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When dementia patients commit crimes: Can Canada's justice system handle the 'grey wave'?

But in his final years, Lee's orderly life veered into chaos as dementia, Parkinson's and paranoid psychosis took hold.

ELIZABETH PAYNE Updated: June 22, 2018



Heather Campbell, seen here outside the Ottawa court house, is head of an organization called Dementia Justice that is raising awareness about the lack of preparedness for people with dementia entering the justice system. *TONY CALDWELL / OTTWP*



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By all accounts, Peter Lee lived quietly and productively for most of his life.

The son of a Shanghai doctor, Lee studied economics and politics in China and worked in a bank. He came to Canada in 1966, eventually settling with his family in Ottawa, where he first ran a small store, then worked as an accountant.

But in his final years, Lee's orderly life veered into chaos as dementia, Parkinson's and paranoid psychosis took hold.

As a result, he lived the last years before his death, some time after his final Ontario Review Board hearing in late 2016, in a kind of legal limbo that experts say underscores how ill prepared the Canadian justice system is to deal with the growing number of dementia patients who are being charged with crimes.

By 2009, Lee's family could no longer care for him at home, and he was moved to a secure unit at Ottawa's Peter D. Clark Long-Term Care Home for residents with behavioral issues related to dementia. Secure units allow residents freedom within the residence without access to the outside — controlled exit doors as well as garden areas with no outside access, keep dementia patients from wandering and, in theory, safe.

In October of that year, the then-84-year-old Lee is alleged to have smothered Frank Moir, his 88-year-old neighbour at the long-term care home, a naval veteran described as "a lovely man." The two men shared a bathroom.

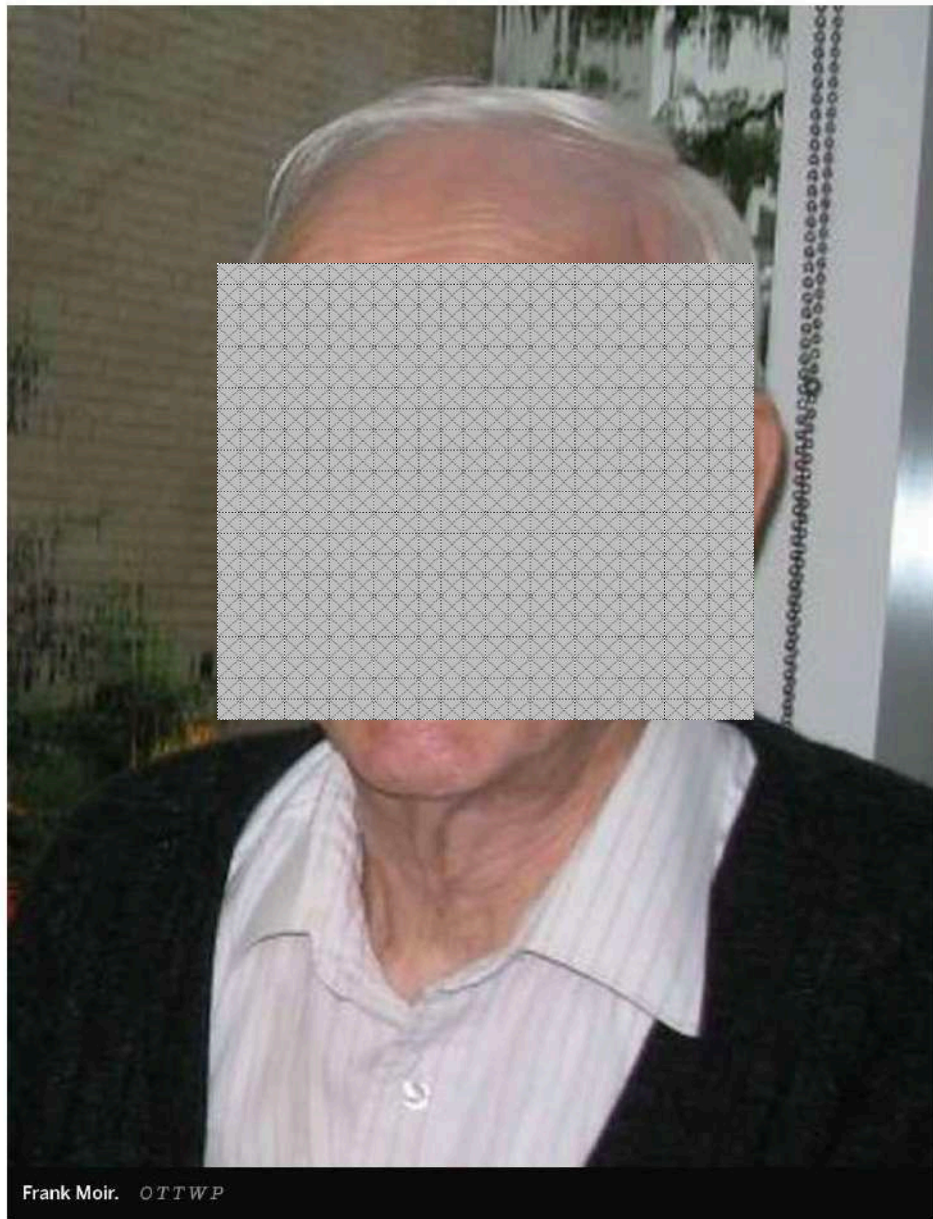
Lee had only been living in the room for a short time. Moir's wife, Betty, had occupied it until her death a month earlier.

