



VIA EMAIL

26 March 2018

The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, ON K1A 0A2
Jody.Wilson-Raybould@parl.gc.ca

Dear Minister:

Re: Criminal Justice System Review Roundtables – Final Report

Thank you for releasing the final report summarizing the Government of Canada’s roundtable discussions on transforming the criminal justice system. The Dementia Justice Society of Canada appreciates the opportunity to read what the government heard from the provincial and territorial stakeholders who were consulted.

We were also heartened to read your opening message, which states in part, “The Criminal Justice System Review is an opportunity to create a criminal justice system that is just, compassionate, and timely—one that reflects the needs and expectations of all Canadians.”

However, it appears that the stakeholder roundtables were not reflective of “all Canadians” across the lifespan. Upon our review of the final report, it seems that the discussions overlooked one major demographic group of criminal defendants: seniors. In this context, we cannot find any meaningful reference to aging, older people, or age-related conditions such as dementia.

This is troubling.

There are now more seniors than children in Canada. According to the 2016 census, there were 5.9 million people aged 65 and older, slightly exceeding the 5.8 million children aged 14 and under. Demographic experts expect this shift to continue. Notably, Statistics Canada projects that the proportion of seniors could reach nearly 25 percent of the total population by 2036.

251 Laurier Avenue West, Suite 900
Ottawa, Ontario K1P 5J6 Canada
Email: dementiajustice@outlook.com
www.dementiajustice.com

Similar shifts are happening in the criminal justice system. Three years ago, the Correctional Investigator of Canada reported that one in four federal inmates were aged 50 and older. “The population of aging or older people behind bars has risen dramatically, increasing by nearly one-third in the last five years alone,” he wrote. The Investigator continued, “Older offenders experience greater hardships in prison, have worse health outcomes, and are one of the most expensive age cohorts to incarcerate while posing the least risk to public safety.”

Likewise, Statistics Canada reported that, in 2015/2016, federal custodial admissions for adults aged 50 and older were up 22 percent and provincial/territorial admissions were up seven percent, compared to five years earlier.

To be sure, we are aware that there is an emerging patchwork of federal-level initiatives focused on aging inmates: the Correctional Service of Canada is developing a national older offender strategy, and the Canadian Human Rights Commission and Correctional Investigator have launched a joint investigation into the human rights vulnerabilities of aging and elderly federal inmates. We are also aware that a Senate committee is studying the human rights of prisoners, and we are hopeful that their findings will address the needs of older inmates.

But as you know, seniors are present at all stages of the criminal justice system. They are arrested by police; prosecuted in the courts; treated in forensic hospitals; and released on bail. Those with a mental disorder, including age-related conditions such as dementia, may be suitable candidates for diversion, or they may be found unfit to stand trial or not criminally responsible.

Like other vulnerable and marginalized populations in the criminal justice system, older defendants with mental health and addictions issues can face great difficulty re-integrating into the community. This is particularly the case if they lack social or family support and are dealing with mental health and addictions issues. The problem is exacerbated for the most vulnerable as some care homes have shown a reluctance to admit older individuals with a mental disorder whose violent or disinhibited behaviour brought them into conflict with the justice system.

At Dementia Justice, we are combing through case law, legislation and policy to identify the gaps that heighten the housing vulnerability of criminal defendants with dementia. So far, our research project, which is funded by The Law Foundation of British Columbia, has found many distressing situations. In one case involving a 63-year-old Aboriginal offender with dementia, a bail supervisor found him to be “unsupervisable,” and as such, the man was rearrested. At sentencing, the court found itself left with no suitable option other than incarceration. The court observed that the man’s lawyer had not provided any realistic alternative living arrangement. “It simply at this time does not exist,” the court stated.

In another case involving a 55-year-old man with a complex mental health diagnosis, including vascular dementia, the B.C. Review Board observed, “In next choosing between a custodial disposition and conditional discharge, we note that there is currently no place in the community that the accused can reside.” As such, the Board made an order detaining the accused in hospital.

Housing vulnerability is just one example of the challenges faced by older defendants with mental health issues, including age-related conditions like dementia. As we outlined in our written submission to the Department of Justice in August 2017, there is considerable work to be done across all stages of the criminal justice system to improve how it manages people with dementia. For ease of reference, we have enclosed a copy of our submission.

In an aging society, it is worrisome that the federal government's stakeholder roundtable final report overlooks seniors. In our view, to create a criminal justice system that is reflective of all Canadians, the needs of older defendants must be considered. As such, we are hopeful that your forthcoming report on the public consultations, as well as the Criminal Justice System Review going forward, will incorporate a lifecourse approach and address the needs of aging and elderly defendants, including those with dementia.

Thank you for your commitment to improving the criminal justice system.

Yours sincerely,

[original signed]

Heather Campbell, BA (Hons.), LLB, LLM
Director
Dementia Justice Society of Canada

Enclosure: Submission (August 2017)

cc: The Honourable Ginette Petitpas Taylor, P.C., M.P., Minister of Health
The Honourable Rob Nicholson, P.C., Q.C., M.P., Justice Critic
Murray Rankin, Q.C., M.P., Justice Critic