

La Commission d'examen des troubles mentaux du Québec

GUIDE
(English)



TRIBUNAL ADMINISTRATIF
du Québec

CAUTION

This document is intended to be a source of general information and does not constitute a legal opinion. The applicable law must be interpreted by conducting an analysis of the relevant statutes (the *Criminal Code* and others).

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INTRODUCTION

The *Criminal Code*¹ provides a special legal mechanism for cases involving persons accused of criminal offences who have been found not criminally responsible on account of mental disorder or who have been found unfit to stand trial. As a result, they are not convicted of the charges brought against them, yet they are not acquitted. They are therefore not released back into society. The significance of the threat they represent to the safety of the public must first be assessed.

It is the responsibility of the Review Boards for mental disorder, within the context of a hearing, to conduct this assessment and, if necessary, decide what measures should be taken to ensure the protection of society.

The Commission d'examen des troubles mentaux du Québec (CETM) has been in existence since 1992. Year after year, the number of accused under its jurisdiction has continued to grow. This situation has a direct impact on the increase in the number of hearings to be scheduled before it.

As it is the CETM's ongoing concern to make sure that its operations are in step with changes in practice and because it would like to see its operations more widely known, it has decided to update its Guide, the last edition dating back to 2007.

This third edition of the Guide is intended for all parties, interveners and participants involved in CETM hearings. The content of this 2016 edition provides information on the CETM's requirements, which will lead to better preparation for hearings and to enhance their conduct.

1. R.S.C. 1985, c. C-46.

A

GENERAL INFORMATION

A TRIBUNAL

1. The Commission d'examen des troubles mentaux du Québec (CETM) is an administrative tribunal established under the *Criminal Code*. It renders decisions that are binding in the same capacity as those of the courts of law.

Since April 1, 1998, its duties have been carried out by the Social Affairs Section of the Tribunal administratif du Québec (TAQ).

DUTIES OF THE CETM

2. The CETM is responsible for rendering decisions concerning persons who have received a verdict of not criminally responsible on account of mental disorder or unfit to stand trial.


In the case of a verdict of:

- (a)** not criminally responsible on account of mental disorder,

the CETM must rule on the significance of the threat posed by the accused to the safety of the public. It renders decisions in accordance with the options specified in sections 57 and 58 of this Guide.

- (b)** unfit to stand trial,

the CETM determines if the accused has become fit and, if so, orders that the accused be sent back before the court of criminal jurisdiction. It renders decisions in accordance with the options specified in section 59 of this Guide.

 It is up to the person in charge of the designated hospital to see to the enforcement of the CETM's decision and the accused's compliance with it.

THE CHAIRPERSON AND ALTERNATE CHAIRPERSONS

3. The Chairperson of the CETM is a member of the Social Affairs Section of the TAQ.

The Chairperson designates the Alternate Chairpersons, who must be lawyers.

The Alternate Chairpersons preside over hearings and, in the performance of their duties, have the same powers and responsibilities as those conferred upon the Chairperson. The Alternate Chairpersons are vested, among other things, with the powers conferred by sections 4 and 5 of the *Inquiries Act*.²

CETM QUORUM

4. The CETM must have a quorum of at least three members, including a lawyer and a psychiatrist. The third person is another member of the Social Affairs Section of the TAQ (lawyer, psychiatrist, social worker, psychologist or physician).

APPLICABLE STATUTES

5. (a) **The Criminal Code**

Sections 2, 16 and 672.1 to 672.95 of the *Criminal Code*³ set out the particular criminal law rules applicable to persons suffering from a mental disorder. These sections include the rules applicable to the CETM.

- (b) **The Inquiries Act**

The powers of the Chairperson and the Alternate Chairpersons of the CETM include the powers of inquiry set out in sections 4 and 5 of the *Inquiries Act*.⁴

- (c) **The Act respecting administrative justice**

Section 19 of the *Act respecting administrative justice*⁵ provides that in exercising its function as a Review Board, the Social Affairs Section of the TAQ acts in accordance with the provisions of the *Criminal Code*. Thus, the rules of procedure of the TAQ do not apply to the CETM.

2. R.S.C. 1985, c. I-11.

3. *Supra* note 1.

4. *Supra* note 2.

5. CQLR, chapter J-3.

NO INTRODUCTORY PROCEDURES

6. The CETM has jurisdiction to hear an accused's case by operation of law following a verdict of not criminally responsible on account of mental disorder or unfit to stand trial by a court of criminal jurisdiction.

THE CETM CAN ACT ONLY WITHIN THE FRAMEWORK OF A HEARING

7. The CETM acts within the framework of hearings held in accordance with the provisions of the *Criminal Code* following a notice of hearing to the parties. A decision cannot be modified or reviewed except within the framework of a new hearing held in accordance with the provisions of the *Criminal Code*.

However, a decision containing a clerical or typographical error may be corrected in the record and, in such case, will be sent to the parties.

TIME LIMITS FOR HEARINGS

8. First Hearing

The first hearing of the CETM after a verdict of not criminally responsible on account of mental disorder or unfit to stand trial must be held within the following time limits:

- (a) **45 days** after the verdict if the court of criminal jurisdiction has not rendered a decision concerning the discharge or detention in custody of the accused or has found him to be a high-risk accused;
- (b) **90 days** after the verdict of the court of criminal jurisdiction when such court has rendered, in addition to the verdict, a decision concerning detention in custody or conditional discharge;
- (c) any other **maximum time limit of 90 days** as of the verdict or the finding that the accused is a high-risk accused set by the court of criminal jurisdiction.

