facility that has not complied with this rule must be prepared to provide a reasonable explanation for the failure to comply*, and the case presenter must not introduce the document as evidence at the hearing without

> the permission of the panel. The review panel has the discretion to proceed with the hearing in the absence of a case note.
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> [italic emphasis added; bold emphasis in original]

We repeat the earlier reference to Rule 4(1) which says that participants must comply with the Rules and *Practice Directions* "unless the Board or panel orders or directs otherwise." Therefore, as we earlier stated, the *status quo*, or presumption upon which a detention review proceeding proceeds, is that a facility must ensure that it has disclosed its case note to the applicant or their representative, at least 24 hours before the scheduled hearing. There must be reasonable cause or justification for an MHRB panel to veer from that presumptive process, exercising flexibility and discretion to ensure that overall, the legal proceeding is fair, just, accessible and understandable. This is especially true in teleconference hearings where a facility must make "every effort" to ensure it has complied in a timely way with its obligation to provide case note to an applicant 24 hours before the scheduled teleconference hearing. The *Practice Direction – Case Note* clarifies Rule 15(8)'s reference to a 30-minute advance disclosure of a case note by a facility to a detention review applicant, by emphasizing that such a short time-frame is only acceptable and appropriate in exceptional circumstances. Thus, the 30-minute advance disclosure of a case note to an applicant is not the standard acceptable timeframe for the usual detention review hearing. We refer again to Rule 4(1) of the MHRB Rules which states that participants must comply with the Rules and *Practice Directions* unless the MHRB or a panel orders otherwise.

The January 31, 2020 *Practice Direction – Case Note* makes it clear that where a facility has failed to comply with its disclosure obligations with respect to a case note, a facility should be ready to give the MHRB panel and the applicant a reasonable explanation for its failure to comply.

We refer to the January 31, 2020 *Notice to the Professional and Public*, from the MHRB chair Diana Juricevic, which clarifies the process for disclosing a case note in accordance with the *Practice Direction-Case Note* and the *Practice Direction – Case Presenters*. That Notice states in part as follows:

> **When a patient is represented by an advocate from the Mental Health Law Program:**
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> The case note should be faxed 24 hours in advance of the hearing to the MHLP administration staff at 604-331-0420. The responsibility is then placed on the

> administration staff at MHLP to ensure the case note is forwarded to the patient's assigned advocate.
>
> [bold emphasis in original]

This Notice makes it clear that it is not sufficient compliance with the MHRB Rules and *Practice Directions* for a facility case presenter to simply complete preparation of their case note 24 hours before a scheduled MHRB detention review hearing, and to then hand the documentation over to a facility administrative team. It is important that a facility have administrative systems in place that ensure compliance with the MHRB Rules and *Practice Directions*.

We suggest that a facility consider educating its case presenters and administrative staff about the Act, the purpose of MHRB detention review hearings, the role of case presenters (a hybrid role of witness and legal advocate), and the overriding principles and values in Canada's *Charter of Rights and Freedoms*. Particular attention should be given to the *Charter's* Section 7 fundamental right of every person to life, *liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

Facilities and their case presenters need to appreciate that as participants in a MHRB detention review hearing, they are participating in a Canadian legal proceeding which must respect the rights and interests of everyone who participates. Case presenters need to understand that the onus and burden of proof is on a facility to satisfy the four statutory criteria for detention, so that applicants will not be denied their fundamental rights to liberty and security of their persons without just cause, in *accordance with the principles of fundamental justice*. The Act's four statutory criteria justifying detention fulfil the "just cause" aspect of the proceeding, but fair and timely disclosure of the facility's case forms part of the second critical aspect of a fair hearing. This is because timely disclosure, giving reasonable advance notice of a facility's case, ensures applicants have adequate time to know the facility's case in advance of the hearing so they have a fair opportunity to gather their information, including potential witnesses, in order to rebut the facility's position.

We emphasize the urgent nature of a detention review hearing. This means that adjournments to rectify late disclosure by a facility should be granted only where a facility has given a reasonable explanation for its failure to comply with the requirements of the MHRB Rules and *Practice Directions*, and where an MHRB panel is satisfied that no undue prejudice will result to an applicant or others by an adjournment.

In this case, the Applicant's Form 7 was completed by him on September 17, 2020, with notice given to the director of the hospital on that date. The mental health team operates under the auspices of the hospital facility. Part B of the Form 7 was completed

by the Applicant's case manager, referring to the Doctor as both the Applicant's treating psychiatrist and the facility's case presenter, requesting a preference for October XX, 2020 at 1 pm to be the scheduled date and time for the MHRB detention review hearing.

The evidence is that three weeks in advance of the scheduled date for hearing, the facility had notice of the Applicant's request for detention review. Although by this time the Applicant was no longer hospitalized, he remained under detention on extended leave in the community. His request to be discharged from detention was a request for immediate discharge from detention. The facility's written preference on the Form 7 for a date three weeks in the future illustrates the busy schedules of facility physicians, and it also illustrates why adjournments beyond a scheduled hearing date pose serious problems for rescheduling in the future. If it took three weeks to find an initial hearing date convenient for the case presenter, it could well have taken another three weeks (or longer) to find a second date and time, post-adjournment, convenient for the case presenter and other participants, such as panel members, now seized of the matter under review.

