TRIBUNAL ADMINISTRATIF DU QUÉBEC

Social Affairs Division

Designated as a review board within the meaning of section 672.38 and following of the *Criminal Code*

Date:

Neutral citation: 2014 QCTAQ 09272

File: SAS-M-226984-1407

Before the administrative judges:

LUCIEN LEBLANC
PHILIP R. BECK
GERTRUDE ROCHELIN

MARC-ANDRÉ LAROCHE
Accused

and

THE PERSON IN CHARGE OF THE INSTITUT PHILIPPE-PINEL DE MONTRÉAL

and

THE DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS

REASONS FOR THE DECISION RENDERED ON AUGUST 28, 2014

Proceedings giving rise to this hearing

[1] The accused (Mr. L.) is the subject of verdicts of not criminally responsible on account of mental disorder rendered on July 18, 2014. On the same day, he was also declared *a high-risk accused.* The following charges were brought against him:

- On or about May 17, 2014, in (...), he attempted to cause death to (his mother), by hitting her with a baseball bat, thereby committing the indictable offence provided for under section 239 (1) (b) of the *Criminal Code*;
- On or about May 17, 2014, (...), he committed an assault against (his mother), while using a weapon, namely a baseball bat, thus committing the indictable offence provided for under section 267a) of the *Criminal Code*;
- On or about May 17, 2014, in (...), he committed an aggravated assault against (his mother), by wounding, maiming, disfiguring her, thus committing the indictable offence provided for under section 268 of the *Criminal Code*;
- On or about May 17, 2014, in (...), he committed an aggravated assault against (his mother), by endangering her life, thereby committing the indictable offence provided for under section 268 of the *Criminal Code*;
- On or about May 17, 2014, in (...), being at large on his recognizance entered into before a justice or judge, in the file(s) (file number), he failed to comply with the condition of keeping the peace and being of good behaviour, thus committing the indictable offence provided for under section 145 (3) (a) of the *Criminal Code*.

Summary description of the facts surrounding the charges described above

[2] On the morning of May 17, 2014, Mr. L., who was living with his parents, was infuriated by what he perceived as excessive control by his mother over his life, and decided that it had to stop. He repeatedly hit her very hard with a baseball bat. He left the apartment and wandered aimlessly for a bit. Then, he went to the police station and

declared that he had just [TRANSLATION] "*bumped off*" his mother. He was very calm. He spoke spontaneously of his actions, and the police had to inform him that he'd be better off consulting a lawyer before making any statements. He initially rejected this suggestion. Then, he provided the name of a lawyer, whom the police tried to reach. He eventually spoke to a legal aid lawyer. He quickly put an end to the conversation, without leaving the lawyer any time to explain his rights to him.

[3] In the meantime, the police went to the address he had provided, where they discovered his mother, seriously injured. She was conscious but unable to answer their questions. She was brought to hospital where she went into a coma for nine days. She suffered multiple fractures, including a skull fracture. She is currently staying in a rehabilitation centre.

Reasons for the present hearing

[4] This hearing is a review held in accordance with the provisions of paragraph 672.47 of the *Criminal Code*. Mr. L. is at his first appearance before this tribunal, the Review Board for mental disorder (the Board), pursuant to the verdicts described in paragraph [1] and the finding that the accused is a high-risk.

[5] It should be noted that this hearing is being held within 45 days after the date the verdicts were rendered. This short period is prescribed by paragraph 672.47(4) of the *Criminal Code* and is an exception to paragraph 672.47(3) of the same Code, which provides that where a court makes a disposition under section 672.54, the time limit for holding a first hearing shall be 90 days. However, paragraph 672.64(5) states that "*for greater certainty, a finding that an accused is a high-risk accused is a disposition*". This obligation forcing the Board to proceed in such a short period of time is difficult to explain, particularly in the context where the Board is deprived of the opportunity to exercise its jurisdiction with regard to the threat that the accused poses to the safety of others, and when the disposition to be made is very specifically provided for in paragraph 672.64 (3) of the *Criminal Code*.

TRANSLATION: WHEN WE CAN MAKE AN APPROPRIATE DISPOSITION, WE HAVE 90 DAYS. WHY DO WE ONLY HAVE 45 DAYS WHEN OUR DISCRETION IS TOTALLY FETTERED?

Criminal Record

[6] Mr. L. has a criminal record. On August 5, 2013, he failed to comply with the conditions of an undertaking or a recognizance and drove a motor vehicle while under the influence of alcohol or drugs. He was found guilty on April 8, 2014, and fined $150 for the first offence and $1,000 for the second.