9. Annual Review

For as long as an accused has not been discharged absolutely or found fit to stand trial, the CETM must conduct a review **within 12 months** following the first hearing and subsequently within every **12-months**

period following its decision. However, this period may be extended **up to 24 months** when:

(a) the Attorney General of Quebec and the accused, represented by counsel, agree;

or

(b) the CETM is convinced that the condition of an accused found not criminally responsible for a serious personal injury offence will probably not improve and that detention in custody remains necessary during the extension period.

In the case of a high-risk accused, this period may be extended **up to 36 months** when:

(a) the Attorney General of Quebec and the accused, represented by counsel, agree;

or

(b) the CETM is convinced that the condition of the accused will probably not improve and that detention in custody remains necessary during the extension period.

10. Review at the Request of the Person in Charge of a Designated Hospital

The CETM must hold a hearing as soon as possible after being notified that:

(a) the person in charge of a designated hospital has, pursuant to a delegation of authority, significantly increased the restrictions on the liberty of an accused for a period of **more than seven days**;

or

(b) the person in charge of a designated hospital has requested a review of the CETM's previous decision ordering the conditional discharge of the accused or his detention in custody.

This request for review must be sent in writing to the CETM with notice to the other parties and must specify the reasons, including any change in the accused's situation.

11. Review of Dual Status Offenders

The CETM must hold a hearing as soon as possible after being notified that an accused subject to a custodial decision rendered by the CETM has received a prison sentence for another criminal offence from a court of criminal jurisdiction.

12. Optional Review

The CETM may hold a hearing at the request of the accused or another party. The request must be in writing and justified.

The CETM may also hold a hearing of its own motion.

B

PRE-HEARING COMMUNICATIONS AND PROCEDURES


GENERAL PROVISIONS

13. Determination of the Designated Hospital

If the court of criminal jurisdiction does not identify the hospital designated to be responsible for treating the accused, the CETM will determine this hospital.

14. Notice of Hearing

The CETM sends a notice of hearing to the accused, the person in charge of the designated hospital and any other party informing them of the date and place of the hearing.

 If the accused is a young person within the meaning of the *Youth Criminal Justice Act*,⁶ the CETM also sends this notice to the accused's parents.⁷

15. Postponement of Hearing

The accused or another party who has serious reasons not to be present on the date set for the hearing must make a request in writing to the CETM, as soon as possible, for postponement of the hearing.

The CETM will rule on the request for a postponement.

6. S.C. 2002, c.1.

7. The word *parent* refers to the definition in section 2 of the *Youth Criminal Justice Act*: any person who is under a legal duty to provide for the young person or any person who has, in law or in fact, the custody or control of the young person, but does not include a person who has the custody or control of the young person by reason only of proceedings under this Act.

16. Change of Address

(a) Inform the Person in Charge of the Designated Hospital

The accused must inform the person in charge of the designated hospital of a change of address **without delay**.

The person in charge of the designated hospital must then forward the information to the CETM.

(b) Inform the CETM

The accused, all other parties and all representatives must inform the CETM **without delay** of any change of address or any other change in their contact information.

REPRESENTATION AND SUBSTITUTION

17. Legal Representation

All parties to the hearing may be represented by counsel.

An accused who has been found unfit to stand trial **must** be represented by counsel; if the accused does not have counsel, the CETM will appoint counsel for him.

The CETM may decide to appoint counsel for an accused who has been found not criminally responsible on account of mental disorder if it considers that it is in the interest of justice that he be represented.

Counsel whose services are retained by an accused or by another party must inform the CETM in writing.

In some cases, the accused may be eligible for legal aid.⁸

18. Cessation of Representation and Substitution

A party who discharges his counsel or substitutes new counsel shall, **without delay**, send written notice to this effect to the CETM and the other parties.

Counsel who ceases to represent a party shall, **without delay**, send written notice to this effect to the CETM and the other parties.

8. More information may be found on the website of the Commission des services juridiques at www.csj.qc.ca.

SUMMONING A WITNESS

19. A party may ask the CETM to subpoena a witness in order to testify or produce a document.

That party has the responsibility of serving the subpoena on his witness and ensuring that the witness is present at the hearing.

PRESENCE OF THE TREATMENT TEAM AT THE HEARING

20. It is up to the person in charge of the designated hospital to ensure that the psychiatrist or attending physician is present at the hearing, as well as the other members of the treatment team.

SENDING AND FILING OF DOCUMENTS

21. **Information and Documents Sent by the Court of Criminal Jurisdiction**

The court of criminal jurisdiction that renders a verdict of not criminally responsible on account of mental disorder or unfit to stand trial shall send to the CETM, **without delay**, the following disposition information and documents:

- the information setting out the criminal offence;
- the indictment;
- the summary of facts;
- the accused's criminal record;
- the assessment of whether the accused is fit to stand trial or is not criminally responsible on account of mental disorder;
- the minutes of the court of criminal jurisdiction;
- the warrant of committal;⁹
- the finding that an accused is a high-risk accused;
- any other information or exhibit relating to the hearing.

9. Form 49 of the *Criminal Code*.

22. Filing and Admissibility of a Document

A party wishing to produce a document must file the original with the CETM **no later than** the beginning of the hearing.

The CETM shall rule on the admissibility of the document.

The party must provide a sufficient number of copies of the document for the CETM, the parties and their counsel.

23. Technology-Based Documents

Subject to its admissibility, a party who wishes to file a technology-based document must ensure, **before the hearing**, that the CETM has the necessary equipment for its presentation during the hearing.

