Translated from the original French

Social Affairs Section

Designated as a Review Board within the meaning of ss. 672.38 *et seq*. of the *Criminal Code*

Date: July 28, 2020

Neutral citation: 2020 QCTAQ 07220

File : SAS-Q-242307-1907

Presiding Administrative Judges:

DANIEL LAGUEUX

ANICK BRISSON

PHILIPPE NOBÉCOURT

M.B.
Accused

and

PERSON IN CHARGE OF THE CISSS A (HOSPITAL A)

and

DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS

and

CLERK OF THE MUNICIPAL COURT OF CITY A

DISPOSITION

1. The Social Affairs Section of the Tribunal administratif du Québec, designated as a Review Board for mental disorder (the Board), is holding its first hearing for the accused, in accordance with s. 672.47 of the *Criminal Code*.[[1]](#footnote-1)
2. The accused received seven verdicts of unfit to stand trial. These verdicts were rendered on July 12 and 24, 2019.
3. The accused stands charged with the following:
* on or about May 18 and 27, November 29, and December 22, 2017:
* stealing property (merchandise, donation boxes) having a value not exceeding $5,000 (4 counts), s. 334(b)(ii) of the *Criminal* *Code;*
* on or about May 20, 23, 24, 27, June 26, and December 22, 2017:
* defrauding organizations or businesses of amounts of money not exceeding $5,000 (8 counts), s. 380(1)(b)(ii) of the *Criminal* *Code.*
1. According to the incident reports, the accused entered businesses and took donation boxes intended for organizations. He identified himself as a member of the organizations and took the donation boxes. At other times, he went to the cash in stores to get reimbursement for various articles. He picked up old receipts outside the stores and went in empty handed. He then went through the aisles and found the items listed on the receipts. He took them to the cash and got reimbursed for articles he never bought.
2. In rendering its verdicts, the Court referred the accused to the Review Board. He remained subject to the same conditions of release that had been set for him.
3. The hearings scheduled for October 17, 2019, and March 5, 2020, had to be postponed because the psychiatric assessments could not be completed by those dates.
4. The accused’s hearing was held on July 2, 2020, and the Review Board took the case under advisement.

**Background**

1. The accused is 63 years old. He has an adult daughter who is a student in Region A. He lives alone in an apartment after being in convalescence in a seniors’ residence for some time. He receives benefits from Retraite Québec and welfare payments. He had previously worked as a cook and in shipping at a print shop.

Expert psychiatric report on fitness to stand trial

1. The psychiatric report on his fitness to stand trial was prepared by Dr. Claude Girard on July 11, 2019. The psychiatrist reported that the accused had alcohol-related problems in the past and participated in several treatment programs. He had been hospitalized in a psychiatric unit in City B at the beginning of 2019 to be weaned off medication and alcohol.
2. He answered most of Dr. Girard’s questions with much vagueness and contradiction. He said he had serious memory problems and could not remember [translation] “anything in the last two and a half years.”

1. The accused was able to provide some details about the charges during that interview. He gave evasive answers about the people in the courtroom. He had some awareness of the consequences of the proceedings.
2. Dr. Girard is of the opinion that the accused has non-symptomatic cognitive impairment, but could not say much beyond that. Given the limitations of his assessment, he preferred to make a cautious conclusion, i.e., that the accused should be considered unfit to stand trial.
3. According to the psychiatrist, the accused should be examined as to the origins of his memory problems, how serious they are, and whether there is a possibility of improvement.

Consultation at Clinic A

1. A consultation report was prepared by Dr. Rémi Bouchard of Clinic A in [Centre A], on July 5, 2019. The neurologist stated that the MMSE[[2]](#footnote-2) was at 23 and 21. For comparison purposes, the accused had a MoCA[[3]](#footnote-3) score of 24 in January, and 16 in October 2018. The MoCA was refused during the consultation.
2. The accused is taking several medications including Seroquel 50 mg (antipsychotic), Wellbutrin 150 mg in the mornings (antidepressant), and sometimes Ativan 0.5 BID.
3. Dr. Bouchard found the memory impairment to be slight or approaching moderate. That could signal the start of either major neuro-cognitive impairment or Alzheimer’s disease, but there are too many confusing elements to put a label on it.
4. The neurologist wants to wait three months to check nutrition and abstinence from alcohol and see whether the liver tests improve before making a diagnosis.

Participation in assessments

1. Dr. Claude Girard reported on the accused’s situation in a letter dated March 3, 2020. The Review Board hearing scheduled for October 2019 had to be postponed because the psychiatrist wanted a neuro-physical examination due to the asserted cognitive impairment and the inconsistencies that had been noted. The accused was contacted on February 11, 2020, about an appointment with a neuropsychologist at [Hospital A]. She was to conduct an extensive cognitive assessment. The accused refused the appointment, claiming that he no longer needed it and was less worried about his memory.
2. The accused subsequently cancelled his February 18 and March 3, 2020, examination appointments with Dr. Girard, mainly due to health and transportation problems.

