GUIDELINES
FOR
CONDUCTING ASSESSMENTS
OF CAPACITY

Capacity Assessment Office
Ontario Ministry of the Attorney General

FOREWORD

The planning and research for a uniform and systemic approach to conducting capacity assessments in line with the Substitute Decisions Act, 1992 was initiated in late 1993 by a joint Steering Committee of the Office of the Public Guardian and Trustee of the Ministry of the Attorney General, and the Ministry of Health. Until proclamation of the legislation on April 3, 1995, the members of this Committee provided direction to the research as well as for the structure and initial activities of the Capacity Assessment Office. Susan Himel and Debbie Oakley of the Public Guardian and Trustee, Michael Ennis, Gilbert Sharpe and Juta Auksi of the Ministry of Health, and Carla McKague of the Advocacy Project (Ministry of Citizenship) were the members of the Steering Committee. Substantive comments and direction were also provided by members of the Interim Advisory Committee on Substitute Decisions. We particularly wish to note the contributions of the Chair of the Committee, Judith Wahl, as well as that of Audrey Cole and Susan Roher.

With minor editing, the guidelines, as they appear, are the work of Dr. Janet Munson, who in collaboration of Dr. Jean Kozak, developed and field tested the procedures in a research project funded by the Ministry of the Attorney General. Both are psychologists affiliated with the Sisters of Charity of Ottawa Health Care Services.

We also want to extend our appreciation to those who contributed as staff or consultants to the preparation and critical review of these guidelines at various stages of their development. Dr. Carole Cohen of Sunnybrook Health Sciences Centre, Professor David Weisstub of the Université de Montréal, Dr. Ed Etchells of the Toronto Hospital, Trudy Spinks, Monique Charlebois, Shelley Birenbaum, Rhoda Matlow and Barry Gang of the Office of the Public Guardian and Trustee all provided essential comments and insight. Anna Della Rocca supplied the perseverance and skills essential to the final preparation.

June 1996
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Capacity Assessment Office

INTRODUCTION

The Guidelines for Conducting Assessments of Capacity are intended to assist in the provision of consistent and high quality assessments in the service of Ontario's vulnerable adults and their families. Designated capacity assessors are required to follow the methodologies set out in the Guidelines when conducting assessments under the Substitute Decisions Act, 1992 (SDA).

Under the Capacity Assessment Regulation to the SDA, in order to be qualified to be a capacity assessor, a person must be a member of one of the following:

The College of Physicians and Surgeons of Ontario
The College of Psychologists of Ontario
College of Nurses of Ontario (as a Registered Nurse or Registered Nurse (EC)
Ontario College of Social Workers and Social Service Workers (and registered as a Social Worker)
College of Occupational Therapists of Ontario

He or she must also successfully complete a training course approved by the Attorney General, and have at least $1,000,000 professional liability insurance, in respect of assessments of capacity, or belong to an association that,

(i) is specified in the by-laws of the regulated health profession of which the person is a member, and
(ii) provides protection against professional liability, in respect of assessments of capacity, in an amount not less than $1,000,000.

Part I of the Guidelines outlines a variety of ethical and legal considerations.
Part II offers interpretation on the two key legal constructs of mental capacity; namely, to understand information relevant to decision-making, and to appreciate the consequences of a decision or non-decision.
Part III provides a general overview of the capacity assessment procedure.
Parts IV focuses on procedure in property.
Part V focuses on personal care assessments.
Part VI deals with the Needs Statement.
Part VII with considerations and implications for assessors when assessing special populations.
Appendices provide worksheets assessors may use to record data and to assist in organizing information from the interview process.

THESE GUIDELINES REPLACE FORMER GUIDELINES TITLED "MANUAL FOR CAPACITY ASSESSMENTS – SECTION R" FEBRUARY 8, 1995.
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PART I: ETHICAL AND LEGAL CONSIDERATIONS

In order to fully and fairly carry out their responsibilities, capacity assessors must be well grounded in the principles that underscore the *Substitute Decisions Act, 1992* (SDA), and with the key legal interpretations that give them precision. The former are highlighted in this Part. The latter, focusing on the meaning of "mental capacity", follow in Part II.

Assessments of legal capacity are undertaken under the SDA in those situations where it may be appropriate to change the legal status or restrict the legal rights of the individual in order to protect him or her from personal or financial harm. In a sense, guardianship legislation is about risk management for incapable people. When an assessment of legal capacity is undertaken, the fundamental issue under consideration is the person's right to decide. If judged incapable, the person may be assigned a substitute decision maker or a guardian whose role is to make the decisions necessary to protect his or her personal and/or financial health.

Prior to the SDA, and in the absence of explicit assessment guidelines, idiosyncratic or value-laden judgements of mental incapacity could and did occur. It was possible for a physician to infer incapacity solely on the grounds that the individual had a disabling medical or psychiatric condition. As a result, a number of vulnerable individuals ended up with a substitute decision-maker where there was either no need or no clear benefit. Others lost the opportunity for protection because of the assessor's lack of familiarity with the appropriate legal test. SDA creates the opportunity for a standard assessment protocol, which reduces bias and introduces consistency in the way that mental capacity assessments are conducted.

The language of the SDA itself has implications for structuring a capacity assessment. In its legislation, the Government of Ontario has codified the belief that mental capacity is, at its core, a cognitive function. The SDA operationally defines capacity as the ability to understand information relevant to making a decision and appreciate the reasonably foreseeable consequences of a decision or lack of decision. By emphasizing the cognitive underpinnings of capacity, the presumption of capacity can only be overridden by compelling evidence of a person's mental or cognitive limitations in his or her "ability to understand and appreciate". Any existing incapacity must be of a nature and degree sufficient to interfere with the ability to manage property or meet essential personal care needs. The law recognizes that a capable individual can make unpopular, unwise or eccentric choices in the absence of incapacity. Capable but risky or even foolish decisions must be respected.

The following are key tenets that represent the ethical foundation of capacity assessment in Ontario. These should be considered during all stages of capacity assessment procedures, including assessments required to authorize substitute decision makers, as well as assessments required to end authority for substitute decision makers.

KEY TENETS:

The Right to Self-Determination

The SDA was designed to promote personal autonomy, as well as enhance the protection of persons of limited or marginal capacity. Persons are encouraged to plan in advance of incapacity through Power of Attorney documents, and these remedies may still remain open to them at the point in time when they begin to have difficulty managing their affairs independently. However, for some, the desire to remain autonomous is over-riding, and persons are under no obligation to use such tools or accept proffered assistance. When encountering a situation where the person is mismanaging or endangering herself or others, the assessor must balance off the infringements to the individual's dignity and right to make risky decisions against the benefits of protecting the vulnerable individual from potential harm. Unless there is clear and compelling evidence of impaired "ability to understand and appreciate", the assessor can not use a finding of incapacity as a means to manage risk. There can be occasions where the individual's dignity and right to make risky decisions in the interest of the right to self-determination will take priority over the need to protect the individual from potential harm.

Presumption of Capacity

In every case, there is a presumption of capacity and there should be reasonable grounds that prompt the request for a formal capacity assessment. Routine screening of whole classes of individuals cannot and should not be endorsed, as this prejudges an individual's capacity based on class membership. For example, it is incorrect to assume that all intellectually disabled persons must be incapable by virtue of their disability. It is incorrect to assume that a diagnosis of a severe psychiatric disorder like schizophrenia renders the person unable to meet his or her personal care or financial needs.

"Decisional" Capacity

The presence of mental illness or a significant cognitive deficit does not necessarily preclude rational decision-making in all aspects of a person's life. In a similar vein, one cannot conclude incapacity solely on the basis of financial mismanagement or self-care deficits, as the person may be voluntarily incurring the known risks. The issue for the assessor is not whether the person's actions or choices appear reasonable or will put them at increased risk, but whether the individual is able to understand critical information and appreciate the reasonably foreseeable consequences of his or her decisions or lack of them. The emphasis is on the quality of the decision-making process, not the actual course of action in which a person engages. This requires exploration of the particular line of reasoning employed by the person in making decisions, and whether or not those decisions are consistent with a personal belief system, known values and reality.

Incapacity is Domain-Specific

The SDA rejects the notion of global incapacity and instead recognizes that capacity may be limited only with respect to certain decisions or classes of decisions. When the assessor receives a request for a capacity assessment, the first question to ask is "capacity for what"? At the broadest level, the law distinguishes between the ability to make personal care and financial decisions, recognizing that a person may lack capacity in one area but not the other. The SDA also subdivides personal care decision-making into six sub-domains: health care, nutrition, clothing, hygiene, shelter, and safety. Here, capacity can be independently assessed in any, several or all of these sub-domains, and the assessor could find the person incapable in one or more or all. The SDA's ability to examine decision-making in a more circumscribed fashion has two important advantages. First, it ensures that the person's rights will not be removed in areas where he or she is still able to manage. Second, guardianship orders can be tailor-made to confer powers only where it is needed and clear benefits derive. Capacity for decision-making does not need to be formally examined in areas where there are no presenting concerns. For example, a person may have severe dementia that precludes his or her ability to meet essential personal care needs, but if the individual is already in safe housing, he or she may only require a capacity assessment for property.

Guardianship as a Last Resort

Ideally, vulnerable individuals will have access to a multiplicity of services and social supports, which optimize functioning and assist with decision-making. Guardianship, as a legal option, should only be used as a last resort when existing supports become inadequate or a legally authorized intervention would bring substantial benefits to the incapable person. In fact, the SDA specifically prohibits the court appointment of a guardian if less restrictive alternatives exist.

PART II: MENTAL CAPACITY: "UNDERSTAND" AND "APPRECIATE"

"Mental Capacity" is a socio-legal construct whose meaning varies over time and across jurisdictions. As a legal construct in guardianship proceedings, a finding of "mental incapacity" serves as a trigger for the appointment of a legally authorized substitute decision-maker. The assessor of mental capacity under the SDA must appreciate that he or she is not performing a clinical assessment where the purpose is to arrive at a diagnosis, make treatment decisions, or mobilize social supports. Rather, the assessor is making a threshold decision (capable or incapable) about the adequacy of the person's ability to make decisions pertaining to his or her personal life and / or financial situation.

There are as many different operational definitions of mental (in)capacity as there are jurisdictions. Thus, an individual can be declared "mentally incapable" for guardianship purposes in one jurisdiction, but not meet the legal criteria in another. The way in which a state or province defines "mental capacity" in its legislation has a direct bearing on the nature of the assessment. First, it defines which legal "test" is to be applied (e.g. a "disabling conditions" test, a cognitive or "decisional impairment" test, a "functional impairment in essential areas" test, a "need-for-court involvement" test, or any combination of the above, etc.). Second, it constrains the assessor in terms of the type of information that is considered to be germane for this purpose.