Lee was charged with second-degree murder, a crime for which he would never stand trial. He was found unfit and, with worsening dementia and related paranoia, lived the rest of his life in a secure forensic unit at the Royal Ottawa Hospital, where his family regularly visited and he would sometimes strike out at those providing him with care.



Peter Lee arrives at the Ottawa courthouse in 2010. *PAT MCGRATH / THE OTTAWA CITIZEN*

His lawyer, Leonard Shore, called Lee "a lovely old fellow." Shore said he was torn at first that the case could never be tried and resolved. But Lee's family came to terms with his situation. At the time Moir's family said they hoped the tragedy would bring about change.



The unit at the Royal Ottawa Hospital where Lee spent his final years was not designed for the care of an elderly patient with complex medical needs. Lee suffered from numerous medical conditions that required intensive nursing. And the forensic unit was not built for the frail elderly with dementia. Unlike nursing homes, it did not have specially trained staff or specialized equipment. But, as his condition worsened, Lee's family concluded it was best that he remain at the Royal's forensic unit, where he was safe and well cared for.

There may not have been many options, since long-term care homes are often reluctant to take elderly residents who have been involved with the legal system as a result of violent actions.

It is part of a “double stigma” that awaits some patients with dementia who have also been charged with a crime, says Dr. Mathieu Dufour, associate chief of the Royal’s forensic program in Ottawa.

“Even when they get better, it is harder to find placements for them,” he said. “They suffer from double stigma, not only because of mental illness, but also because they are in the forensic (or criminal justice) system.”

Lee’s case is one of a growing number in which people with dementia have been charged with crimes, usually while in institutional care, sometimes in their own homes.

It remains the rare exception for people with dementia to become involved with the criminal justice system, but some do, especially those who are aggressive or who have lost inhibitions because of dementia, said Heather Campbell, founding director of Dementia Justice. The organization advocates for the rights of people with dementia.

Campbell, a former lawyer and PhD student at Queen’s law, formed the organization out of concern that Canada’s national dementia strategy did not address justice issues and that the justice system was ill-prepared to handle criminals or those accused of a crime who had dementia.

The numbers of Canadians with dementia is growing dramatically, from about half a million, according to recent estimates, to an expected million within the next 15 years. Many people with dementia will end up in long-term or other residential care.

It is estimated that as many as 80 per cent of long-term care residents have dementia and that 90 per cent of people with dementia experience at least one responsive behaviour — often aggressive reactions to what they perceive as threats — over the course of the disease. For some, aggressive behaviours are a daily, and highly disruptive, occurrence. In long-term care and other institutions where the frail elderly live together, conflicts that stem from violent behaviours related to dementia can be magnified and the results can be tragic.

In rare cases, dementia patients will be charged with injuring or even killing someone, as in Lee’s case. “The sad reality is that a small number of killers with dementia will enter a criminal justice system that is ill-equipped to manage their needs,” Campbell wrote in a blog post about the issue (dementiajustice.com/blog).

Cases such as Lee’s are rare. Dementia-related aggression, though, such as resident-to-resident violence in nursing homes and long-term care homes, is on the rise.

Between 2013 and 2014 in Ontario, for instance, there were 13 homicides in long-term care homes caused by other residents, according to a report from the province’s Geriatric and Long-Term Care Review Committee, which, in 2016, called the issue “urgent and persistent.”

Ottawa, like most parts of the country, has seen its share of such violence in long-term care and nursing homes, including more than one case, reported by this newspaper, of a resident sexually assaulting another.

Some of the behavioural symptoms associated with dementia — especially aggression and disinhibition (the reduction of normal inhibitions) — can lead to involvement with the justice system, says Dementia Justice. Disinhibition can result in sexual actions on the part of dementia patients.

