MENTAL HEALTH COURT

CITATION:	*In the matter of Re: Rhys Michael Austin* [2018] QMHC 14
PARTIES	**AN APPLICATION BY SONIA ANDERSON PURSUANT TO SECTION 160 OF THE *MENTAL HEALTH ACT* 2016**
PROCEEDING:	0151 of 2018
DELIVERED ON:	19 November 2018
DELIVERED AT:	Brisbane
HEARING DATE:	19 November 2018
JUDGE:	Dalton J
ASSISTING PSYCHIATRISTS:	Dr E N McVie and Dr S J Harden
EX TEMPORE DETERMINATION:	**Application dismissed**
COUNSEL:	Mrs Anderson in person D Balic for the Director of Public Prosecutions (Qld) K M Hillard for the Office of the Chief Psychiatrist L Falcongreen for the defendant
SOLICITORS:	Office of the Director of Public Prosecutions (Qld) Office of the Chief Psychiatrist Legal Aid Queensland for the defendant

HER HONOUR: I am going to give my reasons and decision now. This is an application by Mrs Sonia Anderson, who came to the Court in the aftermath of publication of a book by Donald Grant, which included a chapter on one of the defendants who had come through the Mental Health Court, a Mr Austin. Mr Austin killed Mrs Anderson's daughter. He was found to be insane at the time of the killing, and he has been on a forensic order at The Park ever since.

The Mental Health Act 2000 and the Mental Health Act 2016 expressly prohibit the use of reports except for purposes approved by the Court. I think actually this application has shown that there is a very good reason to prohibit that use. The reports are prepared for a hearing in this Court. Although the hearing is in open Court, the matters dealt with in the Court cannot be published until after the criminal proceedings are well and truly finished, and the main reason for that is that to get a defence in this Court, the defendant must either admit to the acts said to constitute the offence, or at the very least not contest them. That is, it must be accepted that they occurred, and occurred in the way the Crown alleges. So there is a very good

reason why the proceedings in this Court cannot be published until after the appeal time.

After that, what occurs in open Court during the hearing can be published, and in significant matters, and in this matter, there are published reasons for decision, and there are published reasons in the Court of Appeal for decisions. So there is a publication, I think, of all the matters which are legally relevant to the matter that comes before the Court, although it is a delayed publication.

The way the Court operates is that the Court receives reports from numerous psychiatrists. Those psychiatrists give evidence, and it is their oral evidence that is public in the hearing, and it is their oral evidence that may be published after all the appeal periods have run. The reports themselves, and other documents which are filed in the Court, are called exhibits, but they remain on the Court file at the registry, and they may not be searched by any member of the public without the Court's leave. The reports under the statute may not be used for any purpose other than with the Court's leave. So even though they are called exhibits, because this Court is really an adjunct to the criminal jurisdiction of the Court, just like exhibits in criminal matters, they are not public exhibits. Nobody can access them without leave.

Mrs Anderson says that Dr Grant expressed views publicly after publication of his book, and after he organised various events designed to attract publicity to his book. She says that he told her in answer to a question at a book launch that the reports of the Court were available to the public. Nobody contested that. I am happy enough to accept that it was true. I think it is consistent with some of the things that are said in the forward to the book itself, but also some of the other press reports and so forth that I have seen.

Certainly, when he began to be criticised for his book, Dr Grant then, so far as I know from reports in the press, proffered the views that the families of victims of acts committed by people who get a defence in the Mental Health Court should have access to the reports. Well, again, Mrs Anderson relies on those views, and she has said from the beginning in this matter that she wanted to test his view.

As I explained, I think, to Mrs Anderson on the first day she came before the Court, and I have explained again this morning, the law is – and it is not judge-made law, it is in the Act – that the reports are not for the public. The reports are used in the hearings and then, after that, access to them is controlled by the mechanism of this Court giving leave. So that is the position.

In those circumstances, Mrs Anderson asked for leave to access the reports. She put that application, really, on three different grounds, I think. One is that she said she is concerned with making submissions to the Mental Health Review Tribunal as to its review of Mr Austin's forensic order. I think that is true, and as I said to her in argument, I think that that is a valuable input to the tribunal process.

