



**VIA EMAIL**

September 2020

Dear B.C. Party Leaders:

**Re: Access to Justice  
Criminal Defendants with Dementia**

On behalf of Dementia Justice Canada, I am seeking your party's answer to the following campaign question: If elected, how will your party improve access to justice for persons with dementia who enter the criminal justice system?

Established in 2017, Dementia Justice is a public advocacy and research association dedicated to advancing the rights, needs and dignity of people with dementia who are in conflict with the criminal justice system. We aim to make a positive impact by advocating for systemic reforms and by conducting interdisciplinary legal and policy research.

While most people with dementia will not have contact with the criminal justice system, it is well-recognized that in some cases, violence and inappropriate behaviour can be unfortunate by-products of the condition. Indeed, there is a growing awareness and willingness to acknowledge that some of the behavioural symptoms associated with dementia (e.g., aggression, disinhibition, hypersexuality) can bring people into conflict with the law.

Amid the COVID-19 pandemic, there is emerging evidence that some persons with dementia are experiencing worsening symptoms, including an increase in agitation and aggression. This deterioration is occurring among those living in residential care and their own homes. In the institutional setting, recipients of harm include nurses, personal support workers and other residents. At home, spouses and other caregivers are at risk. Sometimes police are called.

Coming into contact with law enforcement and entering the criminal justice system can have many collateral consequences for persons with dementia. In a [report](#) funded by The Law Foundation of British Columbia's Legal Research Fund, we address some of the challenges facing criminal defendants with dementia and make 30 recommendations which, if implemented, have a reasonable chance of improving their access to justice.

In particular, we make the following recommendations for the Government of British Columbia:

- ✚ Update the provincial *Charge Assessment Guidelines* (CHA 1) and *Alternative Measures for Adult Offenders* (ALT 1) to address the special circumstances of criminal defendants with dementia, including those charged with serious crimes such as murder.
- ✚ Assess whether the province's specialized courts are meeting the needs of criminal defendants with dementia, and if not, develop a new or modified approach.
- ✚ Commission a law reform study on substitute and supported decision-making for criminal defendants with dementia, with a focus on capacity/consent to diversion and alternative measures.
- ✚ Establish a provincial task force to review, adapt and implement the recommendations from the Frank Alexander Inquest in Manitoba, including:
  - Increase the number of special care units and residential care beds dedicated to persons with dementia who exhibit violent or aggressive behaviour.
  - Enhance follow-up procedures for prospective home care clients with dementia who decline services.
  - Develop a funding protocol for care homes housing a criminal defendant with dementia.
- ✚ Revise the Temporary Absences policy in Chapters 5.B.2 (Assisted Living) and 6.D (Residential Care) of the *Home and Community Care Policy Manual* to account for leaves of absence due to involvement with the criminal justice system.
- ✚ Develop a provincial strategy to address the unintended consequences of ageing-in-place, including the possible increase in domestic violence.
- ✚ Develop no-contact order guidelines for police and the judiciary in cases where the criminal defendant has or is suspected of having dementia, with an emphasis on rapid housing access.
- ✚ Replace the deemed consent model in s 31 of the *Mental Health Act* with a constitutional approach.
- ✚ Amend s 32 of the *Mental Health Act* to protect involuntary patients from discipline.

- ✚ Amend s 37 of the *Mental Health Act* to ensure the civil liberty protections in the *Residential Care Regulation* apply to involuntary patients on leave in facilities governed by the *Community Care and Assisted Living Act* and the *Hospital Act*.<sup>1</sup>

We look forward to hearing how your party will improve access to justice for people with dementia who enter the criminal justice system. Kindly note that we may post responses on our website as they are received.

Thank you for your time and consideration during these difficult and busy days.

Stay well.

Yours sincerely,

Heather Campbell Pope, BA (Hons.), LLB, LLM  
Founder  
Dementia Justice Canada

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<sup>1</sup> See Heather Campbell Pope, "[Seniors with dementia need protection from B.C.'s Mental Health Act](#)" *Times Colonist* (8 December 2019).