

Welcome!

We will begin momentarily

# Legal Framework versus Clinical Approach: Ethics and Capacity Assessment in Palliative Care



**Host:** Diana Vincze

**Presenters:**

Sunil Rocci, O.T. Reg. (Ont)

Tanya McAdams, NP-PHC, MScN Aging and Health, BScN

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# Territorial Honouring

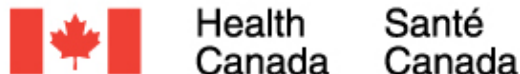


# The Palliative Care ECHO Project

The Palliative Care ECHO Project is a 5-year national initiative to cultivate communities of practice and establish continuous professional development among health care providers across Canada who care for patients with life-limiting illness.

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The Palliative Care ECHO Project is supported by a financial contribution from Health Canada. The views expressed herein do not necessarily represent the views of Health Canada.



# LEAP Core

- Interprofessional course that focuses on the essential competencies to provide a palliative care approach.
- Taught by local experts who are experienced palliative care clinicians and educators.
- Delivered online or in-person.
- Ideal for any health care professional (e.g., physician, nurse, pharmacist, social worker, etc.) who provides care for patients with life-threatening and progressive life-limiting illnesses.
- Accredited by CFPC and Royal College.



Learn more about the course and topics covered by visiting

[www.pallium.ca/course/leap-core](http://www.pallium.ca/course/leap-core)

# Introductions

## Host

**Diana Vincze, Palliative Care ECHO Project Manager**

## Presenters

Sunil Rocci, O.T. Reg. (Ont)

Designated Capacity Assessor

c/o Not Just Therapy Inc.

Tanya McAdams, NP-PHC, MScN Aging and Health, BScN

Regional Director, Transitional Care

Integrated Care Solutions

## ECHO Support

**Aliya Mamdeen, Program Delivery Officer**

# Conflict of Interest

## Pallium Canada

- Non-profit
- Partially funded through a contribution by Health Canada
- Generates funds to support operations and R&D from course registration fees and sales of the Pallium Pocketbook

## Host/Presenter

- Diana Vincze: Nothing to disclose
- Tanya McAdams: Nothing to disclose
- Sunil Rocci: Nothing to disclose

# Welcome and Reminders

- For comments, please use the chat function
- For questions, please use the Q&A function, these questions will be addressed at the end of the session
- This session is being recorded—this recording and slide deck will be emailed to registrants within the next week.
- Remember not to disclose any Personal Health Information (PHI) during the session.



# Legal Framework versus Clinical Approach: Ethics and Capacity Assessment in Palliative Care



# My qualifications/background

- I am an Occupational Therapist and a Designated Capacity Assessor; trained by the Capacity Assessment of Ontario (CAO), Ministry of Attorney General of Ontario
- I qualified in the first wave of assessors back in 1996/97; completed my first assessment in 1997; I attend regular training annually and submit to mandatory audits of our reports every 2 years to ensure I am keeping up with quality standards in our field; Substitute Decisions Act; (not HCCA, not MHA); I also attend various workshops in health care to keep up-to-date
- I cover in-person areas in the GTA, Hamilton and Niagara and occasionally accept assessments further than this if virtual assessments are possible for the client to participate in; there is a roster by CAO; indicates region covered and client population

# What is "mental capacity"?

- Mental Capacity is not dependent on a medical or psychiatric diagnosis. A person can still be found capable of making certain personal care or financial/property decisions, regardless of their diagnosis or age, foolish choices etc.
- For example, does the person have impaired short-term memory and unable to retain certain facts? Does the person understand or have sufficient factual knowledge pertinent to their own situation, to make sound decisions? Are they able to rationally manipulate information and make reasoned choices?
- An example of gathering financial decision-making information might include checking whether the person can perform essential skills such as understanding their banking info.; tracking bills, making correct change, chequebook management, monitoring investments, deciphering a bill, drawing up a budget etc; an example of checking appreciation might be do they understand foreseeable consequences if they continue to not pay their rent?)