[7] He was also charged with failing to comply with the conditions of an undertaking or a recognizance (on March 27, 2014); aggravated assault with a weapon (on April 20, 2013); possessing prohibited substances (on November 17, 2013); and omitting to comply with the conditions of an undertaking or a recognizance (on November 17, 2013). He was found guilty of all these offences on July 18, 2014[1], and sentenced to one day in prison.

Court orders, protection regime or others

[8] Mr. L. is not under a protection of a major regime, or under an order for treatment or residential order issued by a court of justice.

Mr. L.'s social and psychiatric history, his progress and current clinical condition

[9] Mr. L. is 27 and single with no children. He was living with his parents at the time of the offences giving rise to this hearing (see paragraphs [1] and [2]).

[10] He is currently unemployed and receives income security benefits. It also appears that he has very limited experience on the labour market. The only job he ever held was found for him by his father, and he lost it due to poor attendance.

[11] He has a secondary III education.

[12] He had his first psychiatric contact in 2010. He had consulted because he was suffering from insomnia and anxiety, and was having hallucinations. He was making paranoid comments. He was referred to the CLSC and to a drug treatment centre.

[13] He returned to the hospital a few days later, escorted by police officers following a car accident. It was again noted that he presented with anxiety, paranoid interpretations and auditory hallucinations. These hallucinations persisted despite the complete stopping of drug usage. The medication administered to him rapidly led to the disappearance of his psychotic symptoms. He left the hospital, at his request, despite the presence of residual symptoms. However, there were no hallucinations or structured delusions noted.

[14] He subsequently underwent outpatient follow-up, which he more or less complied with. He missed several appointments.

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[1] Namely on the same day as the verdicts of not criminally responsible on account of mental disorder described in paragraph [1].

[15] He was briefly rehospitalized in November 2013, when he was, once again, escorted by police officers due to a state of great agitation. He was under the influence of amphetamines, and presented with a problem of rhabdomyolysis[2] secondary to acute amphetamine toxicity.

[16] In March 2014, he ransacked his apartment and was found half naked in the streets. He was in a state of psychotic disorganization with paranoid delusions and hallucinations. He was placed under an order of confinement at a psychiatric hospital from March 25 to April 5, 2014. His psychotic symptoms quickly disappeared. He left the hospital and was directed to an inpatient drug treatment agency.

[17] He was re-hospitalized on April 17, 2014. He had stopped taking the prescribed antipsychotic medication. He was agitated, irritable, anxious, and he had auditory hallucinations and paranoid delusions. He felt aggressive. These symptoms quickly decreased once he stopped taking amphetamines and resumed the pharmacological treatment. He was granted temporary leave. He was calm and cooperative. He no longer presented with delusional, suicidal or heteroaggressive ideas. He agreed to being followed as an outpatient. He was ambivalent about quitting amphetamines.

[18] On April 30, he refused to return to the hospital. He did not go to the outpatient appointments scheduled for May 5 and 13, 2014.

[19] His clinical condition deteriorated. On May 17, 2014, he committed the offences described in paragraphs [1] and [2].

[20] The following excerpts provide an accurate and brief description of his progress over the past months, taken from the psychiatric report prepared for this hearing:

> *[TRANSLATION]*
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> *"[Mr. L.] has agreed to take the antipsychotic medication even though he does not believe that he suffers from a mental illness. He has had difficulties tolerating Zyprexa, which gave him a rather coated tongue. He presented with acute dystonia as a result of Clopixol acuphase. His medication was adjusted. He tolerates the current medication fairly well.*

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[2] [TRANSLATION] **RHABDOMYOLYSIS**, (gr. *rhados*, striped; myo, muscle; *lysis*, break-down) ***Rhadomyolosis***]. Condition in which the striated muscle breaks down. It can be caused by an infection or an intoxication, and it is accompanied by painful muscle contractures.

However, he is still very vulnerable to stress. He had presented with significant clinical improvement under antipsychotic medication, but in a context of a hearing before the Court, Mr. L. is again presenting with auditory hallucinations. Notably, his condition deteriorated a great deal following his hearing on July 18, 2014. There is no clinical evidence to the effect that he took toxic substances around this period. We were only able to identify situational stress factors that may have increased Mr. L.'s symptoms.

While Mr. L. was aggressive toward a member of the staff, whom he pushed, in the beginning of his hospitalization, we noticed that, subsequently, he has been able to tell when he felt more tense. He informed us that he could become violent. This has allowed the rapid intervention of the staff. On one occasion, namely on June 13, 2014, Mr. L. had to be restrained after he threatened staff members and he banged on the window of his door. Ultimate measures of supervision have also been put in place. These measures were gradually expanded, stopped on July 9, 2014, then reinstated on July 23, 2014 following a clinical deterioration. They were stopped again on July 30, 2014.

