



**VIA EMAIL**

12 November 2020

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Dear Ministers:

**Re: National Dementia Strategy – Criminal Justice Reform  
Second Annual Report to Parliament**

On behalf of Dementia Justice Canada, I thank the Public Health Agency of Canada for recently sharing the second annual Report to Parliament on Canada's national dementia strategy. It is heartening to read about the many dementia-related activities underway across the country. We are grateful to PHAC's Dementia Policy Secretariat for putting together such an inspirational summary of the progress being made in Canada.

We are proud to live in a country with a government that takes the well-being of people with dementia so seriously; however, we are concerned that the annual report, and the national dementia strategy more generally, do not substantively consider people with dementia who enter the criminal justice system due to responsive behaviours.

Respectfully, this omission seems in violation of subsection 3(1) of the *National Strategy for Alzheimer's Disease and Other Dementias Act*, which requires the Minister of Health to develop and implement a comprehensive national strategy that addresses all aspects of dementia.

To help bring the national dementia strategy in line with this legislative requirement, we write to share our short-term recommendations, including the appointment of a justice sector representative to the Ministerial Advisory Board on Dementia, and the establishment of a federal law reform commission to study, *inter alia*, discretionary sentencing for murder.

We acknowledge these are extremely busy and difficult times with many competing priorities, and we understand the annual report provides just a snapshot of existing efforts; however, in a modern liberal society like Canada, substantively neglecting the medical-legal concerns of criminal defendants with dementia is at odds for a strategy that places human rights at its core. As you know, the criminal justice system can be a site of serious rights violations.

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

Our concern about the national dementia strategy's marginalization of criminal justice reform is not new; however, amid the COVID-19 pandemic, which has had a devastating effect on people with dementia and their families, the issue has a renewed sense of urgency. Notably, emerging evidence suggests that lockdown measures in care homes and the wider community have contributed to worsening dementia symptoms, including increases in agitation and aggression.<sup>1</sup>

In normal times, we know these symptoms can manifest as violence and other responsive behaviours that may lead to justice-system involvement. Over the last several months, as some people with dementia have experienced rapid decline, we have heard anecdotal reports of police being called. Incidents like the one publicly shared in July by the North Vancouver RCMP, where officers responded to a call from a woman whose husband with dementia was agitated after being stuck at home for three days. Fortunately, police calmed him down and then went for a walk with him. We are grateful for the compassionate response of these frontline officers.

We also appreciate your government's bail reforms, which received Royal Assent in June 2019, and the many preventative initiatives underway across Canada, some of which were mentioned in the Health Minister's annual report. These include B.C.'s Behavioural and Psychological Symptoms of Dementia Algorithm; the specialized interprofessional team in Montreal; and Behavioural Supports Ontario, which according to the program's 2019/2020 annual report, has led to a reduction of police intervention in the Toronto region.

But as you know, not every incident can be prevented. Sometimes people with dementia who are experiencing responsive behaviours will enter the criminal justice system.

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<sup>1</sup> See e.g., Yat Fung Shea et al, "Worsening behavioural and psychological symptoms of dementia during the coronavirus disease 2019 pandemic" *Psychogeriatrics* (14 September 2020).

People like widower Peter Brooks, who at age 76 was convicted of second degree murder and sentenced to life in prison with no parole eligibility for 10 years; and 74-year-old Piara Singh Sandhu who was charged with two counts of second degree murder after he allegedly pried the metal base off a bedside table and bludgeoned his two care home roommates to death; and World War II veteran Jack Furman, who at age 94 was charged with second degree murder after he allegedly attacked his care home roommate with a shelf.

We shared Mr. Furman's story in our [report](#) delivered to your government in February 2019 and would like to do so again.

In August 2013, Mr. Furman, at age 94, was charged with second degree murder in the death of 85-year-old William May. Mr. May died after Mr. Furman, who had severe dementia, allegedly attacked him with a shelf. The men were roommates in a special care unit in Vernon, B.C.

Mr. Furman was a decorated World War II veteran. Born in Calgary, he had been honoured for his military service in the American-Canadian special forces unit known as the Devil's Brigade. During the war, he served in the Aleutians and Europe. His experiences included surviving an intense campaign that had a 77 percent casualty rate. In 1944, Mr. Furman was shot twice—in his chest and neck. He recovered and returned to battle.

In 1971, Mr. Furman moved to Vernon with his wife.

In his later years, Mr. Furman was diagnosed with dementia. Eventually it became so severe that he could no longer live at home. In August 2013, he was admitted to a care home's special care unit, which housed residents with advanced dementia or major behavioural issues.

For the first three days, Mr. Furman stayed in a lockable room by himself. This was done to give staff a chance to assess him. Although he could be querulous, he showed no signs of aggression toward the workers, and they did not observe any long-term psychological effects of his wartime experience. However, he did appear confused and expressed a desire to go home.

Once assessed, Mr. Furman was moved into a room with Mr. May. Prior to the attack, there was no known aggression between the men. Mr. Furman also had no known history of aggression when he was living in the community.

