



CANADIAN CENTRE FOR  
ELDER LAW



# Introduction to Mental Capacity & Informed Consent

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# Presentation Outline

- Scenario
- Mental capacity
- Informed consent



# My Goal

You will leave this session with:

- Understanding of basic concepts
- Enhanced ability to identify potential legal issues that require research or advice



# Key sources of information

Your responsibilities may be rooted in:

- Laws
- Codes of ethics
- Institutional policies



# Canadian Centre for Elder Law

1. Legal research
2. Law reform
3. Legal education
4. Outreach

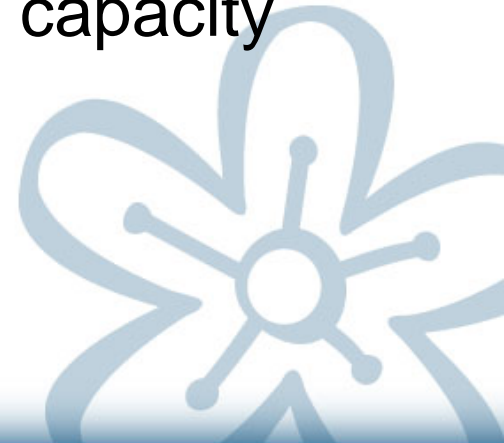


# *Alice*



# Mental Capacity

- Decision-making ability
- Not determined by disease
- Many people with dementia have capacity





# Mental Capacity

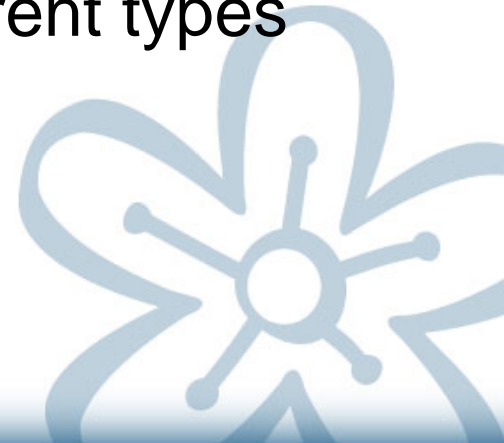
A capable adult is able to:

- Understand information
- Evaluate data
- Appreciate consequences



## Decision-specific

- Always ask, capacity for what?
- What data is relevant?
- Different standards apply to different types of decisions



# Capacity to do what?

Make a will?

Marry?

Accept surgery?

Mediate?

Enter a contract?

Make a Power of Attorney?

Divorce?

Refuse treatment / meds?

Instruct a lawyer?

Sell real estate?



# Presumption of capacity

- Health care consent laws
- Power of attorney laws
- Guardianship laws



Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.



# Capacity is not fixed

- Can fluctuate, increase or decrease
- Can be linked to medication
- Can be affected by time of day

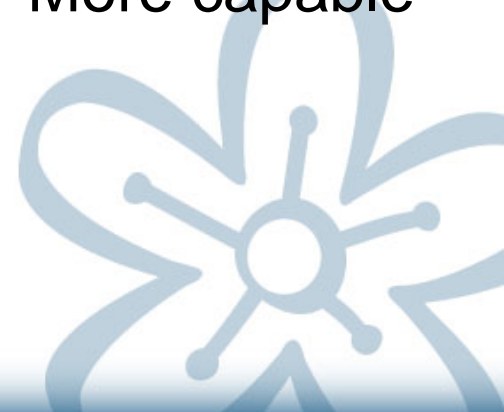


# Capacity continuum



less capable

More capable



# Who determines capacity?

- Health care professionals
- Judges
- Everyone



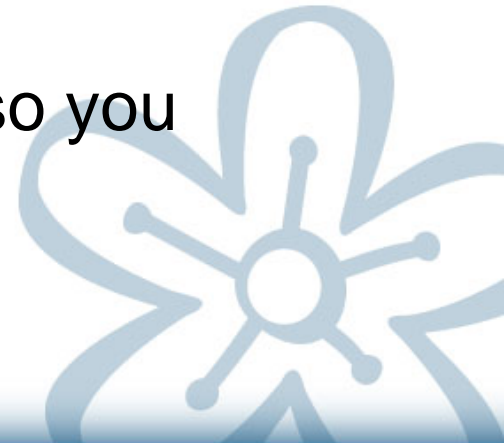


# Citizenship & Ageism



# Maximizing capacity

1. Find out what time of day works best for your client
2. Use visual aids and memory cues
3. Plan for adequate meeting time so you don't have to rush



# Maximizing Capacity

4. Orient your client at the beginning of the meeting
5. Keep food or drink in the office
6. Take breaks as needed





Dementia friendly practice  
<http://alzheimer.ca/en/bc>

## Risk and rights

- Any person with capacity has the right to take risks:
  - With their money
  - With their physical body



# Consent

- Capable
- Informed
- Voluntary



# Informed consent

- Right to sufficient information in order to make an informed decision
- Right to ask questions and receive answers



# Right to revoke

- Right to change your mind
- Right to withdraw from treatment





## Consent can be...

- Orally
- In writing
- Inferred from conduct



# True choice

- Respect for authority
- Pressure and influence
- Social power



# Undue Influence

Recognition/Prevention

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A Reference Aid

<https://www.bcli.org/project/project-potential-undue-influence-recommended-practices-wills-practitioners>

# Review

- Capacity is decision-specific
- Capacity is disease-neutral
- Everyone is presumed capable at law—  
but you must always check for capacity

# Review

Informed consent means:

- Making time for discussion
- Letting people change their mind
- Being aware of power dynamics



## Useful resources

BC: [nidus.ca](http://nidus.ca)

PQ: [educaloi.qc.ca](http://educaloi.qc.ca)

ON: [advocacycentreelderly.org](http://advocacycentreelderly.org)





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[www.bcli.org/ccel](http://www.bcli.org/ccel)