A positive clinical progress was therefore noted with the use of antipsychotics, but Mr. L.'s equilibrium remains precarious.

When the events giving rise to the charges are brought up,. Mr. L. is still convinced that his actions were fully justified. He still considers that if he had not beaten his mother, she would have ended up causing his death. Mr. L. talks about the events as if his actions had the sole purpose of protecting him from what he perceives as an aggression committed by his mother. He is unable to make the connection between psychotic symptoms and his aggressive acting out.

In addition, Mr. L. is incapable of empathy toward his mother. He is still invaded by paranoid perceptions. However, he denied all fear with respect to others, as well as any violent intentions."[3]

[21] The attending psychiatrist's oral testimony revealed that Mr. L. recognizes that he is sick, and that he asked to be relieved. He does not oppose to the treatment or the treating team's interventions under the care plan. Her testimony also revealed that he does not feel ready to resume contact with his parents, which he corroborated in his short testimony (see below).

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[3] See pp. 4 and 5 of the report dated July 30, 2014, drafted by the psychiatrist, Dr. France Proulx.

[22] The medico-legal evaluation of the risk of violence is summarized in the following terms:

[TRANSLATION]

"An assessment according to the HCR-20 guideline was carried out by Ms. Myriam Giguère, a criminologist, and the undersigned. It should be pointed out that, in terms of risk factors, Mr. L. has a history of other charges in connection with acts of violence, but these facts have yet to be established before the tribunal.[4] *The risk of violence appears to be closely related to the presence of psychotic symptoms exacerbated by non-compliance with the pharmacological treatment, and to the consumption of toxic substances. The consumption of amphetamines has been particularly problematic. However, the psychotic symptoms have persisted despite quitting toxic substances, which, in my opinion, confirms the diagnosis of a chronic psychotic disorder, namely paranoid schizophrenia.*

Mr L. currently complies with the treatment in place, but his cooperation is more a question of conformity than a question of truly recognizing a mental disorder. However, he seems to recognize the beneficial effects of medication, at least in part.

Although Mr. L. presents a clinical improvement, ii remains partial. He has been able to establish a fairly good therapeutic alliance with the treating team. However, he still lacks insight, and he still requires a great deal of work so that he can recognize the link between his symptoms and the risk of violence."[5]

[23] When asked to testify, Mr. L. said that he did not really want to testify. However, he agreed to answer a few questions asked by the members of the Board. His answers corroborated the treating team's evaluation. They also clearly demonstrated that he does not believe he is suffering from a mental illness. He believes that his behaviour of May 2014 was [TRANSLATION] "an inadvertent error".

[24] In conclusion, the evidence establishes that Mr. L.'s parents maintain an interest in his well-being, but, above all, they want him to receive the care required by his condition. They understand and accept that he wishes to keep his distance from them for the time being.

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[4] Note from the Board: the facts have been established, Mr. L. was found guilty and sentenced to one day in prison (see paragraph 5).
[5] See pages 5 & 6 of the report cited in note 3.

Current diagnoses

[25] Mr. L. is suffering from [TRANSLATION] "paranoid schizophrenia with persistent psychotic symptoms despite antipsychotic medication. He also presents with a substance use problem, namely amphetamine abuse".[6]

Treating team's recommendation

[26] The treating team recommended that Mr. L. continue to be detained at Institut Phillipe-Pinel de Montréal, under the terms and conditions required by his status of a high-risk accused. It believes it would not be appropriate to transfer him to his local hospital in the immediate future. The team also suggested that the time for holding the next hearing not be extended.

[27] Mr. L., both directly and through his lawyer, said he agrees with this recommendation.

[28] The criminal and penal prosecutor also supports the treating team's recommendation.

Analysis of the evidence and decision by the Board

[29] The evidence clearly establishes that the accused is still, on account of his mental condition, a significant threat to the safety of the public, particularly to that of his mother. He has no insight, both with respect to the actions toward his mother and with respect to his illness. Moreover, he does not believe to be suffering from a psychiatric illness. He is still invaded by paranoid perceptions.[7]

[30] He complies with the proposed treatment plan. However, he complies out of conformity without truly recognizing a need for it.

[31] He clearly gives the impression of being rather unaware of his amphetamine problem. Yet, this consumption was present during each of his disorganizations and prior hospitalizations.

