

On-line resources include:

Consent and Capacity Board

<http://www.ccboard.on.ca/>

Health Care Consent Act

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/96h02_e.htm

Substitute Decisions Act

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/92s30_e.htm

For more information or to request an ethics consult, speak with a healthcare provider or contact the Centre for Clinical Ethics (a shared service of Providence Healthcare, St. Joseph's Health Centre, & St. Michael's Hospital) at 416-864-3071.

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Capacity Assessment

A quick guide* for healthcare consumers & healthcare providers

*This guide provides general information about the current law in this subject area. However, legal information is not the same as legal advice, where legal advice is the application of law to an individual's specific circumstances. Although we have tried to make sure that the information in this guide is accurate and useful, we recommend that you consult a lawyer if you want professional legal advice in this subject area that is appropriate to your particular situation.

Capacity Assessment

70 year old Mohamed Daar recently had a stroke and is unable to speak. He has difficulties swallowing and is at high risk for aspiration. The healthcare team is proposing that a feeding tube be inserted.

Isabella Stewart, a frail 84 year old woman, is recovering from a broken hip. She wants to go home, but doesn't seem to understand the associated safety risks.

67 year old Hadi Darmali recently immigrated to Canada and his English is very limited. He has recently been diagnosed with Alzheimer's disease. He also has bone cancer and a decision about whether or not to undertake further chemotherapy treatment needs to be made.

What is capacity?

A person is considered to have capacity with respect to making a treatment decision if he/she has the ability to understand the information that is relevant to the treatment decision, is able to appreciate the foreseeable consequences of consenting or refusing to consent to the treatment, and is able to communicate a decision. Unless there are reasonable grounds to suggest incapacity, there is a general presumption of capacity.

How is capacity assessed?

Capacity assessment is the responsibility of the healthcare provider who proposes the treatment. It is primarily assessed by asking the individual questions related to the treatment decision.

The assessment may be supplemented by administering standardized tests or procedures that measure cognitive ability and brain function.

It is important to note that capacity is decision-specific. An individual may be able to make a simple, less complex decision but unable to make more difficult decisions that have potentially serious consequences.

What factors can affect capacity?

Capacity may be impaired as a result of a number of treatable underlying physical and psychological conditions such as depression, dehydration, infection, and fatigue.

Capacity may also be impaired as a result of an injury or disease that is not curable or likely to improve over time such as Alzheimer's Disease.

What indicators should prompt further assessment?

If an individual exhibits any of the following, further assessment of capacity is warranted.

- Confused and irrational thinking
- Inability to retain information
- Fluctuating wishes and alertness
- Level of suffering that impairs understanding

What individual indicators do not alone determine incapacity?¹

Incapacity is not directly related to any of the following factors:

- Advanced age
- Language barriers
- Psychiatric illness
- Physical disability and/or communication orders
- Refusal of treatment
- Lower levels of education
- Cultural/Religious background
- Idiosyncratic or unusual beliefs

Who is an evaluator?

An evaluator is a healthcare professional who is a member of one of the Colleges specified in the *Health Care Consent Act 1996*. An evaluator can assess capacity related to decisions about personal assistance services (hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living) and admission to a long-term care facility.

Who is a capacity assessor?

A capacity assessor is a healthcare professional who (a) is a member of one of the Colleges specified in the *Health Care Consent Act 1996*; (b) has completed an approved training course; and (c) is covered by a minimum of \$1,000,000 in liability insurance. In addition to assessments of capacity for decisions related to personal care and long-term care admission, a capacity assessor is authorized to assess capacity to make property decisions.

When do you need to involve a capacity assessor?

A capacity assessor should be involved when:

- A formal capacity assessment is specified as the method of determining incapacity in a Power of Attorney document; or
- One has reasonable grounds to believe that a person is incapable with respect to property decisions and is suffering or at risk of suffering serious adverse effects as a result of his/her incapacity.

Should individuals be informed of a finding of incapacity?

Yes. Individuals should be informed of a finding of incapacity and provided with information about their rights, including the right to appeal the decision through the Consent and Capacity Board.

¹ Hébert, P.C. (1996). *Doing right: A practical guide to ethics for medical trainees and physicians*. Toronto: Oxford University Press.