



UNDERSTANDING YOUR LEGAL RIGHTS

Brendon D. Pooran

PooranLaw Professional Corporation
416-322-2875 | bpooran@pooranlaw.com | www.pooranlaw.com



AGENDA

1. Overview
2. Capacity to make a decision
3. Providing Valid Consent
4. Common Legal Issues



OVERVIEW

1. Is the person "capable" of making the decision?
2. If not, who is authorized to provide consent?



CAPACITY...

CAPACITY...

- Two broad areas of decision making
 - Property
 - Personal Care (health care, nutrition, shelter, clothing, hygiene, safety)
- Presumption of Capacity
 - Unless evidence raises question of capacity AND a decision needs to be made

CAPACITY...

- Age 16
 - Consent to personal care decisions
 - Grant a Power of Attorney for Personal Care
- Age 18
 - Manage property
 - Sign a contract
 - Make a Will
 - Grant a Continuing Power of Attorney for Property

CAPACITY...

Who Assesses Capacity?

- It depends...
 - What type of capacity
 - What type of decision
- Granting POAs, Wills → Lawyer
- Health treatment → Health practitioner proposing treatment
- Formal capacity assessment → Capacity Assessor
 - If required by POA
 - If required by legislation

CAPACITY...

Capacity to Consent to Personal Care

- Requirements
 - Understand the information relevant to making a decision
 - Appreciate the reasonably foreseeable consequences of a decision or lack thereof
- Some Questions
 1. Can the person understand the condition for which the specific treatment is proposed?
 2. Can the person understand information relevant to treatment?
 3. Is the person aware of the risks and benefits associated with treatment?

CAPACITY...

Capacity to Manage Property

- Requirements
 - Understand the information relevant to making a decision
 - Appreciate the reasonably foreseeable consequences of a decision or lack thereof

CAPACITY...

Capacity to Manage Property

- Some Questions
 1. Is the person aware of the nature of his or her assets, liabilities, income, expenses and responsibilities towards dependents?
 2. Does the person experience difficulties with orientation, memory or calculations that affect financial management?
 3. Does the person have a appreciation of his/her strengths or weaknesses?
 4. Is there a demonstrated ability to make reasonable decisions with respect to financial affairs? Is the person expected to do so in the foreseeable future?

CONSENT...

CONSENT...

Hierarchy of SDM (Property)

1. Guardian
2. Attorney for Property
3. PGT as Statutory Guardian

CONSENT...

Hierarchy of SDM (Health care, Admission to long-term care, Personal Assistance Service)

- | | |
|---|-----------------------|
| 1. Guardian | 4. Spouse or partner |
| 2. Attorney for Personal Care | 5. Child or parent |
| 3. Representative appointed by the Consent & Capacity Board | 6. Brother or sister |
| | 7. Any other relative |

CONSENT...

Guardianship

- Person must be found incapable of managing property and/or consenting to personal care matters
- Personal Care → can only be appointed by court
- Property → can be appointed by court or through statutory guardianship process (involved PGT)
- Courts must consider "less restrictive" provision

CONSENT...

Continuing Power of Attorney for Property

Document that gives someone the authority to act on your behalf while you are alive with matters relating to your property

CONSENT...

Capacity Requirements:

- Knows kind and value of property
- Aware of obligations to dependants
- Knows authority of the attorney
- Knows that attorney must account
- Knows the grantor may can revoke
- Appreciates that value may decline
- Appreciates the attorney could misuse authority

CONSENT...

Power of Attorney for Personal Care

Gives someone the authority to act on your behalf while you are alive with matters relating to health care, nutrition, shelter, clothing, hygiene & safety

Capacity Requirements:

- Ability to **understand** that attorney has genuine concern for person's welfare
- **Appreciates** that attorney may have to make decisions for the person

COMMON QUESTIONS...

COMMON QUESTIONS / ISSUES

In speaking with CRA I wanted to get information on my child's tax return and was prohibited from doing so.

What should I do?

COMMON QUESTIONS / ISSUES

I tried to renew my son's health card and was prohibited from doing so. What can I do?

COMMON QUESTIONS / ISSUES

My son is 16 and will be applying for ODSP at age 18 should I get guardianship to support him with that ?

COMMON QUESTIONS / ISSUES

My daughter has a support network what rights do they to act on her behalf once I pass ?

DISCLAIMER

The information provided in this presentation is not legal advice and does not create a solicitor-client relationship. PooranLaw Professional Corporation provides such information for general information purposes only. While we attempt to convey current and accurate information, we make no representations or warranties of any kind, express or implied, about the completeness, currency, accuracy, reliability, suitability or availability of the information. Any reliance you place on such information is therefore strictly at your own risk.