

# Facets of capacity/incapacity



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**CROSS-TRAINING SESSION**

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# Capacity in a nutshell : Conference **outline**



- Capacity to make a decision (part 1)
  - ✦ Self
  - ✦ Assets
  - ✦ Treatment and care
- Evaluation and conclusions (part 2)
  - ✦ Capacity/incapacity
  - ✦ Partial/total
  - ✦ Permanent/temporary.
- If incapacity found, implement protection (part 3)
  - ✦ Protective supervision
  - ✦ Homologation of the Mandate
- Clinical cases

# Capacity to make a decision (part 1)



# Capacity



- Capacity to do what?

Capacity to make a decision  
(see Silberfeld, 1994 for details)

- ! Understand the information
- ! Be able to assess the implications
- ! Think logically
- ! Communicate my decision

(Grisso and Appelbaum, 1998)

Can affect the capacity to  
make a decision ...

- Psychiatric Dx
- Neurological Dx
- Substances

# Facets of capacity



**TAKING CARE OF ONE'S SELF**

**MANAGING ONE'S ASSETS**

**CONSENTING TO CARE/TREATMENT**

Civil

**STANDING TRIAL**

**CRIMINAL RESPONSIBILITY**

Criminal

# 1) Capacity to take care of one's self



- Cleanliness of home
- Nutrition
- Clothing
- Security
- Ability to represent themselves (ex. filing a complaint with the police, consulting a lawyer, contesting his or her confinement within an institution)
- Etc.

## 2) Capacity to manage one's assets



- Assets
- Housing
- Investments
- Filing taxes, an application with the rental board, or an application for old age security pension

### Warning!

One can be declared incapable of managing his or her assets but remain perfectly capable of **deciding who they want to entrust with this responsibility.**

# 3) Capacity to consent to care/treatment



- We must obtain consent for every treatment; every evaluation...

According to the Civil Code,  
**every person is presumed to be capable of consenting to care.**

Even if the person is under protective supervision or confined within an institution

Except in case of emergency or for hygiene care

- Understanding:
  - 1) the nature of his/her illness
  - 2) the nature and the goal of treatment
  - 3) the risks associated with the treatment
  - 4) the potential consequences if treatment is not providedDOES his/her health state can inhibit the capacity to provide consent

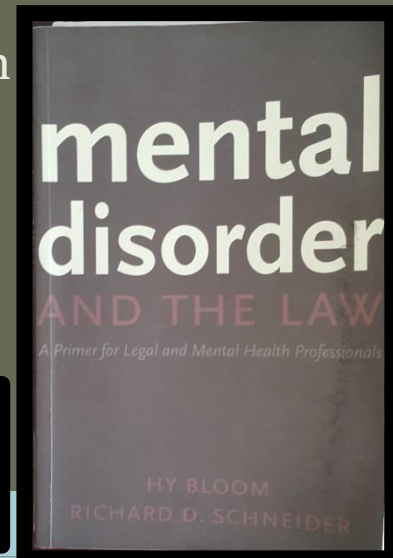


## 4) Capacity to stand trial (criminal only)



- Another component of capacity
- **For those who have committed a crime**
- Determining the capacity of the accused to stand trial
  
- Requested by the Court of an ‘expert’:
  - Evaluate if the client:
    - Understands the nature or the reason for the accusation
    - Understands the consequences of the offense
    - Can communicate effectively with the lawyer  
(ref: Criminal Code)

Different from being not criminally responsible due to mental disorder!

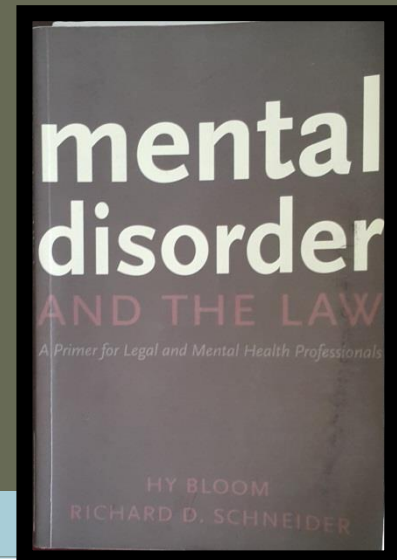


# 5) Criminal responsibility



- For adults who have committed a crime
- If he/she is fit to stand trial
- Determining if the person is responsible for the crime

?? not criminally responsible on account of mental disorder ??



# Evaluating capacity (part 2)



Evaluation = MD + S.W.  
Decision = judge



# Evaluation



**EVALUATION = MD + S.W.**

CAUSAL DIMENSION

FUNCTIONAL DIMENSION

SYSTEMIC DIMENSION

DECISIONAL DIMENSION

**DECISION = JUDGE**

# Causal dimension (help: MD, Neuropsych)

Ref. : Bill 21

- Diagnosis

- ✦ Dementia/delirium?
- ✦ Intellectual disability?