A document is considered “technology-based” if it falls under the *Act to establish a legal framework for information technology*.¹⁰

If the CETM does not have the necessary equipment to present the document, the party must:

- transfer the document to a medium appropriate for the equipment available at the hearing;
- or
- provide the necessary equipment for the presentation of the document.

COMMUNICATION OF REPORTS

24. The Treatment Team’s Report

The person in charge of the designated hospital must make available the original of any report prepared by the treatment team that is to be filed in the record of a hearing on a given date (e.g., the psychiatric report, the report from any psycho-social assessment or assessment of dangerousness), **as soon as the report is ready, and at the latest, before the first hearing that day**.¹¹

He must provide a sufficient number of copies of the report for the CETM, the parties and their counsel.

10. CQLR, chapter C-1.1.

11. Note that the CETM holds several hearings on the same day.

25. Expert Witness

Except with the permission of the CETM, no expert witness will be heard unless his report has first been sent to the other parties and filed with the CETM **at least five business days**¹² before the hearing.

CONSTITUTIONAL ISSUE AND INFRINGEMENT OF RIGHTS AND FREEDOMS

26. (a) Contesting the Constitutionality of a Statute

A party may not contest the operability, constitutional validity or constitutional applicability of the provision of a statute before the CETM, unless written notice of his intention is served to the CETM and the following persons:

- all the parties;
- the Attorney General of Canada or the Attorney General of Quebec, as applicable;
- the Director of Criminal and Penal Prosecutions.

The written notice must be served **at least 30 days** before the date set for the hearing to deal with this application to contest.

(b) Infringement of Fundamental Rights and Freedoms

A party claiming infringement of his fundamental rights and freedoms¹³ may not submit his claim to obtain remedy to the CETM unless written notice to this effect has been served to the CETM and the following persons:

- all the parties;
- the Attorney General of Canada or the Attorney General of Quebec, as applicable;
- the Director of Criminal and Penal Prosecutions.

The written notice must be served **at least 10 days** before the date set for the hearing on this claim for relief.

12. Saturdays, Sundays and holidays are not included in this time limit.

13. An individual's fundamental rights and freedoms are set out in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11*, or the *Charter of human rights and freedoms*, CQLR, chapter C-12.

(c) Content of the Written Notice

Depending on the nature of the claim, the notice must include the following information:

- the remedial action or type of remedy sought;
- the rights concerned, referring to the sections of the charters;
- the grounds for the claim;
- the legal arguments;
- the case law submitted in support of the claim.

(d) Discharge of the Accused

When an issue covered by this section is raised before the CETM, the time limits specified for serving the notices may not delay the accused's discharge.

C

HEARINGS

PROCEDURAL ISSUES

27. With respect to any procedural issue, the Chairperson of the hearing determines the procedure to be followed.

THE PARTIES

28. The Parties to a Hearing

The following may be parties to a hearing:

- the accused;
- the person in charge of the designated hospital where the accused is detained or receiving treatment;
- the Attorney General of Quebec (Director of Criminal and Penal Prosecutions), upon the Attorney's request;
- any other person who demonstrates to the CETM that he has a substantial interest in the proceedings in order to protect the interests of the accused.


29. Rights of the Parties

All parties are entitled to:

- be summoned to the hearing;

 If the accused is a young person within the meaning of the *Youth Criminal Justice Act*,¹⁴ his parents¹⁵ are also summoned.

- submit evidence;
- make oral or written submissions;
- call witnesses and question them;
- cross-examine the witnesses of the other parties;
- cross-examine the author of an assessment report submitted in written form;
- be represented by counsel.¹⁶

 The Chairperson of the hearing can excuse the accused from attending all or part of the hearing subject to the conditions he considers relevant.

THE VICTIM

30. (a) The Definition of Victim

- (i) A victim is a person who has suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of a criminal offence against him or any other person.
- (ii) The decision determining the victim's status is made by the CETM in the course of a hearing.

(b) The Victim's Rights

- (i) A victim is not a party to the proceedings and cannot therefore assert the rights listed in section 29 of this Guide.

14. *Supra* note 6.

15. For the definition of *parent* under this Act, see note 7.

16. For more details, see section 17 of this Guide.

(ii) A victim is entitled to:

- ask the CETM to send him the notice of hearing and a copy of the decision recorded in the minutes of the hearing;
- be notified of his right to prepare a written statement¹⁷ describing the physical or emotional harm, property damage or economic loss that he suffered as the result of the commission of the criminal offence and the impact of the offence on him. This statement must be filed **before the hearing**, and the CETM will send a copy to the Director of Criminal and Penal Prosecutions and the accused and his counsel, if the accused is represented;
- read this statement at the hearing or present it in any other manner authorized by the CETM;
- be notified of his right to file such a written statement with the Superior Court of criminal jurisdiction that must review a finding that an accused is a high-risk accused;
- ask to be notified of the fact that an accused has been granted a conditional or absolute discharge and his intended place of residence.

(c) Victim Assistance

Victims may obtain assistance from the Centre d'aide aux victimes d'actes criminels (CAVAC). The centre offers services free of charge to crime victims.¹⁸

LOCATION OF HEARINGS

I. PLACE WHERE THE HEARING IS HELD

31. The Place Where the Accused is Detained or Receiving Treatment

A hearing is generally held where the accused is detained or receiving treatment. Given the context, that place is usually a hospital designated by the Minister of Health and Social Services.

17. More information concerning the content of this statement may be found on the website of the Ministère de la Justice du Québec at www.justice.gouv.qc.ca.

18. More information may be found on the website of the CAVAC at www.cavac.qc.ca.

This procedure was adopted to facilitate the presence of an accused detained in custody and of the clinical and hospital staff.

