

When Worlds Collide: Unravelling the Issues when individuals living with dementia intersect with the Criminal Justice System

Judith A. Wahl

Advocacy Centre for the Elderly

wahlj@lao.on.ca

www.ancelaw.ca

Credits

- Thank you to Yana Nedyalkova, Barrister and Solicitor for her assistance with the research for this presentation
- Thank you to the people that agreed to be interviewed by Yana and provided ACE with their time and research materials including :
 - Michael Gobeil and Ron Hoffman , Ontario Police College
 - David Harvey, Alzheimer's Society of Ontario
(who shared with us a research paper by Corinne Alstrom that was particularly helpful)
- Yana and I talked with a lot of other people in the course of doing our research and they will all be listed in the report I am writing to put on The ACE website

ACE – Our Experience and this Research

- Practitioners perspective
 - what experience we have or don't have yet
 - Client matters primarily in LTC when charged with criminal offense
 - Involvement in Police Services Education
 - Challenges in health system
 - Access to homecare by families and people with dementia so they can remain living at home
 - Access to LTC when demonstrate “behaviours” or have had contact with criminal justice system
 - Misunderstandings about capacity and who is decision maker – is it person with dementia or someone else?
 - Experience and training of staff to care for persons with dementia
 - Calls from Duty Counsel and Judiciary about conditions on release if resident in LTC Home
- Not represent people in full spectrum of criminal justice or mental health hearings but...

ACE – Our Experience and this Research

- This request and this research
 - Intersections of Mental health system/ Criminal Justice system BUT also Consent and Capacity frameworks and Home care and Long Term Care
 - Range of responses even within one sector – depends on who you come in contact with
 - Particular issues with domestic violence policies
 - Little research in systems (legal, psychiatric, care services)about people with dementia and criminal justice system

Overview

- Contact with Criminal Justice system
- Criminal Justice Framework
 - Police and charges
 - Domestic Violence Policies
 - Crown Attorneys and Prosecution Policies
 - Access (or not) to Legal Aid
 - Legal aid certificates
 - Duty Counsel
- Long term Care and Homecare issues
 - Access to services and admission; post admission access to supports and care ; locked units; interaction with police

What Then?

Criminal Justice System – My 101

- Criminal Code
 - Offenses for which a person can be charged
 - Keep the Peace and Public safety
- Charges - Discretion
 - Seriousness of the offence
 - Circumstances leading up to crime
 - Degree to which person may be criminally liable
 - Alternative to charges
 - Cooperate with concerned family
 - Attend at emergency department
 - Convince to voluntarily admit
 - MHA s. 17 – apprehend and take for assessment

Criminal Justice System – My 101

- Charge with Criminal Code Offense
 - Appearance Notice/ release on undertaking /conditions/ keeping in custody etc
- Prosecution
 - Crown Policies on Internet
 - Peace Bonds CC s810 – can be ordered even if no charge or conviction – person agrees to condition to keep the peace – intent is to keep person from recommitting crime
 - Crown can withdraw a charge
 - Considers seriousness of offense , public safety and whether consequences of prosecution would be duly harsh
 - Charge screening – is there a reasonable prospect of conviction and if yes ,is it in public interest to discontinue the prosecution

Criminal Justice System – My 101

- Also post charge but before verdict - Fitness to Stand Trial
 - Ability or not because of mental disorder to conduct a defense at any stage before a verdict is rendered or to instruct counsel
 - Proceedings stopped until fit
 - Can be detained in hospital – review every two years until acquitted
- Trial but Verdict of Not Criminally Responsible by reason of Mental disorder – act committed but person is exempt from criminal responsibility as not capable of appreciating the nature or quality of the act or omission or of knowing it was wrong

Issues - Police

- Police training and policies
- Police College – Mental Health Training - Ron Hoffman- but there is limited training about dementia/ cognitive impairment
- Info on local resources to divert and support
- Tools – Brief Mental Health Status Screener
 - developing Cognitive Status Screener
- Domestic Violence is treated as a distinct issue
 - Police directed to lay a charge
 - Mandatory charging policy not take into consideration if alleged offender has a dementia
 - Policies developed to enforce seriousness of offenses and put an end to previous approach of treating it as a family matter

Domestic Violence

- So what are consequences for couple living at home where one spouse has dementia
- If “assault” – then can end up in Criminal Justice System
- Charge and release – conditions of release
- Not reasonable in many instances that accused stay away from spouse because spouse is the caregiver
- Possibility of changes to policy?
- Possibility of admission to LTC?
 - No room at the inn?
 - Crisis admit maybe but...availability/ choice?
 - May not be yet eligible? But is then more homecare available? Will staff claim not safe and refuse ?

