



VIA EMAIL

September 2019

Dear Federal Party Leaders:

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

On behalf of Dementia Justice Canada, I am seeking your party's commitment to improving access to justice for criminal defendants with dementia. In particular, I am asking that your party share with us your answer to the following campaign question: How will your party improve the lives of persons with dementia who are in conflict with the criminal justice system?

Founded in 2017, Dementia Justice Canada is dedicated to advancing the rights, needs and dignity of people with dementia who are in conflict with the criminal justice system. We aim to achieve our objectives through public advocacy, awareness-raising, education, and interdisciplinary legal and policy research. The organization transitioned from an incorporated society to an unincorporated association in April 2019.

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.

Entering the criminal justice system can have many collateral civil consequences for persons with dementia. Earlier this year, in a report funded by The Law Foundation of British Columbia's Legal Research Fund, we address one of the most fundamental concerns: housing vulnerability. Following an arrest, criminal charge or conviction, it can be difficult for persons with dementia to access appropriate housing—whether in assisted living, residential care or the larger community.

As such, in our report, we make 30 recommendations which, if implemented, have a reasonable chance of improving access to justice and housing security for this vulnerable population. Given the multiple systems and stakeholders involved, including the shared federal/provincial/territorial responsibility for justice and health, solutions will require coordinated efforts and cooperation among many players. In this spirit, we make two kinds of recommendations in our report.

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First, we make high-level recommendations that could help foster the political will to consider and implement the necessary reforms. To-date, the federal government has demonstrated a tepid approach to addressing the challenges facing criminal defendants with dementia: While the national dementia strategy mentions inmates in federal custody, it does not address the broader population of criminal defendants with dementia who are moving through the justice system prior to conviction.

From a legal and policy perspective, this omission neglects many issues. For instance, it risks overlooking important considerations about police and prosecutorial discretion; the practical consequences of no-contact orders, including in cases where the incident occurs at a nursing home; the laws and policies governing temporary absences from long-term care; the indefinite languishing of chronically unfit accused who exhibit responsive behaviours and are deemed a significant threat to public safety; the civil liberties of mental health patients; the suitability of specialized mental health courts for dementia patients; capacity and consent to diversion and alternative measures; as well as mandatory minimums and potential reforms such as codification of the diminished responsibility defence.

Therefore, to encourage government action on these issues, we make the following recommendations in our report:

- ✚ The Parliament of Canada amend subsection 4(3) of the *National Strategy for Alzheimer’s Disease and Other Dementias Act* to expand the Advisory Board’s role to matters beyond the health sector, including access to justice.
- ✚ The Parliament of Canada amend subsection 4(4) of the *National Strategy for Alzheimer’s Disease and Other Dementias Act* to expand the Advisory Board’s sectoral representation to the justice community.
- ✚ The federal Minister of Health appoint a justice sector representative to the Ministerial Advisory Board on Dementia.
- ✚ The Government of Canada expand the prioritized principle lens of the Dementia Community Investment Fund to matters beyond health equity, including access to justice.

Our second set of recommendations are specific legal and policy suggestions that cover a range of issues. At the federal level, our recommendations include:

- ✚ The Parliament of Canada reform 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.

- ✚ The Parliament of Canada amend 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.
- ✚ The Parliament of Canada consider codifying the diminished responsibility defence into the *Criminal Code*.

We look forward to hearing whether your party will commit to improving access to justice for criminal defendants with dementia, and in particular, the steps your party will take to improve the lives of persons with dementia who are in conflict with the criminal justice system. We will post responses on our website.

Thank you for your time and consideration.

Yours sincerely,

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Encl: [Nowhere to Live: Housing Vulnerability of Criminal Defendants with Dementia](#)