



jurisdictional snapshot

Capacity assessments in relation to
healthcare decision making:
A JURISDICTIONAL SCAN

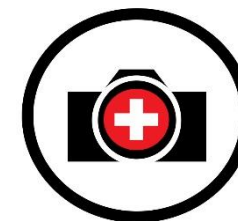
March 2022 | Sarah Mackey & Sarah Mallay

*A scan of health policies and practices implemented outside
Newfoundland and Labrador*

Newfoundland & Labrador Centre for
**APPLIED
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To support our Health System Partners, NLCAHR's Contextualized Health Research Synthesis Program (CHRSP) has produced this Snapshot Report of healthcare practices, programs, and policies inside and outside of Canada. NLCAHR designed Snapshot Reports to inform decision makers about the healthcare landscape across jurisdictions, particularly with respect to practice variation and policy initiatives. Snapshot Reports might also help guide topic selection for other CHRSP products, such as our Evidence in Context and Rapid Evidence Reports.

1. About *Snapshot Reports*

Snapshot Reports provide health system decision makers with a brief scan of health practices, models of care, programs, or policies, and a summary of established or emerging interventions from jurisdictions outside of Newfoundland and Labrador on the issue in question. NLCAHR created these reports to meet health system demand for timely information about practices/programs/policies that might potentially be adapted for use here in Newfoundland and Labrador. Each *Snapshot Report* responds to a specific request from CHRSP's health system stakeholders for information on a topic identified as being of priority interest. The results of a given *Snapshot Report* may provide these stakeholders with all the information they require; the reports may also be a catalyst for more in-depth study on the issue, possibly in the form of a CHRSP *Evidence in Context Report* or *Rapid Evidence Report*.

Snapshot Reports are not a comprehensive or exhaustive evaluation of the practice or policy under study; rather, they offer a brief overview that includes:

- an executive summary;
- an overview of the research objective with a clear description of the policy or practice under consideration;
- a statement of the focus and scope of the report;
- a summary of key descriptive findings;
- tables listing the practices/policies/models identified in other jurisdictions, with web links to each, where available; and
- appendices containing more detailed information.

Given the limitations of this approach, decision makers should not construe this *Snapshot Report* as a recommendation for or against the use of any particular healthcare intervention or policy.

2. Executive Summary

Topic: Adults are expected to make a variety of decisions in healthcare settings. Such decisions may relate to treatment, medication, or medical procedures; they may also relate to preparedness for discharge from hospital or issues of personal safety, to name a few examples. Upon a request from our health system partners, researchers from the Contextualized Health Research Synthesis Program (CHRSP) carried out a jurisdictional scan of Canadian provinces and select international jurisdictions to identify processes that are used elsewhere to evaluate whether or not an adult is capable of making such decisions in the healthcare setting – evaluations known as “capacity assessments.” The information in this *Snapshot Report* is intended to inform health authorities and care providers in Newfoundland and Labrador about approaches to conducting capacity assessments that have been successful elsewhere and that might potentially be considered or adapted for use in this province.

Study approach: For this study, we searched research databases and other websites to identify how capacity assessments are carried out in healthcare settings elsewhere in Canada and in the United Kingdom, Australia and New Zealand.

Key findings: We identified 14 processes that are used to carry out capacity assessments in other jurisdictions. The following are some noteworthy features of the programs included in this report:

- **Definitions are variable:** Most jurisdictions use the term “capacity” to describe the ability to make a decision; however, some jurisdictions prefer the terms “capability,” “incapability,” or “competence.” While the majority of the capacity assessments included in this report clearly define what is meant by “capacity,” some definitions are more comprehensive than others.
- **Capacity assessments are carried out for a variety of reasons:** Some capacity assessments are part of an informed consent process; others are required to ensure that an individual can make decisions in various domains of life; many are required by legislation.
- **Capacity can be assessed in a variety of decision-making domains:** The domain of interest for this report is decision-making in healthcare settings; therefore, the capacity assessments highlighted here will focus mainly on medical care or treatment decisions. Capacity assessments may, however, also evaluate a person’s ability to make decisions related to personal care, finance, accommodation, personal safety, property/estate, and other legal decisions.
- **Legislation plays a key role:** Legislation in the capacity assessment process is often intended to protect an individual’s ability to exercise autonomy and personal freedom to make his/her/their own decisions. Each of the capacity assessments in this report relates to, or is associated with, at least one piece of legislation.
- **Assessments must be triggered for a reason:** Each included jurisdiction operates under the presumption of capacity and there is widespread consensus that capacity assessments should only proceed when there is a concrete reason (i.e., a trigger) that casts doubt on a person’s ability to make a given decision. The level of detail regarding warranted triggers varies across the capacity assessments, but triggers can broadly be

categorized as (1) behaviors or conduct that are cause for concern; or (2) general, personal, health, financial circumstances or other circumstances that are cause for concern.

- **The assessment process can have variable components:** While the capacity assessment processes outlined in this report include a series of steps or components that should be followed when conducting the assessment, the descriptions of these components vary widely. Some jurisdictions have described the process in distinct stages, while others provide a broad overview. However, the following three components are common to capacity assessments conducted in various jurisdictions: (1) a presumption of capacity, (2) the necessity of a trigger to carry out an assessment, and (3) a capacity interview. Other components shared by more than one capacity assessment are shown in **Table 2**.
- **A variety of people may be involved in a capacity assessment:** Determining who carries out a capacity assessment will depend on several factors. For health-related decisions, certain licensed healthcare professionals will have the right to assess capacity included in their scope of practice – or such right may be indicated within various Healthcare Acts. When capacity assessments are tied to legislation, jurisdictions will most often require healthcare providers such as primary physicians, attending teams, or social workers to conduct or coordinate the assessment. For more informal assessments, some jurisdictions may enable a broader range of people to be involved in the assessment, including community members, health or allied health professionals, legal professionals, researchers, government or non-government workers, friends or family.

3. Background & Research Objective

Background

Every day, healthcare professionals face the challenge of determining whether their patients or clients have the mental capacity to make decisions regarding their own healthcare. Professionals may perceive a given healthcare decision to be detrimental to a patient or client's health and may question the capacity of the patient to make sound decisions. Given these realities, health systems require a suitable process for assessing capacity while at the same time promoting client safety, optimizing patients' rights to make decisions, and supporting a person-centered and family-centered approach to care. This report is intended to help guide health authorities and care providers in Newfoundland and Labrador who are considering processes for conducting capacity assessments in healthcare settings by highlighting successful approaches that have been used elsewhere.

Research Objective

The main research objective of this *Snapshot Report* is to find out what types of processes other jurisdictions use to carry out capacity assessments for decision making in healthcare settings.

4. Focus & Scope of this report

The focus of this report is to identify processes used in other Canadian and in select international jurisdictions to conduct capacity assessments for decision making in healthcare. In conducting this jurisdictional scan, we sought out examples that:

- assessed the capacity for decision making *in healthcare settings*;
- related to *health decision making* in some way; and that
- included *clear steps or instructions for the process* of conducting a capacity assessment.

This report provides a selection of representative examples from other Canadian and select international jurisdictions (Australia, New Zealand and the United Kingdom). Given our intention to highlight a range of examples, we did not include redundant approaches used within the same jurisdiction.

Search parameters

Table 1 below outlines the search parameters that were defined in consultation with health system partners in Central Health.

Table 1: Overview of search parameters, inclusion criteria, and exclusion criteria

Parameter	Inclusion criteria	Exclusion criteria
Population	<ul style="list-style-type: none"> • Adults 	<ul style="list-style-type: none"> • Children
Assessment Type	<ul style="list-style-type: none"> • Capacity assessments for decision-making • Capacity or concept for capacity is clearly defined • Formal or informal assessments of capacity or incapability 	<ul style="list-style-type: none"> • Assessments that don't clearly define capacity
Domains Assessed	<ul style="list-style-type: none"> • At a minimum, the assessment must include the domain of healthcare decisions 	<ul style="list-style-type: none"> • Domains that do not include healthcare decisions
Setting	<ul style="list-style-type: none"> • Healthcare setting 	<ul style="list-style-type: none"> • Non-healthcare settings
Jurisdictions	<ul style="list-style-type: none"> • Canadian provinces and territories • Select International jurisdictions (Australia, New Zealand, UK) 	<ul style="list-style-type: none"> • Other jurisdictions

Search strategy

We used the following key strategies to search for relevant information:

- We completed a literature search using PubMed, Google Scholar, and Cochrane databases. We combined search terms (e.g., “capacity”, “process”, “informed consent”, “decision making”, “consent to healthcare”, “capacity assessment”, “medical consent”, “consent to treatment”,

“decision-making capacity”, “competency assessment”, “incapability”) with one another and with jurisdictions of interest. We found some relevant published literature using these search terms that led to information about related capacity assessment processes.

- We also searched public websites using search terms similar to those listed above. We combined these terms with each jurisdiction of interest.
- We conducted a general Canada-wide search and we also searched for examples from Australia, New Zealand and the United Kingdom.
- Additionally, whenever we would find a helpful search term, organization, or website, we would follow-up or cross-reference previous searches.

In total, this report highlights 14 examples of the processes used to conduct capacity assessments:

- 8 from Canada,
- 3 from Australia,
- 2 from the United Kingdom, and
- 1 from New Zealand.

We outline the key features of these examples in the following pages. Appendix A (p. 29) includes more detailed information on each of the 14 examples as well as available references and links.

The following parameters of interest are included in the information tables that follow:

- jurisdiction,
- information source,
- assessment description,
- capacity definition,
- domains assessed,
- trigger for assessment,
- assessment process,
- professionals involved, and
- related or associated legislation.

5. Summary of Key Findings

In general, we found the most detailed information about conducting healthcare-related capacity assessments within guidance documents and toolkits published by government departments or other health organizations. Resources from some jurisdictions were created with the intention of guiding healthcare providers in assessing capacity for health decisions (or other domains of decision making) within a healthcare setting. Sources from other jurisdictions provided guidance for conducting formal capacity assessments and were quite often directed towards the specific healthcare provider required by law to complete such an assessment. Finally, a few jurisdictions provided broader guidance to various individuals (anyone from a healthcare provider to a community member) who might encounter the need to assess a person's capacity to make decisions in various domains or settings, including, but not limited to, health and healthcare.

As stated previously, different jurisdictions use different terminology to describe capacity assessments. In our Summary Tables below, we have named the assessment approach using the same terminology that we found within the guidance documents/toolkits being summarized. For example, the British Columbia Ministry of Health refers to an *Assessment of Incapability When Obtaining Consent*, and so this is how we refer to that particular assessment approach in both the Summary Tables and Appendices.

We found that the majority of capacity assessment approaches were outlined broadly rather than defined specifically. In the most useful instances, detailed examples have been given for each step or component of the assessment process. Overall, most jurisdictions describe a minimum of three common components, which are: a presumption of capacity, the necessity of a trigger in order to carry out an assessment, and a capacity interview.

Below, we summarize key features of capacity assessments conducted in Canada, Australia, New Zealand and the United Kingdom. For additional examples from Canadian and other international jurisdictions that did not meet the full inclusion criteria, please refer to Appendix B. For a supplementary reference list of guidance documents and research articles, please refer to Appendix C.

Defining “Capacity”

As stated previously, various terms are used in the included jurisdictional examples to describe decision-making capacity. Within Canada, the provinces of Alberta, Newfoundland and Labrador, and Ontario all use the term “capacity;” whereas the Yukon Territory and the province of British Columbia prefer to use the terms “capability” and “incapability.” In the United Kingdom, both “capacity” and “incapacity” are used as descriptors. Australia uses the term “capacity,” whereas New Zealand uses the terms “capacity” and “competence” interchangeably.

Within the majority of capacity assessment descriptions, capacity is very clearly defined; however, some definitions are more comprehensive than others. For example, in Australia, decision-making capacity is defined by a person's ability to:

- understand the information relevant to the situation,
- understand the main choices,
- weigh up the consequences of those choices,
- understand how those consequences will affect them, and
- communicate their choice.

Decision-making capacity is defined more conceptually in Canada and in Scotland, with a two-component definition:

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

In contrast, New Zealand, England, and Wales employ the least specificity in defining decision-making capacity. In these jurisdictions, “capacity” is simply defined as “the ability to make decisions.”

Purpose of the capacity assessment

The specific purpose for conducting a capacity assessment varied across jurisdictions included in this report. In the most general terms, capacity assessments were described as aiming to assess an individual's ability to make decisions in one or more domains of one's life. In this report, some capacity assessments are a requirement of the informed consent process or they are a legislated requirement and must absolutely be conducted in certain circumstances. The purpose of other included assessments is to ensure that individuals have the ability to make decisions in various domains (e.g., health-only domains or health domains as well as other areas of life).

Domains assessed

Given the focus of this study on decision making in health, the capacity assessments highlighted here focus mainly on health decisions such as medical care and treatment decisions. In addition to the health domain, capacity assessments included in this report also addressed capacity in the following domains:

- 9 capacity assessments address personal care decisions,
- 8 capacity assessments address financial decisions,
- 7 capacity assessments address accommodation decisions,
- 5 capacity assessments address legal decisions,
- 3 capacity assessments address personal safety decisions, and
- 3 capacity assessments address property and/or estate decisions.

The legislative context

All capacity assessments included in this *Snapshot Report* operate under the presumption of capacity— essentially assuming that an individual has the ability to make his/her/their own decisions unless there is a compelling reason to believe otherwise. Legislation often plays an important role in the capacity assessment process by being enacted to protect the individual right to exercise autonomy and personal freedom to make the choice that best suits the individual, when that individual has the capacity to decide. Only when it is determined that an individual lacks the capacity to make a particular decision will the autonomy to make that decision be removed.

Each of capacity assessment included in this report is directly related to, or associated with, some form of legislation. Several legislative Acts governing capacity assessment were found to be similar across jurisdictions, while some capacity assessments were associated with unique pieces of legislation.

The following legislative Acts govern more than one capacity assessment in this report:

- Guardianship Acts (4 assessments),
- Consent Acts (4 assessments),
- Powers of Attorney Acts (3 assessments),
- Personal Information Protection Acts (3 assessments),
- Adult Protection Acts (2 assessments),
- Protection of Privacy Acts (2 assessments),
- Decision Making Capacity Acts (2 assessments), and
- Substitution Acts (2 assessments).

The following legislative Acts are associated with only one capacity assessment:

- Personal Directives Act,
- Health Professionals Act,
- Social Workers Act,
- Advance Healthcare Directives Act,
- Family Violence Protection Act,
- Public Trustee Act,
- Mental Health Act,

- Civil Law,
- Human Rights Act, and
- Code of Health and Disability Services Consumers' Rights (HDC Code).

Triggers for capacity assessments

Across jurisdictions, there is widespread consensus that capacity assessments should only proceed when there is a valid reason to be concerned about a person's decision-making capacity. For the majority of examples included in this report, a list of suggestions or case examples are provided to illustrate the type of trigger that should be present preceding an assessment. However, the level of detail provided differed among assessment processes.

Overall, triggers for a capacity assessment fall into one or more of the following major categories:

- behaviors or conduct that are cause for concern; or
- general, personal, health, financial circumstances or other circumstances that are cause for concern.

Readers will find comprehensive lists of specific triggers for different decision domains in Section Five of the New South Wales Capacity Toolkit (see Table 12) and on page 23 of the Queensland Capacity Assessment Guidelines 2020 (see Table 13).

Assessment Process

Many of the assessment processes included in this report detailed a specific set of steps or components that a provider should follow when conducting a capacity assessment. Table 2 below details all 14 included capacity assessments and the processes or stages that are included in each. As the table illustrates, we found some commonalities and some variation among the included components. Some descriptions outlined the capacity assessment process in distinct stages, while others provided a broader overview. Some of capacity assessments included three distinct stages, while others were broken down into more detailed steps. For some of the included assessments, the process was outlined in terms of key concepts and tips for providers, rather than being described as a series of steps.

In spite of this variability, we did find several similarities in the overall processes that are used to approach and conduct capacity assessment. The following general components are shared among *all included capacity assessments* in this report:

- the presumption of capacity,
- the necessity of a trigger to justify an assessment, and
- the need for a capacity interview.

The following process components were shared by more than one capacity assessment in this report, as illustrated in Table 2 below:

- a pre-assessment phase;
- determining whether a medical reason necessitates questioning decision-making capacity (e.g., the need to review the patient’s medical history);
- informing individuals that they will be assessed on their capacity to make a particular decision;
- providing individuals with any necessary supports to facilitate the assessment (e.g., communication or cultural supports);
- post-assessment documentation;
- informing the individual about the results of the assessment; and
- following up from the findings of the assessment (e.g., legal processes, initiation of a formal capacity assessment).

Table 2: Common process components included in capacity assessments

Capacity Assessment Processes (Jurisdiction)		Pre-assessment phase	Is there a medical reason?	Inform the person they are being assessed	Provide necessary supports	Post-assessment documentation	Inform person about results	Follow-up from findings (e.g. legal)
Canada	Capacity Assessment under the Adult Guardianship and Trusteeship Act (AB)	X	X	X	X			
	Decision Making Capacity Assessments (AB)	X						
	Assessment of Incapability When Obtaining Consent (BC)				X	X		
	Assessment for Incapability to Consent to Facility Admission (BC)	X	X	X	X	X	X	
	Formal Capacity Assessment (NL)	X	X	X	X	X	X	X
	Assessment of Capacity (ON)	X	X	X	X	X		X
	Capacity Evaluation for Admissions to Long-Term Care Homes (ON)	X				X		
Australia	Determining Incapability to Consent to Healthcare (YK)	X	X	X	X	X	X	
	Assessment of Capacity (New South Wales)					X		X
	Capacity Assessment (New South Wales)			X	X	X		X
NZ	Capacity Assessment (Queensland)	X		X	X	X		X
	Capacity Assessment (New Zealand)	X	X	X	X	X	X	X for formal assessments
UK	Assessing Capacity in Adults (Scotland)	X	X	X	X			
	Mental Capacity Assessment (England and Wales)	X	X	X	X			X involve professionals

Professionals involved

A variety of people may be involved in conducting capacity assessments depending on factors such as whether the assessment is formal or informal, the type of decision-making domains being assessed, the jurisdiction, or whether an assessment is legally required. Typically for health-related decisions, various licensed healthcare professionals have the responsibility to assess capacity through their scope of practice, or such responsibility is granted under the provisions of various Healthcare Acts. Health professionals who are commonly involved in or contribute to the assessment process include: physicians, psychologists, nurses, social workers, occupational therapists and physiotherapists. Others who may be involved in, or who might contribute to the assessment process might include: chiropractors, optometrists, speech language pathologists, audiologists or hearing instrument practitioners, dietitians and nutritionists, dentists, medical imaging technologists, government or non-government employees, family members, or friends.

When capacity assessments are tied to legislation, jurisdictions often require certain healthcare providers (e.g., primary care physicians, attending teams, or social workers) to conduct or coordinate the assessment in specific instances such as on admission to a healthcare facility, as a part of the informed consent process for healthcare or health decisions, or when a physician has to provide an assessment as a part of a legal act. For example, in Newfoundland and Labrador, under the Adult Protection Act, a formal capacity assessment must be coordinated by a social worker and involves input and participation from an interdisciplinary team of professionals. Two other notable Canadian examples describe formal assessment processes that designate capacity assessors:

- In Alberta, some facilities have adopted a Decision-Making Capacity Assessment Model that involves an attending team, a mentoring team and designated capacity assessors. Designated capacity assessors complete capacity interviews and make recommendations to the Office of Public Guardian/Trustee. These assessors are regulated healthcare professionals appointed by the Government of Alberta.
- In Ontario, the Substitute Decisions Act requires that designated capacity assessors conduct capacity assessments. In order to become a designated assessor, health professionals from the following professional bodies must successfully complete a training course approved by the Attorney General as well as having certain liability protections in place:
 - 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 –Extended Class)
 - Ontario College of Social Workers and Social Service Workers (registered as a Social Worker)
 - College of Occupational Therapists of Ontario.

More informal assessment processes include a broader range of people who may need to consider a person's capacity to make a decision. Depending on the decision-making context, these might include community members, health or allied health professionals, legal professionals, researchers, government or non-government workers, friends, or family.