“Despite best efforts, some people with dementia will become entangled with the criminal law. It is therefore imperative that we have a criminal justice system which is prepared to deal with this vulnerable population,” Campbell says.

In some cases, such as Lee’s, those charged with a crime are found not criminally responsible, because of dementia, and do not stand trial. In other cases, though, people with early stage dementia are convicted and jailed for crimes. In some cases, people already incarcerated develop dementia while in custody.

Dementia Justice wants to see more awareness of the issue, more resources directed toward prevention and diversion and better treatment, care and housing of dementia patients who are at risk of or who have been involved with the justice system.

Among the organization’s concerns is that dementia is largely seen as a health, rather than a legal challenge. It must be viewed through both lenses, Campbell says.

In Ottawa, awareness of the issue is beginning to grow, says the Royal’s Dufour.

The forensic psychiatrist has a special interest in elderly offenders and has done extra training in the field of geriatric psychiatry.

That training is serving him well. Although the numbers are small, the Royal is seeing an increase in elderly offenders with dementia in its forensic unit, which treats patients from the criminal system who have mental health issues. In the past, one or two elderly offenders (over 65) would be treated in the unit each year. Now there are as many as six.

“We have definitely seen an increase, although it is still a small number,” Dufour says.

Among those elderly patients, 75 per cent are alleged to have committed sexual offences — a significantly higher rate than the general population.

Dufour notes that loss of inhibition, which can result in inappropriate sexual behaviour, is a symptom of dementia and can, in fact, take hold before other symptoms, such as severe memory loss, are evident.

In Ottawa, there is a growing effort to divert some elderly offenders from the justice system, if possible, said Dufour.

"In my interactions with the police and judicial system, there is an increased awareness that we should try to avoid charging them if possible ... that going the judicial route is sometimes not the right thing to do for these people, especially with minor offences."

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There is no good treatment to stop dementia from getting worse. But there are treatments that can reduce responsive behaviours, such as aggression and sexual disinhibition.

Although diversion — treatment, for example, rather than charges — might become increasingly necessary, the real focus should be on prevention, said Dufour, with intervention and treatment before a crime results.

Ontario's behavioural supports program brings teams to long-term care homes, to help work with staff to reduce aggressive behaviours. In recent years, the province has put millions into expanding the programs, although some long-term care officials and others say they need more help. Long-term care homes are, generally, understaffed and overworked, which adds to the challenge of supporting residents with complex behaviours associated with dementia.

One of the principles of the behavioural supports programs is that better communication can help diffuse aggressive and violent behaviour by people with dementia, who sometimes strike out at caregivers and family members because they feel threatened.

Last year — eight years after the death of Frank Moir — Peter D. Clark long-term care home closed a special unit for residents with complex behavioral issues related to dementia, saying it was too costly to maintain. A similar unit recently opened at Perley and Rideau Veteran's Health Centre as a pilot project. The unit employed specially trained staff to manage patient behaviours related to dementia.

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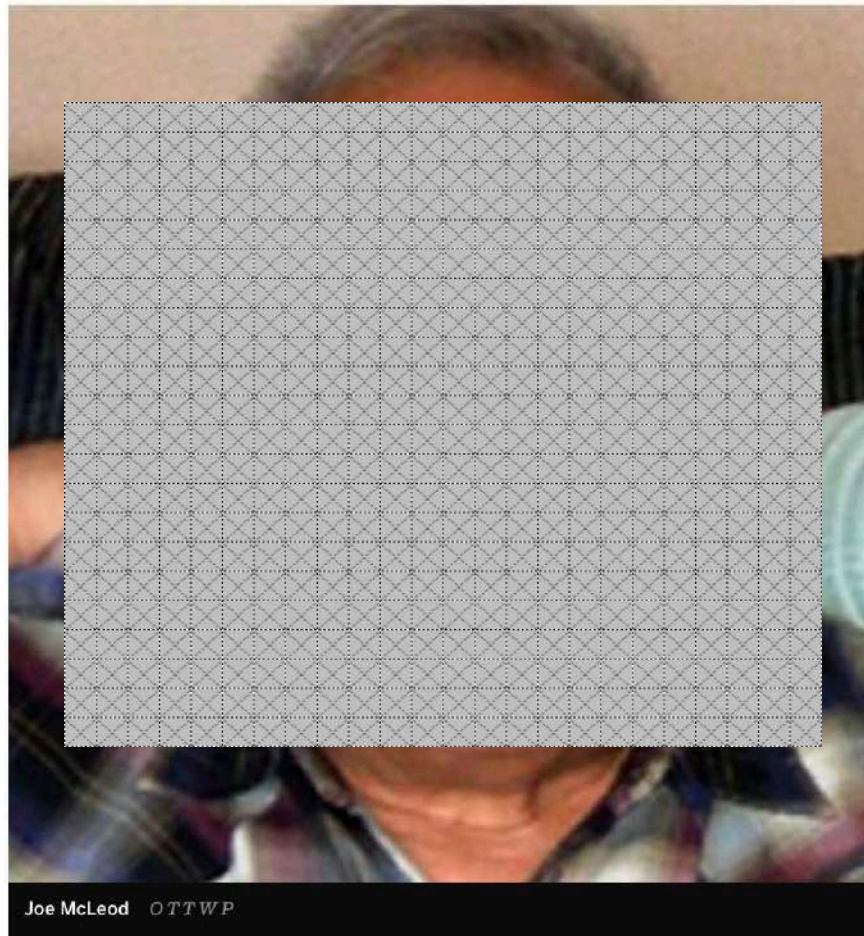
There are now more seniors than children in Canada, Campbell notes, and that shift is being reflected in the criminal justice system. Three years ago, the Correctional Investigator of Canada reported that 25 per cent of federal inmates were over 50.