This facility had three weeks notice of the Applicant's request for a detention review hearing, but the evidence is the Doctor did not complete her case note until the morning before the scheduled hearing date, October XX, 2020, a date indicated by the facility as its preferred hearing date. We understand and respect the demands of a busy facility psychiatrist. However, the Doctor did not present as being aware of the legal requirements of the MHRB's Rules and *Practice Directions*, implying that as she herself had finished the case note 24 hours before the hearing and given it to a facility staff member, she had fulfilled her obligations to the Applicant. The Doctor presented as sincere in apologizing for the late disclosure, and as a person who genuinely wanted to rectify matters by suggesting adjourning to a future date. However, we needed to explain to her that an MHRB hearing has a "time is of the essence" nature, required to be conducted in an efficient, expeditious way, in order to be fair to the Applicant's *Charter* rights for a legal proceeding conducted in accordance with the principles of natural justice. She did not appear to appreciate this critical point. It is important that facility case presenters are educated on this critical point.

Case presenters, as we earlier noted, have a unique, hybrid role in that they act as both witness and legal advocate for the facilities they represent. They are usually physicians with a speciality in mental health, yet they are also expected to act as legal advocates, too, in the context of MHRB hearings. We understand that the role of legal advocate may not be well understood by some case presenters, and that the need to ensure timely disclosure of documentation, including a case note, within MHRB Rules and *Practice Directions*, poses an additional burden on work schedules that may already be overwhelming. But the need for fair, just, accessible and understandable hearings requires facilities and case presenters to make every effort to familiarize themselves and their administrative staff with the MHRB requirements. The MHRB Rules and *Practice Directions* are posted on the MHRB website at www.bcmhrb.ca.

In this case, we found that the facility did not provide a reasonable explanation for its failure to comply with the requirements in the MHRB Rules and *Practice Directions* for timely disclosure of the case note, including attached letter, to the Applicant. It is not a reasonable explanation for a facility case presenter to simply indicate that the case note was prepared and "ready to go" within 24 hours of an MHRB hearing, without proving that "every effort" was made by the facility to transmit the case note to the Applicant and the MHRB office. Further, in this case, given the three-week notice of a request for detention review, in advance of the hearing, that the Applicant gave the facility in his September 17, 2020 Form 7, we find that the evidence does not support a finding that the facility made "every effort" to disclose a copy of the case note to the MHRB and the Applicant in a timely manner, within the MHRB Rules and *Practice Directions*.

We also accept Mr. Lidder's submissions about the prejudicial position of the Applicant and Mr. Lidder in representing him, when attempting to deal with case note disclosure shortly before the commencement of the hearing. We found it inappropriate as insufficient time in this case to adjourn the hearing for an hour or so to allow the Applicant and Mr. Lidder to review the document and prepare their case to meet the facility's case. We noted that it would be logistically difficult, if not impossible, for the Applicant to try to find witnesses to support his position and somehow arrange for their attendance that day. We agree that teleconference hearings pose special challenges for all participants, and that the Rule 15(8) recognizes this by emphasizing that hearings which proceed by electronic means require that "every effort" be made by a facility to prepare and deliver its case note to the MHRB and the applicant within 24 hours of the scheduled hearing.

For the foregoing reasons, we decided that the Doctor was not permitted to introduce the late case note, including the attached two-page letter from the Applicant's parents, in evidence at the hearing. We also did not permit her to read aloud that documentation, nor to refer to it when giving her evidence at the hearing. On this latter point, we agreed with Mr. Lidder that it would not be possible in a teleconference hearing for the panel or Mr. Lidder to be sure that the Doctor was only glancing at her case note to confirm an occasional date, for example.

Pursuant to *Practice Direction – Case Note,* an MHRB panel has the discretion to proceed with the hearing in the absence of a case note. We decided that the hearing would proceed in the absence of a case note. Our view was that in her role as the Applicant's treating psychiatrist, and given that the Doctor's knowledge of the Applicant and expert opinion likely formed a substantial basis of the Applicant's continued detention, she should be sufficiently familiar with the Applicant's case to be able to speak to the facility's reasons in support of detention, without needing to look at her case note. And as earlier noted, the Doctor proved herself up to that task.

Although two of the panel members had quickly reviewed the case note, with attached letter, shortly before the hearing, we disabused ourselves of any memories related to the case note. We did not refer to the case note or attached letter in our deliberations, nor did we refer to that documentation in preparing these written reasons. We note that

Mr. Lidder, in his submissions, indicated that he understood that panel members who had read the case note would be able to disabuse themselves of its contents. We note that this is a common practice for decision-makers in a *voir dire* process in criminal proceedings, for example.

The panel chair did look at the Form 7 document which the Applicant filed on September 17, 2020, to initiate the detention review proceedings. In this way, she was able to determine when the detention review process commenced, and also, the dates of the Form 4's and the Form 6 which are the basis of the Applicant's detention.

In drafting written reasons for her panel colleagues to consider before finalizing these reasons, the panel chair also listened to the audiotape of the hearing in full, to ensure that the evidence relied on by the panel was solely limited to the hearing evidence.