Seven days later, Mr. May was dead. On the night of his death, after hearing a noise coming from their room, a care aide entered and found Mr. May lying with his head at the foot of his bed. Mr. Furman was standing beside him, holding a blood-covered shelf above his head as though he was about to strike Mr. May.

At the time, Mr. Furman was highly agitated and speaking angrily, referring to "bunkers" and suggesting that the nurse was "one of them." When staff tried to come to Mr. May's aid, Mr. Furman made threatening motions toward them with the shelf. A worker called 911.

Police arrived, disarmed Mr. Furman and took him into custody. He was charged with second degree murder and placed on bail in the 40+ bed Hillside Psychiatric Centre in Kamloops, B.C., which is a secure psychiatric unit that provides services to adults with acute mental illness or severely dysfunctional behaviours that cannot be managed in their local area. The acute psychiatric facility's focus is on rehabilitation strategies to promote stabilization and reintegration into the community. Notably, Mr. Furman was a frail 94-year-old with severe dementia, a condition which authorities deemed unlikely to improve.

Three months later, the Crown decided that a prosecution against Mr. Furman was no longer in the public interest and stayed the murder charge. In a media statement, the Crown explained that, based on the evidence, it appeared that at the time of the attack Mr. Furman had been "in a delusional state arising out of his advanced dementia" and that he remained "confused and disoriented as to both his current circumstances and the circumstances of the incident in question." The Crown concluded that Mr. Furman would likely be found unfit to stand trial.

Mr. Furman died two months later.

Tragedies like this motivate us to do our work. In our view, Mr. Furman should not have been charged in the first place. There were other options. His case could have been diverted out of the criminal justice system before the information was laid. Simply put, it was not in the public interest to subject this 94-year-old veteran to the blunt force of criminal prosecution.

Of course, the decision to prosecute in this case was a provincial matter. But as the national dementia strategy is an opportunity to collaborate toward common goals across jurisdictions, we strongly believe prosecutorial decision-making ought to be addressed in the strategy. Best practices and promising approaches can be shared; in Manitoba, for instance, the [prosecutorial guidelines](#) state: "All offences are potentially eligible for restorative approaches (for example, a homicide by a person suffering with dementia could be diverted to the mental health system)." This guidance on dementia cases should be available to Crown attorneys in all jurisdictions.

While any prosecutorial reforms are too late for Mr. Furman, we are hopeful for a future in which people with dementia do not languish unnecessarily in the criminal justice system.

As such, we call upon your government to help accelerate the achievement of this vision. In addition to providing pan-Canadian leadership on issues such as prosecutorial decision-making, there are some matters like *Criminal Code* reform that fall squarely within federal jurisdiction. Notably, as the January 2017 sentencing of 76-year-old Peter Brooks shows, mandatory minimums can have a severe and unjust effect on offenders with dementia.<sup>2</sup>

Mr. Brooks—who had dementia at the time of the offence—was convicted of second-degree murder and sentenced to life in prison with no parole eligibility for 10 years. While the jury made no recommendation on parole eligibility, the Crown and defence jointly suggested the

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<sup>2</sup> *R v Brooks*, 2017 ONSC 439.

mandatory minimum of 10 years in prison. Counsel acknowledged several aggravating factors, including the planned and brutal nature of the killing, as well as the vulnerability and number of victims harmed during the incident. Both sides, however, pointed to Mr. Brooks' worsening dementia as a basis for imposing the 10-year minimum.

In the end, the judge sentenced Mr. Brooks to the 10-year minimum penalty, noting that it was "clear" that his mental disorder contributed to making him dangerous: "He was dangerous to others [at the time of the killing] in 2013 and I conclude that he remains a danger to vulnerable individuals today." The judge also said that given Mr. Brooks' advancing age and lack of family and community support, the 10-year parole ineligibility period "effectively means that he is unlikely to ever be released from prison."

In our view, this outcome reflects poorly on Canada's criminal justice system. While we do not take the position that people with dementia should automatically be immune from criminal liability by virtue of their diagnosis, we believe that in cases like Mr. Brooks', other more humane options ought to be available. For example, when compared to the status quo, the diminished responsibility defence holds much promise because of its potential to strike a more appropriate balance between protecting public safety and achieving fair and humane outcomes for people with dementia who fall in the grey zone of criminal responsibility.

As we recommended in our 2019 report, we encourage the federal government to consider codifying the diminished responsibility defence as a mechanism to allow for discretionary sentencing in situations where the trier of fact senses that it would be unjust to hold a person with dementia (and other mental disorders) who would otherwise be guilty of murder to the same high standard as other killers. Specifically, we urge you to establish a law reform commission to study the defence—a defence that has been statutorily available in Northern Ireland;<sup>3</sup> New South Wales,<sup>4</sup> Queensland,<sup>5</sup> the Australian Capital Territory<sup>6</sup> and the Northern Territory;<sup>7</sup> as well as several other Commonwealth countries such as Singapore,<sup>8</sup> the Bahamas<sup>9</sup> and Barbados.<sup>10</sup> It has also been recognized in Hong Kong<sup>11</sup> and Ireland.<sup>12</sup>

With Senator Kim Pate's discretionary sentencing bill currently before the Senate,<sup>13</sup> now is a particularly timely moment to conduct a federal law reform study on alternatives to mandatory minimums for murder—options like the defence of diminished responsibility.