"Mental capacity" is often incorrectly conceptualized as a personal attribute or broad-based cognitive ability that can be quantified and measured. If this were so, it would be possible to rank people according to how much mental capacity they possess (a "trait approach") and, theoretically, to construct a psychometrically sound instrument to achieve this ranking. Ontario's former *Mental Incompetency Act* held to this view of capacity as some kind of absolute ability. If the level of ability fell below a certain threshold, it was presumed to interfere with functioning in all spheres of a person's life.

Most North American jurisdictions now reject this "trait approach" by requiring that capacity assessments also take into consideration the circumstances in which the person is required to function. The goal of a well-crafted capacity assessment is to elucidate the degree of "person-environment fit"[1]. Specifically, an assessor asks, "Does this person's level of decisional ability match the demands of the specific situation with which they are faced?" An assessor must give full consideration not only to what the individual can accomplish, but to whether the person acknowledges any personal limitations, knows his or her options, and has considered the merits of obtaining appropriate assistance to meet his or her decision-making needs.

[1] Grisso, T. Chapter 2: Legally Relevant Assessments for Legal Compentencies, New York: Plenum Press, 1986, p.14-30.

In Ontario, the SDA has now moved assessment practice away from a test of mental incompetence which was linked to certain diagnostic medical conditions, including the infirmities of old age. Ontario has deliberately chosen a decisional test to protect the rights of capable individuals who could otherwise be deemed in need of guardians simply because they have certain physical conditions; have received a certain medical or psychiatric diagnosis; or have made decisions considered foolish or which lead to a socially "deviant" lifestyle. Current assessment procedures were developed to reflect these legal standards and to guide the collection of evidence that speaks to mental capacity as a legal and not a clinical construct.

A person may have the ability to make capable decisions but not thrive on them. A person who fails to care for self or property but who is nonetheless able to do so should not be deemed mentally incapable.

KEY INTERPRETATIONS: "UNDERSTAND" AND "APPRECIATE"

The SDA sets out a two-part definition of mental capacity in that the person must have the ability to understand information relevant for making decisions, and in addition, show the ability to appreciate the consequences of a decision or a lack of a decision.

The crux of the matter for the assessor is to distinguish between decisions that are poorly informed, foolish, risky or socially deviant; as opposed to decisions that are the product of an impaired decision-making process. Only the latter warrant designation of persons as "mentally incapable". In order to be deemed "mentally capable", an individual must satisfy **both** parts of the definition. In some ways, the "understand" standard is more fundamental to capacity, in that erosion of fundamental knowledge or significant information-processing impairments usually interfere with accurate appraisal of risk needed to fully appreciate the consequences. However, many individuals will pass the "understand" standard as it focuses more on factual understanding, but fail the "appreciation" standard due to lack of insight, poor impulse control, delusional beliefs or motivational disorders that distort the reasoning process or the attachment of personal meaning to decisions.

A. "UNDERSTAND"

As a construct, to "understand" refers to a person's cognitive abilities to factually grasp and retain information. To the extent that a person must demonstrate understanding through communication, the ability to express oneself (verbally or through symbols or gestures) is also implied. The “understand” test is the start point in many statutes dealing with health care, guardianship and contract law, and has been accepted as a legal test of capacity in matters of criminal competency.

In this assessment protocol, at a minimum, a person must have a working knowledge of his or her financial, health or personal care status and be aware of any pressing issues that call for decision-making. He or she must also possess sufficient intellectual and cognitive ability to process and assimilate information about the available options for responding to the particular demands they face. Some individuals may have the ability to recite overlearned facts pertaining to their personal or financial circumstances but lack the ability to follow an intellectual conversation or problem-solve around these rote facts. For example, a person with mild dementia may still know

the name of his or her bank and know his or her approximate net worth, but be easily confused by a discussion around the various options to safeguard his or her estate against the effects of increasing forgetfulness. For this reason, the “Understand” part of the test has been further subdivided into "Factual Knowledge Base" and "Understanding of Options", each explored separately by the assessor in the capacity interview.

(i) Factual Knowledge Base

Factual knowledge base refers to the individual’s awareness of his or her personal and financial circumstances. For the personal care domain, this would entail probing the person’s knowledge of their living arrangements, safety and health care needs, including essential medications. For property assessments, the assessor will query the person’s understanding of assets, ongoing expenses and financial obligations. The assessor may also sample the person’s money management skills to the extent that such skills are essential to managing his or her affairs (e.g. does the person know the name of their bank, know how to establish a budget, can determine the market value of any property owned, etc.) When assessing an individual with factual knowledge deficits, the assessor must consider whether the person has been exposed to the necessary training or learning opportunities to acquire the relevant facts. For example, many elderly persons who delegated the responsibility for important financial decisions to their spouse may not be sufficiently informed as to the size and complexity of their estates upon the spouse’s death. In such a case, the assessor should ensure that the person has been fully informed about his or her material worth and obligations before reaching an opinion as to capacity.

Related but separate concerns arise when evaluating individuals with intellectual disabilities. In this population, essential knowledge and functional skills may not have developed because of a lack of direct instruction or life experience. Many of these individuals have not been raised in an environment where autonomous decision-making was encouraged or expected. Depending on the circumstances of each case, the assessor may be called upon to give an opinion as to whether or not the person could be taught the missing skills or knowledge, or should be placed in a less demanding environment to allow full or partial autonomy. However, some of these individuals may require substitute-deciders in the interim, and assessors may complete a Statement or Certificate of Incapacity with a recommendation that it be reviewed after intervention has taken place.

(ii) Understanding of Options

Faced with alternatives or choices, a person should be able to comprehend information about options and risks necessary to formulate an informed choice or plan of action. This requires the ability to attend to relevant stimuli, understand at a conceptual level and retain the essential information long enough to reach a decision. Furthermore, the person must be able to remember the choices he or she has previously made, and to express those choices in a predictable and consistent manner over time. By drawing the person into a discussion around their particular financial or personal care needs and the options that exist for meeting them, the assessor has the opportunity to witness the person’s full cognitive abilities in action. Oftentimes, this discussion will expose problems with short-term memory, a lowered threshold for confusion, or attentional deficits that have the potential to undermine decision-making.

B. "APPRECIATE"

The "appreciate" standard attempts to capture the evaluative nature of capable decision-making, and reflects the attachment of personal meaning to the facts of a given situation. Some individuals can understand and recite information in an academic fashion, but not see how the facts apply to their particular situation. For example, a person with a severe psychiatric illness may be able to demonstrate his or her understanding of the symptoms diagnostic of the illness and the appropriateness of treatment if one is ill, but at the same time, not recognize that he or she is currently exhibiting signs of active illness. The "appreciate" part of the test requires that individuals not only possess the intellectual and cognitive capability to factually understand information, they must also be able to rationally manipulate this information and appraise it in a reality-grounded fashion. Thus, the "appreciate" standard focuses on the reasoning process behind the individual's decisions, and in addition, explores the particular personal weights that the person attaches to one outcome or another. However, choice also reflects value considerations, therefore assessors must broaden their inquiry to include them. Foolishness, riskiness or social deviance may be grounds to examine "appreciation" more closely, but do not substitute for incapacity. The assessor is not judging whether or not the person's decisions or actions appear reasonable, but whether they are reasoned.

For the purposes of capacity assessments under the SDA, the "appreciate" standard is divided into two distinct dimensions: "Realistic Appraisal of Outcome" and "Justification of Choice". Both dimensions are to be explored separately by assessors, in recognition that impairment in "appreciation" can arise in different ways.

(i) Realistic Appraisal of Outcome

In a general sense, a capable person is one who is able to appraise the likely outcomes that mismanagement will pose to his or her financial or personal well-being. The person must be able to identify the major risks and show that he or she has considered the consequences of choosing to manage or ignore risk. This depends on adequate insight, a clinical term that is used to refer to the degree to which an individual can realistically evaluate his or her current situation. For the purposes of evaluating insight under the SDA, the person should at least acknowledge to the assessor any personal limitations or deficiencies that prevent him or her from meeting important situational demands. However, insight goes beyond simple awareness of one's cognitive deficits or psychiatric impairment. The person must also take into account any personal deficiencies when evaluating the riskiness of a particular decision or course of action. Some persons can formulate a plan to carry out a decision, but lack the initiative to carry out the various steps of the plan. Or, he or she may lack the impulse control to adhere to the plan. Failure to anticipate how they may sabotage their own plans leads them to overestimate the likelihood of success. This is a common area of difficulty for persons with neurological trauma or disease affecting the frontal lobes of the brain, where the ability to self-regulate behaviour can be impaired regardless of stated intentions. When assessing individuals with executive impairment, the assessor needs to place appropriate emphasis on the person's behaviour and any recent change in management practices, to the extent that this attests to the ability to plan, implement and abide by decisions. However, the assessor must be careful not to equate lack of insight with refusal of assistance or unfortunate outcome. Competent individuals can freely mismanage their financial affairs or refuse assistance provided they are fully cognizant of the

consequences of their actions.

Adequate appreciation of outcomes also requires the assignment of personal meaning or significance. The significance a person assigns to certain outcomes may be skewed by factors that cause a distorted interpretation of one's circumstances. This may result in incapacity. An example is that of a severely depressed person with symptomatic feelings of entrenched helplessness and hopelessness, who no longer factors in personal needs and survival issues in decision-making.

(ii) Justification of Choice

In addition to realistically appraising outcomes, a capable individual is one who can show evidence of the rational manipulation of information, where choice is free from delusional beliefs and logically flows from the premises. Here, the focus is on the reasoning process. The assessor must be clear that the emphasis is not on the status of the decision as a "reasonable" one as appraised by others. Rather, the issue is whether it is a "reasoned" one and based on reality. To determine this, the assessor will probe the chain of reasoning to examine it for logical consistency and to determine whether the particular choice is predicated on false or irrelevant beliefs or experiences.

In a select number of cases, the assessor may have to judge whether the particular belief influencing choice is truly delusional or whether it is just idiosyncratic or eccentric. Here, assessors should be guided by the following considerations:

> The particular belief in question must be influencing decision-making in the domain under investigation in some relevant way. For example, a delusional belief about one's food does not necessarily influence the decisions a person makes about managing property.
>
> The assessor can accept the belief as delusional if it can be disputed by objective evidence to the contrary (i.e. it is at odds with reality as we know it).
>
> The assessor's confidence that a particular belief is delusional is increased if it is just one symptom or manifestation of a recognizable psychiatric or neuropsychiatric disorder. Active delusions are often associated with other signs of thought and affective or personality disorders, whereas eccentricities are not.

The assessor can review both verbal and behavioural evidence of reasoned decision-making choice. When the assessor encounters idiosyncratic or seemingly irrational choices, the test is whether the person can show that he or she thought through the issues and related this information to a personal belief system.[2] If primarily behavioural evidence is being relied upon, the behaviour must be consistent with the person's previous actions, expressed wishes and demonstrated values.

PART III: CAPACITY ASSESSMENT PROCEDURE

[2]Drane, J.F. Competency to Give an Informed Consent. JAMA.252 (7): 925-927, 1984.