There is, however, no obligation to proceed in this manner. If a proper hearing room is not provided, the CETM may decide to hold the hearing elsewhere, including:

- a TAQ hearing room, in Montreal or Quebec City;
- a courthouse;
- any other place, anywhere in the province.

32. Video Hearings

Hearings can also be held by video hearing. This exceptional procedure is used:

- in cases of urgency;
- or
- when, for logistical reasons, it is difficult to hold the hearing where the accused is detained in custody or receiving treatment.

To proceed in this manner, there must be no medical contraindication and the consent of the accused is required.

II. ROOM WHERE THE HEARING IS HELD

33. Responsibility to Provide an Adequate Room

The person in charge of the designated hospital where the hearing will be held must ensure that an adequate hearing room is available.

The room must be large enough to accommodate several participants.

34. Accessibility of the Hearing Room

The hearing room must be easily accessible to anyone who wishes to attend, including persons with reduced mobility.

35. Security of the Hearing Room

The hearing room must be secure, e.g., the persons in the room must be able to leave quickly if there is any danger or any threat to their physical integrity.

The person in charge of the designated hospital must also ensure that safety measures that can be readily applied in case of an emergency are in place, such as having a security guard on hand.

36. Layout of the Hearing Room

The hearing room must be equipped with the appropriate furniture and necessary resources for:

- setting up recording and copying equipment;
- the CETM members and the parties to place and use their documents and computer equipment.

37. Room for the Accused and the Accused's Counsel

If the accused is represented by counsel, the person in charge of the designated hospital must also provide a room where they can have a confidential conversation. It must be located near the hearing room.

PREPARING THE HEARING SCHEDULE AND ADDITIONS

38. The schedule for a day of hearings is prepared by the CETM and the person in charge of the designated hospital. Any request to add to the hearing schedule must be sent to the CETM **at least 10 days** before the date of the hearing. It is up to the Chairperson of the CETM to decide whether to authorize such an addition.

The order of presentation of cases on a hearing day cannot be changed once it has been agreed upon between the CETM and the person in charge of the hospital concerned, except with the authorization of the CETM.

PUNCTUALITY

39. Hearings begin at the scheduled time. The parties and their counsel must be ready to proceed with the hearing and must not delay its start.

CONDUCT OF HEARINGS

40. Public Hearings

Hearings are public. Anyone who wishes to attend a hearing is entitled to do so, unless the CETM orders it to be held *in camera*.¹⁹

19. "*In camera*" means that the public is not allowed in the hearing room.

The CETM may, if circumstances warrant, issue a non-publication or non-disclosure order to protect the identity of a victim or witness.



Anyone may obtain the date of a hearing by contacting the CETM, except for a hearing involving an accused who was a young person at the time of the offence.

41. Lack of Formality

Hearings are as informal as possible, considering the particular circumstances of each case.

Lack of formality, however, does not mean familiarity, unruliness or disrespect.

42. Rules of Conduct

Persons attending a hearing must refrain from any behaviour that could have an adverse effect on the conduct of the hearing. They must have a dignified and respectful attitude toward the CETM and all other persons.

All persons at the hearing must be suitably dressed and use appropriate language.

Consumption of food is prohibited.

EXCLUSION FROM THE HEARING ROOM

- 43.** The Chairperson of the hearing may exclude from the hearing room any person, including the accused, whose behaviour has an adverse effect on the orderly conduct of the hearing.

The Chairperson may also exclude the accused from the hearing:

- (a)** if he considers that the presence of the accused could endanger the life or safety of a person or be detrimental to his treatment or recovery;
- (b)** in order to hear evidence, the cross-examination of witnesses or submissions, to decide whether or not the accused should be excluded on the grounds listed above.

LANGUAGE USED AT THE HEARING

44. French and English

At the hearing, everyone may express themselves in French or English.

45. Assistance of an Interpreter

A party or witness who does not understand or speak the language used at the hearing may be assisted by an interpreter.

46. No Charge for the Services of an Interpreter for the Accused and Certain Persons

The CETM provides the accused with the services of an interpreter free of charge. These services are also free of charge for parties or witnesses who are hearing-impaired or speech-impaired.

In other cases, the parties and other witnesses must bear the cost of the interpreter.

AUDIO RECORDING OF THE HEARING, THE USE OF CAMERAS AND CONDUCTING INTERVIEWS

47. Audio Recording

The hearings of the CETM are recorded on a sound medium.

No one may, without the CETM's authorization, make an audio recording of the hearing.

48. Copy of the Audio Recording

A party may obtain a copy of the audio recording by submitting a request to the CETM barring the exceptional cases specified in the *Criminal Code*.

A fee may apply to obtain a copy.

49. Ban on Broadcasting the Hearing

Broadcasting the audio recording of a hearing is prohibited.

50. The Use of Cameras and Conducting Interviews

The use of cameras in the hearing room is prohibited during the conduct of a hearing.

Outside the hearing room, the use of cameras and conducting interviews are subject to the following:

- the CETM's authorization;
- the media relations policy applicable to the location where the hearing is being held;
- the security rules in effect at such location.

THE EVIDENCE

51. No Presumption of Dangerousness

The dangerousness of the accused cannot be presumed solely on the basis of a verdict of not criminally responsible on account of mental disorder or a verdict of unfit to stand trial.

52. Search for Evidence

The CETM must determine the significance of the threat that the accused represents to the safety of the public.

To do so, it has an obligation to search for and assess not only the evidence that justifies restrictions on the liberty of the accused, but also the evidence in favour of the accused's discharge.