6. Summary Tables

The following tables provide a summary of the 14 capacity assessments/ capacity assessment processes included in this jurisdictional scan:

- Tables 3-10 summarize assessments from Canada;
- Tables 11-13 summarize assessments from Australia;
- Table 14 summarizes an assessment from New Zealand; and
- Tables 15-16 summarize assessments from the United Kingdom;

Appendix A provides more detailed descriptions of these assessment approaches and their components as well as any available research or additional program links related to each intervention.

Appendix B includes additional resources from Canadian and international jurisdictions that were not included in the Summary Tables or Appendix A.

Summary Tables – Canada

- Table 3: Capacity Assessment under the Adult Guardianship and Trusteeship Act, Alberta – p. 15
- Table 4: Decision Making Capacity Assessments, Alberta – p. 16
- Table 5: Assessment of Incapability When Obtaining Consent, British Columbia – p. 17
- Table 6: Assessment for Incapability to Consent to Facility Admission, British Columbia – p. 18
- Table 7: Formal Capacity Assessment, Newfoundland and Labrador – p. 19
- Table 8: Assessment of Capacity, Ontario – p. 20
- Table 9: Capacity Evaluation for Admissions to Long-Term Care Homes, Ontario – p. 21
- Table 10: Determining Incapability to Consent to Healthcare, Yukon – p. 22

Summary Tables – Australia

- Table 11: Assessment of Capacity, New South Wales – p. 23
- Table 12: Capacity Assessment, New South Wales – p. 24
- Table 13: Capacity Assessment, Queensland – p. 25

Summary Tables – New Zealand

- Table 14: Capacity Assessment, New Zealand – p. 26

Summary Tables – UK

- Table 15: Assessing Capacity in Adults, Scotland – p. 27
- Table 16: Mental Capacity Assessment, England/Wales – p. 28

Canada



Table 3: Capacity Assessment under the Adult Guardianship and Trusteeship Act, Alberta, Canada | See page 29 for details

Capacity Assessment under the Adult Guardianship and Trusteeship Act, Alberta, Canada				
<ul style="list-style-type: none"> Source: Government of Alberta, Office of the Public Guardian, Guide for Capacity Assessors under the Adult Guardianship and Trusteeship Act (AGTA), Alberta, Canada (LINK) Purpose: To formally assess capacity to make decisions in various personal areas including healthcare. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>The ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision</p> <p>Capacity is determined by the Court and is not a medical diagnosis</p>	<p>Healthcare, accommodation, choice of associates, participation in social/leisure activities, personal legal matters, participation in employment activities, participation in educational, vocational or other training, financial</p>	<ul style="list-style-type: none"> Capacity assessors must ensure that they have been advised of the reasons why the capacity assessment has been requested and provided with a description of any event that gave rise to the request There must be a cause for concern that makes the assessment necessary e.g., any event or circumstance that potentially places the individual or others at risk and that seems to be caused by an inability to make decisions 	<p>Capacity Assessment Process</p> <p>The capacity assessment process consists of three stages</p> <p>Pre-assessment process</p> <ul style="list-style-type: none"> The assessor explains the purpose and significance of the assessment and the adult’s rights <p>Medical evaluation</p> <ul style="list-style-type: none"> Conducted by a medical practitioner to rule out temporary, reversible medical conditions affecting capacity <p>Formal interview</p> <ul style="list-style-type: none"> The assessor uses a cognitive and functional inquiry methodology The capacity assessor asks questions to see if the adult can understand information from a reasoning or executive perspective and can also apply it to real-life situations The formal interview should only focus on assessing those decision-making areas identified as warranting assessment The assessor may determine that other Areas of Concern that were not previously identified also need to be assessed 	<p>Under the AGTA, healthcare professionals such as social workers, occupational therapists, registered nurses and registered psychiatric nurses as well as physicians and psychologists can assess capacity once they have met certain eligibility requirements</p>
Directly Related Legislation: Adult Guardianship and Trusteeship Act (AGTA)				



Table 4: Decision Making Capacity Assessments, Alberta, Canada | See page 33 for details

Decision Making Capacity Assessments, Alberta, Canada				
<ul style="list-style-type: none"> Source: Network of Excellence in Seniors’ Health and Wellness, Covenant Health (2018) Decision-Making Capacity Assessment Model Toolkit, Alberta, Canada (LINK) Purpose: To enable provision of informal decision making capacity (DMC) assessments at the client, provider, and system levels using best-practices. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
A person’s ability to understand information that is relevant to making a personal decision, and to appreciate the reasonably foreseeable consequences of the decision	<ul style="list-style-type: none"> Healthcare Accommodation With whom to live and associate Legal matters Participation in social activities Participation in educational activities Participation in employment activities Financial and estate 	<p>If DMC in question, Attending Team to follow informal assessment process prior to requesting formal assessment.</p> <ul style="list-style-type: none"> Collect info and identify domains (assess social needs or concerns) Perform medical assessment to determine if condition is reversible <p>If condition is not reversible:</p> <ul style="list-style-type: none"> Attending team conducts Pre-assessment (functional/cognitive assessments), try least intrusive means Have a team meeting and if concern remains high, proceed to formal capacity interview 	<p>Screening</p> <ul style="list-style-type: none"> Identify triggers for questioning capacity, domains, and risks <p>Problem solving</p> <ul style="list-style-type: none"> Use Team Approach Cognitive/Functional Tests Options to Reduce Risk <p>Capacity Assessment</p> <ul style="list-style-type: none"> Proceed with capacity interview and formal process when risks not resolved by less intrusive or restrictive means <p>See p. 11 for DMC assessment care map, See pg. 30 for clinical pathway flow chart</p>	<p>Attending teams:</p> <ul style="list-style-type: none"> Include front-line healthcare professionals They provide in-patient, out-patient, rehabilitation, and community-based healthcare services <p>Mentoring teams</p> <ul style="list-style-type: none"> Inter-disciplinary Established at each facility in Alberta that has adopted the DMCA Model Must have a particular interest and expertise in the DMCA Model process <p>Designated Capacity Assessors</p> <ul style="list-style-type: none"> Regulated healthcare professionals who have been appointed by the Government of Alberta to complete capacity interviews and make recommendations to the Office of the Public Guardian/Trustee Physicians and psychologists are not considered DCAs Nurses, occupational therapists, and social workers may undergo a mandatory 3-day training module to become DCAs
Associated Acts: Personal Directives Act, Powers of Attorney Act, Adult Guardianship and Trusteeship Act				



Table 5: Assessment of Incapability When Obtaining Consent, British Columbia, Canada | See page 37 for details

Assessment of Incapability When Obtaining Consent, British Columbia, Canada				
<ul style="list-style-type: none"> Source: BC Ministry of Health (Adopted March 2018) Clinical Practice Guideline – Healthcare Providers’ Guide to Consent to Healthcare (LINK) Purpose: When valid consent cannot be secured for healthcare treatment (in the areas of therapeutic, preventative, palliative, diagnostic, cosmetic or other purpose related to health), demonstration of incapability is required by law. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<ul style="list-style-type: none"> Presumption of capacity until demonstrated that adult is not capable of making the specific decision <p>Capacity (indirectly) defined to include if adult understands:</p> <ul style="list-style-type: none"> Info being given about his/her healthcare conditions Nature of the proposed healthcare, including the risks, benefits and alternatives That info applies to his/her own situation 	<p>Healthcare treatment as defined by HCCCFA: areas of therapeutic, preventative, palliative, diagnostic, cosmetic or other purposes related to health e.g., series or sequence of similar treatments of care, plan for minor healthcare, participation in medical research program</p>	<ul style="list-style-type: none"> If valid consent in question, need to determine incapability and/or get substitute consent as required by HCCCFAA <p>Consider if adult can:</p> <ul style="list-style-type: none"> Repeat and explain the disclosed information in his/her own words, Give clear, consistent and unambiguous answers to questions Through appropriate questioning, demonstrate understanding of the consequences of authorizing or not authorizing treatment Ask pertinent questions which reflect understanding of proposed therapy 	<p>Demonstrate incapability (as per areas of understanding from capacity definition)</p> <p>Best practice principles to apply:</p> <ul style="list-style-type: none"> Presume the adult is capable of making the decision Deal only with the specific decision; Keep best interests of adult at forefront of the process Respect & protect adult’s well-being, self-esteem & right to privacy Conduct process in consultation with the adult & those supportive of the adult Document a finding of incapability (how decision was reached observations that formed opinion); Make reasonable effort to determine if adult has a substitute decision-maker or Advance Directive relevant to proposed care 	<p>Potential healthcare providers include all persons who are licensed, certified or registered to provide care under a prescribed act in British Columbia.</p> <p>See full list in Appendix A</p>
<p>Directly Related Legislation: Healthcare (Consent) and Care Facility (Admission) Act (HCCCFAA)</p> <p>Associated Acts: Health Professions Act, Social Workers Act</p>				



Table 6: Assessment for Incapability to Consent to Facility Admission, British Columbia, Canada | See page 40 for details

Assessment for Incapability to Consent to Facility Admission, British Columbia, Canada				
<ul style="list-style-type: none"> Source: Province of British Columbia (2019) Practice Guidelines for Seeking Consent to Healthcare Facility Admission (LINK) Purpose: To determine if an adult is incapable of giving or refusing consent to admission to, or continue residence in a care facility as set out by Healthcare (Consent) and Care Facility (Admission) Act. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>Use capability instead of capacity.</p> <p>Capable Adult:</p> <ul style="list-style-type: none"> Adult who is able to understand & appreciate the decision being made All adults presumed to be capable unless there is reason to think otherwise <p>Domain-specific and decision-specific</p>	<p>Incapacity to consent to admission to, or continue residence in a care facility</p>	<p>If the adult seems incapable of giving/refusing consent to admission</p> <p>Reasons to question capability</p> <ul style="list-style-type: none"> Documentation provided at admission (e.g., previous clinical assessments that show concerns of adult’s capability) Info provided by the adult, family, other caregivers, or healthcare providers Observations of person while facility admission being discussed (e.g., unable to absorb, retain, or use info given in the consent process, gives/refuses consent to admission without sufficient consideration of the consequences, known to have or have impaired decision-making, makes choices inconsistent with longstanding values and beliefs or decisions that pose a risk to self or others) Reports by family/ healthcare providers of significant cognitive difficulties 	<p>Before the assessment</p> <ul style="list-style-type: none"> Manager must make reasonable effort to obtain consent from adult, review medical info, & consider if any underlying/potentially reversible, health conditions are affecting decisional capability <p>Process Summary:</p> <ul style="list-style-type: none"> Review medical info, prepare for assessment, choose screening tool if needed, conduct assessment interview, consider involvement of support person, gather info, decide if adult is capable, notify & document decision <p>Assessment components:</p> <ul style="list-style-type: none"> Inform adult why they being assessed Review adult’s medical info Assess adult’s decision-specific ability to understand & appreciate info Collect and review collateral info Interview adult (& others as appropriate) Inform adult of resulting decision <p>(See Appendix A for more details)</p>	<p>Assessor must be a physician, or a prescribed healthcare provider identified in Healthcare Consent Regulation (i.e. medical provider, registered nurse, nurse practitioner, registered social worker, registered psychologist, registered occupational therapist and registered psychiatric nurse)</p> <p>Manager of facility coordinates incapability assessment</p>
<p>Directly Related Legislation: Healthcare (Consent) and Care Facility (Admission) Act</p> <p>Associated Legislation: Freedom of Information and Protection of Privacy Act (FOIPPA), the Personal Information Protection Act</p>				



Table 7: Formal Capacity Assessment, Newfoundland, Canada | See page 45 for details

Formal Capacity Assessment, Newfoundland and Labrador, Canada				
<ul style="list-style-type: none"> Source: Department of Children, Seniors and Social Development, Government of NL (2019) Adult Protection Act Provincial Policy Manual (LINK) Purpose: Under the Adult Protection Act, if an adult’s capacity is questioned when an allegation of abuse and/or neglect occurs, a formal capacity assessment must be completed. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
1) Ability to understand info relevant to a decision where that decision concerns one’s healthcare, physical, emotional, psychological, financial, legal, residential or social needs 2) Ability to understand and appreciate the reasonable foreseeable consequences of a decision or the lack of a decision	For decisions that concerns one’s healthcare, physical, emotional, psychological, financial, legal, residential or social needs in the context of adult protection	If adult’s capacity is questioned when an allegation of abuse and/or neglect occurs, a formal capacity assessment must be completed. This usually occurs during an adult protection investigation but it may be initiated during the evaluation phase Triggered when an adult who may be in need of protective intervention appears to be unable to understand or appreciate the level of risk and the risk is unable to be mitigated	Interview Preparation <ul style="list-style-type: none"> Make reasonable effort to provide support needed to communicate Review materials: report and evaluation forms, records relevant to the specific area being assessed, relevant medical info, functional assessments Conduct capacity interview <ul style="list-style-type: none"> Explain purpose of assessment Use set of structured questions to determine if adult understands & appreciates risk they are experiencing & consequence of their decision Document interview info Gather collateral information <ul style="list-style-type: none"> Collect added info & consult appropriate health professionals for their assessments & review findings Completion of Investigation Report	<ul style="list-style-type: none"> Coordinated by a social worker & involves interdisciplinary team of professionals Investigator coordinates meetings with team, including an initial one to review roles & responsibilities Team agrees on at least one capacity question to be assessed Each member the team will complete a capacity assessment based on the identified question(s)
Directly Related Legislation: Adult Protection Act Associated Legislation: Advance Healthcare Directives Act, Enduring Powers of Attorney Act, Personal Health Information Act, Access to Information and Protection of Privacy Act, Family Violence Protection Act, Public Trustee Act				



Table 8: Assessment of Capacity, Ontario, Canada | See page 51 for details

Assessment of Capacity, Ontario, Canada				
<ul style="list-style-type: none"> Source: Capacity Assessment Office, Ministry of the Attorney General (2005) Guidelines for Conducting Assessments of Capacity, Ontario, Canada (LINK) Purpose: To conduct formal assessments of capacity in line with the Substitute Decisions Act (SDA) to make personal care or financial decisions. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
The SDA sets out a two-part definition of mental capacity. The person must have the ability to understand information relevant for making decisions, and show the ability to appreciate the consequences of a decision	Mental capacity is examined in restricted decisional domains under the SDA; namely finances, healthcare, nutrition, shelter, clothing, hygiene, and safety	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	<p>Referral information and informant interview</p> <ul style="list-style-type: none"> Discuss the situation with the requester <p>Capacity interview</p> <ul style="list-style-type: none"> Explore understanding of personal care circumstances Identify areas of unmet need Explore decision-making in areas of need <p>Records review</p> <ul style="list-style-type: none"> Cross-reference the person’s perceptions of their abilities with objective information <p>Formulating an opinion</p> <ul style="list-style-type: none"> Consider understanding and appreciation of the situation <p>Reporting</p> <ul style="list-style-type: none"> For assessments under SDA, the assessor reports their opinion using the prescribed forms For professional opinions not under the SDA, assessors can report their opinion in a short letter <p>*See worksheets #1, 4, and 5 for guidance *See appendices I and II for guidance</p>	<p>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:</p> <ul style="list-style-type: none"> 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 (Extended Class)] Ontario College of Social Workers and Social Service Workers (and registered as a Social Worker) College of Occupational Therapists of Ontario
Directly Related Legislation: Substitute Decisions Act (SDA)				



Table 9: Capacity Evaluation for Admissions to Long-Term Care Homes, Ontario, Canada | See page 55 for details

Capacity Evaluation for Admissions to Long-Term Care Homes, Ontario, Canada				
<ul style="list-style-type: none"> • Source: Cole (2011) Assessing Capacity for Admission to Long-Term Care Homes: A Training Manual for Evaluators (LINK) • Purpose: Capacity evaluations in this context refer to formal assessments of capacity to determine whether a person can give consent for admission to a long-term care home. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
The ability to understand information relevant to a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision	Admission to long-term care homes	<p>Reasonable grounds to proceed with a capacity evaluation:</p> <ul style="list-style-type: none"> • Bizarre, erratic or dangerous behaviour • Repetitive speech • Extreme disorientation • Risk to self or others <p>The person should have an opportunity to respond to the “trigger” behaviours</p>	<p>Pre-evaluation</p> <ul style="list-style-type: none"> • Outline who, what, and why? • Communicate possible consequences • Respect individual rights • Prepare adequately <p>Evaluation</p> <ul style="list-style-type: none"> • Use an evaluator questionnaire • Test the client’s orientation • Ask questions that address the client’s ability to ‘understand’ and ‘appreciate’ <p>Test the responses given, against knowledge of the true situation</p> <ul style="list-style-type: none"> • Verify the details • Probe for the underlying meaning and significance of what is being said <p>Post-evaluation considerations</p> <ul style="list-style-type: none"> • Determine whether the patient has capacity or not <p>Documentation</p>	<p>An evaluator is defined in the statute as a member of one of the following health colleges:</p> <ul style="list-style-type: none"> • College of Audiologists and Speech-Language Pathologists of Ontario • College of Dietitians of Ontario • College of Nurses on Ontario • College of Occupational Therapists of Ontario • College of Physicians and Surgeons of Ontario • College of Physiotherapists of Ontario • College of Psychologists of Ontario • Ontario College of Social Workers and Social Service Workers who holds a certificate of registration for social work
<p>Directly Related Legislation: Healthcare Consent Act</p> <p>Associated Acts: Substitute Decisions Act, Mental Health Act, Personal Health Information Protection Act</p>				



Table 10: Determining Incapability to Consent to Healthcare, Yukon, Canada | See page 58 for details

Determining Incapability to Consent to Healthcare, Yukon, Canada				
<ul style="list-style-type: none"> • Source: Yukon Health and Social Services (2005) Practice Guidelines for Determining Incapability to Consent to Healthcare and Need for Financial Protection Under the Care Consent Act (LINK) • Purpose: Formal legal assessment of incapability to consent to a particular healthcare decision (i.e., whether the person has the legal right to make their own decision) and need for financial protection. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>Refer to incapability or capability</p> <p>Focuses on a person’s understanding and appreciation of the consequences of their decision</p>	<p>Healthcare decision-making: Anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic, or other health-related purpose, and includes a course of healthcare (e.g., a series of treatments)</p> <p>Includes guidance on need for Financial Protection as well (if incapability found)</p>	<p>Evidence of risk factors for impaired decision-making e.g.,</p> <ul style="list-style-type: none"> • Abrupt change in mental status that could be caused by hypoxia, infection, medication, metabolic disturbances, an acute neurologic or psychiatric process, or other medical problem • Refusal of treatment and not willing to discuss the reasons or when the reasons for the refusal are not clear or when the refusal is based on misinformation or irrational beliefs • Consent to treatment too hastily, especially risky or invasive treatment, without careful consideration of the risks and benefits • Known risk factor for impaired decision-making 	<p>Pre-assessment: prep. to assess person, gather background info, identify & address communication barriers, enlist help of others, explain purpose of conversation</p> <p>Assessment: Determining - understanding of health problem and options for care, appreciation of how info applies to their own situation, ability to reason with info in a manner that is supported by the facts and person’s values</p> <p>Documentation and notification: most important for cases where incapability is determined</p> <p>Financial protection contingent on determination of incapability for healthcare decisions (see ref. p.16)</p>	<p>Healthcare providers defined by Care Consent Act:</p> <ul style="list-style-type: none"> • Medical practitioners • Registered nurses • Licensed practical nurses • Chiropractors • Optometrists • Physiotherapists • Psychologists • Occupational Therapists • Speech Language Pathologists • Audiologists or Hearing Instrument Practitioners • Dieticians & Nutritionists • Dentists • Dental Therapists • Dental Hygienists • Denture Technicians • Medical Imaging Technologists
<p>Directly Related Legislation: Care Consent Act</p> <p>Associated Legislation: Decision Making, Support and Protection to Adults Act</p>				

Australia



Table 11: Assessment of Capacity, New South Wales, Australia | See page 64 for details