Capacity assessments are undertaken in order to provide a formal, independent assessment of an individual's capacity to make financial or personal care decisions. It is the job of the assessor to record, verify, organize and summarize the relevant information gathered from the person being assessed, as well as from family, professional care-givers or multi-disciplinary consultants and review of objective records. The assessor then evaluates this wealth of multidimensional information within the appropriate legal framework to arrive at an opinion about mental capacity.

Mental capacity is examined in restricted decisional domains under the SDA; namely finances, health care, nutrition, shelter, clothing, hygiene, and safety. Capacity can be independently assessed in any or several of these functions. This allows the court to limit the substitute's authority to only those areas in which the person's decision-making ability is inadequate.

An individual has the right to refuse to be assessed, unless there is a court order or a Power of Attorney for Personal Care with Special Provisions that is effective and authorizes the use of force to obtain an assessment. The assessor is required by SDA s.78 (2) to fully explain to the person the purpose of a capacity assessment, the significance and effect of a finding of incapacity, and the person's right to refuse to be assessed. A refusal to be assessed terminates the process.

The SDA also requires assessors to use prescribed forms, and to give the assessed person written notice of the findings and, when conducting an assessment under s.16, a copy of the Certificate of Incapacity.

Regardless of scope or complexity, every capacity assessment adheres to the same conceptual framework.

> First, the assessor identifies the general pressures or demands on the person based upon a review of his or her current living arrangements and personal or financial circumstances. For example, what does the person have to do to obtain, administer or dispose of real and personal property given the size and complexity of the estate? ... or to meet his or her essential personal care needs including food, shelter, proper clothing and a generally safe living environment?
>
> Next, the assessor evaluates how well the person is meeting these demands, either independently or with assistance. Does the person possess the necessary skills and knowledge to perform essential tasks? If not, does he or she seek appropriate assistance?
>
> Lastly, if there is evidence of current (or predictable) inadequate functioning or failure to meet essential needs, the assessor focuses on the person's abilities to understand, appreciate and reason about his or her options. The goal here is to determine if the person is aware of the risks of failing to meet essential financial or personal care requirements, and whether he or she is voluntarily incurring the known risks associated with a present lifestyle.

Assessors can rely on a variety of information sources to come to a decision about capacity, but the assessment always builds around a capacity interview with the person. This information can be supplemented by information relayed by an informant (often a significant other who has

requested the assessment because of their knowledge of the person’s affairs) and review of objective records (e.g. bank statements, eviction notices). There are procedural guidelines that govern each of these activities. Once the information gathering stage is complete, the assessor is

faced with the task of formulating an opinion as to the person's capacity status. Once the assessor reaches a conclusion, he or she completes the required reporting format and issues it to the appropriate parties.

1. REFERRAL INFORMATION AND INFORMANT INTERVIEW(S)

The requester is usually the first point of contact. This person can relay the presenting concerns that are triggering the assessment, as well as any known medical information that may be the cause of any suspected impairment in decision-making. He or she may also be able to describe the major demands the person faces or perhaps provide an overview of the person's financial circumstances or living arrangements. Worksheet 1 has been developed to assist assessors in drafting appropriate questions to ask the requester/informant. However, while referral and informant information is valuable, the person should always be considered as the primary source of background information. Preliminary information or concerns brought forward by the requester or an informant should always be balanced against the person's perceptions of his or her situation. Assessors must guard against putting the person being assessed in an adversarial position where he or she feels called upon to defend decisions or disprove allegations of incapacity. For this reason, it may be advisable to obtain from the requester only enough background information to contain the interview to the relevant issues, and to seek more detailed or comprehensive information from informants only as required to verify or expand on the person's self-report.
Permission to conduct a follow-up interview with the requester or a new informant (e.g. the person's landlord or bank personnel) should always be sought from the person if he or she appears capable of giving this consent.

2. CAPACITY INTERVIEW

After establishing rapport and communicating rights advice, the assessor begins by exploring the person's factual understanding of the issues and knowledge of information important in making financial and/or personal care decisions. Next, the assessor probes the person's awareness, insight and appreciation with respect to how well they are meeting the demands that they face. Lastly, the assessor continues with a series of decision-specific questions that ascertain the person's comprehension of risks, benefits and alternatives for action in areas of unmet need. Whenever possible, the assessor also probes the quality of reasoning behind a particular choice or preference. The assessor ascertains whether or not the individual can show evidence of having made a "reasoned" choice that considers the pros and cons and/or is one that shows consistency with a personal belief or value system. Worksheet #4 gives some guidance as to how to probe decision-making more closely in an identified area of unmet need.

A more detailed outline of the interview process specific to assessing property decision-making follows in the next section of these GUIDELINES. The corresponding outline for conducting personal care interviews follows in Section V.

Open-ended questions, asked in a way that accommodate the person's culture, vocabulary, level of education and modality of communication, are used during the capacity interview. Sample questions are set out in Appendices I and II.

In cases where the person's medical condition precludes an interview, e.g., when the person is not in a state that enables communication or acknowledgement, the role of the assessor is simply to verify the incapable status of the person following a brief meeting with the person and a review of available medical reports or discussion with the attending physician.

As a general rule, an assessment may only take place when the person does not refuse to be assessed. There are two exceptions:

(i) The assessor may conduct the assessment despite the person's refusal if the assessment is court-ordered.

(ii) An assessment may proceed despite the person's refusal if there is a Power of Attorney for Personal Care with Special Provisions which is effective and which authorizes the use of force for an assessment.

In both of these situations, if the person refuses to be assessed, the determination may have to be based upon indirect or third party evidence.

3. RECORDS REVIEW

It must be stressed that comprehensive and valid capacity assessments require more than a face-to-face dialogue. It is imperative that the person's own perceptions of her or his own abilities and limitations be cross-referenced and verified with more objective information. For example, the person's self-appraisal could be contrasted with his or her behaviour as witnessed or assessed by others, and if data sources do not show agreement, the assessor should consider potential bias in reporting. It may be that the person is denying or underestimating problems due to impaired insight/reality-testing, but the assessor should also question if an informant is deliberately misrepresenting or is not sufficiently informed of the true level of functioning. In order to resolve any discrepancies, the assessor can defer to more objective behavioural evidence, such as an occupational therapy report. Assessors should not interpret this as a need to do an exhaustive search for collateral data. Rather, assessors should limit their search for information they believe would provide clarification or resolution of these issues.

There may also be occasions where the assessor should request a sample of the person's performance on basic but representative tasks. For example, when financial mismanagement is the issue, the assessor may look to financial records or possibly conduct some simple testing to establish the level of functioning.

Assessors are reminded that behavioural data is important because the assessor must consider the adequacy of decision-making within the areas of unmet need. Informants may be helpful in identifying those tasks that are relevant for the person so the assessor can restrict the capacity

interview accordingly. However, assessors should not interpret this to mean that comprehensive functional or behavioural testing by an occupational therapist is mandatory before an opinion of capacity status can be rendered.

4. FORMULATING AN OPINION

The assessor has now arrived at the complicated task of summarizing and integrating all of the data he or she has collected. To assist with this data integration stage, the assessor needs to ensure that all information considered pertains to the person's decision-making abilities in a fairly obvious fashion. Assessors should appreciate the need for thorough documentation of all aspects of the assessment process. Assessors are advised to maintain files that detail the content of interviews and the conditions under which the assessment was conducted.

In coming to a conclusion, the "understand" and "appreciate" prongs of the legal test of capacity require separate consideration.

Does the person meet the standard of ability to understand information relevant for personal care/financial decision-making? Capacity indicators are: factual knowledge base sufficient for needs; and an understanding of options sufficient for needs. (see Part II)

AND

Does the person meet the standard of ability to appreciate foreseeable consequences? Capacity indicators are: realistic appraisal of outcome; and justification of choice. (see Part II)

The assessor is directed to the POINTS TO CONSIDER that appear at various places in each of Sections IV (Capacity Interview: Property) and V (Capacity Interview: Personal Care) of these GUIDELINES, as these points will help the assessor frame the evidence. The assessor should also keep these Points in mind when setting the threshold of evidence needed to conclude incapacity, as some omissions are more critical than others

The assessor may also be called upon to comment on the extent, duration and remediability of any state of incapacity. In order to do this, the assessor should note any obvious contextual medical, psychiatric, social or historical variables that are operating to undermine decisional ability. For example, consider a developmentally disabled person who grew up in an institution but who is now contemplating community living. Such an individual would never have had the learning experiences or opportunities that foster the development of autonomous decision-making skills. However, it has been demonstrated that some individuals, through training, can acquire the necessary skills to capably decide how to meet most financial or personal care needs, even if it remains advisable that someone assist and supervise him or her on an informal basis.

It is equally important for the assessor to consider any factors that may be operating to create a false impression of either intact decisional ability or impairment. An example of the former would be an articulate and rational brain-injured person whose decision-making abilities are compromised by organically-caused deficits in planning and impulse-control. Conversely, the assessor must be alert for an individual who appears to be compromised in decision-making because of choices which seem

foolhardy, who nonetheless possesses the ability to "understand and appreciate". One way for the assessor to sort out whether or not a particular decision arises from a disturbance in the decision-making process is to specifically look for evidence of recent change in behaviour or decisional patterns that is at odds with the person's prior or normal conduct.

In addition, some individuals may be experiencing difficulty exercising intact decisional powers. They show extreme vacillation or overtly refuse to make any choice, either because of conflicting values or obligations to others, or because of a real or perceived dependency on others that makes them reluctant to express a contrary opinion. In these cases, conflict resolution or professional counselling is the appropriate solution rather than designation as "mentally incapable".

Worksheet #5 may be helpful to assessors as a review of the different kinds of threats to decision-making (some remediable or with a high probability for remission). It also prompts assessors to consider the role that cultural values, education, personality, sensory deficits, physical limitations and availability of resources may be playing in the person's choices or ability to manage.

5. REPORTING

Upon completion of an assessment required under SDA, the assessor will prepare either a Certificate of Incapacity (s. 16), or a statement of capacity or incapacity using the prescribed forms.
When providing professional opinions about capacity or incapacity that are not required SDA assessments, an assessor may set out his or her opinion in a short letter rather than using the legal form. For example, there is no legal form prescribed under the *SDA* to communicate an opinion of capacity with respect to granting or revoking a power of attorney, unless the document requires a capacity assessment to activate it {s. 9(3), s.49(2)}, or the *Act* requires an assessment{s.50(1), s. 50(4)}.

PART IV: CAPACITY INTERVIEW - PROPERTY

In Ontario, a person who is 18 years of age or older is presumed to be capable of making decisions relating to property management, unless there are reasonable grounds to believe otherwise. The SDA defines incapacity in matters pertaining to property:

"A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision." (SDA s.6.)