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<sup>3</sup> *Criminal Justice Act (Northern Ireland) 1966* (c 20), s 5, as amended by *Coroners and Justice Act 2009* (c 25), s 53.

<sup>4</sup> *Crimes Amendment (Diminished Responsibility) Act 1997* (No 106), amending *Crimes Act 1900* (No 40), s 23A.

<sup>5</sup> *Criminal Code and Other Acts Amendment Act 1961*, 10 Eliz 2 No 11, amending *Criminal Code Act 1899*, s 304A.

<sup>6</sup> *Crimes (Amendment) Ordinance (No 2) 1990*, amending *Crimes Act 1900*, s 14.

<sup>7</sup> *Criminal Reform Amendment Act (No 2) 2006*, s 17, amending *Criminal Code Act*, s 159.

<sup>8</sup> *Penal Code* (1961), s 300 (Exception 7).

<sup>9</sup> *Penal Code*, s 305.

<sup>10</sup> *Offences Against the Person Act*, s 4.

<sup>11</sup> *Homicide Ordinance* (Cap 339), s 3.

<sup>12</sup> *Criminal Law (Insanity) Act 2006*, s 6.

<sup>13</sup> Bill S-207, *An Act to amend the Criminal Code (independence of the judiciary)*, 2nd Sess, 43rd Parl, 2020 (first reading 30 September 2020).

Mercifully, such fatal and otherwise extreme violence by people with dementia is rare. Indeed, it is uncommon for persons with dementia to be charged with any crime. If they do come into conflict with the law, it is more likely to be for behaviours such as shoplifting, trespassing, public urination and unwanted sexual advances. In other cases, a person with dementia may be charged with assault, often resulting from agitated behaviour at home or in the community.

Impressively, there are a handful of initiatives addressing these situations. Earlier this year, for instance, the Provincial Human Services and Justice Coordinating Committee in Ontario released a guidebook to help caregivers and service providers of older adults, including those with dementia, navigate the criminal justice system. Some courthouses are also working with partners like local Alzheimer's societies and the Canadian Mental Health Association to divert people with dementia from the criminal justice system and into the health care system.

Yet across the country, the approach to dementia and criminal offending remains piecemeal. We remain optimistic, however, that under your leadership, and in partnership with provinces and territories, the national dementia strategy can be an opportunity for collaboration and coordination across borders to ensure that people with dementia, no matter their location, have access to a fair and humane criminal justice system.

To help move Canada toward such a system, we recommend the following immediate steps:

- ✚ The Parliament of Canada amend subsection 4(3) of the *National Strategy for Alzheimer's Disease and Other Dementias Act* to expand the Ministerial Advisory Board's role to matters beyond the health sector so as to include criminal justice reform.
- ✚ The Parliament of Canada amend subsection 4(4) of the *National Strategy for Alzheimer's Disease and Other Dementias Act* to expand the Ministerial Advisory Board's sectoral representation to include a justice sector representative.
- ✚ Even in the absence of legislative reform, the federal Minister of Health appoint a justice sector representative to the Ministerial Advisory Board on Dementia.
- ✚ The Parliament of Canada establish a law reform commission to consider, *inter alia*:
  - amending s 672.851 of the *Criminal Code* to ensure that permanently unfit accused persons with dementia who under current law and policy "pose a significant threat to the safety of the public" do not languish indefinitely in the criminal justice system;
  - amending s 717 of the *Criminal Code* to ensure, when appropriate, that persons with dementia are not excluded from accessing alternative measures due to compromised capacity; and
  - codifying the diminished responsibility defence into the *Criminal Code*.

In the coming months and years, more Canadians with dementia will enter the criminal justice system. We urge you to respond to this emergent challenge and fulfill your obligation under the *National Strategy for Alzheimer's Disease and Other Dementias Act* to develop and implement a comprehensive national strategy that addresses all aspects of dementia.

We look forward to continuing this dialogue and working with you and other concerned partners to achieve reforms that reduce the criminalization of people with dementia.

Thank you for your time and consideration.

Yours sincerely,

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Founder  
Dementia Justice Canada

cc: The Honourable Erin O'Toole, P.C., C.D., M.P., Leader of the Official Opposition  
The Honourable Rob Moore, P.C., M.P., Shadow Minister for Justice and the Attorney  
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The Honourable Michelle Rempel Garner, P.C., M.P., Shadow Minister for Health  
Mr. John Brassard, M.P., Shadow Minister for Veterans Affairs  
Ms. Rosemarie Falk, M.P., Shadow Minister for Seniors  
Senator Kim Pate, C.M.  
Ms. Anne Kelly, Commissioner of the Correctional Service of Canada  
Dr. Ivan Zinger, Correctional Investigator of Canada  
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Members, Ministerial Advisory Board on Dementia  
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