

Consent and Capacity

Understanding capacity as it relates to dementia in Ontario

In Ontario, capacity as defined by the Substitute Decisions Act and the Health Care Consent Act is a legal definition; it is not a medical condition or mental health status and includes:

- The ability to **understand** the information relevant to making a decision and
- The ability to **appreciate** the reasonable, foreseeable consequences of making or not making a decision.

A person is presumed to be capable unless there is evidence to believe otherwise.

How does dementia affect capacity to consent?

- To consent, one must be able to understand and appreciate.
- To understand, a person needs to have the cognitive ability to remember the general information given.
- To appreciate, a person needs the ability to weigh the information in the context of his or her life circumstances.
- In addition to memory, capacity requires the ability to reason and make decisions. All of these abilities may be impaired in persons with dementia.
- A person may be capable of some decisions but not capable of others.
- A person may also be capable of decisions at certain points in time but not at other times.

What is a Power of Attorney (POA)?

A Power of Attorney is a legal document that gives someone else the right to act on your behalf.

In Ontario there are three kinds of Power of Attorney:

- A **Continuing Power of Attorney for Property** covers your financial affairs and allows the person you name to act for you even if you become mentally incapable.
- A **non-continuing Power of Attorney for Property** covers your financial affairs but can't be used if you become mentally incapable. You might give this Power of Attorney, for example, if you need someone to look after your financial transactions while you are away from home for an extended period of time.
- A **Power of Attorney for Personal Care** covers your personal decisions, such as housing and health care.

The capacity to give a Power of Attorney (POA)

- A person must be mentally capable of giving a Power of Attorney.
- The criteria that indicates whether a person is mentally capable of giving a power of attorney is outlined in the Substitute Decisions Act.
- The requirements that measure a person's ability to give a Continuing Power of Attorney for Property are much more detailed and specific than those which measure ability to give a Power of Attorney for Personal Care.
- The threshold of capacity to appoint an attorney for personal care is much lower than it is for property. These requirements are found in the Substitute Decisions Act.

Further information on this topic

- The Ministry of the Attorney General (Ontario)
www.attorneygeneral.jus.gov.on.ca
1-800-518-7901
- Advocacy Centre for the Elderly (ACE)
www.advocacycentreelderly.org
1-416-598-2656
- Legal Aid Ontario
www.legalaid.on.ca
1-800-265-1392

References

Willing and Able, A Practical Guide to Powers of Attorney in Ontario. N. Jeanne Best with Dawn Dudley Oosterhof, 2nd Edition, 2004.

Visit the following websites:

- www.alzheimerniagara.ca