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[6] See page 5 of the report cited in note 3.
[7] See page 5 of the report cited in note 3.

[32] The Board is convinced that the only possible decision, in this context, and for the time being, is to maintain Mr. L.'s detention in a hospital, with no possibility of outings, unless he is accompanied by a hospital staff member.

[33] The new provisions of the *Criminal Code* make this analysis completely useless because the decision is already set out, in a very precise manner, under paragraphs 672.47 (4)[8] and 672.64 (3)[9] of the *Criminal Code*. These provisions take away any jurisdiction from the Board— a specialized tribunal, according to the terms of the Supreme Court of Canada in *Winko*[10]—for assessing, based on the particularities of each accused, the accused's threat to the safety of the public and, accordingly, the measures needed to protect public safety.

[34] However, these new legislative provisions did not take away the Board's power to decide the accused's place of custody. They also provide that the Board may extend the time for holding a hearing to a maximum of 36 months.[11]

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[8] This paragraph reads as follows:

"(...)if the court makes a disposition under subsection 672.64 (3), *the Review Board shall, not later than 45 days after the day on which the disposition is made, hold a hearing and make a disposition under paragraph 672.54*(c), *subject to the restrictions set out in that subsection."*

[9] The terms of this paragraph read as follows:

"If the court finds the accused to be a high-risk accused, the court shall make a disposition under paragraph 672.54(c), but the accused's detention must not be subject to any condition that would permit the accused to be absent from the hospital unless

- *a) it is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital for medical reasons or for any purpose that is necessary for the accused's treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and*
- *b) a structured plan has been prepared to address any risk related to the accused's absence and, as a result, that absence will not present an undue risk to the public."*

[10] See *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, paragraph 59, which reads:

"(...) although it has allowed courts to make an initial determination, Parliament has created a system of specialized Review Boards charged with sensitively evaluating all the relevant factors on an ongoing basis and making, as best it can, an assessment of whether the NCR accused poses a significant threat to the safety of the public. This assessment is not a guarantee, but it is unrealistic to expect absolute certainty from a regime charged with evaluating the impact of individual, human factors on future events. (...)"

[11] See paragraphs 672.81 (1.31) and 672.81 (1.32) of the Criminal Code, which read as follows:

"672.81 (1.31) Despite subsections (1) to (1.2), the Review Board may extend the time for holding a hearing in respect of a high-risk accused to a maximum of 36 months after making or reviewing a disposition if the accused is represented by counsel and the accused and the Attorney General consent to the extension.

672.81 (1.32) Despite subsections (1) to (1.2), at the conclusion of a hearing under subsection 672.47 (4) *or this section in respect of a high-risk accused, the Review Board may, after making a disposition, extend the time for holding a*

[35] The treating team recommended that the accused not be transferred to his local hospital. The evidence warrants such recommendation. The accused and the criminal and penal prosecutor agree. The Board does not see any reason to rule against the recommendation.

[36] The treating team also suggested the delay for holding the next hearing not be extended. The accused, through his lawyer, also asked the Board not to proceed with such an extension. Therefore, the Board could not proceed by consent (see 672.81 (1.1), already cited in note 11).

[37] In addition, the Board could not proceed, on its own initiative, to grant such an extension. There is nothing in the evidence to establish that Mr. L.'s condition is not likely to improve and that detention remains necessary for the period of the extension (see paragraph 672.81 (1.32) cited in note 11).

ON THESE GROUNDS, the Board **ORDERS:**

- That Mr. L. remain in detention at Institut Phillipe-Philippe-Pinel de Montréal with no possibility of outings, unless the following conditions are met:
  - the outing is appropriate for medical reasons or for the purpose of his treatment;
  - he is escorted, individually, by a person authorized to do so, and this person shall be a hospital staff member;
  - a structured plan has been prepared to address any risk related to the accused's outing and, as a result, it will not present an undue risk to the public.
- That Mr. L. refrain from communicating with his parents, except on their initiative.

HENCE THE DECISION rendered unanimously on August 28, 2014 and communicated to the parties at the end of the hearing.

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subsequent hearing under this section to a maximum of 36 months if the Review Board is satisfied on the basis of any relevant information, including disposition information as defined in subsection 672.51 (1) and an assessment report made under an assessment ordered under paragraph 672.121(c), that the accused's condition is not likely to improve and that detention remains necessary for the period of the extension."

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LUCIEN LEBLANC, j.a.t.a.q.
Designated Chairperson

Me Maude Joly-Robert, Counsel for Mr. L.

Me Marie-Josée Guillmette, Criminal and Penal Prosecutor