53. Evidence

The evidence consists of:

- the psychiatric report of the attending physician;
- a second opinion report, if applicable;
- any relevant document concerning the condition of the accused (e.g., report or notes from the nursing care, social services, neurology, psychology, occupational therapy and addictions teams);
- documents from the court of criminal jurisdiction (e.g., denunciation, indictment, assessment of fitness to stand trial or of being not criminally responsible on account of mental disorder, minutes of the hearing and warrant of committal);
- documents from the police authorities (e.g., criminal history and summary of facts);
- all exhibits filed in the record of the accused during previous hearings, including the decisions;
- testimonies;

- the victim's statement, if applicable;
- any other evidence considered relevant by the CETM (e.g., letter, correspondence and e-mail).

54. Importance of the Psychiatric Report

The CETM pays particular attention to the psychiatric report. The more complete and well documented the report is, the better informed the CETM, the accused, the accused's counsel and the other parties will be.

This report provides for a better understanding of the accused's progress, of his condition at the time of the hearing and, consequently, provides an analysis of the threat the accused could pose to public safety. The CETM not only takes into account the condition of the accused at the time of the hearing, but also tries to anticipate what his progress will be.

55. Content of the Psychiatric Report

The psychiatric report concerning the condition of the accused should contain the following:

- psychiatric history and current clinical condition;
- psycho-social background:
 - family environment,
 - social environment,
 - socioprofessional integration;
- description of behaviour:
 - attitude and cooperation,
 - impulsiveness, aggressiveness, response to frustrations,
 - history of violence,
 - alcohol and drug use;
- relevant medical history;
- description of attitude toward illness and treatment:
 - acknowledgement, understanding and acceptance of the illness,
 - compliance with the prescribed medication;
- treatment plan prepared by the treatment team:
 - intervention plan and prognosis,
 - resources, adaptability and self-sufficiency of the accused,
 - family and social support,
 - the accused's need for supervision and his willingness to collaborate on the treatment plan;

- opinion and recommendations of the attending physician:
 - opinion as to the dangerousness of the accused,
 - recommendations concerning the measures to be taken to ensure the protection of the public and the needs of the accused, especially with regard to his reintegration into society,
 - if the accused has been declared to be a high-risk accused, opinion as to the likelihood that he will use violence that could endanger the life or safety of another person.

56. Order for Assessment of the Mental Condition of the Accused

The CETM may order, whenever it considers necessary, an assessment of the mental condition of an accused in the following cases:

(a) to determine whether to recommend that the court of criminal jurisdiction suspend proceedings against an accused who is unfit to stand trial;

or

(b) to determine whether to refer a high-risk accused to the Superior Court of criminal jurisdiction so that such court may review the finding that he is a high-risk accused;

or

(c) to render a decision in respect of an accused in the cases provided under subsection 672.121(b) of the *Criminal Code*, e.g., to render a decision under section 672.54 of the *Criminal Code* in the following circumstances: no assessment report on the mental condition of the accused is available, no assessment of the mental condition of the accused has been conducted in the last twelve months, or the accused has been transferred from another province under section 672.86 of the *Criminal Code*.

D

CETM'S DECISIONS

TYPES OF DECISIONS

57. Possible Decisions in the Case of a Verdict of Not Criminally Responsible on Account of Mental Disorder

For this type of verdict, the CETM is responsible of rendering one of the following decisions, which is necessary and appropriate in the circumstances, taking into account the safety of the public, which is the paramount consideration, as well as the mental condition of the accused, his reintegration into society and his other needs:

- (a) absolute discharge**, if in the opinion of the CETM, the accused is not a significant threat to the safety of the public, or if the CETM cannot conclude with certainty that the accused represents a significant threat; it must therefore, if there is a doubt as to the significance of the threat posed by the accused, discharge the accused absolutely;
- (b) conditional discharge**, if the CETM finds that the accused continues to represent a significant threat to the safety of the public, but that this threat will be sufficiently reduced if:
 - the accused complies with the conditions that the CETM considers necessary to impose;
 - and
 - the CETM has serious reason to believe that the accused will in fact comply with these conditions;
- (c) detention in custody, with or without conditions**, if the CETM believes that the threat posed by the accused to the safety of the public cannot be adequately controlled if the accused is released into the community;
- (d) in the case of a high-risk accused, detention in custody without the possibility of being absent from the hospital** unless:
 - (i) 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
 - (ii) 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.

58. Referral of a High-Risk Accused to the Superior Court of Criminal Jurisdiction

When the CETM holds an annual review hearing (including a hearing for an extension of time) or for review upon the application of either of the parties, it must:

- (a) if it is satisfied that there is not a substantial likelihood that the accused will use violence that could endanger the life or safety of another person, refer the finding that he is a high-risk accused for review to the Superior Court of criminal jurisdiction;
- (b) if it is not so satisfied under paragraph (a), render a decision of detention in custody without the possibility of being absent from the hospital, except on certain conditions (see section 57(d) of this Guide).

59. Possible Decisions in the Case of a Verdict of Unfit to Stand Trial

For this type of verdict, the role of the CETM is to determine whether the accused has become fit to stand trial and, in such case, to order that the accused be sent back to the court of criminal jurisdiction.

In this case, it may order the accused to be **detained in custody** until his forthcoming appearance before the court of criminal jurisdiction if it believes that without such detention, the accused would once again become unfit to stand trial or his **conditional discharge**.