# What is "mental capacity"?

Examples with Personal Care Decisions include 6 domains:

- 1) Nutrition
- 2) Healthcare
- 3) Clothing
- 4) Safety
- 5) Hygiene
- 6) Shelter

A Capacity Assessor is called less often for a Personal Care assessment, however, the same principles apply to Personal Care decisions. Does the person understand and appreciate consequences related to the decisions they need to make for each domain? One can be capable in some areas and not in others.

# Legal Standard for Capacity: Ability to Understand and Appreciate

- **UNDERSTAND-** example; understanding the risks of not accepting treatment; are they able to process language, to construct orderly thought, retain information long enough to evaluate? Risks/benefits
- Can they demonstrate their understanding through some act of communication, or express oneself verbally or through symbols, gestures?
- Do they understand options? Strategies for example; might actually be capable!

# Legal Standard for Capacity: Ability to Understand and Appreciate

- **APPRECIATE-** can they realistically appraise outcome of their decision? Is there a justification of choice? Apply the facts to one's personal situation; look at their reasoning skills ex. Allowed to make foolish choices; what is their reasoning behind it? Do they appreciate consequences? Ex. Insight

# Process: Right to refuse

- Gather background info; reason for referral; threats to decision-making; what do you want to do with the report? (intake call or pre-screening questionnaire or both)
- Every client has the right to refuse; unless court-ordered; assent versus consent! Very important distinction!
- Special accommodations needed? Interpreter?
- Interview
- Collateral evidence
- Report; who gets a copy
- Fees

# Substitute Decision-Maker

- When a person is deemed to be incapable of certain decisions, such as incapable to managing their financial/property situation, the next step is that a substitute decision-maker then steps in to make decisions on that incapable person's behalf. This is a legally authorized substitute decision-maker. It might be a client representative from the PGT office or an appointed family member for example. (egs.16 of SDA; s.22 of SDA)
- Examples of when Capacity Assessors are called in to various facilities/homes and why?
- Dementia/Alzheimer's
- ABI/TBI/MVA insurance files
- Psychiatric- usually done by Psychiatrist under MHA if current psyc. Pt.
- Developmental delay



# Case Examples

- The **Ontario Public Guardian and Trustee**- (often called the **PGT**)- Case Study
- 90 year old client; recently widowed; referral by PGT investigation unit; vulnerable to financial exploitation
- 60 year old client; referral by lawyer; medical malpractice case; now a quadriplegic; understands finances; appreciates pros and cons of lawsuit; can instruct legal counsel? Able to express his decisions consistently? If not, then what could be conclusion? How to assess?
- 17 year old- requires help with finances according to parent; did I accept this referral? Yes or no?
- Finally do all Capacity Assessors offer “letters of opinion?”; (outside of the Substitute Decisions Act); what is usual request? Grant/revoke POA; testamentary capacity; ability to instruct legal counsel

# Helpful phone numbers or email

- Capacity Assessment Office- 416-327-6766 or [CAO@ontario.ca](mailto:CAO@ontario.ca)
- Ontario Public Guardian and Trustee office- 1-800-366-0335
- [www.ontario.ca/page/mental-capacity](http://www.ontario.ca/page/mental-capacity)
- [Sunil.rocci@gmail.com](mailto:Sunil.rocci@gmail.com)
- My specific process: I might email you a Pre-screening questionnaire to determine if my services are warranted(based on reason for referral; ethical considerations (ex. Not a restraining system; not a control method for someone's behaviour); legal considerations; correct age? Is there a POA in existence? Family disputes? my experience and ability to take this on; availability)
- After that I provide a complimentary 15 mins. Intake call to confirm that I should proceed (legally, ethically etc.) remember clients have the right to refuse the assessment unless court-ordered

# Web Resources

- <https://www.publications.gov.on.ca/the-office-of-the-public-guardian-and-trustee>
- <https://www.ontario.ca/page/office-public-guardian-and-trustee>

Q & A



# Session Wrap Up

- Thank you for joining us!
- Please fill out the feedback survey following the session—a link has been added into the chat

# Thank You



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