The capacity interview for management of property typically moves through three stages of questioning that become increasingly focused on the reasoning process. Sample interview questions for negotiating each step are set out in Appendix I. Assessors are also directed to the tables (Worksheet #2) developed to assist with the compilation of this financial information.

STEP 1: EXPLORE THE FACTUAL UNDERSTANDING OF PRESENT FINANCIAL CIRCUMSTANCES.

Record the person's knowledge of assets, income, expenses, debts and financial dependents. Accept approximations of the dollar amounts and net worth of assets, and require only that major income sources/holdings/debts be identified. If the person does not volunteer information about a significant aspect of his or her financial status, bring it to the person's attention. If acknowledged, inquire at a later point in the interview to see if this information is being retained. In addition, probe for the reasons behind any significant discrepancies between the self-report and a third-party report, or between the self-report and financial records.

In the majority of cases that come forward for assessment, the assessor will be evaluating capacity for routine money management, and for these purposes it is reasonable to expect the person to show a functional or basic awareness of his or her financial status and circumstances in addition to having a rudimentary understanding of the monetary system. Specifically, he or she should be able to provide an approximate accounting of any income, predictable expenses and net worth.

One reason for starting the capacity interview with a review of the person's understanding of their financial holdings and net worth is to establish whether or not the power of attorney option remains open as an alternative to guardianship. Assessors are directed to S. 8 of the SDA for a listing of the criteria that must be met in order to have capacity to grant or revoke a continuing power of attorney for property.

Points to Consider:

Is there a substantial discrepancy between the person's understanding and his or her actual income and expenses that cannot be corrected through education or re-education?

Is the person able to estimate the approximate worth of various assets? If managing large sums of money, can he or she appreciate the size of the estate in terms of purchasing power?

Is the person aware of obligations to financial dependents?

Can the person identify the important decision-making demands he or she faces?

Do compensations exist for any lack of basic instrumental skills needed to manage his or her affairs (e.g. can they be taught to estimate the likely cost of a regularly purchased item, to count change, complete a cheque, use a bank machine)?

STEP 2: IDENTIFY AREAS OF UNMET FINANCIAL NEED.

At a minimum, the person should be able to identify those essential financial tasks and commitments he or she is called upon to perform. However, assessors must take into consideration the fact that many individuals lack the financial skills to manage large investments, transactions or estates. In these instances, capacity is demonstrated if the person has chosen to delegate the execution of certain tasks to a qualified other, (broker, accountant, advisor) as this demonstrates insight into isolated skill deficiencies rather than impaired decision-making. However, a capable person retains the ability to supervise the activities if he or she chooses, and would be able to seek redress if improper activities on the part of their agent came to light. The same can not be said for the person who because of significant cognitive or intellectual impairment is left in a position of trust and open to potential exploitation.

Contrast self-report with informant observations, and arrive at a conclusion with respect to the adequacy of functioning for each critical skill area. Where discrepancies in information exist, flag these for further investigation. Defer to objective behavioural evidence if it exists (i.e. functional or psychometric assessments by health care professionals indicating skill deficiencies, or financial records documenting mismanagement). An assessor may wish to test some of the basic skills if it is necessary to resolve any uncertainty as to the level at which the person actually functions. For example, the person could be presented with an array of coins to add up or make change, or a sample bill or bank statement to determine if the he or she can decipher it. The person could be asked to solve simple everyday math problems.

Points to Consider:

Does the person admit to any problems with routine or complex money management skills?

For those areas the person acknowledges as problematic, does he or she seek appropriate assistance?

Is there any evidence of a recent change in the person's ability to manage his or her finances?

Can the person recognize situations of potential exploitation and respond accordingly?

Can the person communicate his or her basic financial needs to others to obtain the necessary

assistance?

Does the person face financial risks because of pervasive memory problems?

How does the person reconcile his or her perception or reality of financial management against objective evidence of inability?

Does the person acknowledge that he or she may not be able to implement decisions without help?

STEP 3: EXPLORE DECISION-MAKING WITHIN CRITICAL AREAS OF UNMET NEED.

First, the assessor asks questions directed at uncovering the degree of the person's insight into the problem areas. Begin by questioning the person about the alleged problem or concern raised by informants.

Second, engage in decision-specific questioning that probes recognition and appreciation of options in those same areas. To do this, the assessor begins by exploring the person's factual understanding of his or her options and solicits his or her appraisal of the costs and benefits or advantages and disadvantages attached to each. Then inquire as to whether or not he or she has come to a decision, and ask about the likely consequences or desired outcome of the decision. Of special importance is the person's ability to anticipate the consequences of a decision or lack of decision, and whether or not the person has a realistic appraisal of the risk to property or the likelihood of the desired outcome.

Third, look for evidence of reasoned choice. This stage of inquiry is especially important in situations where the person seems to be making an irrational or illogical decision that carries significant impact for his or her financial well-being. Examine the chain of reasoning for logical consistency and specifically probe for choices that are predicated on delusional beliefs or hallucinatory experiences. A review of previous actions, prior wishes or history of choice under similar circumstances may yield information that either justifies or challenges the choice being expressed.

Points to Consider:

Is there evidence of stability of choice over a reasonable time period? Does the person express the same choice when questioned on separate occasions?

Is the person's appraisal of the degree (severity) and likelihood (probability) of risk realistic? Are major negative consequences being overlooked in favour of secondary or minor beneficial ones?

Is there any evidence of rational manipulation of information or the weighing of advantages/disadvantages as part of the deliberation process?

Are the conclusions logically consistent with the premises?

Is the choice predicated on premises known to be false?

Are the person's actions or choices consistent with stated or inferred goals and priorities?

Even if the person is unable to articulate reasons for his or her choices, are these consistent with his or her values and beliefs?

PART V: CAPACITY INTERVIEW - PERSONAL CARE

In Ontario, a person who is 16 years of age or older is presumed to be capable of giving or refusing consent in connection with his or her personal care unless there are reasonable grounds to believe otherwise. The SDA defines incapacity in matters pertaining to personal care:

"A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision." (SDA, s.45.)

As is the case with capacity assessments pertaining to property, the personal care capacity interview typically follows a three-step procedure. Sample interview questions for each step and personal care domain are set out in Appendix II. Personal care tables are found in Worksheet 3.

STEP 1: EXPLORE THE FACTUAL UNDERSTANDING OF PRESENT PERSONAL CARE CIRCUMSTANCES.

Record the person's description of present living arrangements, perceived physical and medical status, and recollection of formal services received. If the person does not volunteer pertinent facts, bring it to his or her attention. If acknowledged, inquire at a later point in the interview to see if this information is being retained. In addition, probe for the reasons behind any significant discrepancies between self-report and a third-party report. The assessor will need to ascertain and verify where and with whom the person lives, and the availability and acceptance of supports.

Points to Consider:

Is there a substantial discrepancy between the person's depiction of his or her daily routine or current living arrangements and that known or reported by others?

Is the person aware of his or her responsibilities/obligations to dependents?

Is the person aware of the important decision-making demands faced in meeting personal care needs?

STEP 2. IDENTIFY AREAS OF UNMET NEED IN EACH PERSONAL CARE DOMAIN BEING INVESTIGATED.

The assessor inquires as to the activities the person must perform in order to meet needs for basic care and safety, and asks the person to appraise the adequacy of his or her functioning in each. The assessor then explores whether the individual possesses the requisite skills and knowledge to meet personal care needs. If not, does the person recognize limitations and seek appropriate assistance? To evaluate the adequacy of functioning, the self-report will be compared with informant reports and

direct behavioural evidence. If the assessor cannot form an opinion of the adequacy of functioning

in essential areas, this is the point at which one would call for additional work up through an in-home occupational therapy assessment. While not to be confused with incapacity, this functional information is needed to identify the individual's true capabilities so the assessor can determine if he or she is able to reason and problem-solve around risk.

Points to Consider:

Does the person admit to any problems in meeting personal care needs? If so, does he or she seek appropriate assistance?

Is there evidence of a recent change in the person's ability to self-manage?

Can the person recognize dangerous situations and respond accordingly?

Can the person communicate basic needs to others to obtain necessary or emergency assistance?

Does the person encounter safety or physical health risks because of pervasive memory problems?

STEP 3. EXPLORE DECISION-MAKING WITHIN THOSE CRITICAL AREAS OF UNMET NEED.

Assessors are directed to Appendix II and Worksheet #3, as a broad outline of how to probe decision-making in areas where the person faces risk or is not managing his essential needs. First, ask questions designed to uncover the degree of insight into personal limitations in the problem areas. Begin by questioning the person about any alleged problem or concerns raised by informants.

Second, engage in decision-specific questioning that probes "understanding and appreciation" of options, leading up to the person's expression of his or her preferences for managing personal care needs. This requires probing to determine the perceived advantages and disadvantages of one option over another, and whether or not the person can anticipate consequences, both in terms of likelihood and severity. If the issue is refusal of services, explore fully the person's appreciation of the foreseeable consequences, as they would apply in the particular circumstance.

Third, look for evidence of reasoned choice. This stage of inquiry is especially important in situations where the person seems to be making an irrational or illogical decision that carries significant impact for his or her personal care, physical safety or well-being. Examine the chain of reasoning for logical consistency and specifically probe for choices that are predicated on delusional beliefs or hallucinatory experiences. A review of previous actions, prior wishes or history of choice under similar circumstances may yield information that either justifies or challenges the present choice or preference being expressed.

Points to Consider:

Is the person able to understand and retain knowledge of critical information relevant to making decisions about his or her particular personal care requirements?

Is there evidence of consistency of choice over time?

Can the person state the consequences of failure to meet personal care requirements? Is the appraisal of the degree and likelihood of risk realistic? Are major negative consequences being overlooked in favour of secondary or minor ones? Is an outcome being appraised unrealistically because of a temporary distortion in attached values?

Is there any evidence of rational manipulation of information or the weighing of information as part of the deliberations?

Do the reasons provided support the conclusions drawn? Are the stated reasons relevant to the decision at hand?

Is the choice predicated on premises known to be false?

Are the person's actions or choices consistent with stated or inferred goals and priorities?

Even if the person is unable or refuses to articulate the reasons for his or her personal care choices, are actions consistent with expressed values or beliefs?

PART VI: THE NEEDS STATEMENT

Generally, the law limits the assessor's task to supplying an opinion on mental capacity. There are, however, instances when an assessor is required to state his or her written opinion about whether it is necessary for decisions to be made on the person's behalf by someone authorized to do so. This is referred to as the “needs statement”.

In particular, an informed opinion by an assessor as to "need" is relevant when an assessor is being asked to support an application to court for guardianship, in which there has been a finding of incapacity. Assessors should view the preparation of such a "needs statement" as a separate activity from the evaluation of mental capacity.

LEGAL CONTEXT

The determination of necessity is required of a court in considering an application for guardianship of property or of the person. The applicant bears the burden of proof in this regard. If the application will be heard in court, the applicant may introduce any evidence that the court may find relevant.