Assessment of Capacity, New South Wales, Australia				
<ul style="list-style-type: none"> Source: Capacity Australia (2016) Decision-making capacity & dementia: A guide for Healthcare Professionals in NSW Mini-legal kit Series 1.12 (LINK) Purpose: To assess capacity in response to certain triggers e.g., to facilitate planning, as a part of routine clinical care assessment, or as a consequence of concerns from others regarding a person’s decision-making ability. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<ul style="list-style-type: none"> Ability to make & communicate a decision Not a unitary or global concept Domain-specific decision or task specific Cannot be extrapolated from one decision to another Within each domain there is a spectrum or hierarchy of decisions Situation-specific 	<p>Broadly, 3 domains of decision-making:</p> <ul style="list-style-type: none"> personal financial health <p>Within these domains there are numerous types of capacity decisions or capacity tasks</p>	<ul style="list-style-type: none"> To facilitate future planning (appointing enduring guardian, general or enduring power of attorney, documenting wishes for future treatment Part of routine clinical care assessment Concerns raised about a person’s decision-making ability by others (lawyer, family member, carer or service provider) and an assessment might be requested 	<p>Process</p> <ol style="list-style-type: none"> Global assessment of person’s mental state & cognitive function - ideally with estimate of severity and assessment of specific executive and functions of judgment, reasoning and planning which are relevant to decision making Functional assessment of decision-making i.e., whether person can show, using their own words, an understanding of decision (as defined by the relevant legal test) in the domain in which they are making a decision (not just “yes, I understand”) <p>Relevant legal tests:</p> <ol style="list-style-type: none"> Assessment to aid future planning Enduring Guardianship (ED) - Health and Personal decisions [Advance Care Directives (health decisions), Powers of Attorney (general & enduring -financial decisions)] Assessment as Part of Routine Care – Health and Personal decisions (capacity to drive, medical treatment consent) Assessment prompted by concerns from others [Capacity to Manage Financial Affairs – Financial decisions (Guardianship – Personal decisions, Testamentary Capacity)] 	Healthcare Professionals
<p>Directly Related Legislation: Common Law, Article 12 of the UN Convention on the Rights of Persons with Disabilities, Guardianship Act 1987 (NSW)</p>				



Table 12: Capacity Assessment, New South Wales, Australia | See page 67 for details

Capacity Assessment, New South Wales, Australia				
<ul style="list-style-type: none"> Source: New South Wales Government (2009) Capacity Toolkit (LINK) Purpose: To assess an adult’s capacity to make a decision about something significant or a decision that has legal consequences within civil areas of law. Assessment questions should reflect the legal test of capacity for that type of decision. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<ul style="list-style-type: none"> Understand the facts involved Understand the main choices Weigh up the consequences of the choices Understand how the consequences affect them Communicate their decision Decision-specific Can be regained <p>Under law, must presume every adult has capacity.</p>	<p>Decisions in 3 of the following areas.</p> <p>Personal life (making & using enduring guardianship, personal decisions)</p> <p>Health (making and using advance care directive, medical & dental treatment, other health decisions)</p> <p>Money and property</p>	<p>Person’s conduct</p> <ul style="list-style-type: none"> As an example, a person makes decisions that put them at significant risk of harm/mistreatment <p>Person’s circumstances</p> <ul style="list-style-type: none"> As an example, being taken advantage of by others <p>Person’s capacity improves</p> <ul style="list-style-type: none"> All other attempts to solve the problem have failed, and there are important legal consequences or the conduct of the person is causing, or is likely to cause, significant harm to the person or someone else <p>See section 5 for specific triggers for different decision domains.</p>	<p>Apply 6 principles of capacity assessment:</p> <ol style="list-style-type: none"> 1) Always presume person has capacity 2) Capacity is decision- specific 3) Don’t assume person lacks capacity based on appearances 4) Assess person’s decision-making <i>ability</i> - not the decision they make 5) Respect person’s privacy 6) Substitute decision-making is last resort <p>Process</p> <ul style="list-style-type: none"> Inform person about process prior to beginning an assessment Be flexible about assessments Consider cultural and linguistic diversity and capacity Don’t make value judgments Determine what you are looking for Apply right legal test to decision in question Ask questions carefully (See Section 5 for specific legal tests & questions for capacity related to different decision-making areas: personal, health, money and property) 	<p>Range of people in the community: e.g.,</p> <ul style="list-style-type: none"> Solicitor professional from the financial sector medical or dental practitioner community worker or other professional member of the community appointed as an enduring guardian, or with an enduring power of attorney advocate family member, friend or carer making informal decisions government or non-government employee or volunteer
Related Legislation: Civil law				



Table 13: Capacity Assessment, Queensland, Australia | See page 73 for details

Capacity Assessment, Queensland, Australia				
<ul style="list-style-type: none"> Source: Queensland Government (2020) Queensland Capacity Assessment Guidelines 2020 (LINK) Purpose: General test for capacity to make personal, health or financial decisions under Queensland’s guardianship legislation. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>Legal term referring to ability to exercise the decision-making process.</p> <p>Ability to:</p> <ul style="list-style-type: none"> Understand and retain info relating to the decision Understand main choices available Understand and weigh consequences of their choices Communicate the decision Make a decision freely & voluntarily <p>Decision-specific Time-specific Can fluctuate</p>	<p>Personal matters</p> <ul style="list-style-type: none"> Relate to the adult’s care or welfare <p>Health matters</p> <ul style="list-style-type: none"> Related to the adult’s healthcare including medical treatments, procedures and services to treat both physical and mental conditions <p>Financial matters</p> <ul style="list-style-type: none"> Related to finances and property <p>Making/revoking an enduring document</p>	<p>Deciding if :</p> <ul style="list-style-type: none"> Adult can consent to medical treatment, adult needs more support with decisions, providing evidence to QCAT¹ or Supreme Court about adult’s capacity, whether to apply QCAT for appointment of guardian/administrator, if you should witness signature of adult on enduring power of attorney or advance health directive form, attorney’s power under enduring power of attorney has commenced <p>Circumstances that give cause for concern: general, personal matters, health matters, financial matters (see more specific details p. 23)</p>	<p>Apply 5 principles of capacity:</p> <ol style="list-style-type: none"> 1) Presume adult has capacity 2) Capacity is decision-specific and time-specific 3) Provide support and info adult needs to make and communicate decisions 4) Assess adult’s decision-making ability rather than decision made 5) Respect adult’s dignity and privacy <p>6 Step Process</p> <ol style="list-style-type: none"> 1) Identify decision to be made (personal, health, financial) 2) Identify need to assess capacity (concerns) 3) Apply right legal test of capacity 4) Prepare for assessment (gather info, make a plan) 5) Conduct assessment (explain process to adult, ask questions) 6) Document conclusion and reasons 	<p>Family member, friend or colleague, health professional, social worker, support worker or advocate, person who works in the law, including an attorney or a Justice of the Peace worker in a financial institution Aged Care Assessment Team worker</p> <p>While anyone can carry out a capacity assessment, an assessment is just an opinion. Results of the assessment can be reviewed or challenged. The QCAT or Supreme Court can make a formal declaration or finding about adult’s capacity</p>
<p>Related Legislation: the Guardianship and Administration Act 2000, Powers of Attorney Act 1998, Human Rights Act 2019</p>				

¹ Queensland Civil and Administrative Tribunal (QCAT): an independent, accessible tribunal that efficiently resolves disputes on a range of matters.

New Zealand



Table 14: Capacity Assessment, New Zealand | See page 79 for details

Capacity Assessment, New Zealand				
<ul style="list-style-type: none"> Source: Douglass (2019) A Toolkit for Assessing Capacity (LINK) Purpose: To determine by clinical interview whether the person is unable to make a legally effective decision. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>Ability to make decisions</p> <p>“Capacity” and “Competence” are used interchangeably</p> <p>In a clinical context, “competence” tends to refer to the <i>process</i> of decision-making, and capacity to the <i>legal term</i> that is used.</p>	<p>Necessary to identify decision required to be made and relevant legal test</p> <p>New Zealand follows a functional rather than a status approach to capacity</p> <p>Possible Domains</p> <ul style="list-style-type: none"> Medical Personal welfare, living arrangements, property Cases of doubt, or complex major decisions Consent for treatment 	<p>Concern/ doubt of capacity when person has a medical or psychiatric condition affecting their mental state & decision has serious consequences/ high risk</p> <p>Factors such as:</p> <ul style="list-style-type: none"> Significant risk or long-lasting consequences associated with decision, Person’s proposed decision is contrary to reasonable advice without justification, Person unable to make decision at all despite being provided with all relevant info & appropriate support, where it is imperative that a decision needs to be made, Person unable to communicate decision, concern expressed by family member, carer, lawyer, or service provider, Decision out of character 	<p>1. Prepare for the Assessment</p> <ul style="list-style-type: none"> Consider triggers Identify capacity decision to be assessed Identify legal test against which capacity to be assessed Gather info needed to make decision Consider medical history Provide supportive measures including cultural supports Consider best place and time for assessment <p>2. Assessment Interview</p> <ul style="list-style-type: none"> Explain who you are and purposes of assessment Consider if person in appropriate health and cognitive state to be interviewed Apply legal test <p>3. After the Interview</p> <ul style="list-style-type: none"> Decide if enough info available to decide on capacity, communicate results, document results 	<p>Informal & formal assessments are two contexts which clinicians can assess capacity.</p> <p>Health practitioners, including: doctors, psychologists, nurses, occupational therapists (clinicians) and social workers may be involved depending on the decisional domain.</p>
<p>Related Legislation: Protection of Personal and Property Rights Act 1988 (PPPR Act) - Guardianship law, Code of Health and Disability Services Consumers’ Rights (HDC Code)</p>				



United Kingdom

Table 15: Assessing Capacity in Adults, Scotland, UK | See page 83 for details

Assessing Capacity in Adults, Scotland, UK				
<ul style="list-style-type: none"> • Source: Scottish Government (2008) Adults with incapacity: guide to assessing capacity (LINK) • Purpose: To assess the capacity of individuals who may come under protection of the Adults with Incapacity (Scotland) Act. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
The ability to understand information relevant to a decision or action and to appreciate the reasonably foreseeable consequences of taking or not taking that action or decision.	Personal care	<p>The Act covers people whose incapacity is caused by a mental disorder and people who are unable to communicate due to a physical condition. If they appear to be struggling to make or act on financial, welfare or healthcare decisions, the possibility of incapacity should be considered.</p> <p>There may be cause for concern if an individual repeatedly makes unwise decisions and place him/her at significant risk of harm or serious exploitation. Concern may be triggered if a person makes a particular decision which defies all notions of rationality and/or is markedly out of character.</p>	<p>Step 1: Explore understanding of personal care circumstances</p> <ul style="list-style-type: none"> • Is there a difference between the person's description and that reported by others? • Is the person aware of their responsibilities? • Is the person aware of the important demands in meeting personal care needs? <p>Step 2: Identify areas of unmet need</p> <ul style="list-style-type: none"> • Does the person admit to any problems in meeting personal care needs? • Is there evidence of recent change in the person's ability to self-manage? • Can the person recognize risky situations and respond accordingly? • Can the person ask others for help? • Does the person have safety or physical health risks because of memory problems? <p>Step 3: Explore decision-making within critical areas of unmet need</p> <ul style="list-style-type: none"> • Ask questions about the degree of insight the person has about their self-care limitations • Ask the person specific questions to test their 'understanding and appreciation' of the choices available • Look for evidence of reasoned choice 	<p>This guide is primarily for social work and healthcare staff in Scotland, including:</p> <ul style="list-style-type: none"> • care managers and other health and social care staff involved in carrying out community care assessments • health and social care staff, including clinical psychologists • medical practitioners • Doctors have principal responsibility for the formal assessment of capacity
Directly Related Legislation: Adults with Incapacity Act 2000				



Table 16: Mental Capacity Assessment, England and Wales, UK | See page 87 for details

Mental Capacity Assessment, England and Wales, UK				
<ul style="list-style-type: none"> Source: The Stationery Office on behalf of the Department for Constitutional Affairs (2007) Mental Capacity Act 2005 Code of Practice (LINK) Purpose: To informally assess mental capacity of individuals in line with the Mental Capacity Act 2005. 				
Capacity Definition	Domains Assessed	Trigger for Assessment	Assessment Process	Professionals Involved
<p>The ability to make a decision that:</p> <ul style="list-style-type: none"> Affects daily or more serious or significant decisions That may have legal consequences (e.g., agreeing to have medical treatment, buying goods or making a will) 	<p>The Act covers a wide range of decisions that can be about day-to-day matters or decisions about major life-changing events, such as whether the person should move into a care home or undergo a major surgical operation.</p>	<p>There are a number of reasons why people may question a person’s capacity to make a specific decision:</p> <ul style="list-style-type: none"> Behaviour or circumstances cause doubt about decision making capacity Somebody reports concern Previous diagnoses with an impairment or disturbance of the mind or brain, and it has already been shown they lack capacity to make other decisions 	<p>Stage 1: Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?</p> <p>Stage 2: Does the impairment or disturbance mean the person is unable to make a specific decision?</p> <p>Practical Steps</p> <ul style="list-style-type: none"> The assessor should understand the decision to be made The assessor can access relevant documents and talk to family and close friends for background information The assessor should explain information in a way that is accessible to the person Avoid questions with ‘yes’ or ‘no’ answers Repeat steps to confirm the result Medical or psychometric tests may be helpful <p>Professional involvement might be needed if:</p> <ul style="list-style-type: none"> The decision is complicated or has serious consequences The conclusion of the assessment is contested There is a conflict of interest The person being assessed is expressing different views to different people Someone has been accused of abusing a vulnerable adult A person makes decisions that put them at risk 	<ul style="list-style-type: none"> Attorney under a Lasting Power of Attorney Deputy appointed by the Court of Protection Independent Mental Capacity Advocate Researchers Professionals who work with people who lack capacity Healthcare staff Social care staff Others who may be involved in the care of people who lack capacity
Directly Related Legislation: Mental Capacity Act 2005				

Appendix A: Data Extraction

This section is a companion to the Summary Tables from the main report. The data extraction tables below contain detailed information from online assessment materials. Available website links and references are included. Information was obtained from websites, reports, guidance or toolkits associated with assessments. As much as possible information included in the data extraction tables is verbatim from program materials in full or shortened form.

Data Extraction – Canada

Alberta

Capacity Assessment under the Adult Guardianship and Trusteeship Act (Alberta, Canada)

Name of assessment	Capacity Assessment under the Adult Guardianship and Trusteeship Act
Jurisdiction	Alberta, Canada
Main source	Government of Alberta, Office of the Public Guardian, Guide for Capacity Assessors under the Adult Guardianship and Trusteeship Act, Alberta, Canada (LINK) <ul style="list-style-type: none"> • Guide for capacity assessors under the Adult Guardianship and Trusteeship Act • Provides information for formal assessments of capacity to make decisions in the following personal areas: healthcare, accommodation, choice of associates, participation in social/leisure activities, personal legal matters, participation in employment activities, and participation in educational, vocational or other training, financial.
Capacity Definition	<ul style="list-style-type: none"> • In respect to the making of a decision about a personal or financial matter, it is the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision, and a failure to make a decision. • Capacity is determined by the Courts and is not a medical diagnosis. Capacity assessments provided by capacity assessors are a clinical opinion provided to the Courts. In guardianship, trusteeship and co-decision-making applications, capacity is a legal decision made by the Court, based on evidence from the capacity assessment report.
Purpose of assessment/ Domains assessed	<ul style="list-style-type: none"> • The purpose of the assessment is to formally assess capacity to make decisions in various personal areas including healthcare. • The domains assessed are healthcare, accommodation, choice of associates, participation in social/leisure activities, personal legal matters, participation in employment activities, participation in educational, vocational or other training, financial
Relevant legislative acts	<ul style="list-style-type: none"> • Adult Guardianship and Trusteeship Act

<p>Trigger for assessment</p>	<ul style="list-style-type: none"> • The capacity assessor must ensure that he or she has been advised of the reasons why the capacity assessment has been requested and has been provided with a description of any event that gave rise to the request for a capacity assessment. • There must be a cause for concern that makes the assessment necessary (e.g. the adult is displaying symptoms of Dementia and is having difficulty remembering when and how to pay household expenses or when and how to take necessary medications). A cause for concern could be any event or circumstance that potentially places the individual or others at risk and that seems to be caused by an inability to make decisions.
<p>Assessment process</p>	<p>Capacity Assessment Process</p> <ul style="list-style-type: none"> • The capacity assessment process under the AGTA consists of three stages: <ul style="list-style-type: none"> ○ A pre-assessment process (explaining the purpose and significance of the assessment and the adult’s rights), ○ A medical evaluation (conducted by a medical practitioner to rule out temporary, reversible medical conditions affecting capacity), and ○ A formal interview with the adult conducted by the capacity assessor using a cognitive and functional inquiry methodology. This means the capacity assessor asks questions to see if the adult can understand information from a reasoning or executive perspective and can also apply it to real life situations. The formal interview should only focus on assessing those decision-making areas identified as warranting assessment. The assessor may determine that other Areas of Concern that were not previously identified also need to be assessed. <p>Pre-Assessment</p> <ul style="list-style-type: none"> • The capacity assessor must ensure that he or she has been advised of the reasons why the capacity assessment has been requested and has been provided with a description of any event that gave rise to the request for a capacity assessment. • There must be a cause for concern that makes the assessment necessary (e.g. the adult is displaying symptoms of Dementia and is having difficulty remembering when and how to pay household expenses or when and how to take necessary medications). A cause for concern could be any event or circumstance that potentially places the individual or others at risk and that seems to be caused by an inability to make decisions. • This may lead to action on the part of a healthcare professional or family. Family, home care personnel, and/or the person requesting the capacity assessment are usually good contact points for collecting information about adult. These persons can relay the presenting concerns that are causing the assessment. • They may also be able to describe any major demands the person faces. However, while this type of information is valuable, it should only be seen as background information. Preliminary information or apprehensions brought forward must always be balanced against the person’s perceptions of their own situation. • The capacity assessor should obtain only enough background information to target the interview to the relevant Areas of Concern (i.e., personal matters Office of the Public Guardian – Guide for Capacity Assessors 13 and/or financial matters); (See section on Access to Personal Information on page 22 of this guide). <p>Assessing Risk</p> <ul style="list-style-type: none"> • The capacity assessor should assess the severity of any risks to the adult or to others that have been identified. Causes for capacity assessments often arise from safety concerns respecting an adult’s level of functioning in their usual environment.