Allegations of Violence / Contact with Criminal Justice System or MH system and Admission

- Eligible for LTC but LTC Homes refuse

Licensee consideration and approval

(7) The appropriate placement co-ordinator shall give the licensee of each selected home copies of the assessments and information that were required to have been taken into account, under subsection 43 (6), and the licensee shall review the assessments and information and shall approve the applicant's admission to the home unless,

- (a) the home lacks the physical facilities necessary to meet the applicant's care requirements;
- (b) the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements; or
- (c) circumstances exist which are provided for in the regulations as being a ground for withholding approval.

Written notice if licensee withholds approval

(9) If the licensee withholds approval for admission, the licensee shall give to persons described in subsection (10) a written notice setting out,

- (a) the ground or grounds on which the licensee is withholding approval;
- (b) a detailed explanation of the supporting facts, as they relate both to the home and to the applicant's condition and requirements for care;
- (c) an explanation of how the supporting facts justify the decision to withhold approval; and
- (d) contact information for the Director.

Crown Attorneys

- Understanding of mental disorder and where person with dementia fits into this
- Knowledge and appreciation of alternative options
- Our unscientific sampling - range of responses from charge would be withdrawn to peace bond to prosecution
- Is there a reasonable possibility of conviction?
- Does a peace bond have any meaning to person with dementia as its meant to deter?
- Likely not want to go down path to Unfit to Stand Trial
- And if convicted – sentencing?
 - And again where does person go? LTC Home reaction if know of conviction for “violent” offense
 - Likely not want to go down path of NCR
 - Incarceration – jails not set up to care for person with dementia

Defense Counsel/ Legal Aid/ Duty Counsel

- Criminal Lawyers Association
- Legal Aid or lack thereof
- Many seniors of limited or fixed income but may have assets
- Legal aid Eligibility – NO SENIOR IN THIS PROVINCE WITH SENIORS GUARANTEED INCOME IS ELIGIBLE FOR LEGAL AID CERTIFICATES to retain counsel because of financial eligibility guidelines
- Duty Counsel – knowledge or lack thereof of dementia, capacity , resources
- Conditions of release – lack of understanding of LTC system and lack of alternative beds, that if person can't return to LTC in allotted time (leave periods) will LOSE accommodation, lack of understanding of seniors other housing alternatives and care supports systems

Legal Aid

- Mental health initiative
- Will it address response in that sector?
- Development of mental health tool?
 - What will that do and will it help with these issues?

Long Term Care System

- Eligibility for Admission refusals to take applications unless return home from hospital – creating crisis and policies that don't reflect the law
- If eligible, approval by LTC Homes issues as stated above
- If admitted
 - requirements to meet care needs – next slides on requirements to address responsive behaviours but still see:
 - Failure to follow through on care plans
 - Labeling all “altercations” between residents as resident to resident “abuse”
 - Abuse should be used only if perpetrator has intention or has duty and then neglects duty not when interaction because of behaviours
 - Workplace Safety issues - need to keep workers safe but that's not necessarily resolved by transfers
 - Is a LTC Home the RIGHT place – alternatives?

Requirements to address Responsive Behaviours - LTCHA s. 53

53. (1) Every licensee of a long-term care home shall ensure that the following are developed to meet the needs of residents with responsive behaviours:

1. Written approaches to care, including screening protocols, assessment, reassessment and identification of behavioural triggers that may result in responsive behaviours, whether cognitive, physical, emotional, social, environmental or other.
 2. Written strategies, including techniques and interventions, to prevent, minimize or respond to the responsive behaviours.
 3. Resident monitoring and internal reporting protocols.
 4. Protocols for the referral of residents to specialized resources where required.
- O. Reg. 79/10, s. 53 (1).

(2) The licensee shall ensure that, for all programs and services, the matters referred to in subsection (1) are,

- (a) integrated into the care that is provided to all residents;
 - (b) based on the assessed needs of residents with responsive behaviours; and
 - (c) co-ordinated and implemented on an interdisciplinary basis.
- O. Reg. 79/10, s. 53 (2).