If the matter is proceeding by way of summary disposition, that is, consideration (without a hearing by the court) on the basis of the documentation supplied, a needs statement is required(SDA s.77).

For **personal care** applications by way of summary disposition, one of the two required capacity assessors must make a needs statement. An additional opinion of incapacity is required from the second assessor, but the opinion as to needs by that assessor is not mandatory. For **property**, the opinion as to needs is not mandatory in the second assessment. The needs statement can be made by the assessor or by the other person who is filing a statement of incapacity.

Assessors should clarify with legal counsel the section under SDA that applies and whether a needs statement is also requested. Subsections 72(3) and 74(3) imply that an assessor could volunteer an opinion about whether the person requires decisions to be made on his or her behalf.

THE NECESSITY OF GUARDIANSHIP

In providing a "needs statement", the assessor is commenting on necessity: that is, whether the person will derive substantial benefit from having a guardian act or make decisions on his or her behalf.

In the absence of a court ruling providing interpretation as to the definition of "necessity", two interpretations are proposed, and it is recommended that assessors answer both:

1. Is there a requirement for a formal consent (to a transaction, for example) in order to obtain or provide protective services to reduce the risk of harm or to prevent the loss or dissipation of the estate?

Caution is recommended in dealing with the above-noted requirement for a formal consent. Only a court can give a clear determination as to whether someone's consent is in fact "required" in law, depending on the circumstances. Assessors should restrict their opinion to a recitation of the facts and whether the transaction that is contemplated would reduce the risk of harm or prevent the loss or dissipation of the estate.

The focus is on the merits of the appointment of a guardian for the benefit of the person, as opposed to the benefit of a third person such as a creditor.

2. Does the person face likely and serious harm to his or her well-being, or to their estate, if a guardian is not appointed?

   This interpretation recognizes that guardianship legislation has risk-management for the incapable person as its ultimate goal.

In both interpretations, appointment of a guardian must solve the person's problem. If it does not, then there is no obvious benefit to the person, and hence no need for a guardian.

Implications:

It is recommended that assessors obtain clear instructions at the beginning, as to whether the requester will require an opinion as to needs. The requester should be advised that the assessor's report will be based on professional opinion and cannot be influenced by the requester's beliefs or intentions. If the assessor intends to provide an opinion as to needs, the person being assessed should also be advised.

In cases of marginal capacity, the assessor should have an informed view of the person's risk exposure; the likelihood and severity of actual and imminent harm; and the scope of impact for the person, with and without a guardian. Up-to-date information about functional status in the home as well as the adequacy of compensatory formal and informal supports may be required to complete an informed needs statement. Additional analysis of the quality of the existing social supports may be required to explore potential or hidden issues, such as abuse, exploitation, victimization or neglect.

The law does not explicitly assign the job of exploring less restrictive alternatives to the assessor. A proper analysis should be based upon specialized knowledge or familiarity with community resources, which could lie beyond the assessor's expertise. It is the duty of the judge to consider less restrictive alternatives to the person's need for a decision-maker. The onus is on the applicant to bring forward information that shows that such alternatives have been explored or tried.

If requested, the analysis of the less restrictive alternatives (a separate process from the opinion on capacity and needs statement) should only be conducted by an assessor if he or she has strong knowledge of the person's condition and the available supports in the community.

The analysis should incorporate the following:

(i) Information on the person's functional status, which could be of assistance to judges who must critically review guardianship plans that propose the person's participation in circumscribed areas or activities.

(ii) Identification of any mismatch between the person's current environment and his or her needs. This may require some creative and critical thinking about why the existing environment is not satisfactory. For example, do current caregivers hold an opinion as to the person's condition, needs and possible supports based on factors other than the person's actual needs?

(iii) Suggestions as to whether the current environment could be adapted to meet the needs of the person, and whether this is likely. For example, can the person afford a private room or a more costly long-term care facility? The assessor should consider making suggestions to the court on how to ensure the application and follow-up of the recommendations, such as a trial period during which a final court decision could be postponed, pending a report to the court by a person appointed to do so.

(iv) Indication of whether there is another environment that could better meet the person's needs. This requires a description of any wishes that the person has expressed, the availability of supports, and the reasons for the assessor's opinion as to why the proposed alternative would satisfy the person's needs or wishes.

NINE PRELIMINARY CRITERIA FOR MAKING A NEEDS STATEMENT

The following can serve as preliminary, but not exhaustive criteria for determining whether the "needs" test has been met.

1. If no guardian is appointed, can you predict on the balance of probabilities that the person's inability to manage will cause or expose him, her or others to significant harm?
2. If a guardian is appointed, is the person less likely to dissipate property, injure self or others, be deceived, or expose self or family to want or suffering?
3. Will the benefits derived from the appointment of a guardian be cancelled or outweighed by adverse consequences for the person either in terms of the quality of life or psychological well-being?
4. Is there any possibility that the proposed guardianship will contribute to the vulnerability of the person? Is guardianship being sought for no other reason than to strictly control the individual?
5. Does the need for guardianship arise because of a lack of support, or an indication that existing supports have disintegrated and cannot be easily reconstructed?
6. Is there a need for important decisions to be made on the person's behalf?
7. Is the need for protection, care, or support by the guardian likely to increase over time?
8. Is a period of rehabilitation likely to remove the need for a guardian?
9. Is the nature of the incapacity likely to be of short duration, for example, less than six months?

PART VII: SPECIAL POPULATIONS

PERFORMING CAPACITY ASSESSMENTS WITH SPECIAL POPULATIONS

In virtually all requests for capacity assessments, the alleged "incapable" person will belong to at least one identifiable vulnerable class of citizens. Each class of citizen, for example people with developmental disabilities or the elderly, have unique issues and life experiences that an assessor must be aware of and sensitive to. To this end, assessors must consider whether or not they have sufficient experience with the population in question in order to carry out a competent evaluation. Such experience will ensure possession of the essential clinical, content, or evaluative skills that subserve valid and unbiased assessments of mental capacity.

What follows is a discussion of four of the major classes of persons with either a disability or vulnerability. Each section will outline the way in which a particular problem (disease, disorder or disability) can impact on the decisional ability of individuals from these vulnerable groups. Special attention will be paid to how these problems may impact cognition, affect, or expressed values.

Topics:

THE ELDERLY
FOCAL NEUROLOGICAL DISORDERS
THE PSYCHIATRICALLY DISABLED
PEOPLE WITH INTELLECTUAL DISABILITIES

The Elderly

Special Considerations:

1. Elderly individuals are very diverse; they are not a homogeneous group. One cannot envision one "characteristic" elderly person as a representative of the entire group. Factors such as age (less than 80 years versus over 80 years) mental health, physical health, social supports may help differentiate one elderly person from another.

2. Age, itself, does not determine capacity. Very elderly persons can be completely capable of making all decisions on their own behalf.

3. Psychiatric disorders (other than Dementia) are probably not more common in the elderly.

4. Certain disorders (Dementia, e.g., Alzheimer's Disease) are much more common in the elderly. Dementia probably occurs in 8% of those over 65 and 34% of those over 85 years of age.

5. Elderly individuals have a long history (personal, medical) preceding the present. This can be a rich history encompassing childhood, schooling, work, marriage, family life, interests and pastimes, relationships and health over many years.

6. Cultural diversity of the elderly in Ontario is an important issue. Many are first generation Canadians whose first language is not English or French. Cultural norms and traditions may be very different and have a profound influence on day-to-day life.

7. Although cognition (process of thinking) does not necessarily deteriorate in old age, thinking processes may be slower. It may take longer for older individuals to learn new information. However, the elderly can use experience to help them solve problems.

8. The current group of elderly people has experienced certain important events such as the Great Depression and the World Wars. These will influence their actions and beliefs. Moreover, values held by the elderly may be different than those important to other generations.

9. Involvement with families over many years continues into old age. These relationships may be positive or complex and conflictual. The elderly are often very involved with their families and not cut off from them.

10. There is an increased prevalence of medical problems in older individuals. Fatigue, decreased concentration, poor hearing and diminished eyesight may result from conditions which are more common in the elderly. Many of these conditions are treatable.

11. The elderly may not have any experience in dealing with government bureaucracy. They may be particularly anxious about formal assessment processes. They may resent any government involvement in their affairs.

12. The elderly may be especially concerned about others trying to force them out of their home and into institutions.

13. Many individuals in society still view the elderly as infirm, feeble and incapable. The elderly often see themselves as younger, fit and capable.

14. The elderly do not necessarily fear death – they often fear the loss of their independence and painful illness much more than death itself.

Implications for Assessment:

1. Assessors have to be aware that assessments with elderly persons may take longer and have to be slower paced. Assessors should learn to speak clearly, using straight-forward (non jargon) language. They should pace the assessments to allow for time for responses and not make the person being assessed feel rushed or pressured.

2. Assessors may have to spend more time explaining the assessment process to the elderly person and gaining their trust before the assessment process can occur.

3. Assessors should be aware of possible differences in values between themselves and the elderly individuals they assess. They should be careful not to make value judgments based on their experiences and keep in mind that the elderly may have experienced different things in their lifetime.

4. Assessors should take the time to familiarize themselves with the elderly person's background and be sure to understand the relationship of the older person with their family.

5. Assessors should be conscious of their own potentially ageist views. They should be careful not to sound patronizing or to classify the elderly in their mind as incapable. They should recognize that many conditions are treatable in old age and not assume that "nothing can be done."

6. Assessors should familiarize themselves with disorders of old age (dementia in particular) in order to recognize the signs and symptoms themselves and to enable them to interview individuals with these disorders.

7. Assessors should insure that hearing aids and glasses are available and used. They may have to complete the assessment over more than one interview to ensure the elderly person does not become too fatigued.

8. Assessors should try to understand the natural fears of the elderly – the fear of losing their independence and their home.

9. Assessors should not assume that it is "normal" and "understandable" for the elderly to be depressed. Depression is treatable and should be identified so that it can be treated.

FOCAL NEUROLOGICAL DISORDERS

Special Considerations:

1. Neurological disorders include a spectrum of medical conditions, and not all have implications for central nervous system functioning. Assessors will need to know which diagnoses impact on mental functions. Most common are the neurobehavioural syndromes produced by head injury, stroke, degenerative diseases (cortical or subcortical) or neurosurgery.

2. The existence of brain damage/dysfunction does not impair decision-making in a uniform fashion. Different etiologies may produce a characteristic neuropsychological profile, which in turn can affect the decision-making process at different levels or in different ways.

3. The presence of specific or even global information-processing deficits must not undermine the presumption of capacity.

4. The presence of significant neuropsychological impairment on formal testing does not automatically translate into an inability to care for oneself or make financial or personal care decisions.

5. Persons with circumscribed information-processing impairments may have areas of preserved function that may be used to bypass deficits. For example, persons with expressive aphasia may be able to avail themselves of alternative means of expressing wishes/decisions (e.g., through gestures, pointing, drawing pictures).