Elderly inmates have special needs, and so do elderly offenders living in the community, or in seniors' residences. Among Dementia Justice's concerns is finding suitable housing for them.

"The problem is exacerbated for the most vulnerable as some care homes have shown a reluctance to admit older individuals with a mental disorder whose violent or disinhibited behaviour brought them into conflict with the justice system."

Dementia Justice cites cases of elderly offenders with dementia who have been kept in hospitals or jail for lack of anywhere else to go.

One such case involved Winnipeg's Joe McLeod who, at age 69 with advanced Alzheimer's, was charged with domestic assault after pushing and injuring his wife, thinking she was an intruder into their home.



McLeod, whose condition was deteriorating, remained in jail for five weeks.

He was eventually assessed, placed in a long-term care home and his charges were stayed. But less than five months later, he was rearrested after shoving a resident in the home where he was living. That resident, 87-year-old naval veteran Frank Alexander, died from his injuries. McLeod, reportedly, did not remember the incident.

McLeod, charged with manslaughter, was eventually found unfit to stand trial and was transferred to a locked ward at the Selkirk Mental Health Centre.

At an inquest into Alexander's death, there were admissions that the system, at many steps along the way, was not equipped to deal with and treat offenders with dementia.



Frank Alexander *HANDOUT / HANDOUT*

“It is evident that there is a clear under appreciation of the degrees of complexities when dealing with persons with dementia generally and Alzheimer’s disease specifically,” the court wrote in the inquest report.

The court recommended more behavioral unit beds for dementia patients with violent or aggressive tendencies, better co-ordination among agencies dealing with people with dementia and better tracking of people with dementia living in the community.

Across the country, there are a few initiatives to divert dementia patients from the criminal justice system and to get more appropriate treatment and housing for those charged or in jail.

Campbell and others say there needs to be a more co-ordinated effort.

"It is an area that we are really concerned about," said Jane Meadus, staff lawyer at the Toronto-based Advocacy Centre for the Elderly.

"We know there are these systemic problems, and yet we don't have the right care."

Meadus said there have to be more specialty units for people with aggressive behavioural issues related to dementia so they are not mixed with other people in long-term care. One solution might be separate care homes to house geriatric residents whose behaviour could make them a danger to others, with highly trained staff and high staff-to-resident ratios.

She said there should be a better means of diverting people with dementia from the criminal system to get mental health treatment and support, something being done in a patchwork way in parts of the province.

At Ontario Shores Centre for Mental Health Sciences, near Oshawa, a geriatric transitional unit is helping to stabilize some elderly dementia patients displaying aggression. The region has an elderly diversion program that promotes collaboration between the criminal justice system, health system and local organizations caring for the elderly to ensure public safety and the most appropriate outcome when seniors with dementia are charged with crimes.

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Campbell of Dementia Justice calls the death of Frank Moir and the arrest of Peter Lee a double tragedy.

"One senior has lost their life, and another has become a killer."

In that and similar cases, the accused often end up in institutions ill-suited to care for them and their stories are seldom told, "yet these men are our husbands, fathers and friends."

That is changing, but there is no time to lose, says Mike Newell, a Regional Municipality of Durham Crown attorney involved with a program to divert and support elderly offenders, when possible.

"The demographic tidal wave is here."

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