Requirements to address Responsive Behaviours - LTCHA Reg s. 53

- (3) The licensee shall ensure that,
- (a) the matters referred to in subsection (1) are developed and implemented in accordance with evidence-based practices and, if there are none, in accordance with prevailing practices;
 - (b) at least annually, the matters referred to in subsection (1) are evaluated and updated in accordance with evidence-based practices and, if there are none, in accordance with prevailing practices; and
 - (c) a written record is kept relating to each evaluation under clause (b) that includes the date of the evaluation, the names of the persons who participated in the evaluation, a summary of the changes made and the date that those changes were implemented.
- (4) The licensee shall ensure that, for each resident demonstrating responsive behaviours,
- (a) the behavioural triggers for the resident are identified, where possible;
 - (b) strategies are developed and implemented to respond to these behaviours, where possible; and
 - (c) actions are taken to respond to the needs of the resident, including assessments, reassessments and interventions and that the resident's responses to interventions are documented. O. Reg. 79/10, s. 53 (4).

Is failure to follow care plan, neglect that is reportable to MOHLTC?

24. (1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director:

- 1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.**
- 2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.**
3. Unlawful conduct that resulted in harm or a risk of harm to a resident.
4. Misuse or misappropriation of a resident's money.
5. Misuse or misappropriation of funding provided to a licensee under this Act or the *Local Health System Integration Act, 2006*.

Duty on practitioners and others

(4) Even if the information on which a report may be based is confidential or privileged, subsection (1) also applies to a person mentioned in paragraph 1, 2 or 3, and no action or other proceeding for making the report shall be commenced against a person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion:

1. A physician or any other person who is a member of a College as defined in subsection 1 (1) of the *Regulated Health Professions Act, 1991*.
2. A person who is registered as a drugless practitioner under the *Drugless Practitioners Act*.
3. A member of the Ontario College of Social Workers and Social Service Workers. 2007, c. 8, s. 24 (4).

Long Term Care – Locked Units

- Provisions on locked units NEVER proclaimed in effect
- URGENT NEED to get this addressed
- Duty of care to stop person from leaving facility- when is this appropriate vs Unlawful detention

- Locked units in Retirement homes are NOT legal and section in Retirement Homes Act permitting Retirement home landlords to have locked units should be repealed – these are TENANCIES NOT REGULATED CARE FACILITIES yet are treated as alternatives to LTC homes

Requirements to Call Police in LTC System

- LTC Homes act requires that police be contacted if licensee thinks that abuse/ neglect could be a Criminal Code offense
- Why? Because it wasn't happening before so included this in legislation to prompt response
- BUT
 - Misunderstandings of when to call
 - Is it really a policing issue or was it lack of care?
 - What happens next AFTER the police arrive???

Police Notification

LTCHA Regulation S.98

Every licensee of a long-term care home shall ensure that the **appropriate police force is immediately notified of any alleged, suspected or witnessed incident of abuse or neglect** of a resident that the licensee suspects may constitute a criminal offence.

Retirement Homes and Requirements to contact police

- Similar provisions in Retirement Homes Act
- What happens then?

Retirement Homes Act

Policy of zero tolerance of abuse and neglect

O. Reg 166/11 s. 15

Policy of zero tolerance of abuse and neglect

15.

(2) The procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents described in clause 67 (5) (e) of the Act shall include details outlining who will undertake the investigation and who will be informed of the investigation.

(3) The policy to promote zero tolerance of abuse and neglect of residents described in subsection 67 (4) of the Act shall ...

(c) identify measures and strategies to prevent abuse and neglect;...

(f) provide that the licensee of the retirement home shall ensure that the appropriate police force is immediately notified of any alleged, suspected or witnessed incident of abuse or neglect of a resident that the licensee suspects may constitute a criminal offence

Hospitals and ALC and Mental Health

- ASO research – people not wanting to seek assistance from variety of resources because of negative experiences
- Hospital discharge policies that want to avoid ALC patients but that don't reflect the Ontario law – how are these contributing to the worlds colliding ?

SO.. What to do next?

- Ripe for all kinds of research to get evidence to change practices
- Domestic Violence Policy – could it be modified?
- Are the right resources and responses there?
- Are LTC homes the rights place?
- LOCKED UNITS – need to proclaim the law
- Mental health system response to increase in dementia
- Intersection of systems – criminal justice/ legal services/ mental health services/ Long term care / home care
 - What are the pathways???

Thank You!

Judith Wahl

Advocacy Centre for the Elderly

wahlj@lao.on.ca

www.ancelaw.ca