If the accused remains unfit, the CETM must render one of the following decisions, which is necessary and appropriate in the circumstances, taking into account the safety of the public, which is the paramount consideration, as well as the mental condition of the accused, his reintegration into society and other needs:

- (a) **conditional discharge**, if the CETM finds that the accused continues to represent a significant threat to the safety of the public, but that this threat will be sufficiently reduced if:
 - the accused complies with the conditions that the CETM considers necessary to impose;
 - and
 - the CETM has serious reason to believe that the accused will in fact comply with these conditions;

(b) detention in custody, with or without conditions, if the CETM believes that the threat posed by the accused to the safety of the public cannot be adequately controlled if the accused is released into the community.

60. Order to Refer an Accused Back to the Court of Criminal Jurisdiction, Without a Hearing, in Cases Where Accused Found Unfit

The Chairperson of the CETM may order that an accused found to be unfit to stand trial be sent back to the court of criminal jurisdiction, without having to hold a hearing.

(a) Conditions for Referral

The following conditions must be met for the Chairperson of the CETM to order such a referral:

- (i) the accused must have become fit to stand trial (a psychiatric assessment report must be filed);
- (ii) the accused and the person in charge of the designated hospital where the accused is detained in custody consent thereto;
- (iii) the CETM will not hold a hearing within a reasonable period.

Following the referral, the CETM will request that the court of criminal jurisdiction send a copy of the minutes of the hearing.

(b) Application for Referral

The application to refer the accused back to the court of criminal jurisdiction is submitted to the CETM by using the forms in **Schedules 1A and 1B**.

Such application may be made by the person in charge of the designated hospital or by the accused or his counsel.

61. Recommendation of the CETM in Cases Where Accused Found Unfit

If the CETM is of the opinion that the accused does no longer pose a significant threat to the safety of the public and that he will most likely never be fit to stand trial, it may recommend that the court of criminal jurisdiction suspend the proceedings. If the proceedings are suspended, the accused will not have to appear again before the CETM.

To finalize its record, the CETM will request that the court of criminal jurisdiction send it a copy of the minutes of the hearing in which proceedings were suspended.

62. Treatment Orders

The CETM cannot prescribe treatment or order the accused to submit to treatment.

It can, however, make a treatment a condition of the accused's discharge or temporary unescorted absences from the designated hospital.

If the accused refuses to submit to the treatment, the CETM may, if it considers that the treatment is required to ensure the safety of the public, refuse to discharge the accused or forbid any temporary absences.

63. Delegation of Authority to the Person in Charge of the Designated Hospital

The CETM may delegate to the person in charge of the designated hospital authority that the restrictions on the liberty of the accused be increased or decreased within any limits set out in the decision (e.g., accused detained in custody against his will).

The authority to decrease the restrictions on the liberty of a high-risk accused is subject to the terms set out in subsection 672.64(3) of the *Criminal Code* (see section 57(d) of this Guide).



Recourse by the Person in Charge of the Designated Hospital to Authority Delegated by the CETM

Any change ordered by the person in charge of the hospital under the delegation of authority shall be deemed to be a decision of the CETM.

The person in charge of the designated hospital who significantly increases the restrictions on the liberty of the accused pursuant to authority delegated by the CETM shall:

- make a record of the increased restrictions in the accused's file;
- immediately give notice of the increase to the accused;
- notify the CETM if the increased restrictions remain in force for **more than seven days**. The CETM will then hold a new hearing as soon as practicable.

64. Other Types of Orders

The *Criminal Code* provides that the CETM may issue various types of orders during the conduct of the hearing. The main orders are:

- assessment order of the mental condition of the accused;²⁰


20. For more details, see section 56 of this Guide.

- interhospital transfer order;²¹
- interprovincial transfer order in accordance with the provisions of the *Criminal Code*;²²
- order to place a dual status accused in a designated hospital or a detention facility;
- non-publication or non-disclosure order regarding disposition information;
- order excluding the public from the hearing (hearing held *in camera*).²³

TRANSMISSION AND AVAILABILITY OF DECISIONS

65. Copy of Decision Delivered at End of Hearing

A copy of the decision recorded in the minutes is given to the parties at the end of the hearing or is sent to them. The reasons are drawn up subsequently and sent to the parties.

 When the CETM releases an accused who was subject to an order to comply with the obligations set out in the *Sex Offender Information Registration Act*,²⁴ it will give the accused a copy of this order issued at the time of the verdict of not criminally responsible on account of mental disorder.

66. Availability of Decisions

The minutes of the hearing containing the decision are public. Any personal information is redacted.

Reasons for the decision are available on the website of the Société québécoise d'information juridique (SOQUIJ) at <http://citoyens.soquij.qc.ca>. All personal information is also redacted.

 Some specific statutes restrict access to documents of the CETM, including those concerning an accused who was a young person at the time of committing the criminal offence.

21. For more details, see section 73 and following of this Guide.

22. For more details, see section 77 and following of this Guide.

23. For more details, see section 40 of this Guide.

24. S.C. 2004, c. 10.

67. Translation of Decisions

Parties may ask to have the decision and reasons translated into French or English. The CETM assumes the translation costs.

However, the CETM does not assume the translation costs for any other documents in the record.

68. Transmission of Decisions to the Quebec Police Intelligence Centre

Since January 2009, the CETM's decisions have been sent to the police forces concerned in order to be registered at the Quebec Police Intelligence Centre (QPIC) of the Ministère de la Sécurité publique of Quebec.

E

FOLLOW-UP ON DECISIONS

FOLLOW-UP ON DECISIONS

69. Responsibility for Following-up on Decisions

It is not up to the CETM to ensure that the accused or any other party complies with the decision it has rendered.

70. Responsibility of the Designated Hospital

The person in charge of the designated hospital is primarily responsible, in conjunction with the treatment team, to ensure that the accused complies with the CETM's decision.

