



**VIA EMAIL**

September 2020

Dear Saskatchewan 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 special care homes and their own dwellings. 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, while our report focuses on the legal and policy framework in British Columbia, we looked across provincial and territorial jurisdictions for best practices and promising approaches. We are grateful that Government of Saskatchewan staff kindly took the time to respond to our research inquiries.

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Saskatchewan staff advised us that when a care home is aware of a criminal charge, the next steps are based on risk assessment and may include enhanced observation (short-term or, in rare circumstances, ongoing) and additional support for assessment and care planning. They also informed us that in Regina, there is a 10-bed unit for males who have high-risk behaviours that remain unstable and require longer-term placement. There is also a similar unit for females, although their care needs are less intense.

Building on this foundation, we recommend Saskatchewan address the following issues to improve access to justice for criminal defendants with dementia:

- ✚ Update the provincial *Public Prosecution Policies (Proceeding with Charges and Alternative Measures [Adult])* to address the special circumstances of criminal defendants with dementia, including those charged with serious crimes such as murder.
- ✚ Assess whether the province's therapeutic 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, such as:
  - Increase the number of 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 Transfers policy in Section 4.5 (Access to Services) of the *Program Guidelines for Special Care Homes* to account for leaves of absence due to involvement with the criminal justice system.

Other considerations include the unintended consequences of ageing-in-place, including the possible increase in domestic violence; the practical consequences of no-contact orders, including in cases where the incident occurs at a special care home; and the civil liberties of mental health patients involuntarily detained and treated under *The Mental Health Services Act*.

We look forward to hearing how your party will build on the good work already underway in Saskatchewan to 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,

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Founder  
Dementia Justice Canada