

# Clinical Issues within Capacity Assessment



**Dr. Arlin Pachet,  
Neuropsychologist**

**\* Pachet Assessment &  
Rehabilitation Services Inc.**  
**\*Adjunct Professor –  
University of Calgary**

# Objectives

- ❖ Capacity: Guiding Principles and Definitions
- ❖ Best Practice & Key Concepts
- ❖ Adult's Rights
- ❖ Common Decision-Making Capacity Questions
- ❖ Identifying if Capacity is an Issue
- ❖ Capacity Assessment Stages
- ❖ Cognitive Tests & Capacity

# Capacity: Guiding Principles

- ❖ All adults presumed capable of making their own decisions until contrary demonstrated
- ❖ Taking away a person's right to liberty and freedom is a very serious step

# Capacity: Guiding Principles

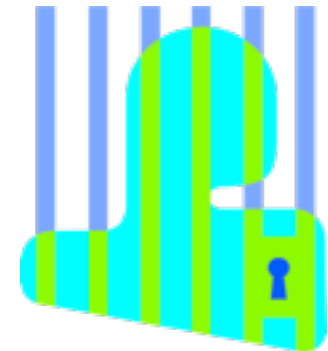
- ❖ Change of legal status is a last resort and there must be evidence that it is absolutely necessary
- ❖ The onus is on the assessor to demonstrate lack of capacity, not on the patient to demonstrate capacity

# Respect for Autonomy

A finding of incapacity:

“remains one of the most significant mechanisms in our society for the removal of a person’s fundamental rights and freedoms”

(Pepper-Smith et al, 1996, p. 3)



# What is capacity?

- ❖ An adult who is repeatedly or continuously unable to care for himself or herself **AND** is unable to make reasonable judgements in respect of matters relating to his or her person or his or her estate

# What is capacity?

❖ “the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the reasonably foreseeable consequences of the decision” - PDA

❖ Initiation?

# Capacity: Guiding Principles

- ❖ Capacity is **not** a medical diagnosis
- ❖ Health care providers can provide a **clinical opinion** on capacity
- ❖ The final legal decision made by the Court - based on evidence

# Capacity: Guiding Principles

- ❖ Socio-cultural construct
- ❖ Capacity - on a continuum



# Capacity: Guiding Principles

- ❖ A person who is thought to lack capacity does not necessarily require an alternative decision-maker, if the decisional demands of their environment are low and they have good informal supports in place



# Capacity: Guiding Principles

- ❖ It is the process – or the lack of process – by which risky decisions are made that calls into question the capacity of a patient to make that decision.



# Capacity: Key Concepts

- ❖ Global vs. domain and/or decision specific
- ❖ Incapable adults can still articulate preferences and make some
- ❖ Know your own risk tolerance and own values



# Capacity: Key Concepts

- ❖ Decision-making capacity is domain specific
- ❖ The complexity of the specific decision has to be considered
- ❖ Capacity assessment is a process for determining whether there is sufficient evidence to declare a person incapable



# Capacity: Key Concepts

- ❖ A capable decision-maker:
  - ❖ is aware of available choices
  - ❖ understands the foreseeable consequences of the choices
  - ❖ makes a choice after they weigh the relative benefits and disadvantages of the choices available



# Capacity: Adult's Rights

- ❖ A capacity assessment may be conducted only if need has been established
- ❖ An adult has the right to refuse to undergo or continue with an assessment

# Capacity: Adult's Rights

- ❖ An adult has the right to have a person present to assist the adult in feeling comfortable and relaxed
- ❖ An adult has the right to have the assistance of an interpreter or the use of a device to assist the adult to communicate in order for the adult to

# Capacity: Adult's Rights

- ❖ An adult shall be given the opportunity to undergo a capacity assessment at a time when and under circumstances in which the adult will likely be able to demonstrate their capacity

# Common Capacity Questions

- ❖ Testamentary Capacity
- ❖ Retrospective Capacity Assessment
- ❖ Donative Capacity
- ❖ Matrimonial Capacity

# Common Capacity Questions

- ❖ Domain specific queries under the AGTA and PDA
- ❖ Financial Capacity - EPOA
- ❖ Consent to treatment

# Capacity May Be An Issue When?

- ❖ You identify a significant change in behaviour
- ❖ You suspect cognitive deterioration
- ❖ You identify a significant change in decision-making process
- ❖ You identify a significant change in risk tolerance

# Capacity May Be An Issue When?

- ❖ You identify significant changes in wishes and instruction
- ❖ Your client appears to be taking instructions from others – is this a change?
- ❖ Response inconsistency

# Capacity May Be An Issue When?

- ❖ Have your client see their family physician
  - ❖ Medical stability
  - ❖ Reversible conditions
- ❖ Consult with family if available
- ❖ Consult with your local clinical expert about your concerns

# Components of a Good Referral

- ❖ Letter of engagement
  - ❖ specific referral questions
  - ❖ agreed costs (typically a range)
  - ❖ agreed timelines
- ❖ Detailed medical precis highlighting the core capacity related issues present

# Components of a Good Referral

- ❖ Timelines of events (e.g., testamentary capacity)
- ❖ Contact information of collateral sources
- ❖ Highlights of relevant case law
- ❖ List of potential relevant assumptions

# Capacity Assessment: Two Stages

- ❖ Pre-assessment process
- ❖ Capacity interview

# Cognitive Tests and Capacity

- ❖ MMSE - No!
- ❖ Many other, much more clinically useful test
- ❖ Assessing components of executive functioning is the key

# Contact Information

❖ Pachet Assessment & Rehabilitation Services Inc.

❖ Dr. Arlin Pachet

Suite 326, 11245 Valley Ridge Dr. NW

Calgary, AB T3B 5V4

❖ Ph: 403-232-1212 Fax: 403-770-8497

❖ Email: [Dr.Pachet@gmail.com](mailto:Dr.Pachet@gmail.com)

❖ Website: [www.pachetservices.com](http://www.pachetservices.com)