	<ul style="list-style-type: none"> • The higher the level of risk to the adult or to others, the stricter the standard applied to determine options to minimize or remove that risk. The assessor should also determine whether other, less intrusive measures have already been tried but failed to reduce the risk and whether the appointment of a guardian, trustee or co-decision-maker may resolve the problem. <p>Explanation of Purpose, Significance and Rights</p> <ul style="list-style-type: none"> • The capacity assessor must make a reasonable effort to meet with the adult and, unless the adult is non-responsive, explain to the adult the purpose and nature of the assessment and the significance of a finding of incapacity. The capacity assessor must also explain the adult’s right to refuse to undergo or continue with the assessment and the adult’s right to have the assistance of a person or device – for communication or comfort – but not to interfere with the assessment. • The capacity assessor must determine whether the adult has refused to be assessed, understands the purpose of the assessment and his/her right to refuse, appears to be capable of consenting, and has consented or, if the adult appears not to be capable of consenting, the capacity assessor must determine if it is in the adult’s best interests to conduct or continue the assessment. If the adult refuses to undergo or continue with the assessment, the capacity assessor must stop the assessment and note this on the capacity assessment report. • The capacity assessor must also determine whether it is necessary for the adult to have or whether the adult has requested the assistance of a person or the use of any device to assist in communication or to make the adult feel comfortable and relaxed and then take reasonable steps to accommodate that need. <p>Prior medical evaluation</p> <ul style="list-style-type: none"> • The capacity assessor must confirm that a medical evaluation by a physician was conducted within the 3 months prior to the capacity assessment and that the results did not indicate that the adult was suffering from a reversible temporary medical condition that appeared likely to have a significant impact on the adult’s decision-making capacity. If the evaluation indicated that there was a temporary, Office of the Public Guardian – Guide for Capacity Assessors 14 reversible condition (e.g., a urinary tract infection or drug interaction problem), the condition must be treated before the assessment begins. <p>Formal Interview</p> <ul style="list-style-type: none"> • The capacity assessor must meet with the adult and use a cognitive and functional inquiry method (see Capacity Assessment Worksheets) to assess the decision-making areas (Areas of Concern) that were previously identified as warranting assessment. It is important to remember that incapacity in one Area of Concern does not necessarily mean incapacity in other Areas of Concern. However, while conducting the formal interview, the assessor may determine that other Areas of Concern that were not previously identified also need to be assessed. • The assessor must also ask the adult about any recent, significant changes in his/her values and beliefs related to the identified decision-making areas. This will help the assessor understand whether the adult can appreciate the consequences of making a decision and the adult’s justification for their decision or choice. • An individual’s ability to articulate the reasoning behind their choice should reflect both relevance and internal consistency with the individual’s beliefs and values. An individual’s preferences and values may change over time, reflecting personal growth and life experiences.
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	<ul style="list-style-type: none"> • For each of the decision-making areas or Areas of Concern being assessed, the capacity assessor must form an opinion about whether the adult is able: a) to understand the information relevant to a decision and b) to appreciate the reasonably foreseeable consequences of making or not making a decision. • In forming his or her opinion, the assessor must take into account the adult’s ability to retain information and any other factors that the capacity assessor considers appropriate. The emphasis is on the quality of the decision-making process, not the actual course of action in which the adult engages. • For each Area of Concern that was assessed, the capacity assessor must give their opinion about whether the adult’s capacity is significantly impaired (for a co-decision-making application) or lacking (for a guardianship or trusteeship application). • The capacity assessor must also form an opinion about whether the adult would be seriously harmed if he or she were served with an application for a guardianship or trusteeship order. • If the capacity assessor determines that the adult lacks the capacity to make personal or financial decisions or that the adult’s personal decision-making is significantly impaired, the assessor must form an opinion about whether the adult is likely to regain capacity and if so, must recommend that there be a further capacity assessment and the period within which that should occur. <p>Functional Inquiry</p> <ul style="list-style-type: none"> • Functional assessments, done in the past by family members or healthcare providers, were completed as part of guardianship applications under the Dependent Adults Act. These assessments no longer need to be completed. However, in a capacity assessment under the AGTA, the capacity assessor is determining the adult’s ability to understand and appreciate the decisions that he or she is making with respect to each of the functional activities that fall within the decision-making Areas of Concern being assessed. • The areas that are assessed will depend upon the identified causes for concern and the type of court application. In assessing functionality, the assessor should be looking particularly at areas where there is a potential risk to the adult or others and where there is no one who can help the adult, thereby reducing the risk. • The personal and financial matters (Areas of Concern) and the functions within those matters are listed in the Capacity Assessment Worksheets. Information about the adult’s current and prior level of functioning in the various Areas of Concern may be gathered from: <ul style="list-style-type: none"> ○ the adult ○ family members/caregivers ○ team members in a facility ○ direct observation ○ standardized testing <p>Cognitive Inquiry</p> <ul style="list-style-type: none"> • Cognition is the ability to process, store, retrieve and manipulate information. The basic cognitive functions are attention, orientation and memory. The higher cognitive functions are manipulation of knowledge, social awareness, reasoning, and problem-solving skills.
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	<ul style="list-style-type: none"> • A cognitive assessment is not necessarily equivalent to an adult’s functional abilities and is only part of the capacity assessment. Although there is no cognitive test that will definitively determine capacity, there are many different types of tests that may be used by health professionals, depending upon their professional training. • For each of the Areas of Concerns identified as needing to be assessed, the capacity assessor will assess cognitive functions such as attention, orientation and memory to help determine the adult’s ability to understand and appreciate the consequences of making decisions in those Areas of Concerns. <p>Components of a Capable Decision</p> <ul style="list-style-type: none"> • A capable decision is one where: <ul style="list-style-type: none"> ○ the adult is aware of the choices that are available and understands the information provided about the choices; ○ the adult understands the reasonably foreseeable effects or consequences of each choice and of making or not making a decision; ○ The adult makes a choice after weighing the relative benefits and disadvantages of the choices available.
Who is involved in assessing decision making capacity?	<ul style="list-style-type: none"> • Under the Dependent Adults Act, capacity assessments have been performed by a physician or a psychologist. Under the AGTA, that list has been expanded to include other healthcare professionals, (social workers, occupational therapists, registered nurses and registered psychiatric nurses as well as physicians and psychologists) once they have met certain eligibility requirements which are set out by the Regulations.
Other references	N/A
Web links	<ul style="list-style-type: none"> • Government of Alberta, Ministry of Seniors and Housing: www.seniors.alberta.ca
Contact	jsg.opgt-capassmnt@gov.ab.ca

Decision Making Capacity Assessments (Alberta, Canada)

Name of Assessment	Decision Making Capacity Assessments
Jurisdiction	<ul style="list-style-type: none"> • Alberta, Canada
Main source	<ul style="list-style-type: none"> • Network of Excellence in Seniors’ Health and Wellness, Covenant Health (2018) Decision-Making Capacity Assessment Model Toolkit, Alberta, Canada (LINK) • Toolkit on a decision making capacity assessment model. Includes 4 sections: <ul style="list-style-type: none"> ○ Part 1: The Decision-making Capacity assessment (DMCA) Model ○ Part 2: DMCA Model Implementation Framework ○ Part 3: Resources for Healthcare Providers ○ Part 4: Resources for Family Caregivers

	<ul style="list-style-type: none"> This Toolkit is a practical, evidence-informed resource that aims to offer information and resources related to Decision-Making Capacity Assessment (DMCA) best-practices and capacity-building processes, and implementation of the DMCA Model. We hope that the DMCA Toolkit may be of use in providing support and services to individuals, service providers, and organizations at the local, zonal, and provincial levels as well as beyond Alberta’s provincial borders
Capacity definition	<ul style="list-style-type: none"> Decision-Making Capacity (DMC) is a person’s ability to understand information that is relevant to making a personal decision, and to appreciate the reasonably foreseeable consequences of the decision. All adults are presumed capable of making their own decisions (health, legal, accommodation, social activities, choice of associates, educational, employment, financial and estate) until the contrary is demonstrated. Restricting a person’s right to liberty and freedom is a very serious step, and is seen as a last resort. A person’s decision-making ability or capacity is dependent on both the complexity of the decision-making process and one’s ability to engage in that process. The degree of impairment regarding one’s decision-making capacity can vary as a result of developmental or disease processes, cognitive impairment, or brain injury
Purpose of assessment/ Domains assessed	<ul style="list-style-type: none"> The purpose of the assessment is to enable provision of informal decision making capacity assessments at the client, provider, and system levels using best-practices. The domains assessed are: <ul style="list-style-type: none"> Healthcare Accommodation With whom to live and associate Legal matters Participation in social activities Participation in educational activities Participation in employment activities Financial and estate
Relevant legislative acts	<ul style="list-style-type: none"> Personal Directives Act Powers of Attorney Act Adult Guardianship and Trusteeship Act
Trigger for assessment	<ul style="list-style-type: none"> When decision-making capacity is in question, the Attending Team should follow a process similar to this one prior to requesting a formal assessment of decision-making capacity. Informal – formal capacity assessment process is on p.30 and includes the following broad steps <ul style="list-style-type: none"> Triggers are identified and documented by attending team for questionable DMC Collect information and identify domains Perform medical assessment <ul style="list-style-type: none"> If no reversible conditions continue with Pre-assessment by Attending Team

	<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▪ If possible try, less intrusive measures, ▪ Have a team meeting to determine if concern about DMC is still valid, complete CAPW ○ If Concern remains and risk to self or others remains high <ul style="list-style-type: none"> ▪ Attending physician proceeds with formal capacity interview using the Capacity Interview WORKsheet • If after informal capacity assessment “concern remains and risk to self or others remains high” then proceed to formal capacity assessment; Complete paperwork as appropriate pending findings of interview
<p>Assessment process</p>	<p>Screening</p> <ul style="list-style-type: none"> • Identify triggers for questioning capacity, domains, and risks <p>Problem solving</p> <ul style="list-style-type: none"> • Use Team Approach • Cognitive/Functional Tests • Options to Reduce Risk <p>Capacity Assessment</p> <ul style="list-style-type: none"> • Proceed when risks not resolved by less intrusive or restrictive means <p>The following DMCA process and interview worksheets guide practitioners through the DMCA process and are tied into steps in the Care Map and Clinical Pathway:</p> <ul style="list-style-type: none"> • Capacity Assessment Process Worksheets <ul style="list-style-type: none"> ○ Capacity Assessment Process Worksheet (Data Group form: CH-1191) - Covenant Health (http://seniorsnetworkcovenant.ca/wp-content/uploads/CH-1191-fillable2-CapacityAssessmentProcess.pdf) ○ Capacity Assessment Process Worksheet (Data Group form: 09947) - AHS (http://seniorsnetworkcovenant.ca/wp-content/uploads/AHS-09947-fillable-CapacityAssessmentProcess.pdf) ○ Capacity Assessment Process Worksheet Guidelines for Attending Teams (Alberta Health Services, Covenant Health) (http://seniorsnetworkcovenant.ca/wp-content/uploads/Capacity-Assessment-Process-Worksheet-Guidlines-for-Attending-Teams.pdf) • Capacity Assessment Interview Worksheets <ul style="list-style-type: none"> ○ Capacity Interview Worksheet (Data Group form: CV-0527) - Covenant Health (http://seniorsnetworkcovenant.ca/wp-content/uploads/CH-Capacity-Interview-Worsheet-cv-0527-fillable.pdf) • Capacity Interview Worksheet (Data Group form: 09948) - AHS (https://myapps-aaa1fa.albertahealthservices.ca/logon/LogonPoint/tmindex-ahs.html#search=capacity%20interview%20worksheet)
<p>Who is involved in assessing decision making capacity?</p>	<p>Attending teams:</p> <ul style="list-style-type: none"> • Attending teams include front-line healthcare professionals who work directly with clients in various facilities to provide in-patient, out-patient, rehabilitation, and community-based healthcare services. Members of these teams may include: <ul style="list-style-type: none"> ○ physicians ○ nurse practitioners

	<ul style="list-style-type: none"> ○ nurses ○ social workers ○ psychologists ○ occupational therapists ○ physical therapists ○ speech-language pathologists ○ chaplains ○ recreation therapists, and ○ therapy and nursing assistants <p>Mentoring teams</p> <ul style="list-style-type: none"> • Mentoring teams are inter-disciplinary in nature, and have been established at each facility in Alberta that has adopted the DMCA Model. Members of these teams have a particular interest and expertise in the DMCA Model process and may include: <ul style="list-style-type: none"> ○ physicians ○ nurses ○ social workers ○ occupational therapists ○ psychologists ○ Designated Capacity Assessors (DCAs) • The purpose of the mentoring team is to: <ul style="list-style-type: none"> ○ Educate the staff in their facility on the DMCA Model and process; and ○ Provide support, answer questions and problem-solve during complex DMCA situations. <p>Designated Capacity Assessors</p> <ul style="list-style-type: none"> • Designated capacity assessors (DCAs) are regulated healthcare professionals who have been appointed by the Government of Alberta to complete capacity interviews and make recommendations to the Office of the Public Guardian/Trustee. Physicians and psychologists are designated as capacity assessors by regulation and therefore are not considered DCAs, while nurses, occupational therapists, and social workers may undergo a mandatory 3 day training module to become DCAs. To remain certified, a DCA must complete at least three capacity assessments every two years. • Formal assessment of capacity is conducted by interviewing the patient and completing the appropriate standardized forms. The DCAs opinion regarding co-decision-making, guardianship or trusteeship applications is then submitted to the court, which makes the legal determination regarding capacity. Ideally, pre-assessment and problem-solving should be done with frontline staff and mentoring teams before DCAs are requested to conduct a formal capacity assessment.
Other references	<ul style="list-style-type: none"> • Paramar, 2017, 10 things you need to know about Decision-Making Capacity PPT (LINK)
Web links	<ul style="list-style-type: none"> • About Capacity Assessment: https://www.alberta.ca/capacity-assessment.aspx • Covenant Health Assessment of Decision-Making Capacity, 2014, Corporate Policy & Procedures Manual: https://extcontent.covenanthealth.ca/Policy/vii-b-35.pdf

Contact	ShapeSeniorsCare@CovenantHealth.ca
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British Columbia

Assessment of Incapability When Obtaining Consent (British Columbia, Canada)

Name of Assessment	Assessment of Incapability When Obtaining Consent
Jurisdiction	British Columbia, Canada
Main source	<p>BC Ministry of Health (Adopted March 2018) Clinical Practice Guideline – Healthcare Providers’ Guide to Consent to Healthcare (LINK)</p> <ul style="list-style-type: none"> • Section on Incapability to give consent • This Guide is designed to help healthcare providers understand the basic legal requirements for securing a valid consent (or refusal) for a proposed course of healthcare treatment for an adult in British Columbia, as of September 1, 2011. • The Guide provides general information about the law of healthcare consent, but it is not a substitute for legal advice. Healthcare providers should seek legal advice if faced with a situation in which there is conflict or ambiguity. • The guide is for healthcare providers delivering healthcare to which the HCCCFAA applies & for emergency medical assistants insofar as it relates to their responsibilities under the Emergency and Health Services Act to person who have made an Advance Directive
Capacity definition	<p>Presumption of capacity (as it pertains to gaining consent)</p> <p>A healthcare provider must presume an adult is capable of making a healthcare decision, until it is demonstrated that the adult is not capable of making the particular decision. Even if the adult has been found by the court to be incapable and has a Personal Guardian (i.e., The court has appointed a Committee of the Person), the first effort to obtain consent should still begin with the adult.</p> <p>In deciding whether an adult is incapable of making a particular healthcare decision, the decision must be based on whether the adult demonstrates that he or she:</p> <ul style="list-style-type: none"> • Understands the information being given about his or her healthcare conditions; • Understands the nature of the proposed healthcare, including the risks, benefits and alternatives; and • Understands as well that the information applies to his her own situation
Purpose of assessment/ Domains assessed	<p>Incapacity to give consent when determining if substitute decision-maker can give consent</p> <ul style="list-style-type: none"> • Focused on incapability when obtaining consent <p>Domains</p> <ul style="list-style-type: none"> • Healthcare decision making

	<ul style="list-style-type: none"> ○ HCCCFAA covers anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health including ○ 1. A series or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem; ○ 2. A plan for minor healthcare ○ 3. Participation in a medical research program approved by an ethics committee designated by regulation. <p>See exclusions page 3.</p>
<p>Relevant legislative acts</p>	<p>Directly related Act</p> <ul style="list-style-type: none"> • Healthcare (Consent) and Care Facility (Admission) Act (HCCCFAA) <ul style="list-style-type: none"> ○ Set down in statutory form the basic legal requirements for obtaining consent to healthcare in British Columbia Associated Act • Health Professions Act and the Social Workers Act
<p>Trigger for assessment</p>	<p>Trigger to assessing incapability: The following points provide some suggestions about what should be considered when deciding whether or not an adult is incapable of making a particular healthcare decision</p> <ul style="list-style-type: none"> • The adult repeats and explains the disclosed information in his/her own words; • The adults gives clear, consistent and unambiguous answers to questions; • Through appropriate questioning, the adult demonstrates understanding of the consequences of authorizing or not authorizing treatment; • The adult asks pertinent questions which reflect an understanding of the proposed therapy.
<p>Assessment process</p>	<p>In the context of determining if substitute consent is needed incapability must be demonstrated:</p> <p>A sort of process is outlined for demonstrating incapability</p> <ul style="list-style-type: none"> • Demonstrating/determining incapability <ul style="list-style-type: none"> ○ In deciding whether an adult is incapable of making a particular healthcare decision, the decision must be based on whether the adult demonstrates that he or she: <ul style="list-style-type: none"> ▪ Understands the information being given about his or her healthcare conditions; ▪ Understands the nature of the proposed healthcare, including the risks, benefits and alternatives; and ▪ Understands as well that the information applies to his her own situation ○ Trigger is present • Best practice principles to apply when determining whether an adult is incapable of making a healthcare decision: <ul style="list-style-type: none"> ○ Begin with the presumption the adult is capable of making the decision ○ Deal only with the specific decision needed ○ Keep the best interests of the adult at the forefront of the process

	<ul style="list-style-type: none"> ○ Respect and protect the adult’s well-being, self-esteem and right to privacy ○ Conduct the process in consultation with the adult and those supportive of the adult ● Documenting a finding of incapability <ul style="list-style-type: none"> ○ Whatever the decision, it is important that the healthcare provider who is proposing the healthcare documents how the decision was reached, including recording the observations that form the basis of his or her opinion. ● Implications of a finding of incapability <ul style="list-style-type: none"> ● In the event a patient is determined to be incapable of making a specific healthcare decision, and the health condition is not a triage, or other preliminary examination situation, the healthcare provider must make reasonable efforts to determine whether the adult has a substitute decision maker or has made an Advance Directive relevant to the proposed healthcare.
<p>Who is involved in assessing decision making capacity?</p>	<ul style="list-style-type: none"> ● Potential healthcare providers include all persons who are licensed, certified or registered to provide care under a prescribed act in British Columbia. The prescribed Acts are the Health Professions Act and the Social Workers Act: <ul style="list-style-type: none"> ○ Acupuncturists, Audiologists, Chiropractors, Dental Hygienists, Dental Technicians, Dentists, Dental Assistants, Dietitians, Hearing Instrument Practitioner, Licensed Practical Nurses, Massage Therapists, Massage Therapists, Midwives, Naturopathic Physicians, Nurse Practitioners, Occupational Therapists, Opticians, Optometrists, Pharmacists, Physical Therapists, Physicians, Podiatrists, Psychologists, Osteopathic Physicians, Registered Nurses, Speech Language Pathologists, Registered Social Workers, Surgeons, Traditional Chinese Medicine herbalists, Traditional Medicine practitioners.
<p>Other references</p>	<ul style="list-style-type: none"> ● Ministry of British Columbia, 2016, A Guide to the Certificate of Incapability process under the Adult Guardianship Act https://www.trustee.bc.ca/reports-and-publications/Documents/A%20Guide%20to%20the%20Certificate%20of%20Incapacity%20Process%20under%20the%20Adult%20Guardianship%20Act.pdf ● Sullivan, 2019, Decision Making in Healthcare of Adults with Intellectual and Developmental Disabilities: Promoting Capabilities. Developmental Disabilities Primary Care Program of Surrey Place. http://ddprimarycare.surreyplace.ca/wp-content/uploads/2019/10/1.2-Decision-Making-Approaches.pdf
<p>Web links</p>	<ul style="list-style-type: none"> ● BC Ministry of Health Incapability Assessment Form: https://www2.gov.bc.ca/assets/gov/health/forms/3910fil.pdf ● Healthcare (Consent) and Care Facility (Admission) Act (HCCCFAA): https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96181_01 ● Health Professions Act: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96183_01 ● Social Workers Act: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_08031_01 ● Seniors First BC, 2022, Assessing Legal Capacity https://seniorsfirstbc.ca/for-professionals/assessing-legal-capacity/
<p>Contact</p>	<p>None given</p>

Assessment for Incapability to Consent to Facility Admission (British Columbia, Canada)