6. Persons with receptive language-processing are not necessarily incapable of decision-making. It must be demonstrated that the comprehension ability of the person is sufficiently limited to the point that he/she cannot understand information sufficiently to make informed decisions.

7. Memory is not a unitary phenomenon, and a memory impairment may require further characterization (i.e., is it a problem with new learning vs. accessing remote memories, or a retention vs. retrieval problem). In persons with isolated deficits in memory, capacity for certain types of decision-making may be preserved, depending on the level or nature of impairment in the memory system. For example, persons who experience difficulty with unassisted information-retrieval (e.g., Parkinson's Disease) may require cueing or a recognition format to demonstrate their knowledge and understanding. Also, no guideline can be offered as to the absolute degree of memory impairment sufficient to conclude incapacity, as it will depend on the specific decision(s) the person is being asked to make.

8. Many persons with a significant memory loss have additional intellectual deficits that comprise a dementia syndrome. Hence, the person may be deemed incapable because of the associated problems in awareness, reasoning and judgment.

9. Sensory-motor problems (e.g., paralysis), while perhaps handicapping for the execution

of activities of daily living, should not be mistaken for incapacity.

10. Persons with dementing illnesses (e.g., Alzheimer's Disease, Parkinson's Disease, vascular dementias) should not be assumed a priori to be incapable. In the early stages of these diseases, intellectual deterioration may not have sufficiently advanced to impact on decision-making.

11. Certain neurological conditions produce changes in personality (e.g., hostility, suspiciousness), drive (e.g., apathy) or emotional control (e.g., rage, agitation, disinhibition) that can be either associated with or independent of changes in higher-order cognition. Conversely, the assessor cannot assume that all psychopathology in neurological patients is the result of neurological disease. Regardless of etiology, assessors will need to consider the impact of conjoint neuro-psychiatric disorders on decision-making.

12. Persons with neurological disease/damage may proceed through stages of exacerbation and/or recovery. This has implications for the timing of the capacity assessment as well as the need for periodic review of capacity status.

Implications for Assessors:

1. Assessors may also need to have extensive clinical and theoretical knowledge of brain-behaviour relationships to be able to evaluate the specific role that global or circumscribed information-processing deficits play in undermining decisional capacity. The major cognitive skills that subserve decisional capacity are attention, memory, language and executive functions.

2. When evaluating persons with neurological conditions, the assessor must determine if the person's preserved intellectual and information-processing abilities are sufficient to support reasoned decision-making with respect to the situational demands that apply.

3. Assessors must be alert to cases in which a false impression of decisional integrity is created. This may arise in situations where compromise in specific critical cognitive sub-skills is undetected or is not considered to be important to the decision-making process. For example, certain individuals with frontal lobe damage/dysfunction may have preserved "intelligence" as well as intact language, memory or visuo-spatial skills. However, neurologically-based changes in self-control, planning, and self-reflection undermine the person's ability to follow through on his/her stated intentions, and hence may interfere with the ability to appreciate the consequence of his/her actions.

4. Persons with neuropsychological impairments may require special accommodations for the interview process to be valid. For example, vocabulary and phrasing of questions may require adaptation and simplification. Important information may need to be written down for reference by the person throughout the interview to help him/her stay focused and retain the critical facts. Additional accommodations may include language

5. augmentation, use of close-ended versus open-ended questions, repetition, and memory

retrieval support.

6. Assessors will need to exercise clinical judgment in knowing when to defer an opinion of capacity until additional clinical work-up has taken place. A neuropsychological assessment, while helpful in delineating areas of intact or compromised cognitive functioning, will not necessarily address the issue of whether a person "understands and appreciates" the consequences of his/her decisions. However, it may identify the presence of sufficient compensatory abilities. Similarly, an evaluation by a speech and language pathologist may serve to identify residual language skills or pathways for the communication of information.

7. Assessors will need to be familiar with the precipitating conditions of delirium or acute confusional states that if treated, will restore capacity.

THE PSYCHIATRICALLY DISABLED

Special Considerations:

1. Many individuals who have mental disorders still feel stigmatized by others in society. These may result in feelings of shame, low self-esteem, anger and a heightened wariness of clinical professionals in a real or perceived position of authority. The person may feel especially stigmatized by the capacity assessment process.

2. Different people with the same mental disorder may respond differently to the same treatment.

3. Some psychiatric disorders are treatable conditions and they may respond to various types of treatment – medication, talking therapies and other therapies. Some psychiatric disorders produce symptoms that can be controlled or alleviated by medication. Some psychiatric disorders fit neither description.

4. Psychiatric disorders per se do not imply incapacity in any decisional area.

5. Delusions (fixed false beliefs) per se do not imply incapacity in any decisional area.

6. Individuals who are hallucinating (hearing voices, seeing things which are not there) may find it hard to concentrate in an assessment process as they are distracted by the hallucinations.

7. Individuals with depression may find it hard to concentrate in an assessment process; depression itself may dramatically impair concentration.

8. Individuals with depression may have trouble seeing the potentially positive outcomes of treatments or other changes in their current situation. They may refuse all help, as they can see no future for themselves.

9. Other mental disorders may impair judgments, i.e., those with anorexia nervosa may have a distorted body image; those with mania may have an unrealistic understanding of their abilities.

10. Individuals who have been treated with some drugs, such as neuroleptics, may present facial tics, drooling, grimacing, muscle spasms, etc. These physical symptoms should not be confused with decisional capacity.

11. Psychiatric treatment may itself complicate or interfere with the assessment. For example, someone on a heavy dose of neuroleptics may demonstrate sleepiness, inability to concentrate, slowed thinking and difficulty articulating.

Implications for Assessors:

1. Assessors should be conscious of how they speak with these individuals; they should not be patronizing or assume they cannot adequately discuss issues because they suffer from a mental disorder.

2. Assessors have to try to understand how the mental disorder affects the individual being assessed. Only those areas being assessed are particularly important. Delusions or misperceptions resulting from the mental disorder are only important if they relate to the issues at hand, e.g., specific delusions about money matters in a financial assessment.

3. Assessors should be conscious of their own feelings about mental disorders and not let these prejudgments interfere with a fair assessment process.

4. Assessors may have to proceed slowly to insure that the psychiatrically disabled can concentrate and attend to the process at hand during the assessment. They may have to see the person over several visits to get to know them and begin to understand the "person" in relation to the disorder.

5. The assessor should consider whether the person's mental status is being affected by short-acting sedation or recent medication changes and whether to delay assessment until a more appropriate time. The assessor should also consider the timing of the assessment in relation to any course of electro-convulsive therapy.

Special Considerations:

1. Presence of intellectual disability must not undermine the presumption of capacity.

2. People with intellectual disabilities are not a separate group of human beings who think, feel and act in a similar fashion. Their individual likes, dislikes, choices, talents, strengths and weaknesses are varied as elsewhere in society.

3. Difficulties in communication should not be confused with incapacity.

4. Physical disabilities, no matter how extensive, do not equal or necessarily indicate incapacity.

5. Characteristics associated with specific syndromes cannot be presumed to be evidence of incapacity, e.g., in Down's Syndrome, an extensive range of intellectual ability is encountered.

6. Institutionalization is not an indicator of incapacity. Most people were institutionalized because government-funded community alternatives were not available and families had no access to other support.

7. An intellectual disability (like a physical disability) is a fact of life for the person, part of who that person is. It typically dates from birth and it is not something that is only now happening to the person. The extent to which it has become a handicapping condition depends to a significant extent on factors external to the person, e.g., the presence, absence or variability of opportunities for early developmental nurturing and support, education (social or academic), family or community acceptance and emotional support.

8. Decision-making skills may be under-developed as a consequence of the limiting experience of restrictive environments, e.g., institutional and other controlled, congregate settings, family over-protectiveness, or other externally imposed barriers to growth and development including negative expectation of progress (self-fulfilling prophesies) on the part of professional advisors.

9. Inappropriate use of traditional assessment procedures (e.g., I.Q. and related instruments) has typically led to exclusion from, rather than access to, supports for the individual (such instruments do not predict adequacy or functioning ability to make reasoned decisions about personal care or financial management).

10. People are not necessarily conscious of their own biases and prejudice towards individuals with disabilities. Assumptions that people with intellectual disabilities do not need to go to school or be gainfully employed, that rather than have homes of their own they should live only in large group settings or other situations that would be unacceptable to most people, are examples of handicapism that have their origins in society's prevailing attitudes and responses rather than in the needs or characteristics of

the person. Many people share these assumptions.

11. Parents and family members are also diverse. They may also have biases. It cannot be

assumed that being a parent or member of a family in which there is a person with an intellectual disability guarantees either immunity to prejudice, or up-to-date knowledge or understanding of the person or of the law. Many parents of adults with disabilities have simply assumed that children who have disabilities, unlike other children, remain forever under the parents' legal guardianship and responsibility can be willed to other family members on death. Some parents, having always controlled the lives of their sons and daughters, may be seeking guardianship in order to maintain that authority and control or to ensure that their values prevail over those of the person. Some may sincerely believe that guardianship guarantees protection from abuse.

12. Despite the Charter which dictates otherwise, some people (including some parents or other family members) believe that people with intellectual disabilities who are not able to exercise rights independently, should not be entitled to them. Others (including some parents or other family members) spend a lifetime fighting to ensure that those rights are not usurped or violated in any way.

Implications for Assessors:

1. Because so many people with intellectual disabilities will easily satisfy the cognitive test of mental incapacity, the importance of needs assessments cannot be over stressed. When assessing needs, it is important for assessors to know that there are people, Adult Protective Service Workers, for example, who have up-to-date knowledge of what is or is not available in a community for people with intellectual disabilities.

2. People with intellectual disabilities, particularly those who have been institutionalized, may have had greater than usual exposure to assessments of various kinds. There may be resistance to yet another intrusion by an authority figure, particularly one associated with government. Alternatively, behaviour conditioned by the need to survive in the system may result in total compliance and a need to provide the assessor with expected response. There may be anxiety in the face of the threat of loss of autonomy. Assessors must be prepared to feel comfortable with a full range of emotional reactions including anxiety, compliance and resistance, and have an understanding of the reasons for them.

3. As with anyone, communication with a person with an intellectual disability may require particular sensitivity in matching the vocabulary and phrasing of questions to the person's experience. Jargon should be avoided. Too many alternatives or ideas in one sentence may place the person at a disadvantage in considering a response. Conversely, overly simplistic questions may appear condescending or insulting.

4. Assessors must be alert to double standards and prejudice against people with disabilities (handicapism), either within themselves or in applicants and others with whom they will make contact as part of the assessment process.

5. Assessors must be alert to the fact that not all parents and family members are involved closely with the person, particularly when the person is or has been institutionalized. The family's perceptions of the person's capacity and their expectations for the person, may be at odds with those of the person and also of others with whom the person is in day-to-

day contact.