- Prognosis

- ✦ Can the condition be treated?
- ✦ Should we expect deterioration ?

Mental disorder ≠  
incapacity

Alzheimer's disease ≠  
incapacity

**Establish the  
link between  
diagnosis and  
incapacity !**

# Functional dimension

(help: Occupational therapist, Physiotherapist)



- Difficulties related to ADL and IADL;
  - ✦ Impact of cognitive deficits on functioning  
(i.e.: payment of multiple bills but lacks the funds)

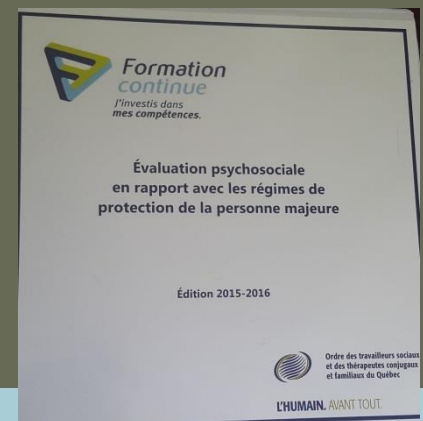
# Systemic dimension (Social Worker)

Ref. : Bill 21



SYSTEMIC evaluation because of: requirements that the elderly person must face which involve the risk of putting him or her in a vulnerable position to make certain decisions.

- Obtain information on the client's environment:
  - ✦ Management of their budget and assets
  - ✦ Support from relatives
  - ✦ Potential abuse
  - ✦ Other information of a psychosocial nature



# Decisional dimension



*Is the person so much at risk that it is necessary to protect them by declaring them incapable?*

**Evaluation = MD + S.W.**

**Decision = judge**

**If incapable,**

Partial incapacity. Or total? (assets, person)

Temporary incapacity. Or permanent?

**Then, protection? (part3)**

Advisor? Tutorship? Curatorship?

**STAY  
TUNED!**



# SUMMARY so far..



- Capacity = capacity to make decisions
  - ✦ Understanding information
  - ✦ Understanding meaning / consequences
  - ✦ Thinking
  - ✦ Communicating
- Areas where I must be capable of making a decision
  - ✦ Self
  - ✦ Assets
  - ✦ (Treatment/care)
- Incapacity
  - ✦ Total/ partial
  - ✦ Temporary/ permanent

# If incapacity is detected, implementation of protection (part 3)



# Protection for persons of legal age



## PROTECTION MANDATE: IN CASE OF POTENTIAL AND FUTURE INCAPACITY

Evaluation for approval of the mandate by MD et SW (Bill 21)  
Decision by the judge

## PROTECTIVE SUPERVISION: FOR ESTABLISHED INCAPACITY

Evaluation by MD et SW (Bill 21)  
Decision by the judge

OTHER (procuration, administration des biens, fiducie,, administration des affaires, etc)

# Protective measures



- To assist persons of legal age with their rights
  - 1) Homologation of mandate, if there was one
  - 2) Establishing protective supervision

**1) Advisor** to assist with certain specific tasks.

**2) Tutor** for partial incapacity (assets or person).  
To be reassessed every 3 years

**3) Curator** for total incapacity (assets and person). To be reassessed every 5 years

# Clinical examples



AND AVENUES FOR REFLECTION...

To be answered personally...

What type of capacity does it refer to?  
What would you do?

- Mr Beaudoin
  - Comes to your office
  - He is exhilarated, spends the couple's retirement money, flirts with women on the street
  - He withdrew 20 000\$ from their retirement savings to gamble at the casino and still has a debit card giving him access to their joint account...

His relative tells you that:

- He has always been unfaithful to his wife
- He has always been a gambler
- He has gone bankrupt in the past due to his gambling habit...

To be answered personally...

What type of capacity does it refer to ?  
What would you do?

- Mr Bougon

- Comes to your office
- He works as an accountant in his own company and his clients have always been satisfied with his services
- However, for the past two days, he is suddenly confused, his speech is disoriented and he is using words that do not mean anything
- He seems to have trouble with simple tasks, such as putting on his sweater or using a kettle

A family member who has accompanied him tells you that:

- while gardening 10 days ago, he cut his thumb. He was treated with antibiotics for an infection. A few days later, his symptoms began.

To be answered personally...

What type of capacity does it refer to ?  
What would you do?



## • Mr Buton

- Comes to your office
- He is mute.
- He doesn't seem to understand what you are saying to him.
- The right half of his body is drooping and he is dragging his right leg. His face is sagging, also on the right side.
- He is known to engage in problematic alcohol use and severe cocaine consumption.

His accompanying relative tells you that:

- He has been like this since he had a stroke 6 months ago
- He was recently convicted of a hit and run and is awaiting his trial
- He will appear in court in 10 days



Have a good training day!