Name of Assessment	Assessment for Incapability to Consent to Facility Admission
Jurisdiction	British Columbia, Canada
Main source	<p>Province of British Columbia (2019) Practice Guidelines for Seeking Consent to Healthcare Facility Admission (LINK)</p> <ul style="list-style-type: none"> • These guidelines establish the foundation for consistent and fair provincial processes for seeking consent to facility admission and assessing for incapability to make such decisions. This document is intended to provide information to enhance the knowledge of those who seek consent to facility admission and those who assess for incapability and support their ability to comply with their responsibilities under Part 3 of the HCCCFAA and regulations. These guidelines are intended to be used in conjunction with the online course Consent to Care Facility Admission in BC: A Course for Managers and Assessors. In addition, healthcare providers should also be guided by their own regulatory bodies’ policy and guidelines on consent and incapability assessments. • While this document is intended for use by all those involved in the admission process, it is specifically intended for the managers who are defined in Part 3 of the HCCCFAA as being responsible for the operation of care facilities, and/or admissions into care facilities, as well as assessors who conduct assessments to determine if an adult is incapable of giving or refusing consent to admission to, or continue residence in, a care facility.
Capacity definition	<p>Use capability instead of capacity</p> <ul style="list-style-type: none"> • Capable Adult: Consent to facility admission is valid only if given by a capable adult, which means an adult who is able to understand and appreciate the decision being made. All adults are presumed to be capable unless there is reason to think otherwise • Capability to consent to admission requires the ability to understand information that is relevant to making a decision about the admission and appreciate the reasonably foreseeable consequences of a decision or lack of decision. Understanding refers to the ability to receive and remember the information. Appreciation refers to the ability to weigh the information in the context of one’s own life circumstances. • Capability should not be confused with an assessor’s view of the reasonableness of an adult’s decision. Even if an adult’s decisions are perceived by others as bad decisions, an adult has the right to decide as long as they understand and appreciate what their decision means. Unusual or eccentric choices are not a valid reason for doubting a person’s decisional capability. • Capability as domain-specific and decision specific. A person may be capable of making decisions in one area or domain but not another. • To be capable of making decisions, an adult must be adequately informed
Purpose of assessment/ Domains assessed	<p>Assessment for incapability to consent to Facility Admission</p> <ul style="list-style-type: none"> • Assessment to determine if an adult is incapable of giving or refusing consent to admission to, or continue residence in a care facility

	<p>Care Facility means:</p> <ul style="list-style-type: none"> • a facility that is licensed or designated under the Community Care and Assisted Living Act, and provides residential care to adults; • a private hospital licensed under Part 2 of the Hospital Act; • an institution designated as a hospital under the Hospital Act for the treatment of persons • convalescing from or being rehabilitated after acute illness or injury, or requiring extended care; or • any other facility, or class of facility, designated by regulation as a care facility, • but does not include a service provider under the Community Living Authority Act.
<p>Relevant legislative acts</p>	<ul style="list-style-type: none"> • Healthcare (Consent) and Care Facility (Admission) Act <ul style="list-style-type: none"> ○ The following key provisions of Part 3 of the HCCCFAA are the basis for these guidelines and will be explained in more detail in subsequent sections of this document. <ul style="list-style-type: none"> ▪ An adult must not be admitted to a care facility until consent has been given by the adult or a substitute, unless it is an emergency. ▪ If an adult is admitted without consent in an emergency, substitute consent for continued residence in the care facility is required within 72 hours. ▪ Consent to care facility admission must be voluntary, not obtained through fraud or misrepresentation, informed, given by a capable adult, and specific to a particular facility. ▪ An adult who does not seem able to give or refuse consent to facility admission must be assessed for incapability by a medical practitioner or a prescribed healthcare provider. The legislation sets out the criteria for incapability and requirements for incapability assessments. ▪ If an adult is found to be incapable of giving or refusing consent to facility admission, then consent is sought from a qualified substitute authorized to give or refuse consent on the adult’s behalf under Part 3 of the HCCCFAA. ▪ A manager must allow an adult to leave the facility if the adult is capable and wishes to leave or if the adult’s substitute wishes the adult to leave (unless the manager has reason to believe the substitute is acting in a manner that may be abusive or harmful to the adult). ▪ If an adult who has been assessed as incapable wishes to leave the care facility, the manager must seek substitute consent to continued residence within a reasonable time, unless: <ul style="list-style-type: none"> • 1. substitute consent to continued residence was obtained within the last 90 days, or • 2. the adult’s admission to the care facility occurred with the last 30 days.¹ ▪ If an incapable adult wishes to leave the care facility and the manager has reason to believe the person in care may now be capable of giving or refusing consent to care facility admission, the manager must have the person in care assessed within a reasonable time. ▪ If a manager believes that a substitute is acting in a manner that may be abusive or harmful to the adult, the manager must notify a person designated for this purpose within a health authority and, in the meantime,

	<p>take steps necessary to protect the adult, which may include refusing to discharge a person in care from a care facility</p> <ul style="list-style-type: none"> • The consent to facility admission provisions of the HCCCFAA do not apply to admission to designated mental health facilities under the Mental Health Act. • The provisions of Part 3 of the HCCCFAA intersect with the provisions of Part 3 of the Adult Guardianship Act in terms of protections for vulnerable adults who may be abused, neglected or self-neglecting, and are unable to seek support or assistance. <p>Legal test for incapability</p> <ul style="list-style-type: none"> • Legal Test: Those involved in seeking consent and assessing for incapability need to be aware of the specific legal test for incapability to give or refuse consent to facility admission. Part 3 of the HCCCFAA states a determination of an adult’s incapability must be based on: <ul style="list-style-type: none"> ○ an assessment made in accordance with the regulations and ○ whether or not the adult demonstrates that they understand the information given about being admitted into a care facility, including the care and services at the proposed facility and the circumstances under which the adult may leave <p>Associated Legislation:</p> <ul style="list-style-type: none"> • Freedom of Information and Protection of Privacy Act (FOIPPA), • Personal Information Protection Act
<p>Trigger for assessment</p>	<ul style="list-style-type: none"> • Reasonable grounds for undertaking an assessment of incapability may come from written documentation such as: <ul style="list-style-type: none"> ○ previous clinical assessments that contain concerns about the adult’s capability, ○ observations of the person while facility admission is being discussed and ○ information provided by the adult, family, other caregivers, or healthcare providers. ○ Ideally, the need to assess for incapability is triggered by something that occurs in the process of seeking consent; for example, when the adult from whom consent is being sought: <ul style="list-style-type: none"> ▪ does not appear to be able to absorb, retain, or use the information given in the consent process ▪ gives or refuses consent to admission without sufficient consideration of the consequences (the adult agrees or disagrees before being fully informed) ▪ is known to have impaired decision-making or has a known risk factor for impaired decisionmaking ▪ is making choices that are not consistent with longstanding values and beliefs ▪ is making decisions that pose a risk to self or others ▪ has been reported by family or healthcare providers to have significant cognitive difficulties • It is important to remember that a capable adult has the right to decide about their admission to a care facility and must not be assessed as incapable solely because others disagree with the adult’s decision. This means that what a manager or family member may perceive as a poor decision is not sufficient to trigger an assessment of incapability.

	<ul style="list-style-type: none"> It is also important to recognize when an incapability assessment should be postponed. This may be identified by a manager or an assessor. A delay is warranted when the manager or assessor is aware of transient factors that may influence an adult’s capability, such as underlying or potentially reversible health conditions that may be affecting the adult’s decisional capability.
<p>Assessment process</p>	<p>Conducting assessments to determine incapability to consent to facility admission</p> <ul style="list-style-type: none"> seeking consent to facility admission and assessing for incapability to make that decision are a part of a single process If in the process of providing care facility information to an adult, the manager has reason to doubt the adult’s understanding (see 3.8 – When to Assess for Incapability), the manager may begin assessing for incapability if the manager meets the requirements for being an assessor. A determination of whether or not an adult is incapable must be based on the adult’s ability to understand particular information about a care facility and appreciate what giving consent to being admitted to the facility means. <p>An incapability assessment includes:</p> <ul style="list-style-type: none"> letting the adult know why they are being assessed; reviewing the adult’s medical information; assessing the adult’s decision-specific ability to understand and appreciate information; collecting and reviewing collateral information; interviewing the adult (and others as appropriate); and, letting the adult (and others, as appropriate) know the results. <p>Purpose of the assessment</p> <ul style="list-style-type: none"> under Part 3 of the HCCCFAA is to determine if the adult is incapable of consenting or refusing consent to a facility admission or to continued residence in a facility. The term incapability assessment rather than capability assessment is used because it is presumed that the adult is capable until the contrary has been demonstrated. <p>Review of Medical information Required</p> <ul style="list-style-type: none"> Assessors are required to review the adult’s relevant medical information before the adult is assessed for incapability and consider whether there are any underlying, or potentially reversible, health conditions that are affecting the adult’s decisional capability. The medical information should be based on an examination made by a physician or nurse practitioner and include relevant diagnoses and prognoses of conditions that may affect the adult’s ability to make decisions about admission to, or continued residence in, a care facility. <p>Preparing for the assessment (and documentation of it all)</p> <ul style="list-style-type: none"> review of legal requirements for the assessment review of trigger(s) for the assessment determination of when and how the adult will be informed of the assessment and the reasons for it determination, in consultation with the adult, of whether others will be present and if so, who and why

	<ul style="list-style-type: none"> • determination of the location, date, time and duration of the assessment interview(s) • review of collateral information from family, friends, caregivers, other healthcare providers • review of medical information • review of results of the interRAI assessments if the adult has been assessed for access to, or is residing in, a publicly-subsidized residential care facility • identification of assessment instrument(s) to be used, if any. <ul style="list-style-type: none"> ○ Note that there is no evidence that scores from standards tests of cognitive ability are a reliable indicator of capability or incapability but decisional tools can provide useful information <p>Documentation and notification</p> <ul style="list-style-type: none"> • Assessors need to ensure the process and results of an incapability assessment are well documented with factual details of what the person said or did in response to certain questions • Includes a section on health authority record keeping <ul style="list-style-type: none"> • There is also a section on Assessments to determine incapability to consent to continued residence in a care facility • See Appendix A for detailed Q&A and Appendix C of resource for example of incapability Assessment
<p>Who is involved in assessing decision making capacity?</p>	<ul style="list-style-type: none"> • Assessor refers to the person who is responsible for assessing an adult for incapability to consent or refuse consent to facility admission. An assessor must be a physician, or a prescribed healthcare provider identified in the Healthcare Consent Regulation. • Prescribed healthcare provider: a healthcare provider who is permitted by law to determine whether an adult is incapable of giving or refusing consent to admission to, or continued residence in a care facility. This includes the following providers: registered nurse, nurse practitioner, registered social worker, registered psychologist, registered occupational therapist and registered psychiatric nurse. (A medical practitioner is also permitted to determine whether an adult is incapable of giving or refusing consent to admission to, or continued residence in a care facility.) • As the person responsible for the admission process and for seeking and obtaining consent, the manager coordinates the incapability assessment. An incapability assessment for the purposes of admission to a care facility only occurs after the manager has made every reasonable attempt to obtain consent from the adult and has reason to believe the adult may be incapable of giving or refusing consent. A determination of incapability must be based on assessment that has been requested by the manager. An assessment conducted outside of this process cannot be the basis for a determination that an adult is incapable of giving or refusing consent. For example, if an adult’s family member obtains an opinion from a health professional that their relative is incapable, prior to approaching a health authority about having their relative admitted into a care facility, the manager cannot avoid the procedure set out above or treat this opinion as an assessment made in accordance with the regulations. <ul style="list-style-type: none"> ○ The legislation requires that an assessor be either a physician or a member of a class of prescribed healthcare providers identified in the Healthcare Consent Regulation (registered nurse, nurse practitioner, registered psychiatric nurse, social worker, occupational therapist or psychologist).

	<ul style="list-style-type: none"> ○ The individual who seeks consent to facility admission can be the same person who assesses for incapability to give or refuse consent to facility admission because an adult’s ability to understand and appreciate the information provided when consent is sought is one of the criteria for determining incapability. The same person can perform both roles when the manager is a physician or a healthcare provider named in the Healthcare Consent Regulation authorized to conduct incapability assessments as part of a single seamless process. ● If an adult is assessed as being incapable of giving or refusing consent to care facility admission and the adult disagrees with this determination, the adult may request a second assessment be conducted by a different health professional. If the adult has requested a second assessment, the manager may not proceed with choosing a substitute and seeking substitute consent until a second assessment has occurred and unless the second assessment results in a determination that the adult is incapable. <ul style="list-style-type: none"> ○ If the initial assessment was conducted by a medical practitioner or nurse practitioner, the second assessment can be conducted by any assessor (a medical practitioner or prescribed healthcare provider – registered nurse, registered psychiatric nurse, social worker, occupational therapist or psychologist).
Other references	N/A
Web links	<ul style="list-style-type: none"> ● Government of British Columbia: Consent to Care Facility Admission (LINK) ● Healthcare Consent and Facility Admission Act BC: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96181_01 ● Incapability Assessment Report (same as Appendix C): https://www2.gov.bc.ca/assets/gov/health/forms/3910fil.pdf
Contact	None given

Newfoundland and Labrador

Formal Capacity Assessment (Newfoundland and Labrador, Canada)

Name of Assessment	Formal Capacity Assessment
Jurisdiction	Newfoundland, Canada
Main source	<p>Department of Children, Seniors and Social Development, Government of NL (2019) Adult Protection Act Provincial Policy Manual (LINK)</p> <ul style="list-style-type: none"> ● This manual includes step by step procedures about how to assess an adult’s capacity, and to determine whether abuse, self-neglect and/or neglect are factors contributing to an adult’s risk of harm. It describes the evaluation process for all reports that have been accepted and, when necessary, the completion of the investigations of adults who may be in need of protective intervention.

Capacity definition	The ability of an adult to understand information relevant to a decision where that decision concerns one’s healthcare, physical, emotional, psychological, financial, legal, residential or social needs; and the ability to understand and appreciate the reasonable foreseeable consequences of a decision or the lack of a decision.
Purpose of assessment/ Domains assessed	<p>Formal Capacity Assessment</p> <ul style="list-style-type: none"> • If an adult’s capacity is questioned when an allegation of abuse and/or neglect occurs, a formal capacity assessment must be completed. This usually occurs during an adult protection investigation but it may be initiated during the evaluation phase. A comprehensive interdisciplinary capacity assessment process has been developed • If an adult’s capacity is uncertain and there are valid triggers to suggest an adult may lack the capacity to understand and appreciate the risk associated with abuse and neglect, a formal capacity assessment may be required. • is decision-specific • The inability of an adult to communicate in traditional ways must not determine an adult’s capacity to make decisions
Relevant legislative acts	<p>Directly Relevant Legislation:</p> <p>Adult Protection Act:</p> <ul style="list-style-type: none"> • Under the Act, an adult in need of protective intervention means an adult who lacks capacity and is either incapable of caring for themselves or who refuses, delays or is unable to make provision for adequate care and attention of themselves; or is abused or neglected • presume every adult has the capacity to make decisions unless the contrary is proven • The quality of a decision is not indicative of the ability to make that decision. <p>(1) This Act applies to every person who is not a child or youth as defined in the Children and Youth Care and Protection Act including a person who is a patient or resident in:</p> <ul style="list-style-type: none"> • (a) a facility operated by an authority established under paragraph 6(1) (b) of the Regional Health Authorities Act; • (b) a personal care home as defined in the Personal Care Home Regulations; • (c) a long term care home; • (d) a community care facility; or, • (e) an assisted living facility. <p>(2) This Act does not apply to a person who is the subject of a certificate or a community treatment order issued under the Mental Healthcare and Treatment Act.</p> <p>Associated Legislation (all mentioned as associated with different parts of Adult Protection)</p> <ul style="list-style-type: none"> • Advance Healthcare Directives Act • Personal Health Information Act, • Enduring Powers of Attorney Act • Mentally Disabled Persons’ Estates Act

	<ul style="list-style-type: none"> • Neglected Adults Welfare Act • Family Violence Protection Act, • Public Trustee Act • Access to Information and Protection of Privacy Act <p>Adult Protection Act does not apply to persons that fall under</p> <ul style="list-style-type: none"> • Mental Healthcare and Treatment Act • Children and Youth Care and Protection Act
<p>Trigger for Assessment</p>	<p>Determine that Adult could be in need of protective intervention</p> <p>In determining if an adult is in need of protective intervention, the adult must lack capacity and meet one of the following two criteria:</p> <ul style="list-style-type: none"> • (1)The adult is incapable of caring for themselves and refuses, delays or is unable to make provision for their adequate care and attention (self-neglect). • (2) The adult is abused or neglected. An adult who lacks capacity to protect themselves from being deliberately mistreated is at risk of being abused or neglected. <p>If capacity is in question as a result of an Adult Protection Investigation this leads to:</p> <ul style="list-style-type: none"> • Review records and gather information • Interview the adult who may be in need of protective intervention • Coordinate a capacity assessment (if necessary) <ul style="list-style-type: none"> ○ A formal capacity assessment is completed when an adult who may be in need of protective intervention appears to be unable to understand or appreciate the level of risk and the risk is unable to be mitigated.
<p>Assessment process</p>	<p><u>Capacity Assessment Process</u></p> <p>Interview Preparation</p> <ul style="list-style-type: none"> • The social worker/investigator must: <ul style="list-style-type: none"> ○ make every reasonable effort within program guidelines to provide the support an adult will need to communicate. If a spokesperson is present during the interview, that individual must not speak for the adult. Rather, the spokesperson must try to help make sure the assessor’s questions are understood by the adult and the adult’s answers are understood by the assessor; ○ review information as provided in the report and evaluation forms (see Appendices C,E and F). This includes details about the alleged abuse and/or neglect and whether an adult appears to appreciate the risks involved; ○ review any relevant medical information including the results of any cognitive testing; ○ review any records relevant to the specific area being assessed (i.e., financial); and, ○ review any functional assessments that may have been completed (i.e., occupational therapy report, physiotherapy report).