71. Failure for an Accused to Comply with Conditions

If the person in charge of the designated hospital notes or finds out that the accused has failed to comply with the conditions imposed by the CETM, the person in charge must determine to what extent the conduct of the accused increases the significance of the threat he poses to the safety of the public.

(a) Conduct of the Accused that Increases the Threat to the Safety of the Public

If the person in charge of the designated hospital considers that the accused's conduct significantly increases the threat he poses to the safety of the public in the short term, the person in charge may:

- increase the restrictions on the liberty of the accused within the limits set by the delegation of authority granted by the CETM;
- if no delegation of authority has been granted, request the intervention of the police, who can then act in accordance with the provisions of sections 672.91 and 672.92 of the *Criminal Code*, e.g., proceed with the arrest of the accused, without a warrant. Depending on the circumstances, they may bring the accused to the place indicated in the decision or order, or before a justice of the peace.

(b) Conduct of the Accused that does not Increase the Threat to the Safety of the Public

If the accused fails to comply with the conditions imposed by the CETM, but the person in charge of the designated hospital considers that the threat to the safety of the public is not significantly increased in the short term, the person in charge may:

- report the failure to comply and request that the police proceed in accordance with the provisions of sections 672.91 and 672.92 of the *Criminal Code*;
- request that the CETM review its decision.

72. Police Intervention

To obtain police intervention, the person in charge of the designated hospital must complete the form "Report to a Police Force of Failure to Comply with an Order" in **Schedule 2**.

This form must be transmitted to the police force concerned so that it may be registered with the Quebec Police Intelligence Centre (QPIC).

This form may be completed by a medical practitioner or by the person in charge of the designated hospital for any breach of conditions by the accused even before the initial decision has been rendered by the CETM.

INTERHOSPITAL TRANSFERS

73. Authority of the CETM to Order a Transfer

The CETM has the authority to order an interhospital transfer.

The transfer of an accused to a designated hospital may be ordered by the CETM, which takes into account the interest of the accused and the extent of the threat he poses to society.

74. Communication Between Hospitals

If the person in charge of the designated hospital intends to request that the accused be transferred to another hospital, the CETM expects the person in charge to inform the hospital in question prior to the hearing.

75. Order of the CETM

Any interhospital transfer of an accused must be ordered by the CETM at a hearing.

76. Transfer to a Designated Hospital

Only transfers to designated hospitals are permitted.

INTERPROVINCIAL TRANSFERS

77. Recommendation of the CETM

An accused may be transferred to the review board of another province for the purpose of the reintegration of the accused into society or his recovery, treatment or custody.

However, this transfer must be recommended by the CETM and previously authorized by the Attorney General of Quebec and the Attorney General of the province to which the accused is intended to be transferred.

If an accused is being transferred, the CETM may issue an order directing the accused to attend at a specified place in the other province, subject to any conditions that it or the review board of the province to which the accused is being transferred considers appropriate.

78. Transfer Procedure

The party requesting the interprovincial transfer must submit the reasons that, in its view, justify it. The party shall submit the following information to the CETM:

- the reasons why the transfer would facilitate the accused's reintegration into society or his treatment;
- the location where the accused will reside if the transfer is authorized;
- the name of the hospital where the accused will receive treatment;
- the name of the physician who will provide treatment (if known).

If the CETM recommends the transfer, it will inform the Attorney General of Quebec by sending its recommendation to the Director of Criminal and Penal Prosecutions.²⁵

79. Cooperation

A party who wishes to expedite his interprovincial transfer request should try to obtain the cooperation of the following people in the province to which the accused is intended to be transferred:

- the people who can provide the information required to support the party's transfer request;
- the people who can ensure that such information is actually provided.

INTERNATIONAL TRANSFERS

80. The *International Transfer of Offenders Act*²⁶ sets out the principles that govern the international transfer of offenders and allows Canada to enter into administrative agreements in this regard.

Apart from the situations covered by this statute, there is no procedure regarding the transfer of an accused outside Canada.

25. More information may be found on the website of the Director of Criminal and Penal Prosecutions at www.dpcp.gouv.qc.ca.

26. S.C. 2004, c. 21.

POSSIBILITY FOR THE ACCUSED TO LEAVE QUEBEC FOR A SPECIFIED PERIOD

81. Right and Applicable Restrictions

An accused may leave Quebec for a specified period unless:

- it is forbidden by a decision of the CETM;
- leaving Quebec would prevent him from complying with any of the conditions imposed by the CETM.

82. Objection to Intended Travel

The person in charge of the designated hospital who believes he has serious grounds to object to the intended travel of an accused under his responsibility, to either outside the area in which he lives or outside of Quebec, may take one of the following measures:

- (a) if the CETM has granted the person in charge a delegation of authority, he may restrict the right of the accused to travel;
- (b) if no delegation of authority has been granted, he may apply to the CETM to hold a hearing and rule on the issue; it will be up to the person in charge of the designated hospital to demonstrate that his objection is well-founded.

APPEALING A CETM DECISION

83. Court of Appeal of Quebec

A party who is not satisfied with a decision rendered by the CETM may appeal therefrom to the Court of Appeal of Quebec.

84. Notice of Appeal

When a party appeals a CETM decision, copy of the notice of appeal must be served on the CETM.