I do not think, however, that she needs access to the reports in this matter to make effective representations to the Tribunal. The Tribunal has those reports. The Attorney-General has those reports, and the Attorney-General appears at the Tribunal

reviews to advocate the interests of the Crown, the State, the public interest. And I think, actually, Mrs Anderson accepted in argument that really was not her role to be advocating on the basis of the reports in the Tribunal.

Then Mrs Anderson put her application, really, on the basis of a personal desire to see the reports or, at least, parts of them. And she said two things particularly were hurtful to her in the way the matter was run through the Courts: one was that it was years before she found out that Mr Austin had taken responsibility for the killing. Now, he had initially given a story that somebody else altogether was responsible for her daughter's death, and it was years before she found out that, in fact, Mr Austin took responsibility.

I can see how it would be hurtful to her not to know that and not to know that early. It probably was available in all the reports in this Court through the time that the reference in this Court was active. It is a difficult problem to address as to whether or not that information can be released before the decision in this Court, because, obviously enough, if the proceedings in this court had have been to the effect that Mr Austin was not entitled to a defence, he would have had to face trial in the ordinary Courts and that trial might have been irrevocably prejudiced if there had been publication before the trial of the fact that Mr Austin took responsibility for the killing.

It does give me pause for thought, though, because, certainly at the public hearing in the Mental Health Court, it is plain to anyone who cares to listen that the named defendant accepts responsibility for whatever crime it is, and that occurs within the hearing of the Court, before the decision of the Court and certainly well before any appeal of the decision of the Court. So that information is actually shared in open Court, although there are prohibitions on publication, so it does lead me to wonder whether or not there could be mechanisms whereby the direct victims of crime dealt with in this Court are given more information sooner.

The other particular piece of information which Mrs Anderson found, reading Dr Grant's book, was something that is presented in the book as being words that her daughter spoke very close to the time of her death and Mrs Anderson says: how is it that she could have been so involved in the hearing in the Mental Health Court and paid such attention to everything that went on in the Mental Health Court, but then learned something as personal, as compelling, as potentially distressing as that, from reading it in a book.

As I say, I really do have sympathy for her point of view, but I think as the hearing wore on, the difficulties with these matters in the hearing in the Mental Health Court became apparent. I think quite often counsel, not just in the Mental Health Court, quite often in the criminal Courts, censor their questions in a way that will produce answers which give legally relevant material, but which perhaps limit what counsel assumes will be the distress caused to people listening and, in particular, the families of victims, and I say that having been a barrister at one stage of my life. And I probably reason by analogy that sometimes doctors in this Court and witnesses in the other Courts censor what they give in their answers for exactly the same reason. I think that might have particular play in this Court, because if something is in the

report and it is very distressing, the doctor and the barrister know that the Judges and the assisting psychiatrists will have read it and, therefore, probably both sometimes act in a way which they assume will be productive of less distress to those listening.

Certainly, distressing matters do have to be ventilated in this Court, and they are for purposes that are legally relevant. But it may well be that matters that are not strictly legally relevant, like the one that Ms Anderson raises here, are not ventilated in the open Court hearing and perhaps discretions and self-censoring of the type I have talked about play some part in that.

The other difficulty, I think, with this particular topic – that is, the words that apparently Mr Austin reported to Dr Grant – this is a problem raised by Dr McVie: and he was the only doctor that received that version. It might not have been true. It might have been a product of his psychosis at the time. It might have been the product of his psychosis at the time he gave the interview to Dr Grant. So while it may be true that Mr Austin said those words to Dr Grant, there remains questions about whether, in fact, they were said by the deceased lady.

I think that raises a difficulty about using parts of reports in circumstances other than the Court hearing, because if it had been relevant to something in the Court hearing, questions would have been asked about it and those questions would have been explored, "Well, Dr Grant, that is maybe what he told you, but do you think that really happened or do you think that was something that he was imagining, fantasising, hearing as a hallucination?" Or, "Dr Grant, he has never told that to any other psychiatrist and he was quite sick when he saw you. Do you think it was a product of his illness at the time he saw you?"