	<p>Capacity Interview</p> <p>The investigator must:</p> <ul style="list-style-type: none"> • explain to the adult the purpose of the capacity assessment and outline the process to be followed. Be sure to try to use a form of communication the adult understands such as a tool to enhance hearing or a spokesperson to provide communication support; • determine, using a set of structured questions, whether the adult understands and appreciates the risk they are experiencing and the consequences of their decision; and, • document the information from the interview(s) including the names of the participants, questions asked and the exact responses to the questions. Clear and accurate record keeping is necessary as it may be used in a court proceeding. • Some indicators of an adult understanding the situation include: <ul style="list-style-type: none"> ○ the adult can describe, through words or another form of communication, the issue and level of risk; ○ the adult is able to ask questions, independently or with support, relevant to the topic to clarify understanding; and, ○ the adult demonstrates a consistent train of thought throughout the interview through conversation or another form of communication. • It is preferable for the adult who may be in need of protective intervention to participate directly in the capacity interview. However, if the adult refuses to do so, information can be obtained from collateral sources such as family, friends, neighbours and service providers. Observation of the adult’s appearance, living conditions, and behaviour can occur as well. <p>Collateral Information</p> <ul style="list-style-type: none"> • Following the investigator’s interview(s), additional information may be needed to help determine an adult’s ability to make a decision in certain area(s). • An occupational therapist, neuropsychologist, physician or other healthcare professional may be consulted to assess whether the adult is capable of making decisions which may be placing them at risk. Each assessment is completed through the lens of the discipline. For example, an occupational therapist may assess safety from a functional perspective. A physician may explore medical conditions that may impact an adult’s ability to make safe decisions. Each assessment must be summarized in writing and signed by the professional. Collectively, these assessments contribute to a comprehensive capacity assessment. • Each discipline or profession will ask questions and seek answers from different perspectives. For example, a physician’s assessment may address the following questions: <ul style="list-style-type: none"> ○ Does the adult have a diagnosis/disability (physical or mental) affecting capacity? Provide relevant details. ○ Is there a recommended treatment? If yes, please describe. ○ Following treatment, is there a reasonable expectation for improvement that could result in the adult being capable to make decisions? If there is no reasonable expectation for improvement, does the adult lack capacity to make decisions? ○ A professional might choose to use a standardized tool to assist with the assessment of capacity. There are numerous tools available and others under development. It is important to note that the choice of tool used is dependent on professional preference and area of capacity being explored.
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	<ul style="list-style-type: none"> • Tool(s) results may provide indicator(s) of difficulty understanding and/or appreciating risk. The results of tools may signal the need for further assessment. Results of tools are not meant to be used as the sole indicator of an adult’s capacity for decision-making. Results of previously administered tools may be sufficient to assist in the evaluation process, or may be used as a baseline. • Functional assessments may also be needed. It may be necessary to assess the adult’s ability to safely manage their daily routine. A community health nurse may complete an assessment of activities of daily living. An occupational therapist may assess the adult’s ability to manage personal care, prepare meals and administer medications. • Historical information can be gathered from interviews with neighbours, family and friends. This information can highlight any changes with the adult that are inconsistent with his or her lifelong patterns of behaviour. • Information from staff at institutions such as banks can identify recent high risk changes inconsistent with the adult’s previous way of conducting business. <p>Completion of Investigation Report</p> <ul style="list-style-type: none"> • When the investigation is concluded, an investigation report must be completed. The report will follow the format outlined in the Adult Protection Investigation Template (see Appendix I). A copy of the investigation report must be forwarded to the provincial office within thirty days of completion. <p>Summary</p> <p>The outcome of the investigation will result in either:</p> <ul style="list-style-type: none"> • no further involvement; • professional/supportive services being offered and accepted to reduce risk; or, • An application being made to the court by the provincial director for an order to declare an adult in need of protective intervention following consultation with the regional director.
<p>Who is involved in assessing decision making capacity?</p>	<p>Note - The need for a formal capacity assessment is determined as a part of the Adult Protection Investigation process. The results of this investigation determine if a formal capacity assessment is required.</p> <p>A formal capacity assessment is completed when an adult who may be in need of protective intervention appears to be unable to understand or appreciate the level of risk and the risk is unable to be mitigated.</p> <p>When a formal capacity assessment is required it is coordinated by a social worker/investigator with the help of an interdisciplinary team and will include observations and/or interviews with the adult who may be in need of protective intervention through the provision of collateral information, and professional judgement.</p> <ul style="list-style-type: none"> • Whenever possible, a social worker must coordinate the completion of a formal capacity assessment. The best capacity assessment is a thorough one involving a team of professionals. • The investigator will coordinate meetings of the interdisciplinary team, including an initial one to review roles and responsibilities

	<ul style="list-style-type: none"> • The interdisciplinary team agrees on at least one capacity question to be assessed. In some instances, there may be more than one question. • Each member of the interdisciplinary team will complete a capacity assessment based on the identified question(s). • Risk may be identified with a particular function such as not being able to manage personal care, prepare meals and/or shop for basic necessities. The assessment may also explore financial risks such as the inability to pay bills, deposit cheques and pay rent. • The capacity assessment team must meet to review findings and reach a consensus about the capacity question(s). • Each professional must complete and sign the report representing their discipline. • The answer to the capacity question(s) is a collective one representing the decision of the entire assessment team. • It is preferable that a capacity assessment be completed in the adult’s home environment. • It may be necessary for an adult to be assessed medically in an acute care facility. The information from this assessment may inform a capacity assessment. • Before an adult is interviewed during a capacity assessment, every effort must be made within program guidelines to assist the adult to communicate effectively and/or access the meeting space. Discussion about the adult’s unique needs may occur with the adult, the adult’s family and/or friends. • The adult’s cultural values, beliefs and practices must be considered throughout the capacity assessment. • The services of an interpreter or translator may be needed. <ul style="list-style-type: none"> ○ Professional judgement based on knowledge and skills is an integral part of the capacity assessment process. • The results of the capacity assessment contribute to whether a person may be considered at low, moderate, high or very high level of risk. The results also determine whether the adult can or cannot make decisions about the present areas of risk.
Other references	<ul style="list-style-type: none"> • Newfoundland & Labrador Association of Social Workers, 2012, Social Work & Decision-Specific Capacity Assessments https://nlcsw.ca/sites/default/files/inline-files/Social_Work_And_Decision-Specific_Capacity_Assessments_Final.pdf • CASW Guidelines for Ethical Practice (2005) https://nlcsw.ca/sites/default/files/inline-files/CASW_Guidelines_for_Ethical_Practice_2005.pdf
Web links	<ul style="list-style-type: none"> • CASW Code of Ethics (2005) https://nlcsw.ca/practice-resources/code-of-ethics • Department of Seniors, Children and Social Development, Adult Protection: https://www.gov.nl.ca/cssd/apa/
Contact	<p>CSSDInfo@gov.nl.ca</p>

Ontario

Assessment of Capacity (Ontario, Canada)

Name of assessment	Assessment of Capacity
Jurisdiction	Ontario, Canada
Main source	<p>Capacity Assessment Office, Ministry of the Attorney General (2005) Guidelines for Conducting Assessments of Capacity, Ontario, Canada (LINK)</p> <ul style="list-style-type: none"> • Conducting capacity assessments in line with the Substitute Decisions Act • Capacity assessments are undertaken in order to provide a formal, independent assessment of an individual's capacity to make financial or personal care decisions. • Mental capacity is examined in restricted decisional domains under the SDA; namely finances, healthcare, 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. • 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). • 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
Capacity definition	<ul style="list-style-type: none"> • 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.
Purpose of assessment/ Domains assessed	<ul style="list-style-type: none"> • The purpose of this assessment is to conduct formal assessments of capacity in line with the Substitute Decisions Act to make personal care or financial decisions. • Mental capacity is examined in restricted decisional domains under the SDA; namely finances, healthcare, 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.
Relevant legislative acts	<ul style="list-style-type: none"> • Substitute Decisions Act

<p>Trigger for assessment</p>	<ul style="list-style-type: none"> 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.
<p>Assessment process</p>	<ul style="list-style-type: none"> Regardless of scope or complexity, every capacity assessment adheres to the same conceptual framework. <ul style="list-style-type: none"> 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. Next, the assessor evaluates how well the person is meeting these demands, either independently or with 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. <p>Referral information and informant interview(s)</p> <ul style="list-style-type: none"> 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. <p>Capacity interview</p> <ul style="list-style-type: none"> 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. 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

	<p>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:</p> <ul style="list-style-type: none"> ○ The assessor may conduct the assessment despite the person’s refusal if the assessment is court-ordered. ○ 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. <ul style="list-style-type: none"> ● 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. <p>Records review</p> <ul style="list-style-type: none"> ● 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. 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 behavioral evidence, such as an occupational therapy report. There may be occasions where the assessor should request a sample of the person's performance on basic but representative tasks. Assessors are reminded that behavioral data is important because the assessor must consider the adequacy of decision-making within the areas of unmet need. <p>Formulating an opinion</p> <ul style="list-style-type: none"> ● To assist with the 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. Capacity indicators are: factual knowledge base sufficient for needs; and an understanding of options sufficient for needs. Capacity indicators are: realistic appraisal of outcome; and justification of choice. 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. 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. 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 behavior 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,
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	<p>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.</p> <p>Reporting</p> <ul style="list-style-type: none"> • 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. <p>Capacity interview - Personal care</p> <p>Step 1: Explore the factual understanding of present personal care circumstances.</p> <ul style="list-style-type: none"> • 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? <p>Step 2. Identify areas of unmet need in each personal care domain being investigated.</p> <ul style="list-style-type: none"> • 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? <p>Step 3. Explore decision-making within those critical areas of unmet need.</p> <ul style="list-style-type: none"> • 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 favor 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?
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Who is involved in assessing decision making capacity?	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ 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
Other references	N/A
Web links	<ul style="list-style-type: none"> • Government of Ontario, List of Capacity Assessors: https://www.ontario.ca/page/list-capacity-assessors • Government of Ontario, Mental Capacity: https://www.ontario.ca/page/mental-capacity
Contact	CAO@ontario.ca , Tel: 416-327-6766 or Toll-free: 1-866-521-1033

Capacity Evaluation for Admissions to Long-Term Care Homes (Ontario, Canada)

Name of assessment	Capacity Evaluation for Admissions to Long-Term Care Homes
Jurisdiction	Ontario, Canada
Main Source	<p>Cole, J. and Dawe, N. (2011) Assessing Capacity for Admission to Long-Term Care Homes: A Training Manual for Evaluators. (LINK)</p> <ul style="list-style-type: none"> • The purpose of this manual is to provide practical assistance to health practitioners completing capacity evaluations for admission to long-term care homes. It covers the legislative framework for capacity evaluation, guidelines for completing the evaluation, and highlights ethical issues arising from the evaluation process. It also includes results from court decisions and Consent and Capacity Board Hearings. The manual is intended to enhance competency in the evaluation of capacity when health practitioners are unable to presume a person is capable.
Capacity definition	<ul style="list-style-type: none"> • The ability to understand information relevant to a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.
Purpose of assessment/ Domains assessed	<ul style="list-style-type: none"> • Capacity evaluations in this document refer to formal assessments of capacity to determine whether a person can give consent for admission to a long-term care home. • This guideline is for assessing capacity for admission to long term care
Relevant legislative acts	<ul style="list-style-type: none"> • Healthcare Consent Act • Substitute Decisions Act • Mental Health Act

	<ul style="list-style-type: none"> • Personal Health Information Protection Act • Nursing Homes Act • Homes for the Aged and Rest Homes Act • Charitable Institutions Act
<p>Trigger for assessment</p>	<ul style="list-style-type: none"> • Reasonable grounds to proceed with a capacity evaluation: <ul style="list-style-type: none"> ○ Bizarre, erratic or dangerous behavior ○ Repetitive speech ○ Extreme disorientation ○ Risk to self or others • The person should have an opportunity to respond to the “trigger” behaviors
<p>Assessment process</p>	<p>Capacity to Consent to Admission to a Care Facility</p> <ul style="list-style-type: none"> • There is a decision tree on this one page 24/180 (the page is numbered 16 in the document) <p>Pre-evaluation requirements</p> <ul style="list-style-type: none"> • It is important to adequately set the stage for the capacity evaluation process in order to ensure that the rights of the client are respected, and that the process and finding would stand up to the scrutiny of the Consent and Capacity Board or the Ontario courts • First thing to consider is whether you are the most appropriate person to evaluate capacity; if possible, have someone who knows the client best conduct the evaluation, or participate in the evaluation process. • Before starting, clarify in your own mind the purpose of the evaluation. Be clear on the decision that is at hand, so that you can clearly articulate it to the client. Remember, this is not a ‘best interest’ test. • Communicate possible consequences • Respect individual rights • Prepare adequately <p>The Evaluation</p> <ul style="list-style-type: none"> • When conducting the capacity evaluation, the evaluator should use an Evaluator Questionnaire (see Appendix A), which must accompany all Long-Term Care Home placement applications. This form consists of a series of questions that help determine if the person has the ability to understand the information relevant to a proposed transfer to a long-term care home and the ability to appreciate the consequences of a decision or lack of decision related to admission to a long-term care home. • Ask questions in an understandable (to the client) way, and aimed at eliciting information about his/ her insight into his/her current situation. Does the client understand how the pending decision applies to him/her? • Test the client’s orientation • Ask questions that address the client’s ability to ‘understand’ and ‘appreciate’ • Other tools have been developed to assist evaluators in completing capacity evaluations. One of them, the “PACE: Placement Aid to Evaluation” is included in the appendices (Appendix C).

	<ul style="list-style-type: none"> • It is important to remember, however, that while other tools can assist with the capacity evaluation, they do not replace the Evaluator Questionnaire; it must still be completed. <p>Beyond the tools</p> <ul style="list-style-type: none"> • It is imperative to test the responses given, against knowledge of the true situation. Review the information collected prior to the evaluation, from all sources before conducting the interview. If the answers given and clinical/incidental information do not line up, go back to the client and specifically address the discrepancies. You can use a multi-disciplinary approach, but one person is the evaluator and who will be responsible for the final decision. • Two key strategies should be utilized when carrying out the evaluation: first is verifying the details; and second is probing for the underlying meaning and significance of what is being said. This means going beyond the mere accumulation of facts; it is essential to uncover the veracity of the information, and then the implications, related to the decision at issue. <p>Post-evaluation considerations</p> <ul style="list-style-type: none"> • Finding of capacity • Finding of incapacity • Individual’s rights • Non-communication or passivity • Fluctuating capacity • Uncertain results <ul style="list-style-type: none"> ○ If there is a doubt as to whether the client is capable or not after having completed the capacity evaluation, you can redo the evaluation with a focus on the areas of doubt. As well, you can seek out additional information about the client; this information may be legal, medical, psychiatric, or from family and/or friends, prior to redoing the evaluation. Other options are to again investigate for the presence of a reversible condition, or have someone else carry out an evaluation. <p>Documentation</p> <ul style="list-style-type: none"> • It is important to document your work thoroughly (see Appendix D). Remember that a person is presumed to be capable until proven otherwise. The onus of proof is on the evaluator alleging incapacity — not on the person to prove capacity. <p>Healthcare Consent Act Evaluation of Capacity for Admission to a Long-Term Care Home Instructions for evaluators</p> <ul style="list-style-type: none"> • Page 32/180, Appendix A <p>Evaluator Questionnaire Assist</p> <ul style="list-style-type: none"> • Appendix B, Page 35/180 • This Evaluator Questionnaire Assist is a summarized information sheet that is a ‘companion’ and can be used in conjunction with the Evaluator Questionnaire <p>PACE: Placement Aid To Capacity Evaluation</p> <ul style="list-style-type: none"> • Appendix C, Page 37/180 • This is another tool that can be used to assist in evaluating capacity for admission to a Long-Term Care Home.
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<p>Who is involved in assessing decision making capacity?</p>	<ul style="list-style-type: none"> • The Healthcare Consent Act requires that capacity to make a decision with respect to admission to a long-term care home must be assessed by an evaluator. An evaluator is defined in the statute as a member of one of the following health colleges: <ul style="list-style-type: none"> ○ College of Audiologists and Speech-Language Pathologists of Ontario: www.caslpo.com ○ College of Dietitians of Ontario: www.cdo.on.ca ○ College of Nurses on Ontario: www.cno.org ○ College of Occupational Therapists of Ontario: www.coto.org ○ College of Physicians and Surgeons of Ontario: www.cpsso.on.ca ○ College of Physiotherapists of Ontario: www.collegept.org ○ College of Psychologists of Ontario: www.cpo.on.ca ○ Ontario College of Social Workers and Social Service Workers: www.ocswssw.org who holds a certificate of registration for social work. • Each of these health colleges has developed guidelines for completing capacity evaluations, which can be found at the websites noted above.
<p>Other references</p>	<p>N/A</p>
<p>Web links</p>	<ul style="list-style-type: none"> • Healthcare Consent Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm • Mental Health Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m07_e.htm • Personal Health Information Protection Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04p03_e.htm • Substitute Decisions Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_92s30_e.htm • Nursing Homes Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90n07_e.htm • Homes for the Aged and Rest Homes Act http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h13_e.htm • Charitable Institutions Act http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c09_e.htm • Consent and Capacity Board http://www.ccboard.on.ca/scripts/english/index.asp • Board of Decisions and Resources CanLii Web resource providing access to legal documents from Canada’s federal, provincial and territorial governments for both legal practitioners and the general public http://www.canlii.org/en • e-Laws Database of Ontario’s statutes and regulations http://www.e-laws.gov.on.ca/index.html
<p>Contact</p>	<p>Jeffrey.cole@central.ccac-ont.ca and/ or noreen.dawe@sunnybrook.ca</p>

Yukon

Determining Incapability to Consent to Healthcare (Yukon, Canada)

<p>Name of assessment</p>	<p>Determining Incapability to Consent to Healthcare</p>
<p>Jurisdiction</p>	<p>Yukon, Canada</p>

<p>Main source</p>	<p>Yukon Health and Social Services (2005) Legal Assessment Practice Guidelines for Determining Incapability to Consent to Healthcare and Need for Financial Protection (LINK)</p> <ul style="list-style-type: none"> • Guidelines that describe the process of determining whether: <ul style="list-style-type: none"> ○ 1. A person is incapable of making a healthcare decision; and/or ○ 2. A person is in need of financial protection. • elaborate on the basic framework for determining incapability found in the Care Consent Act (Yukon) • reflect best practices for obtaining a valid consent and assessing incapability • Healthcare providers are not “required” to follow these guidelines, but they may wish to do so to reduce potential liability. In addition, the decision of a healthcare provider that a person is not capable of making their own healthcare decision can be challenged. Anyone can apply to the Capability and Consent Board to have the decision reviewed. If a matter is referred to the Board, healthcare providers will be called upon to explain their determination of incapability. • Guidelines intended to be used by healthcare providers in two instances: <ol style="list-style-type: none"> 1. In obtaining a valid consent to a proposed treatment or healthcare; and/or 2. In assessing whether to issue a certificate of need for financial protection
<p>Capacity definition</p>	<ul style="list-style-type: none"> • Determining Incapability to Consent to Healthcare; and, need for financial protection (contingent on assessment of incapability to consent to healthcare) • The determination of whether a person is incapable to consent to healthcare is a legal assessment (i.e. whether the person has the legal right to make their own decision). This is different than a clinical assessment where the healthcare provider is assessing the health needs and treatment options. However, healthcare providers use their clinical skills (e.g. interviewing techniques) in the legal assessment of whether a person is incapable to consent. • Definition of healthcare comes from the Care Consent Act: <p>Anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic, or other health-related purpose, and includes a course of healthcare (e.g. a series of dialysis treatments).</p>
<p>Purpose of assessment/ Domains assessed</p>	<p>Refer to incapability or capability</p> <ul style="list-style-type: none"> • Adults (19 years and older) are presumed capable until the contrary is demonstrated. Therefore, it is not necessary to do an assessment of a adult’s capability to consent to healthcare in most situations. However, where there is a known risk factor for impaired decision-making (see page 9), a more careful assessment should be undertaken. In these instances, these guidelines and the worksheets may prove to be useful to healthcare Providers. • The Care Consent Act requires that the healthcare provider base the determination of incapability on whether or not the person demonstrates that he or she understands: <ul style="list-style-type: none"> ○ the information given by the healthcare provider about both the person’s health condition and the proposed treatment; and ○ that the information given applies to the person’s situation. In other words, does the person understand and appreciate the consequences of their decision?

<p>Relevant legislative acts</p>	<ul style="list-style-type: none"> • Directly Related Legislation: Care Consent Act • Associated Acts: Decision Making, Support and Protection to Adults Act
<p>Trigger for Assessment</p>	<ul style="list-style-type: none"> • Where there is a known risk factor for impaired decision-making (see page 9) • Be aware of scenarios which should trigger a more careful assessment of capability to consent. These threats to decision making include: <ul style="list-style-type: none"> ○ An abrupt change in mental status that could be caused by hypoxia, infection, medication, metabolic disturbances, an acute neurologic or psychiatric process, or other medical problem ○ Refusal of treatment and not willing to discuss the reasons or when the reasons for the refusal are not clear or when the refusal is based on misinformation or irrational beliefs ○ Consent to treatment too hastily, especially risky or invasive treatment, without careful consideration of the risks and benefits ○ Known risk factor for impaired decision-making, such as <ul style="list-style-type: none"> ▪ a chronic neurologic or psychiatric condition, ▪ a significant cultural or language barrier, ▪ an education level concern, ▪ an acknowledged fear or discomfort with institutional healthcare settings, ▪ unmanaged pain, ▪ anxiety, or ▪ who are at an age at either end of the age spectrum (people younger than 19 years or adults older than 85 years). • When deciding whether a person is incapable of making the healthcare decision, the healthcare provider must keep in mind that: <ul style="list-style-type: none"> ○ The person’s choice does not have to be what the healthcare provider would consider “reasonable”. The person’s choice must be “reasoned” meaning that it is consistent with the person’s own belief system, and has some logical consistency grounded in the person’s own values and beliefs. For example, refusal of a blood transfusion on religious grounds may seem irrational to a healthcare provider, but may be a reasoned choice for the person holding the religious beliefs. ○ The presence of a mental illness, intellectual disability, physical illness, cognitive impairment or speech or language impairment does not mean that a person is incapable of making the decision. ○ A person of any age can be capable of making a healthcare decision. ○ A person has the right to voluntarily incur risk if he or she understands the consequences of making a decision not to receive the healthcare. ○ The issue of incapability is focused only on the healthcare decision that has to be made at the time. ○ A determination of incapability must be done for each specific healthcare decision regardless of any previous determination of incapability or the person’s ability to make other types of healthcare decisions (except for adults for whom a guardianship order is in effect). Consent, however, can be given for a healthcare plan or a course of

	<p>healthcare, for example a course of chemotherapy. If consent is given for a course of healthcare, the healthcare provider should reassess the person’s capability to consent when clinically indicated. Generally, if the person regains mental capacity during the course of healthcare, a reassessment should be undertaken to determine if the individual can make their own healthcare decision.</p> <p>If the healthcare provider is unable to reach a justifiable determination of incapability, continue to assume decisional capability for those people 19 years of age and older, and consider calling in a consultant (i.e. another healthcare provider) to assist with the determination.</p>
<p>Assessment process</p>	<p>Determining Incapability to Consent to Healthcare</p> <p>Pre assessment</p> <ul style="list-style-type: none"> • Identify and address any barriers to communication (e.g. hearing or visual impairment, language barrier, environment, etc.) • Be aware that the backgrounds of both the person and the healthcare provider (e.g. language, culture, familiarity) will affect how information is given and understood. • Be aware of scenarios which should trigger a more careful assessment of capability to consent. These threats to decision making include: <ul style="list-style-type: none"> ○ An abrupt change in mental status that could be caused by hypoxia, infection, medication, metabolic disturbances, an acute neurologic or psychiatric process, or other medical problem ○ Refusal of treatment and not willing to discuss the reasons or when the reasons for the refusal are not clear or when the refusal is based on misinformation or irrational beliefs ○ Consent to treatment too hastily, especially risky or invasive treatment, without careful consideration of the risks and benefits ○ Known risk factor for impaired decision-making, such as a chronic neurologic or psychiatric condition, <ul style="list-style-type: none"> ▪ a significant cultural or language barrier, ▪ an education level concern, ▪ an acknowledged fear or discomfort with institutional healthcare settings, ▪ unmanaged pain, anxiety, or ▪ who are at an age at either end of the age spectrum (people younger than 19 years or adults older than 85 years). • Given the threats to decision-making present for the individual, think about how you will focus the assessment, for example: <ul style="list-style-type: none"> ○ if the individual suffers from memory loss or has a cognitive disability, their ability to “understand” information may be impaired ○ if the person is delusional or depressive their ability to realistically appraise the consequences of their choices may be impaired. • Enlist the help of others (e.g. a family member or a translator) to assist the person to understand and communicate, where appropriate. A support person can clarify questions and information as necessary, but is not there to answer for the person or to act as the person’s substitute decision-maker.