SCHEDULES



SCHEDULE 1A

Referral Back to Court of an Accused Found Unfit to Stand Trial on Account of Mental Disorder

CONSENT OF THE ACCUSED

SURNAME OF THE ACCUSED

GIVEN NAME OF THE ACCUSED

I hereby declare that I have read the assessment report of my attending physician and that I agree with his or her recommendation that I am fit to stand trial. Consequently, I agree that the Commission d'examen des troubles mentaux du Québec may issue an order to send me back to a court of criminal jurisdiction by decision of the Chairperson, without a hearing, pursuant to the provisions of subsection 672.48(3) of the *Criminal Code*. I am aware that it is the court that will finally decide if I am fit to stand trial and if I should remain in hospital until the date of my court appearance.

I have signed at _____, this ____ day of _____ 20 ____

SIGNATURE OF THE ACCUSED

SIGNATURE OF COUNSEL

SCHEDULE 1B

Referral Back to Court of an Accused Found Unfit to Stand Trial on Account of Mental Disorder

CONSENT OF THE PERSON IN CHARGE OF THE DESIGNATED HOSPITAL

NAME OF THE PERSON IN CHARGE OF THE HOSPITAL

As the person in charge of the hospital, I agree that the Commission d'examen des troubles mentaux du Québec proceed in the case of:

SURNAME OF THE ACCUSED

GIVEN NAME OF THE ACCUSED

by issuing an order to send the accused back to a court of criminal jurisdiction, by decision of the Chairperson, without a hearing, pursuant to the provisions of subsection 672.48(3) of the *Criminal Code*. I have read the assessment report of the attending physician, and I confirm his or her recommendation.

I have signed at _____, this ____ day of _____ 20 ____

SIGNATURE OF THE PERSON
IN CHARGE OF THE HOSPITAL

TITLE

SCHEDULE 2

Request for Police Intervention Submitted to the Quebec Police Intelligence Centre (QPIC)

Note: The form below is a translation of a form taken from the *Guide de pratiques policières* [Manual of policing practices] - Schedule D

Subject: 2.2.8 Intervention auprès d'une personne dont l'état mental est perturbé [Intervention in respect of a person in a disturbed mental state]

Report to a Police Force of Failure to Comply with an Order

Date: _____ Event No.: _____

Recipient	Issuer
Name of police force:	Name of health care facility:
Telephone:	Telephone:
Fax:	Fax:
E-mail:	E-mail:

Identification of Person	
Surname:	Telephone:
Given name:	Known address:
Date of birth:	
Places frequented:	

Types of Orders			
Criminal Orders	<i>Check</i>	Civil Orders	<i>Check</i>
Conditional discharge order from the Commission d'examen des troubles mentaux (CETM) or the court <i>SAS- Order No.:</i>		Confinement in an institution	
Detention order from the CETM <i>SAS- Order No.:</i>		Protective custody	
Psychiatric assessment (fit or unfit) <i>Order No.:</i>		Provisional custody for psychiatric assessment	
		Order for care (authorization of treatment or placement)	

Description of Failure to Comply or Escape
<input type="checkbox"/> Failure to Comply <input type="checkbox"/> Escape

Description of Condition of the Person, Specific Problems and History of Violence

--

Steps Taken by the Hospital to Find the Person

--

Medical Practitioner or Person in Charge of the Institution

Name of the medical practitioner or person in charge of the institution:	Telephone:
	Fax:

Consequently, we require police intervention to locate this person, who is to be dealt with in accordance with the applicable legal provisions.

Signature: _____

*****To be returned completed to the police force with a copy of the order.**

N.B.: Please call the police force before sending the form.

SCHEDULE 3

Judgments Regarding the Commission d'examen des troubles mentaux du Québec and Part XX.I of the *Criminal Code*

A. Principal Judgments of the Supreme Court of Canada Regarding the Commission d'examen des troubles mentaux du Québec and Part XX.I of the *Criminal Code*

- *R. v. Swain*, [1991] 1 S.C.R. 933
- *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625
- *R. v. Owen*, [2003] 1 S.C.R. 779, 2003 SCC 33
- *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*, [2004] 1 S.C.R. 498, 2004 SCC 20
- *Pinet v. St. Thomas Psychiatric Hospital*, [2004] 1 S.C.R. 528, 2004 SCC 21
- *R. v. Demers*, [2004] 2 S.C.R. 489, 2004 SCC 46
- *Mazzei v. British Columbia (Director of Adult Forensic Psychiatric Services)*, [2006] 1 S.C.R. 326, 2006 SCC 7
- *R. v. Conway*, [2010] 1 S.C.R. 765, 2010 SCC 22

B. Judgments of the Quebec Court of Appeal

- *E. F. v. Québec (Procureur général)*, 2006 QCCA 1392
- *Directeur des poursuites criminelles et pénales v. D.G.*, 2009 QCCA 2380
- *T.M. v. Institut Philippe-Pinel de Montréal*, 2010 QCCA 1711
- *R. v. B. S.*, 2013 QCCA 1729
- *T.D. v. R.*, 2014 QCCA 274

C. Judgment of the Superior Court of Quebec

- *Institut Philippe-Pinel de Montréal et L.F.*, 2011 QCCS 3744

To reach the CETM, please contact the Secretariat of the Tribunal administratif du Québec:



By telephone

Our information agents are available to answer your questions Monday through Friday, between 8:30 a.m. and 4:30 p.m. To reach them, please call one of the following numbers:

	Telephone	Fax
Montreal area	514 873-7154	514 873-8288
Quebec City area	418 643-3418	418 643-5335
Elsewhere in Quebec	1 800 567-0278 (toll-free)	



In person or by mail

You can write to us or go to one of our offices:

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Tribunal administratif du Québec
Secretariat
500, boulevard René-Lévesque Ouest
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Montreal, Quebec
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Quebec City:

Tribunal administratif du Québec
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