6. Assessors must be alert to the tendency to expect different manifestations of psychiatric and certain medical problems in persons who have intellectual disabilities. Solutions to real or anticipated problems may more properly lie within provisions of the HCCA (*Health Care Consent Act*) or MHA (*Mental Health Act*), than under the SDA.

7. Assessors should be conscious of the roles that settings and contextual variables can play in precipitating applications for assessment. The pre-cursor of an apparent crisis may have been intolerance or rigidity on the part of staff or caregivers with respect to autonomy in less critical, even mundane, situations. Escalation of the situation might have been avoided by more tempered and reasonable responses to the initial incident. For example, treating an expression of frustration as non-compliance and imposing further controls, leads to an increase in frustration, further strictures, more frustration, possible violence, stricter control, e.g., guardianship. Modification of the environment and assistance with stress and anger management may have been all that was required.

APPENDIX I: SAMPLE INTERVIEW QUESTIONS: PROPERTY

1. FACTUAL UNDERSTANDING

"Can you tell me something about your present money situation? How much money do you have in the bank? Do you own any property? Where do you get your money? Do you get a pension? Welfare? Salary? How much? Do you have any RRSPs? Do you think you are wealthy, poor or neither?"

"Can you tell me approximately how much you spend in a month? Do you pay rent or have a mortgage? Do you have any debts or owe people money? Do you owe a lot on your credit cards? Did you ever get in debt over your head?"

"Your sister tells me you own your own home. Is this true? Why didn't you think of this when I asked if you owned any property? How much do you think it would be worth if you sold it?"

"Do you have any people that depend on you for money or support? Does your spouse have his or her own source of income? Do you have any children that are not yet full-grown and on their own? Are you in business with anyone?"

"Do you have any plans to make any major purchases or repairs to your home? Do you plan on selling your home or selling off your stock portfolio? Do you intend to make any loans or donations to your family, friends, charities, etc? Do you intend to take out any loans in the near future?"

2. AREAS OF UNMET NEED

"Do you have any problem with handling small bills, making change or balancing your cheque book? Do you need to be able to perform this task? Could you manage without help?"

"Do you have any difficulty doing your own books for your business? Do you need to be able to track your investments or do you have a financial advisor? How do you monitor the advisor's performance?"

"In order for you to manage your money, what different types of things do you have to do or watch out for? (pay bills, do banking, budget for major purchases) Have you noticed any problems with your memory that cause you to lose track of time or forget to pay your bills on time?"

"Have you ever fallen into excessive debt because you made a number of unwise purchases? What will happen if you spend more than you can afford? Do you feel a budget would help you?"
"Do you think that you may be pressured into buying things you don't need or making loans or gifts you really shouldn't because you can't say no or you fail to think things through?"

“What would you do if someone threatened you to give them money? Would you do the same if it was a relative? Is anyone trying to steal your money?"

"Can you tell me the name of your broker, your lawyer, your bank? Do you know what a Power of Attorney is?"

"When you retire, do you know what benefits you can apply for?"

3. WHERE CONCERN EXISTS AS TO INADEQUATE FUNCTIONING

(i) Insight into Problem

"Your spouse is worried that you won't remember to pay the bills on time. Is that a real concern? Has it ever happened? Your daughter thinks you don't keep a careful enough watch on your money, and that some dishonest person will be able to easily con you. Do you think you are an easy target for some salesperson on the take?"

"What would happen to you if you lost your wallet, forgot to pay your bills, failed to budget or made expensive but unwise purchases? Has this actually happened to you? What did you do? Are you likely to find yourself in this situation?"

"Has there been any change in your ability to manage your financial affairs?"

"Has anyone in your family expressed concern to you about how well you are able to manage or keep track or your affairs?"

(ii) Decision - Specific Probing

"You have refused to accept your family's offer to help, or to make a Power of Attorney (POA). Why? What other alternatives are there to managing your money on your own? What are some of the advantages and disadvantages to accepting help or making a POA? Why do you want to keep managing on your own?"

"One of your options is to agree to a loan, rather than a gift to your girlfriend. Or, you could give them a smaller amount. Have you considered this? What would be the advantages of a gift over a loan? What would be some of the drawbacks? "

"You have chosen to spend your money on X or buy Y. Why did you decide to spend your money this way? What are the consequences for you if you spend all of your income on X? Some people would question the wisdom of spending your money this way. What would you say to them?"

"What are some of the likely consequences of your choosing to do X? Do you think it very

probable that things will turn out the way you imagine?"

(iii) Reasoned Choice

"This doesn't make sense to me. Can you tell me why you want to give all your money to charity against your family's advice, knowing you will have to go on welfare? Why is this an important choice for you?"

"Tell me your reasons for wanting to make this investment when you don't know anything about the market for these kinds of stocks. Why do you want to buy this property when you don't have the money?"

"Given what you told me about what life is about for you, can you show me how this helps you meet your goals?"

APPENDIX II: SAMPLE INTERVIEW QUESTIONS: PERSONAL CARE

1. FACTUAL UNDERSTANDING

"Where do you live? Who do you share your home with? Are there relatives or close friends nearby? Do they visit often?"

"Do you live in a shelter or on the street?"

"Do you provide care or support to others?" (ailing spouse, dependent children)

"Who does your cooking/grocery shopping/cleaning?"

"What is your average day like? What kind of things/activities do you do all day?"

"Are you thinking of moving to another place? Why?"

"Do you have any health problems? Do you take any pills or medicine? Do you see a doctor often?"

2. AREAS OF UNMET NEED

"You told me you get your own meals. Do you have any problems with cooking or using the stove? Have you had a kitchen fire or burned any pots lately? Have you lost weight lately?"

"What would you do if a fire started in your home? If you had a bad fall, how would you get help?"

"Do you know how to use the telephone to call for help?"

"If you were going to go out right now, what kind of clothes would you need?"

"Do you have problems with wetting yourself?"

"Do you ever have any problems finding your way home from the store? What is your address and telephone number?"

"What do you usually eat for breakfast/lunch/supper? Do you sometimes forget to eat? Do you not feel like eating? Is it too hard to prepare? Is there not enough money to buy food?"

"Do you have to eat special food to keep you well? Are you pretty good about watching what you eat? Have you ever been in trouble because of what you ate?"

"Have you ever been sick or infected a cut because you didn't keep yourself clean?"

"Do you have trouble keeping an apartment or staying in one place? Why?"

"Did you ever forget to take your pills? What happened to you?"

"How do you tell if a pill or something in a bottle is poison or if it will hurt you?"

3. WHERE CONCERN EXISTS AS TO INADEQUATE FUNCTIONING

(i) Insight into Problem

"Your family is worried because you got lost twice last month. Do you remember what happened?"

"I see burn holes in your sweater/on the carpet from lit cigarettes. How did that happen? What would happen to you if you fell asleep while smoking?"

"Have you been able to care for yourself lately as well as you'd like to? What has happened?"

"You have been in hospital two times in the past month for mixing up your pills. Do you see this as a concern?"

"Do you know that your family is worried about you? They're afraid you may wander away from home and become lost. Do you think this is likely to happen?"

"Why is your wife so worried about your health?"

(ii) Decision - Specific Probing

"You won't allow someone to come into your home to help you with your bath/dressing. What could happen to you if you can't keep your body or clothes clean?"

"You have chosen to live on the street and only use the shelter when it gets too cold. Can you think of anything good about having your own place? What wouldn't you like about having a place of your own? What do you like about living the way you do? What do you dislike? Is it dangerous to live on the street?"

(iii) Reasoned Choice

"The last time you worried about your food you ate only eggs. You got so sick you ended up in hospital. After treatment, you knew you only ate eggs because of your mental illness. Is your refusal to eat meat the same kind of thing?"

"Your family wonders why you won't put in smoke detectors. Is there something about the

smoke detectors that worries you or makes you afraid?"

"Your children think you've changed. Do you think there is a way that your decision could make sense to them?"

"Are you doing this of your own free will or do you feel you are being forced to do this?"

APPENDIX III: WORKSHEETS

The following worksheets are provided to assist in the organization of the information required when assessing capacity.

They are meant to correspond to key components of the capacity assessment.

#1 Financial Capacity Assessment Tables
#2 Personal Care Assessment Tables
#3 Capacity Assessment Interview
#4 Review of the person's present and past situation.

While more straightforward assessments may not require the use of the Worksheets, this format may be helpful when conducting more complex assessments.

WORKSHEET 1: SUMMARY OF INFORMANT INTERVIEW

Date: _____ Name: _____ Relationship: _____

Reason for Request

1. a) What evidence was supplied to suggest the person lacks capacity to make personal care decisions (e.g., very poor personal hygiene, poor nutrition, untreated serious medical conditions, medication misuse, getting lost in familiar surroundings, etc.)?

   b) What evidence was supplied to suggest the person lacks capacity to make financial or property management decisions (e.g., financial exploitation, failure to safeguard valuables/money, unwise or impulsive purchases, problems with daily or complex money management, etc.)?

2. What problem(s) have been described that could be resolved through a substitute decision-maker?

3. What are the circumstances leading up to the request for capacity assessment? Is the request for assessment being triggered by the person's refusal of services? Please elaborate in full.

4. How long has the problem(s) existed and how often does it occur?

5. What reasons were given as to the cause of the person's failure to meet his/her personal care/financial needs (i.e., physical disability, sensory disability, communication disability, mental/emotional/memory/intellectual disability, insufficient knowledge or skills, etc.)?

6. a) If a personal care assessment is being requested, is the problem life-threatening or dangerous? If Yes, estimate both the likelihood and severity of adverse consequences to the person and others should he or she display impaired decision-making.

   b) If a financial assessment is being requested, is there potential to seriously deplete the estate? If Yes, indicate the specific nature and severity of consequences to person and financial dependents/partners should he or she display impaired decision-making (e.g., eviction, bankruptcy, etc.).

WORKSHEET 1: SUMMARY OF INFORMANT INTERVIEW

Present Circumstances

1. a) If a **personal care** assessment is requested, what evidence was given about the person's current living arrangements and health status (e.g. alone, with other, supervised housing/group home, nursing home, health care institution, etc.). **(Enter information in the appropriate place in the personal care capacity tables.)**

   b) If a **financial** assessment is requested, what evidence was given about the person's current financial status, including assets, income, expenses, debts, and financial dependents. **(Enter information in the appropriate place in the financial capacity tables.)**

2. a) Did the informant indicate any pending or planned personal care/financial decisions of significant import or complexity (e.g. a change of residence, major surgery, sale of property, etc.)?

   b) Are the person's plans perceived as erratic or in conflict with previously expressed wishes?

3. a) (i) What activities or decisions must the person perform in order to meet his basic **personal care** needs in his present circumstances, defined as providing food, shelter, proper clothing and a generally safe, secure living environment?