	<ul style="list-style-type: none"> • Explain the purpose of the conversation (i.e. to obtain consent) to the individual. If there is reason to doubt the person’s capability to make the healthcare decision, explain the purpose of the incapability assessment and consequences of a finding of incapability (i.e. appointment of a substitute decision-maker to give or refuse consent) • Refusal to Participate <ul style="list-style-type: none"> ○ If a person refuses to participate in the assessment, they should be informed that the assessment will proceed based on input from other sources and observations only. Encourage the person to participate at any stage while the assessment is underway. <p>Assessment Process</p> <ul style="list-style-type: none"> • The healthcare provider can offer the information about the person’s health condition and the proposed healthcare in one of two ways: <ul style="list-style-type: none"> ○ 1. Each piece of information is given to the person separately. Immediately following each piece of information, the healthcare provider discusses it with the person to determine whether the person understands what has been said. OR ○ 2. All the information is given at once. The healthcare provider discusses all the information with the person, again to determine whether the person understands. • Healthcare providers should present information about all the options in a neutral fashion. It is particularly important when presenting information about consequences, that a person does not feel threatened or coerced into a decision • Determining Understanding <ul style="list-style-type: none"> ○ Determining understanding of health problem, and proposed options for care ○ If a person is not able to understand the information and options (e.g., insufficient memory to remember information long enough to analyze choices) then there is no need to go on with the rest of the assessment. Incapability to consent to healthcare can be determined solely on the inability to understand the information presented. However, if a person does not understand the information because of a lack of knowledge (e.g. the person has no knowledge of how the body functions), the information should be provided and the person given a chance to demonstrate that they understand the information. • Determining Appreciation <ul style="list-style-type: none"> ○ Determining whether the person appreciates how the information applies to their own situation • Determining Ability to Reason <ul style="list-style-type: none"> ○ Determining the ability to reason with information in a manner that is supported by the facts and the person’s own values <p>See attachment A for sample questions p.20 (example questions categories)</p> <p>Documentation and notification</p> <ul style="list-style-type: none"> • In cases where an adult is presumed to be capable and there is no reason to question this presumption, documentation of the assessment or presumption is not necessary. • In situations where the assessment of incapability to consent is straightforward, the determination of the healthcare provider should be documented as set out in the policies and procedures of the agency or profession (e.g. noted in the person’s health record).
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	<ul style="list-style-type: none"> • In situations where the assessment of incapability to consent is more complex, the healthcare provider should document all stages of the process including <ul style="list-style-type: none"> ○ Information provided to the person ○ Any problems encountered in communicating with the person ○ Steps taken to overcome communication problems ○ The person’s expressed understanding of the information and that the information pertains to the person ○ Determination of incapability and reasons for judgement. • Ensure that the process and results of the assessment are well documented with factual details of what the person said or did in response to certain questions. This is particularly important for a finding of incapability because the individual or any other person can apply to have the finding of incapability reviewed by the Capability and Consent Board. • Worksheets can be kept (e.g. on the person’s health record or in the healthcare provider’s files) as further substantiation of the assessment. However, it is not necessary to use the worksheets – they are simply a tool to assist the healthcare provider. • The healthcare provider should tell the individual and any support person who is accompanying the individual the result of the assessment of incapability. This may include explaining the reasons for the determination and answering the person’s questions. • Healthcare providers are not legally obligated to tell people that they have the right to have the determination of incapability reviewed by the Capability and Consent Board. However, the person should be advised of this right unless there are reasons for not sharing this information with the person (e.g., insufficient comprehension skills). If the information is not provided to the person, provide it instead to a family member or friend. (See the handout on “Rights” found in Attachment D). • A person found to be incapable of a healthcare decision may also need someone to protect and/or manage their finances. For example, a person in a motor vehicle accident who is unconscious may need someone to pay their bills in the short-term. In this case, the healthcare provider may want to assess the need and issue a certificate for financial protection. More information on this is presented in section 10 below. Note that a substitute decision-maker chosen by a healthcare provider to make a healthcare decision does not have any legal authority to make financial decisions for the individual. <p>Financial Protection</p> <ul style="list-style-type: none"> • A person found to be incapable of a healthcare decision may also need someone to protect and/or manage their finances. For example, a person in a motor vehicle accident who is unconscious may need someone to pay their bills in the short-term. In this case, the healthcare provider may want to assess the need and issue a certificate for financial protection. More information on this is presented in section 10. <p>Appendix also includes</p> <ul style="list-style-type: none"> • Worksheet for financial protection • Factors Affecting Decision-Making Ability and Ways to Enhance Communication • Rights information Sheet
<p>Who is involved in assessing decision making capacity?</p>	<p>Healthcare providers assume that an adult is capable of giving, refusing or revoking consent to healthcare unless they see evidence to the contrary</p>

	<ul style="list-style-type: none"> • Under the Care Consent Act the following professions are defined as healthcare providers: • Medical practitioners, Registered nurses, Licensed practical nurses, Chiropractors, Optometrists, Physiotherapists, Psychologists, Occupational Therapists, Speech Language Pathologists, Audiologists or Hearing Instrument Practitioners, Dieticians and Nutritionists, Dentists, Dental Therapists, Dental Hygienists, Denture Technicians, Medical Imaging Technologists
Other references	<ul style="list-style-type: none"> • Yukon Department of Justice, 2005, Guidelines for Conducting Incapability Assessments for the purpose of guardianship applications: https://yukon.ca/sites/yukon.ca/files/jus/guidelines_for_conducting_assessments.pdf
Web links	<ul style="list-style-type: none"> • Adult Protection and Decision-Making Act: https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2003/2003-021A/2003-021A.pdf • Capability and Consent Board: https://yukon.ca/en/capability-and-consent-board <ul style="list-style-type: none"> ○ The Board provides a forum for reviewing the decisions of care providers and substitute decision-makers, and for providing direction to substitute decision-makers, to ensure that: <ul style="list-style-type: none"> ▪ the rights of care recipients are respected; ▪ as required by other provisions of the Act, careful consideration is given to the wishes, beliefs and values, or best interests of care recipients; and ▪ relatives and friends of the care recipient, and care providers, have an opportunity to be heard. ○ Overview of decision making legal tools: https://yukon.ca/sites/yukon.ca/files/hss-overview-decision-making-legal-tools-adults.pdf • Government of Yukon, Find Decision-Making and Legal Tools for Adults: https://yukon.ca/en/health-and-wellness/care-services/find-decision-making-and-legal-tools-adults • Yukon Medical Council, Assessing the Mental Capacity of a Patient http://yukonmedicalcouncil.ca/pdfs/Assessing_Mental_Capacity_of_Patient.pdf
Contact	inquiry.desk@yukon.ca

Data Extraction – Australia

Assessment of Capacity (New South Wales, Australia)

Name of assessment	Assessment of Capacity
Jurisdiction	New South Wales

<p>Main source</p>	<p>Capacity Australia (2016) Decision-making capacity & dementia - A guide for Healthcare Professionals in NSW Mini-legal kit Series 1.12 (LINK)</p> <ul style="list-style-type: none"> Capacity Mini-legal Kits’ have been developed by Capacity Australia for use by healthcare professionals (Psychiatrists, Geriatricians, General Practitioners, Psychologists, Nurses and others) in assessing decision-making capacity. The Kits are B4, 8 page, coloured brochures with essential information on capacity fundamentals. They present the formal legal test for capacity in each decision-making domain in an easy to follow, but comprehensive manner. While the Kits focus on dementia, they are also applicable to other impairments or disabilities which may affect a person’s decision-making capacity.
<p>Capacity definition</p>	<p>Capacity is:</p> <ul style="list-style-type: none"> ability to make and communicate a decision; not a unitary or global concept; domain specific: particular to the type of decision being made (e.g. personal, health, financial); and decision or task specific: different for every decision made, even within one domain <p>Also capacity:</p> <ul style="list-style-type: none"> cannot be extrapolated from one decision to another Capacity is decision-specific Within each domain there is a spectrum or hierarchy of decisions. Capacity is situation-specific
<p>Purpose of assessment/ Domains assessed</p>	<p>Under the common law, and consistent with Article 12 of the UN Convention on the Rights of Persons with Disabilities (CORPD) a person is always presumed to have capacity to make decisions. Where a person has dementia this may be a trigger for a capacity assessment if a decision needs to be made.</p> <p>Broadly, there are three areas or domains of decision-making: personal, financial and health. Within these domains there are numerous types of capacity decisions or capacity tasks</p> <p>Healthcare professionals may be asked to assess capacity in response to certain triggers:</p> <ul style="list-style-type: none"> To facilitate planning As a part of routine clinical care assessment Concerns from others regarding a person’s decision-making ability
<p>Relevant legislative acts</p>	<p>Directly related legislation:</p> <ul style="list-style-type: none"> Under the common law, and consistent with Article 12 of the UN Convention on the Rights of Persons with Disabilities (CORPD) a person is always presumed to have capacity to make decisions

	<ul style="list-style-type: none"> The Guardianship Act 1987
Triggers for assessment	<p>Healthcare professionals may be asked to assess capacity in response to certain triggers:</p> <ul style="list-style-type: none"> To facilitate future planning – a person may be encouraged to appoint: an enduring guardian; or general or enduring power of attorney; or document their wishes with regards to future treatment (advance care planning). As part of a routine clinical care assessment -it may be necessary to ensure that a person has the capacity to consent to medical treatment or to drive. Concerns from others regarding a person’s decision-making ability – these may have been raised by a lawyer, family member, carer or service provider, and an assessment may be requested
Assessment process	<p>Any assessment of capacity must include a:</p> <ul style="list-style-type: none"> global assessment of the person’s mental state and cognitive function - ideally with an estimate of severity and an assessment of the specific executive and functions of judgment, reasoning and planning which are relevant to decision making; and a functional assessment of decision-making i.e. whether the person can show, using their own words, an understanding of the decision (as defined by the relevant legal test) in the domain in which they are making a decision (not just “yes, I understand”). <p>Relevant legal tests</p> <ul style="list-style-type: none"> 1. Assessment to aid future planning Enduring Guardianship (ED) - Health and Personal decisions (each have their own “what”, “who” and “freedom” of appointment) <ul style="list-style-type: none"> Advance Care Directives (ACD) – Health decisions Powers of Attorney (General and Enduring) – Financial decisions 2. Assessment as Part of Routine Care – Health and Personal decisions <ul style="list-style-type: none"> The capacity to drive Medical treatment consent 3. Assessment prompted by concerns from others <ul style="list-style-type: none"> Capacity to Manage Financial Affairs – Financial decisions Guardianship – Personal decisions Testamentary Capacity
Who is involved in assessing decision making capacity?	<ul style="list-style-type: none"> Healthcare professionals may be asked to assess capacity in response to certain triggers
Other references	<ul style="list-style-type: none"> John, 2019, Decision-making capacity assessment for confused patients in a regional hospital: A before and after study https://pubmed.ncbi.nlm.nih.gov/32390205/ John, 2019, Assessing patients decision-making capacity in the hospital setting: A literature review https://onlinelibrary.wiley.com/doi/abs/10.1111/ajr.12592

Web links	<ul style="list-style-type: none"> Capacity Australia Website: www.capacityaustralia.org.au Mini Legal Kits Capacity Australia: https://capacityaustralia.org.au/resources/mini-legal-kits/ Australian Centre for Health Law Research Queensland University of Technology, 2020, Capacity to Consent to Medical Treatment https://end-of-life.qut.edu.au/capacity
Contact	info@capacityaustralia.org.au

Capacity Assessment (New South Wales, Australia)

Name of assessment	Capacity Assessment
Jurisdiction	New South Wales, Australia
Main source	<p>New South Wales Government (2009) Capacity Toolkit (LINK)</p> <ul style="list-style-type: none"> This Capacity Toolkit was created in response to that request. It provides information and guidance to government employees, community workers, professionals, families and carers in issues relating to capacity and capacity assessment. In doing so, it upholds the freedom of each individual to make their own decisions, while protecting the interests and dignity of those who lack the capacity to do so.
Capacity definition	<p>In this Toolkit ‘capacity’ is a legal word. We use the term to refer to an adult’s ability to make a decision for themselves. Under the law, you must presume that every adult has capacity</p> <p>Generally, when a person has capacity to make a particular decision they can:</p> <ul style="list-style-type: none"> understand the facts and the choices involve weigh up the consequences, and communicate the decision <p>However, for some decisions there is a specific legal test for capacity. When you are assessing a person’s capacity to make any of these decisions you must consider the particular matters outlined in the legal test. The test you use depends on the legal area to which the decision relates.</p> <p>Broadly speaking, when a person has capacity to make a particular decision, they are able to do all of the following:</p> <ul style="list-style-type: none"> understand the facts involved understand the main choices weigh up the consequences of the choices understand how the consequences affect them communicate their decision

	<p>Capacity is decision-specific</p> <p>The level of capacity a person has at a particular time can depend on the following factors:</p> <ul style="list-style-type: none"> • type of decision being made: <ul style="list-style-type: none"> ○ Is it a financial decision, a health decision, or some other kind of decision? • timing of the decision: <ul style="list-style-type: none"> ○ Is the person tired? Is the person more able to make decisions in the morning, for instance? • is decision simple or complicated? • how much information has the person been given, and what is their level of understanding about the information? • communication between the assessor and the person: <ul style="list-style-type: none"> ○ Is there effective communication in place at the assessment so each person understands the other? or advocates may be required, or a particular Alternative and Augmentative Communication (AAC) strategy may be needed • physical environment in which the decision is being made: <ul style="list-style-type: none"> ○ Is the environment noisy or is the situation stressful? • the person’s experience: <ul style="list-style-type: none"> ○ How much knowledge of, or familiarity with, the topic does the person have? • health: <ul style="list-style-type: none"> ○ Does the person have an illness or condition that worsens from time to time and affects their capacity, such as a mental illness or the effects of drugs, alcohol or anesthetic? • personal stress: <ul style="list-style-type: none"> ○ Is the person dealing with any social issues which may cause them stress at the time of decision-making? <p>Capacity can be regained</p>
<p>Purpose of assessment/ Domains assessed</p>	<ul style="list-style-type: none"> • In general, a person’s capacity to make day-to-day decisions is not subject to the type of assessment discussed in this Toolkit. • Purpose of assessment: To assess a person’s capacity in personal or professional life when an adult’s the decision in question is about something significant or has legal consequences (within civil areas of law). • This Capacity Toolkit applies only to the civil (non-criminal) areas of law. It does not relate to an assessment of a person’s capacity under criminal law <p>Decisions can be divided into the three following areas:</p> <p><u>Personal life:</u></p> <ul style="list-style-type: none"> • making and using an enduring guardianship • decisions including accommodation and personal support services.

	<p><u>Health:</u></p> <ul style="list-style-type: none"> • making and using an advance care directive • treatment medical and dental • decisions including non-intrusive other health examinations, over the counter medication and alternative therapies. <p><u>Money and property:</u></p> <ul style="list-style-type: none"> • entering into a contract making a - power of attorney and making and using an enduring power of attorney • decisions financial making a - will.
<p>Relevant legislative acts</p>	<ul style="list-style-type: none"> • Assessing capacity for an adult’s decision on matter of civil law • Different legal tests are applied as it relates to particular types of decisions
<p>Trigger for assessment</p>	<p>If you are claiming that a person doesn’t have capacity you need to give good reasons. Use facts to show that it is more likely than not that the person lacked the ability to make the decision at the time.</p> <p>Triggers that involve the person’s conduct might include any of the following:</p> <ul style="list-style-type: none"> • repeatedly making decisions that put the person at significant risk of harm or mistreatment • making a decision that is obviously out of character and that may cause harm or mistreatment • often being confused about things that were easily understood in the past • often being confused about times or places • having noticeable problems with memory, especially recent events, which have an effect on the person’s ability to carry out everyday tasks • dramatically losing language and social skills. For example, having difficulty finding a word, not making sense when speaking, not understanding others when they speak, having wandering thought patterns, interrupting or ignoring a person when they are speaking, or failing to respond to communication • having difficulty expressing emotions appropriately, such as inappropriate anger, sexual expression, humour or tears without actual sadness • displaying sudden changes in personality. For example, excessive irritability, anxiety, mood swings, aggression, overreaction, impulsiveness, depression, paranoia or the • onset of repetitive behaviours • declining reading and writing skills • having difficulty judging distance or direction, for example when driving a car. <p>Triggers that involve the person’s circumstances might include:</p>

	<ul style="list-style-type: none"> • not looking after themselves or their home the way they usually do and this being bad for their health or putting them at significant risk. For example, neglecting significant personal concerns such as health, hygiene, personal appearance, housing needs or nutritional needs • not paying bills or attending to other financial matters, such as running their business, repaying loans or other debts • making unnecessary and excessive purchases or giving their money away, and this being out of character • noticeably being taken advantage of by others, such as being persuaded into giving away large assets that they still require such as a house, car or savings, or signing contracts that disadvantage them • having been diagnosed with a condition that may affect their capacity • having lacked capacity to make decisions in the past. <p>Another important trigger for assessment is when a person’s capacity improves. The person may simply have regained capacity lost through ill health or other circumstances</p> <p>In some situations, a second opinion may be the only way to ensure a fair assessment of a person’s capacity. Factors that may indicate that a second opinion might be necessary are:</p> <ul style="list-style-type: none"> • a dispute by the person concerned, who believes they still have capacity • a disagreement between family members, carers, community workers or other professionals about the person’s capacity. <p>Specific triggers for each decision domain can be found in section 5</p>
<p>Assessment process</p>	<p>Capacity assessment principles</p> <ol style="list-style-type: none"> 1. Always presume a person has capacity 2. Capacity is decision specific 3. Don’t assume a person lacks capacity based on appearances 4. Assess the person’s decision-making ability – not the decision they make 5. Respect a person’s privacy 6. Substitute decision-making is a last resort <p>Providing facts and demonstrating a person’s inability to make a decision can be as simple as doing the following:</p> <ul style="list-style-type: none"> • documenting the assessment process • providing a summary of the questions you asked the person and their answers, and • giving an explanation as to the reasons why you made your decision. <p>You need to assess, or seek an assessment of, a person’s capacity when:</p>