So one just starts to realise that things that are in reports that are not explored in a forensic way in the courtroom just sort of lead to layer upon layer of uncertainty. And I am afraid for someone in the position of Mrs Anderson, I do not know if that makes things more or less distressing to find out, probably hearing Dr McVie's view today that while Dr Grant has put that in his book, maybe it did not happen.

And I would have to say that I have read the book. I have read it a couple of times. The chapters in there are not written – having sat here and read – having read dozens at least, scores, of Dr Grant's reports for matters in this Court, the way those chapters are written is nowhere near the forensic independent professional level that the reports for the Court are written.

Anyway, I think possibly all of this discussion, really, leads me to the conclusion that probably the rule in section 160 of the Mental Health Act 2016 is probably a pretty good rule of thumb that there are all sorts of problems once you start giving leave to people to look at the reports.

And Dr McVie has outlined how complicated the hearing of this reference and the progress of this reference through the Court was, and that is particularly valuable because she was there as an assisting psychiatrist at the time. A lot of time has passed, and I am sure there would be things that Mrs Anderson will never forget from that hearing, but there must be things she has forgotten and especially if there

were fragmented hearings. To now have reports given at the end, not as a cohesive whole, I do just wonder how – how the provision of the reports could be helpful, quite frankly.

The third argument that Mrs Anderson puts before the Court is that because of the experience she has been through, she has a wider social agenda in relation to the law that relates to the way the criminally insane are dealt with in Queensland. And I think the bundle of documents tendered today by counsel for Mr Austin really shows that and shows that she has been actively campaigning to parliamentarians but also in the press and so forth. I do not think Mrs Anderson needs the reports from this matter to continue that campaign. She certainly made me think about whether there are ways this Court could address someone in her position better than we do, and it is something that I will be continuing to think about in the future, because it is not just this case. I have had other cases that have caused me to think the same thing.

I actually think the system in the Mental Health Court is a really terrific system. I think it is an amazingly good system, but we can always do better and I think sometimes there needs to be some flexibility. It would be difficult and I think Ms Balic in her submissions made some very good points. If the burden of that is going to fall on the DPP or part of that burden falls on the DPP, how does the DPP cope with that? But, as I say, I think there may well be room for improved communication.

And I think certainly, as I have explained, I devote more time to the hearing of cases involving killings in this Court. I also now have a complex case list for any matter involving a killing so that it is managed in a pro-active way through the Court. I am wondering whether we cannot allow some input into that management by victims and the family of victims; it would have the advantage that it would come earlier, too, in the progress of the case through the Court. So I appreciate Mrs Anderson's wider agenda. I appreciate why she has it, why she feels motivated to do those things, and I do think there are things to consider for the way this Court does manage these cases, but I do not see that she needs the reports in this case to pursue it.

So I come back, having looked at the three limbs. The one, I think, that is most compelling is the one, really, which is the most personal: that Mrs Anderson says, "Well, there is information there that I do not have." I am not inclined to allow access to that information for reasons that I have explained. In this case in particular, I do not know that there is any easy way to access it either in whole or in part. I do not know that it will be accurate or truthful information if it is just even the whole of what is contained in the reports, divorced from cross-examination and clarification which would occur if the information was given orally in Court. And I think what Dr McVie said about what seemed to be the victim's last words, if you read the chapter in Dr Grant's book, probably really cast that in very fine relief. It was not explored at the hearing and it may not mean what it seems to mean.

In the course of the hearing, Mrs Anderson told me that she did not want, I suppose, the halfway house of having redacted reports or parts of reports given to her orally in a way that she was not able to share. And I – again, I can understand exactly why she says that. So I think while the parties did try to work on some accommodation of

that type, which I do not think really got to the stage of being fully or satisfactorily formulated even by the time of hearing, and not for want of trying and not for want of goodwill. It is not something that Mrs Anderson seeks, and for that reason, really, looking at the whole of the matter, I am going to dismiss the application.