   (ii) According to the informant, how well does the person perform each of these requisite tasks? **(Use the personal care tables to indicate the informant's opinion of adequacy of functioning in critical domains.)**

   b) (i) What activities or decisions must the person perform in order to obtain, administer or dispose of his/her estate and fulfill the **financial** demands of his/her circumstances?

   (ii) According to the informant, how well does the person perform each of these requisite tasks? **(Use the financial capacity tables to indicate the informant's opinion of the adequacy of functioning in basic and/or complex financial domains.)**

4. Describe the type of informal support services/solutions (social, educational, vocational,

medical, rehabilitational, financial) explored that are either currently in place or were rejected. If rejected, list reason if known. *(least restrictive alternatives)*

Current or anticipated:

Explored but rejected:

5. Give some indication of
(a) the informant's availability and willingness to provide support or assistance that may maximize the person's functioning.

(b) Does the informant know of others (relatives, neighbours, friends, agency personnel) who have offered their support?

(c) Is the person willing to accept the informant's support or other services that would allow him/her to better meet his/her essential needs?

d) Has the person been given information about possible less restrictive alternatives?

WORKSHEET 2: FINANCIAL CAPACITY ASSESSMENT TABLES

Step 1. Explore the person's factual understanding and awareness of his/her present financial circumstance.

Assets:	**TYPE**	**APPROXIMATE WORTH**	**SOURCE OF INFORMATION**	**PERSON'S UNDERSTANDING**
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Income:	**TYPE**	**APPROXIMATE WORTH**	**SOURCE OF INFORMATION**	**PERSON'S UNDERSTANDING**
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Expenses:	**TYPE**	**APPROXIMATE WORTH**	**SOURCE OF INFORMATION**	**PERSON'S UNDERSTANDING**
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Debts:	**TYPE**	**APPROXIMATE WORTH**	**SOURCE OF INFORMATION**	**PERSON'S UNDERSTANDING**
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Dependents:	**RELATIONSHIP**	**PERSON'S UNDERSTANDING**
	_____	_____
	_____	_____
	_____	_____

2. Does the person indicate any current or pending transactions/major purchases/costly repairs or any future plans for acquiring or disposing of the assets.

WORKSHEET 2: FINANCIAL CAPACITY ASSESSMENT TABLES

Step 2. Identify Areas of Unmet Financial Need

A. Basic Money-Management	Self-Report	Informant	Behavioural Evidence	Final Rating	Not Applicable
Maintain Monthly Rent/Mortgage					
Handle Small Currency					
Handle Large Sums					
Safeguard Valuables					
Make Small Purchases					
Pay Bills, Pay for Services(s)					
Manage Income					
Issue Cheques					
Budget Weekly Expenses					
Make Donations/Gifts					
Resist Exploitation					
Knowledge of Basic Services					
Other: _____ _____					

KEY: **Satisfactory**= fully independent or compensates for personal limitations (appreciates need for and accepts assistance)
Marginal= could be a problem depending on availability and acceptance of supports
Unsatisfactory= no assistance available or refusing assistance, resulting in unmet need
Not applicable= skill is not required to manage property of given size/complexity

B. Complex Money-Management	Self-Report	Informant	Behavioural Evidence	Final Rating	Not Applicable
Manage Business					
Manage/Advise Investments					
Budget for Major Purchases					
Dispose of or Acquire Property					
Apply for Pension Benefits					
Balance Accounts					
Arrange for Tax Obligations					
Knowledge of Specialized Services					
Other: _____					

WORKSHEET 3: PERSONAL CARE ASSESSMENT TABLES

Step 1. Explore the person's awareness of his/her present personal care circumstances.

Living Arrangements:	**INFORMANT REPORT**	**PERSON'S UNDERSTANDING**
Alone/shared	_____	_____
Type of accommodation	_____	_____
Responsible for Self	_____	_____
Others (list)	_____	_____
	_____	_____

Physical Health:		
Major medical	_____	_____
problems and	_____	_____
medications	_____	_____
	_____	_____
Physical limitations	_____	_____
i.e. sensory/motor)	_____	_____

Formal services in place:		
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

2. Does the person indicate any current or pending personal care decisions that could carry significant impact e.g. a proposed move, surgery, etc.)

WORKSHEET 3: PERSONAL CARE ASSESSMENT TABLES

Step 2: Identify Areas of Unmet Need in Each Personal Care Domain Under Investigation

A. Nutrition (apply minimum standards)	**Self-Report**	**Informant**	**Behavioural Evidence**	**Final Rating**	**Not applicable**
Able to store, prepare food					
Able to arrange for purchase of food					
Able to eat unassisted					
Knowledge of special dietary needs					
Knows what to eat / has rudimentary knowledge of nutrition					
Other: _____ _____					

KEY: **Satisfactory**= fully independent or compensates for personal limitations (appreciates need for and accepts assistance.)
Marginal= could be a problem depending on availability and acceptance of supports
Unsatisfactory= no assistance available or refusing assistance, resulting in unmet need
Not applicable= skill is not required to manage personal care requirements

B. Clothing	**Self-Report**	**Informant**	**Behavioural Evidence**	**Final Rating**	**Not Applicable**
Able to dress/undress					
Clothes are adequate for weather					
Other: _____					

WORKSHEET 3: PERSONAL CARE ASSESSMENT TABLES

C. Hygiene (Apply minimum standards)	Self-Report	Informant	Behavioural Evidence	Final Rating	Not Applicable
Able to wash/bathe					
Able to use bathroom					
Deals effectively with incontinence					
Keeps clothes clean					
Keeps living environment clean					
Personal grooming: teeth, hair, shaves					
Other: _____					

D. Safety	Self-Report	Informant	Behavioural Evidence	Final Rating	Not Applicable
Sufficient mobility to meet needs/circumstances					
Does not exhibit life-threatening behaviour: (wandering, driving recklessly, provoking others, medication abuse)					
Able to recognize and avoid hazards: (handles cigarettes carefully, remembers to turn off stove, manages meds)					
Able to handle emergencies (notification and evacuation): (e.g. medical, fire, break-ins)					
Recognizes when others present a danger and takes precautions: (careful when out alone at night, does not carry large sums)					
Other: _____					

WORKSHEET 3: PERSONAL CARE ASSESSMENT TABLES

E. Shelter	**Self-Report**	**Informant**	**Behavioural Evidence**	**Final Rating**	**Not Applicable**
Able to find shelter that meets minimum personal needs					
Type of shelter is appropriate to needs (e.g. manages steps, locks)					
Adequate temperature regulation maintained within shelter					
Other: _____					

F. Health Care (Apply minimum standards)	**Self-Report**	**Informant**	**Behavioural Evidence**	**Final Rating**	**Not Applicable**
Takes care of routine health problems (headaches, colds, cuts, menses, etc.)					
Can follow medical regimen for essential or hazardous drugs					
Takes precautions against illness					
Recognizes and alerts others to serious health problems					
Knows primary medical Diagnosis and need for treatment					
Can communicate symptoms of illness					
Other: _____					

WORKSHEET 4 : CAPACITY INTERVIEW

Step 1. Explore the person's awareness of his/her present financial/personal care circumstances. **(**See worksheets 1 or 2)

Step 2. Identify areas of unmet need. (See worksheets 1 or 2))

Step 3. Explore decision-making within those critical areas identified in Step 2 in which there is verified evidence of marginal or unsatisfactory functioning. (Complete the following sections A, B, and C)

A. Insight into Areas of Unmet Need or Alleged Problem(s)

1. How does the person respond when you mention a recent example(s) of evidence of inability to manage (medication mix-up, burned pots, wandering, failure to pay bills, loss of valuables, etc.). How does the person explain this occurrence or omission?

2. Is the person aware that others are questioning his/her ability to make important personal care/financial decisions?

3. Does the person perceive any change in his/her ability to manage his/her personal care/financial needs? If yes, what does he/she perceive to be the reason for the deterioration?

4. Does the person feel he/she would benefit from some kind of help or assistance?

WORKSHEET 4 : CAPACITY INTERVIEW

B. Factual Understanding of Options and Appraisal of Outcome(s)

1. Is the person aware of the various alternatives for meeting his personal care/financial requirements so as to resolve the functional inadequacies identified in step 2? Can he/she state associated benefits/risks for each? (It is acceptable for the assessor to outline the options available to the person and to assist with the identification of advantages/disadvantages.)

Problem: _____

	Options	Advantages/Benefits	Disadvantages/Costs
a)	_____	_____	_____
b)	_____	_____	_____
c)	_____	_____	_____

Problem: _____

	Options	Advantages/Benefits	Disadvantages/Costs
d)	_____	_____	_____
e)	_____	_____	_____
f)	_____	_____	_____

2. Can he/she indicate a preference for managing or meeting his/her personal care/financial needs? Will he/she re-evaluate the choice and do something else if it does not work out?

3. What does the person perceive to be the possible and probable consequences of his/her particular choice in managing the identified personal care/financial deficits, given the

particular and present circumstances?

C. Reasoning Behind Particular Choice/Decision

1. Can the person justify his/her choice/preference for resolving unmet personal care needs or managing his/her property ?

   Do his/her reasons reveal an attempt to weigh pros against cons?

2. If applicable, can the person explain why he/she refuses available assistance designed to optimize functioning? How does he/she explain the decision to family or a close friend?

3. What are the person's values, goals and priorities with respect to personal care/financial management? Does he/she see the choice as compatible with stated goals? Does he/she perceive any continuity with prior decisions made under similar circumstances? If there is a clear discrepancy between previous choices and what he/she presently chooses, is it clear as to what caused this change in values/priorities?

4. Does the person feel pressured or coerced into making a particular decision?

WORKSHEET 5 : REVIEW OF THE PERSON'S PRESENT AND PAST SITUATION

A. Medical, Psychiatric, Developmental or Physical Conditions:

Communication impairment.

Hearing and/or visual impairment.

Fluctuating arousal/periods of confusion.

Loss of consciousness

Global intellectual deterioration.

Limited intellectual development.

Short-term memory impairment that prevents retention of new information beyond a short (under one hour) time period.

Language processing impairment.

Poor impulse control that results from a neurological or psychiatric condition.

Motivational/Mood disorder that pathologically distorts values and beliefs.

Impaired reality-testing as it pertains to decision-making.

Extreme distractibility that disrupts intention to follow through on stated decisions.

Executive (planning/organizational) deficits that interfere with ability to follow through on stated intentions

Extreme disorganization of thought process.

Other:

B. Social/Cultural Context:

Lack of available family and community resources to maximize independence and/or their unwillingness to provide continuing support.

Situational dependency that reduces the person's willingness to exert decisional control.

Certain decisions being dictated by recognized customs or belief structure.

Other:

WORKSHEET 5 : REVIEW OF THE PERSON'S PRESENT AND PAST SITUATION

C. Historical Factors:

Limited education or opportunity to develop essential life skills including decision-making.

Person historically opted out of personal care/financial decisions in deference to a significant other who is no longer available to act on their behalf.

History of being a risk-taker with respect to life-style/finances.

Other: