

Facets of capacity/incapacity



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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:

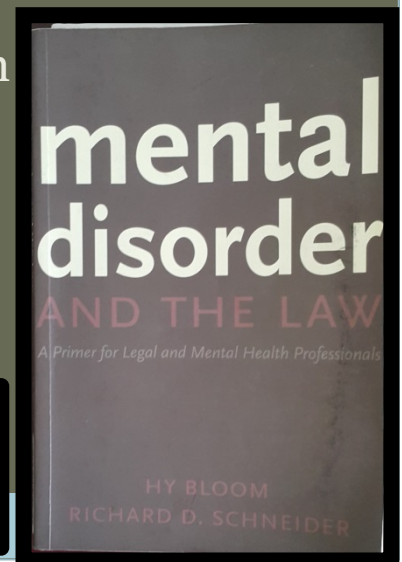
- 1) the nature of his/her illness
- 2) the nature and the goal of treatment
- 3) the risks associated with the treatment
- 4) the potential consequences if treatment is not provided

DOES 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)

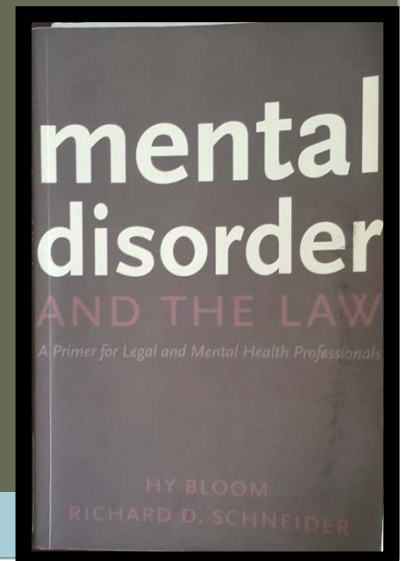
Different from being not criminally responsible due to mental disorder!



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

(GRISSE, 1994)

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 !**



- My patient is admitted to the emergency room, confused and suffering from a severe urinary infection.
- My patient is admitted to the emergency room, confused and suffering from severe dehydration.
- In both cases, a ‘ friend of the family ’ tries to convince them to sell their house at a ridiculous price...

Dementia = neurodegenerative + progressive


Delirium = secondary to an imbalance + (rapid) improvement

Difficult diagnosis in an emergency context!

Consequences of an incorrect diagnosis of dementia in the case of delirium...

Functional dimension

(help: Occupational therapist, Physiotherapist)



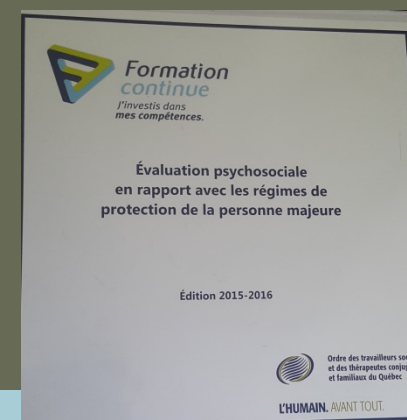
- Difficulties related to ADL and IADL;
 - ✦ Impact of cognitive deficits on functioning
(i.e.: payment of multiple bills but lacks the funds)

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?



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!

