



CANADIAN CENTRE FOR
ELDER LAW



Introduction to Mental Capacity & Informed Consent: Part 2

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Presentation Outline

- Discuss accommodation of disability
- Compare capacity standards
- Review substitute & supported decision making
- Provide an overview of abuse by SDM

My goal for today

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



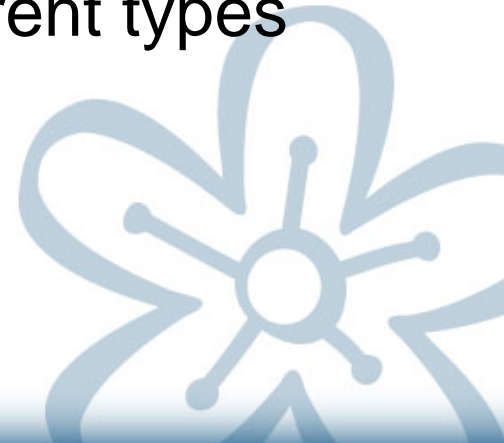
Disclaimer

This presentation is not legal advice



Capacity is decision-specific

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



Accommodation and support

- Human Rights Codes
- UN Convention on the Rights of Persons with Disabilities
- Consider: how can you support a person's capacity?

Accommodation and support

- Give people extra time
- Welcome helpers or supporters
- Create plain language forms
- Make reminder phone calls
- Book meetings around health issues

Capacity to do what?

Make a will

Marry

Accept surgery

Mediate

Enter a contract

Participate in research

Appoint a supportive decision maker

Make a decision about a care facility

Make a Power of Attorney

Divorce

Refuse treatment / meds

Instruct a lawyer

Sell real estate

Donate your money



Relationship between tests

- Capacity to marry/ separate vs capacity to make a will
- Care facility admission vs consent to health care
- Create a representation agreement vs hire a lawyer

Supported decision making

Responsibilities of a supportive decision maker :

- to assist the adult to make and express a decision;
- to assist the adult to obtain relevant information;
- to advise the adult by explaining relevant information and considerations;
- to ascertain the wishes and decisions of the adult and assist the adult to communicate them; and
- to endeavour to ensure that the adult's decision is implemented.

Supported decision making

A supportive decision maker helps others to:

- Truly hear or understand a person;
- Appreciate the person's needs, rights, values, preferences and goals; and
- Respect the person's autonomy, dignity and wisdom.

Supported decision making in Canada

- BC: representative
- Yukon: associate decision-maker
- Alberta: supporter or co-decision-maker
- Saskatchewan: co-decision-maker?

Substitute decision making

1. Appointed by you, eg power of attorney
2. Appointed by a court, eg a guardian
3. Authority by statutory process



Substitute decision making authority

Can cover different types of decisions

- health care
- personal care
- Financial matters
- property transfers
- facility admission



Duties of substitute decision makers

- To keep records
- To act honestly
- To consult with the person
- To consider best interests



Elder abuse and substitute decision making

- Theft by a person holding a power of attorney
- Neglect by a guardian
- Threats and intimidation



Undue Influence

Recognition/Prevention

A Reference Aid

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

Useful resources

BC: nidus.ca

PQ: educaloi.qc.ca

ON: advocacycentreelderly.org



What can be done?

- The older person may be able to revoke authority
- The court might be able to appoint a different guardian
- An agency may be able to step in to assist

Most important

- Be aware of signs of abuse
- Be a good listener
- Help them access support
- Respect their rights



Review

Today we covered:

- Capacity standards
- Human rights law and mental capacity
- Supported and substitute decision making
- How substitute decision makers get their authority
- Elder abuse by a substitute decision maker

More information

www.canlii.org

www.bcli.org/ccel

www.cnpea.ca





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