Psychiatric assessment

1. Transportation had to be arranged with the CISSS A to ensure the accused would attend the hearing. Dr. Stéphane Roussel examined him in the morning of July 2, 2020, and gave a verbal report to the Review Board that afternoon.
2. The psychiatrist conducted a MoCA test – an examination to check neuro-cognitive functions – and noted a score of 24 out of 30. That is relatively favourable, with the only difficulty being with memory retrieval. In his opinion, the accused could get better with treatment in a suitable environment.
3. The accused is still living alone in an apartment and has little contact with his daughter. He is taking essentially the same medication for his medical and psychiatric problems. He is still taking an antidepressant. Ativan is being phased out; it had been introduced to manage the accused’s withdrawal symptoms and anxiety. He had an alcohol relapse three weeks ago.
4. The accused was rather forthcoming during his examination. His pace was slow, and he had some trembling in the upper limbs. His thought process was organized, and his mood was somewhat neutral. He had no psychotic symptoms. His concentration was quite good, and he was able to answer questions.
5. The accused is aware of the charges against him. He wants to present a defence. He understands the legal proceedings and knows who the different people in the courtroom are. He understands his rights and the different kinds of pleas. He is calm and would be able to respect courtroom decorum.
6. According to Dr. Roussel, the only problem is that the accused claims he has no memory of the alleged facts, or hardly any.
7. The psychiatrist made a diagnosis of slight neuro-cognitive impairment. The exact etiology is rather difficult to determine. Dr. Roussel cannot say whether the accused will develop Alzheimer’s. The major risk factor is his previous alcohol consumption.
8. A short hospital stay would clear things up and pinpoint the treatment required to help the accused. A neuro-psychological assessment could be useful, although with a MoCA score of 24 out of 30, that is not usually the case. There may be components affecting that score. Ativan and Seroquel can have an effect on cognitive performance, as could the presence of alcohol. Dr. Roussel would be inclined to look at those aspects before seeking a neuro-psychological assessment, to see whether the required adjustments improve the accused’s condition.
9. The accused has no memory problems in other fields, except for sporadic spatial orientation. During the examination, however, he recognized places in the hospital.
10. As part of the hospital stay, it would be good to know how the accused manages when alone at home.

The accused’s testimony

1. During his testimony the accused said that he lives alone and is doing fine. He does his shopping every week and also does a lot of volunteer work.
2. The accused is able to prepare his own meals. He says he is a good cook. He uses both the stove top and the oven. He manages his budget and does not have excessive debts.
3. With regard to the alleged events, the accused does not remember what happened, but he does have remorse and regrets. He remembers going into the store and then being arrested by the police. That traumatized him.
4. At that time in 2017 the accused was not drinking and had not drunk for years. After the events, he starting drinking again and was less involved in social life in 2019–2020. He would drink and stop for six-month periods. He says he has never taken drugs.
5. Asked about the cognitive impairment, the accused said he has memory lapses from time to time. He forgets events like the thefts and forgets aspects of his routine. By way of example, he said he loses his keys and forgets his clothes in the dryer. That happens almost every day. He is still very anxious.
6. The accused does not think it is necessary to go to [Hospital A] for an assessment of his cognitive impairment. However, he would go to Hospital B on his own.

**Analysis and reasons**

Unfitness to stand trial

1. The Review Board must decide whether the accused is fit to stand trial. Unfitness is defined in s. 2 of the *Criminal* *Code*:

**unfit to stand trial** means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

(a) understand the nature or object of the proceedings,

(b) understand the possible consequences of the proceedings, or

(c) communicate with counsel;

1. According to Dr. Roussel’s assessment, the accused knows the charges against him. He understands the consequences of the proceedings and knows what the various people in the courtroom do. He is able to answer questions and respect decorum.
2. According to the accused’s counsel, the only issue is whether the accused’s memory lapses are part of a neuro-cognitive disorder. If he has pronounced memory impairment, he will not be able to follow the judicial process, communicate with his counsel, and present a defence.
3. According to Mtre Déry, the accused should undergo an assessment in regard to his memory problems and how extensive they are in his own sector hospital in City B.
4. The Review Board is of the opinion that such an assessment is not necessary to determine whether the accused is fit to stand trial. Dr. Roussel’s assessment and the accused’s testimony have clarified the situation. What is more, the accused has never made himself available for additional assessments in the past.
5. The psychiatrist concluded that the accused has a slight neuro-cognitive disorder. Similarly to Dr. Bouchard, the MoCA test resulted in a score of 24 out of 30, which is relatively favourable. The etiology of the disorder is unknown, but psychotropic drugs (Seroquel and Ativan) coupled with alcohol could make a significant contribution.
6. The Board finds that the accused is autonomous and able to manage his everyday life. He remembers many things, but not the facts alleged against him. His ability to remember events connected with the offences is fragmented and selective.
7. The accused alleges that he suffered post-traumatic shock after one (of the) arrest(s). There is no medical support for that assumption.
8. Regarding the memory lapses reported by the accused – as they affect his ability to communicate with counsel – the principle was laid down by the Court of Appeal for Ontario in *R. v. Morrissey.*[[4]](#footnote-4) In that case Mr. Morrissey, after killing his former girlfriend, turned the gun on himself and shot himself in the middle of his forehead, giving himself severe brain damage. Mr. Morrissey stated that he did not remember the events surrounding the death of his former girlfriend. As a result, he could not communicate with his counsel to recount the details of the events surrounding the homicide and could not testify about them.
9. The Court of Appeal for Ontario stated:

[29] First, the concept that the accused must be able to recount "the necessary facts relating to the offence in such a way that counsel can then properly present a defence" must be interpreted in a purposive and functional manner, […] the thrust of the concept of unfitness to stand trial is that the accused is unable to conduct a defence or to instruct counsel to do so. The ability to communicate with counsel in the context of a fitness inquiry speaks to the ability to seek and receive legal advice. An inability to recount the facts immediately connected with the event giving rise to the charges is not the same as an inability to communicate with counsel in a way that permits an accused to seek and receive effective legal advice.

…

[34] Neither of these authorities suggests that an accused person’s ability to relate the immediate events surrounding the actual crime is a prerequisite to a finding of fitness to stand trial. … I am not persuaded that an accused person’s inability to relate to counsel the immediate events surrounding the homicide necessarily leads to the conclusion that he or she is unfit to stand trial.

(Reproduction true to original.)

1. More recently, in *R. c. Saint-Cyr,*[[5]](#footnote-5) our Court of Appeal said that unfitness to stand trial should not be confused with the inability to remember the sequence of events shortly before and after the offence a person is accused of. Amnesia is of course one element that a court must consider when assessing all the evidence before arriving at its verdict. But it does not justify a verdict of unfit to stand trial or a recommendation to stay the proceedings.
2. The accused’s alleged memory lapses with regard to the events of theft and fraud he is accused of are not enough to make him unfit to stand trial.
3. With respect to his condition, the Review Board is of the view that the accused is not unable to seek or receive advice from his counsel. In fact, he did just that during a break in the hearing.
4. It must therefore be concluded that the accused is fit to stand trial. He must be sent back to court.

Supervision of the accused

1. The Board must now rule on the conditions of the accused’s supervision in the light of the parameters set out in s. 672.54 of the *Criminal* *Code.*
2. The accused lives alone in an apartment and is able to manage his domestic and daily living activities. However, he has a long history of alcohol consumption. He is in withdrawal now and taking Ativan to control the unpleasant symptoms. Conditions need to be set for his discharge so that his mental condition does not deteriorate before his trial(s).
3. To that end, it is essential that the treatment team have quick and effective intervention measures available to it before the accused endangers the safety of the public, should his mental condition deteriorate.

**FOR THESE REASONS**, the Board:

**DECLARES** that the accused has become fit to stand trial;

**ORDERS** that the accused be sent back to court and, until such time;

**MAINTAINS** the accused’s discharge subject to the following conditions. He must:

* live at a location known to the person in charge of the hospital;
* comply with the recommendations of the treatment team;
* abstain from consuming alcohol; and
* keep the peace;

**DELEGATES** to the person in charge of the CISSS A (Hospital A), in accordance with s. 672.56 of the *Criminal Code* and subject to the conditions determined in this disposition, the authority to increase restrictions on the liberty of the accused, including the authority to have him once again detained at such institution, if his mental condition deteriorates or if there are behavioural changes that increase the threat that he continues to pose to the safety of the public to such a degree that this safety could no longer be ensured were he to remain free.

If the person in charge decides, in accordance with this delegation of authority, to significantly increase restrictions on the liberty of the accused, he or she must record this decision in the accused’s file and give him notice thereof. If this increase of the restrictions on liberty remains in effect for more than seven days, the person in charge must also give notice to the Board (s. 672.56(2) of the *Criminal Code*). A new hearing will then take place as soon as practicable (s. 672.81(2.1) of the *Criminal Code*).

Furthermore, the Board **DELEGATES** the authority to decrease restrictions on the liberty of the accused to the person in charge who, pursuant to this delegation, has previously increased such restrictions. This decrease may go so far as to release the accused, subject to the conditions determined herein, if the clinical condition and behaviour of the accused are deemed by the person in charge to be so improved that they justify such a decrease, even after he or she has given notice to the Board in accordance with the second paragraph above.

The person in charge will inform the Board if he or she releases the accused in accordance with the previous paragraph. In that case, the hearing under s. 672.81(2.1) of the *Criminal Code* will not be held.

This disposition is rendered unanimously.

|  |  |
| --- | --- |
|  | DANIEL LAGUEUX, a.j.t.a.q.Alternate Chairperson |

Legal Aid A

Mtre Nicolas Déry

Counsel for the accused

1. R.S.C. (1985), c. C-46. [↑](#footnote-ref-1)
2. Mini-Mental State Examination. [↑](#footnote-ref-2)
3. Montreal Cognitive Assessment. [↑](#footnote-ref-3)
4. 2007 ONCA 770. [↑](#footnote-ref-4)
5. 2013 QCCA 1729. [↑](#footnote-ref-5)