	<ul style="list-style-type: none"> • there is a demonstrated trigger • all other attempts to solve the problem have failed, and there are important legal consequences or the conduct of the person is causing, or is likely to cause, significant harm to the person or someone else. <p>Apply the 6 principles of capacity assessment:</p> <ul style="list-style-type: none"> • Always presume a person has capacity • Capacity is decision-specific • Don't assume a person lacks capacity based on appearances • Assess a person's decision-making ability - not the decision they make • Respect a person's privacy • Substitute decision-making is a last resort <p>Tell the person about the process prior to beginning an assessment</p> <ul style="list-style-type: none"> • Effectively communicate to the person what you are doing and why <p>Be flexible about assessments</p> <ul style="list-style-type: none"> • Be flexible and adaptable to individual's needs and preferences <p>Consider cultural and linguistic diversity and capacity</p> <ul style="list-style-type: none"> • May need to make accommodations or seek info about cultural and ethnic background <p>Don't make value judgments</p> <p>Determine what you are looking for</p> <ul style="list-style-type: none"> • considering whether the person can do the following: <ul style="list-style-type: none"> ○ understand the facts involved in the decision ○ know the main choices that exist ○ weigh up the consequences of the choices ○ understand how the consequences affect them ○ communicate their decision <p>Apply the right test to the decision in question</p> <ul style="list-style-type: none"> • When you are assessing a person's capacity to make a decision you must consider the particular matters outlined in the test. The test you use depends on the legal area to which the decision relates. <p>Ask questions carefully</p>
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	<ul style="list-style-type: none"> • Ask open-ended questions • Don't ask leading questions <p>See Section 5 for specific questions related to different decision-making areas (personal, health, money and property)</p>
<p>Who is involved in assessing decision making capacity?</p>	<p>In NSW a range of people in the community are recognised as having a responsibility to undertake an assessment of a person's capacity. You may find yourself in the role of a:</p> <ul style="list-style-type: none"> • solicitor, who has an obligation to consider a person's capacity before acting on instructions about a variety of decisions such as property transactions, civil litigation and future planning • professional from the financial sector, who must consider a person's capacity to give directions regarding their finances and assets • medical or dental practitioner seeking consent for treatment from a patient • a community worker or other professional, such as a disability or social and allied health worker, who may assess a person's capacity to make a decision about services • member of the community appointed as an enduring guardian, or with an enduring power of attorney stating that it can only commence once a person has lost capacity • advocate seeking consent to support a person to express their views • family member, friend or carer making informal decisions for a person with a decision-making disability <p>If there are still doubts about a person's capacity after an assessment, you (or another individual) may want to get a second opinion about the person's capacity from a general practitioner, a psychiatrist, a psychologist, a geriatrician or a neuro-psychologist.</p> <p>In some situations, a second opinion may be the only way to ensure a fair assessment of a person's capacity. Factors that may indicate that a second opinion might be necessary are:</p> <ul style="list-style-type: none"> • a dispute by the person concerned, who believes they still have capacity • a disagreement between family members, carers, community workers or other professionals about the person's capacity.
<p>Other references</p>	<ul style="list-style-type: none"> • New South Wales Government, 2009, Capacity Toolkit Adapted for Tasmania https://doh.health.tas.gov.au/_data/assets/pdf_file/0008/98513/Web_Capacity_Toolkit_Tasmania.pdf • Dārziņš P, William Molloy D, Strang D. Who can decide? The six step capacity assessment process. Adelaide: Memory Australia Press, 2000. https://research.monash.edu/en/publications/who-can-decide-the-six-step-capacity-assessment-process • The Law Society of New South Wales, 2016, When a Client's Mental Capacity is in Doubt - A Practical Guide for Solicitors https://www.lawsociety.com.au/sites/default/files/2018-03/1191977_0.pdf

Web links	<ul style="list-style-type: none"> New South Wales Communities and Justice: https://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/divserv_assess_principles.aspx#:~:text=2.,about%20different%20types%20of%20decisions Capacity Australia: https://capacityaustralia.org.au/about-decision-making-capacity/
Contact	diversity_services@agd.nsw.gov.au

Capacity Assessment (Queensland, Australia)

Name of assessment	Capacity Assessment
Jurisdiction	Queensland, Australia
Main source	<p>Queensland Government (2020) Queensland Capacity Assessment Guidelines 2020 (LINK)</p> <ul style="list-style-type: none"> These guidelines provide general information about capacity, capacity assessment and the legal tests of capacity in Queensland. They are relevant for Queensland’s guardianship legislation (the Guardianship and Administration Act 2000 and Powers of Attorney Act 1998). These guidelines only apply when assessing the capacity of adults (people 18 years and over). These guidelines apply to capacity assessments for decisions about: <ul style="list-style-type: none"> personal matters health matters financial matters. These guidelines also apply to making or revoking an enduring document (advance health directive or enduring power of attorney). These guidelines only apply to capacity assessments carried out according to Queensland’s guardianship legislation. These guidelines do not apply to other types of decisions, such as: <ul style="list-style-type: none"> making a will (testamentary capacity) giving instructions to a lawyer fitness and capacity in criminal proceedings.
Capacity definition	<p>Capacity is a legal term referring to the ability to exercise the decision-making process.</p> <ul style="list-style-type: none"> When an adult has capacity to make a certain decision, they are able to: understand and retain (even for a short while) the information relating to the decision understand the main choices available understand and weigh up the consequences of the choices communicate the decision make a decision freely and voluntarily.

	<ul style="list-style-type: none"> • It is the adult’s ability to exercise the decision-making process that is assessed when you carry out a capacity assessment. • It is important to remember that while an intellectual or cognitive impairment might impact on an adult’s decision-making ability, it doesn’t necessarily mean they lack capacity. The same can be said for mental illness, brain injury, dementia and age. Whether the adult makes a decision that others might think is wrong, risky or immoral is also irrelevant • Presumption of Capacity • Capacity is decision-specific and time-specific • Capacity can fluctuate • Capacity can change with support
<p>Purpose of assessment/ Domains assessed</p>	<p>General test for Capacity to make personal, health or financial decisions under Queensland’s guardianship legislation</p> <p>Use the general test of capacity for any decision relating to personal, health or financial matters</p> <p>Domains</p> <ul style="list-style-type: none"> • personal matters (relate to the adult’s care or welfare) • health matters (relate to: the adult’s healthcare including medical treatments, procedures and services to treat both physical and mental conditions) • financial matters (relate to finances and property) • Making or revoking an enduring document <p>There are many reasons why a capacity assessment may be needed, such as</p> <ul style="list-style-type: none"> • deciding if an adult can consent to medical treatment • deciding if an adult needs more support with making decisions • providing evidence to the Queensland Civil and Administrative Tribunal (QCAT) or Supreme Court about an adult’s capacity • deciding whether to apply to QCAT for appointment of a guardian or an administrator • deciding if an attorney’s power under an enduring power of attorney has commenced. <p>Under the general test for capacity under Queensland’s guardianship legislation, the adult must be capable of:</p> <p>(a) understanding the nature and effect of decisions about the matter</p> <p>(b) freely and voluntarily making decisions about the matter</p> <p>(c) communicating the decision in some way.</p> <p>There are three parts that make up this test. The criteria in all three needs to be met for an adult to have capacity to make the decision</p>
<p>Relevant legislative acts</p>	<ul style="list-style-type: none"> • Guardianship and Administration Act 2000 • Human Rights Act 2019

<p>Trigger for Assessment</p>	<p>There are many reasons why you might need to carry out (or seek) a capacity assessment. You might be:</p> <ul style="list-style-type: none"> • deciding if an adult can consent to medical treatment • deciding if an adult needs more support with making decisions • providing evidence to QCAT or the Supreme Court about an adult’s capacity • deciding whether to apply to QCAT for an appointment of a guardian or administrator • deciding if you should witness the signature of an adult on an enduring power of attorney or advance health directive form, refer to Section 6 • deciding if an attorney’s power under an enduring power of attorney has commenced <p>Go into more detail about circumstances that may be a cause for concern</p> <p>General circumstances that may be a cause for concern</p> <ul style="list-style-type: none"> • sudden changes in personality, such as depression, aggression, mood swings, paranoia • inability to remember certain words • a change in speech patterns or communication, reading or writing skills • confusion about where they are or where they have put things (disorientation) • making choices or decisions that are out of character • a noticeable inability to remember information, particularly in the short term • wandering attention or inability to concentrate • often losing things or getting lost • being taken advantage of by others. <p>Circumstances for Personal Matters that may be a cause for concern</p> <ul style="list-style-type: none"> • a drastic change in their personal habits or self-care • dressing differently than they normally would • sudden homelessness • fear of certain acquaintances • having friends and family members around that they would not normally socialise with • accidents with cooking (such as leaving the stove on) • sudden changes in personality • confusion about things that they understood in the past. <p>Circumstances for Health Matters that may be a cause for concern</p> <ul style="list-style-type: none"> • missing medical appointments • being unable to answer basic questions about their medical history • consenting to treatment which does not align with the adult’s views and values (e.g. • religious beliefs)
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	<ul style="list-style-type: none"> • appearing confused about basic medical information • unusual behaviour towards health professionals. <p>Circumstances for Financial Matters that may be a cause for concern</p> <ul style="list-style-type: none"> • significant financial changes in spending habits • forgetting to pay bills • giving away a lot of money • frequently losing or forgetting their wallet • being confused or overwhelmed about single financial interactions • forgetting to pay for items at the shops • having trouble with everyday calculations
<p>Assessment process</p>	<p>Capacity assessments should be carried out in a way that least restricts an adult’s human Rights</p> <p>Apply 5 principles of capacity in making assessment of adult’s capacity (see more detail on page 10)</p> <ul style="list-style-type: none"> • Always presume an adult has capacity • Capacity is decision-specific and time-specific • Provide the adult with the support and information they need to make and communicate decisions • Assess the adult’s’ decision-making ability rather than the decision they make • Respect adult’s dignity and privacy <p>6 steps to follow when conducting a capacity assessment</p> <ul style="list-style-type: none"> • Identify the decision to be made <ul style="list-style-type: none"> ○ Personal, health or financial matter • Identify a need to assess capacity <ul style="list-style-type: none"> ○ Presume adult has capacity ○ Identify concerns about the adult’s capacity <ul style="list-style-type: none"> ▪ Generally, you are looking for a change in behaviours or circumstances (e.g. something that is unusual or out of character for the adult). If the adult has always exhibited a certain behaviour or lived in a certain way, this is probably not a cause for concern. ○ Identify genuine need for the decision to be made at this time ○ Consider if concerns about adult’s capacity can be addressed by linking the adult to appropriate supports • Apply the right legal test of capacity. <ul style="list-style-type: none"> ○ Apply the general test of capacity (for personal, health and financial decisions). • Prepare for the assessment.

	<ul style="list-style-type: none"> ○ Gather information relevant to the decision ○ Make a plan to: <ul style="list-style-type: none"> ▪ involve and support the adult <ul style="list-style-type: none"> ● Establish a supportive environment ● Find out best way to communicate with adult ● Consider whether a support person should attend ▪ provide the adult with information in the right way. ● Conduct the assessment. <ul style="list-style-type: none"> ○ Explain the assessment process to the adult ○ Give the adult the opportunity to ask questions about the assessment process ○ Ask relevant questions <ul style="list-style-type: none"> ▪ Start with open ended questions ▪ Then ask more specific questions ▪ Ask about options and consequences ▪ Check to see if the adult is being pressured in any way ▪ What to do if you think adult is being abused or pressured ● Document your conclusion and reasons. ● Options if adult does not have capacity <ul style="list-style-type: none"> ○ Consider if the adult can continue to make the decision with support ○ Consider if a member of an adult’s support network can make decisions on an informal basis ○ Consider if a substitute decision-maker might be needed ● If not sure if adult has capacity or not <ul style="list-style-type: none"> ○ consider seeking a second opinion and/or a more formal assessment of capacity
<p>Who is involved in assessing decision making capacity?</p>	<p>Many different people may be required to carry out or seek an assessment of an adult’s capacity to make a decision. This could include a:</p> <ul style="list-style-type: none"> ● family member, friend or colleague ● health professional ● social worker, support worker or advocate ● person who works in the law, including an attorney or a Justice of the Peace ● worker in a financial institution ● Aged Care Assessment Team (ACAT) worker. <p>While anyone can carry out a capacity assessment, an assessment is just an opinion and the results of the assessment can be reviewed or challenged. The Queensland Civil and Administrative Tribunal (QCAT) or Supreme Court can make a formal declaration</p>

	<p>or finding about an adult’s capacity. You may want to seek legal advice if you are unsure about an adult’s capacity, or for information on making an application, see Appendix B.</p>
Other references	<ul style="list-style-type: none"> Advanced Care Planning Australia, 2017, Factsheet for Health Professionals https://www.advancecareplanning.org.au/docs/default-source/acpa-resource-library/acpa-fact-sheets/legal-fact-sheets-for-health-professionals/qld_acp-legal-fact-sheet-for-health-professionals.pdf?sfvrsn=2 Bird, 2011, Capacity to consent to treatment https://www.racgp.org.au/download/documents/AFP/2011/April/201104bird.pdf Capacity Australia, 2013, Decision-making capacity & Dementia - A guide for Healthcare Professionals in Queensland Mini-legal kit Series 1.8 https://capacityaustralia.org.au/wp-content/uploads/2013/10/123626-AUST-CENTRE-OF-CEP-DISABILITIES-QLD-Legal-kit-12pp.pdf Clapton, 2011, Impaired Decision-Making Capacity and Indigenous Queenslanders Final Report https://www.justice.qld.gov.au/_data/assets/pdf_file/0007/699208/indigenouqldersidmcfinalreport-dec-2011.pdf Clements, 2011, Indigenous Australians and Impaired Decision-Making Capacity https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.857.5171&rep=rep1&type=pdf Dārziņš P, William Molloy D, Strang D. Who can decide? The six step capacity assessment process. Adelaide: Memory Australia Press, 2000. https://research.monash.edu/en/publications/who-can-decide-the-six-step-capacity-assessment-process Queensland Government, 2018, Assessing Adult Capacity for decision-making - Social Work Guide & Practice Toolkit https://mhlawqld.com.au/wp-content/uploads/2020/03/E1.-PDF-Assessing-Adult-Capacity-for-Decison-Making-Jan-2018-Department-of-Health.pdf
Web links	<ul style="list-style-type: none"> Australian Centre for Health Law Research Queensland University of Technology, 2020, Capacity to Consent to Medical Treatment https://end-of-life.qut.edu.au/capacity Australian Centre for Health Law Research Queensland University of Technology, 2020, Capacity to Consent to Medical Treatment https://end-of-life.qut.edu.au/capacity MHLaw Queensland Capacity, 2020, - Assessing and Re-Assessing https://mhlawqld.com.au/capacity-decision-making/capacity-assessing-and-re-assessing Queensland Civil and Administrative Tribunal, Capacity for decision-making (Late updated August 2021) https://www.qcat.qld.gov.au/matter-types/decision-making-for-adults-with-impaired-capacity/capacity-for-decision-making Queensland Government, Treatment and Care: https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/topics/treatment-care
Contact	PolicyADG@justice.qld.gov.au

Data Extraction – New Zealand

Capacity Assessment (New Zealand)

Name of assessment	Capacity Assessment
Jurisdiction	New Zealand
Main source	<p>Douglass (2019) A Toolkit for Assessing Capacity (LINK)</p> <ul style="list-style-type: none"> This toolkit is a clinical, legal and practical guide for health practitioners (clinicians) when assessing an adult’s capacity to make decisions. The checklist is a summary of the toolkit. It is intended to assist clinicians who do capacity assessments infrequently. Each bullet point is hyperlinked to the main Toolkit or to external websites and resources to provide more information. There is more information on the legal framework at the end of the toolkit.
Capacity definition	<p>Decision-making capacity (or simply, “capacity”) refers to a person’s ability to make decisions</p> <p>In New Zealand legislation, both “capacity” and “competence” are used interchangeably. In a clinical context, “competence” tends to refer to the process of decision-making, and capacity to the legal term that is used. In this toolkit, the term “capacity” is used throughout</p>
Purpose of assessment/ Domains assessed	<p>Capacity Assessment</p> <ul style="list-style-type: none"> Deciding whether a person has the capacity to make a particular decision has legal implications and in some cases may need to be determined at a court hearing. A capacity assessment is part of the evidence that informs the legal decision. There are legal tests which are applied to determine whether a person has capacity to make specific decisions or whether someone else or the court, a substitute decision-maker, should make decisions for them. The purpose of assessing capacity is to determine by clinical interview whether the person is unable to make a legally effective decision. A functional test is used. A person lacks capacity if they are unable to: <ul style="list-style-type: none"> understand the nature and purpose of a particular decision and appreciate its significance for them; retain relevant, essential information for the time required to make the decision; use or weigh the relevant information as part of the reasoning process of making the decision and to consider the consequences of the possible options, (including the option of not making the decision); or communicate their decision, either verbally, in writing or by some other means.
Relevant legislative acts	<ul style="list-style-type: none"> There is a wide range of legislation and common law (case law) in New Zealand that is relevant to people with impaired capacity for decision-making. See legal Framework page 15 Protection of Personal and Property Rights Act 1988 (PPPR Act) - Guardianship law that applies to people who lack capacity and are 18 or older

	<ul style="list-style-type: none"> • Code of Health and Disability Services Consumers’ Rights (HDC Code) - concerns consent to healthcare treatment and procedures. • To assess capacity, it is necessary to identify the decision required to be made and the relevant legal test. As with many countries, New Zealand follows a functional, not a status approach to capacity
<p>Trigger for Assessment</p>	<p>Triggers: why is this person’s capacity being questioned now?</p> <ul style="list-style-type: none"> • Start by presuming person has capacity • Concern or doubt about person’s capacity usually occurs when person has a medical or psychiatric condition affecting their mental state and in the context of that condition the person is required to make a decision that has serious consequences or high risk • combination of the mental condition and the significant decision can be thought of as a trigger for the assessment. The clinician will need to have a clear understanding of the trigger, which should be documented. In some situations the trigger for the assessment may be simply an unusual feature of a proposed decision, and the mental condition may only be discovered at the assessment. <ul style="list-style-type: none"> ○ condition affecting the person’s mental state is most frequently cognitive decline or dementia, but may also be psychiatric illness such as severe depression, psychotic illness, profound grief or stress, or severe physical illness associated with pain, insomnia or emotional distress. ○ Factors such as: significant risk or long-lasting consequences associated with the decision, the decision the person is proposing to make is contrary to reasonable advice, without justification (for example, refusal of standard medical treatment for a serious but treatable condition), or the person is unable to make a decision at all despite being provided with all the relevant information and the appropriate support, where it is imperative that a decision needs to be made (for example, about residential care). ○ A person is unable to communicate a decision (for example, a person affected by a stroke). ○ A family member, carer, lawyer or service provider has expressed concern about a person’s decision-making ability ○ an unwise decision may trigger a more detailed assessment, particularly if the decision is out of character or has significant consequences. The assessment should only proceed on that basis that something can be done - an intervention in the person’s best interests – If the person lacks capacity in respect of the specific decision.
<p>Assessment process</p>	<p>Key Practice Points</p> <ul style="list-style-type: none"> • Presumption of Capacity • Capacity is decision and time specific • Assessment of a person’s decision-making ability, not the decision they make • Supported decision-making • Substitute decision-making as a last resort • Tikanga Maori and cultural diversity <p>Form of assessment - Two contexts which clinicians can assess capacity:</p>

	<ul style="list-style-type: none"> ● Informal assessments: <ul style="list-style-type: none"> ○ may often occur in the context of assessing a person’s capacity to give or refuse consent to medical treatment ○ narrowly focused on the knowledge of the relevant information, available options, and consequences, and on the reasoning and communication abilities of the person giving consent. ○ often conducted “intuitively” or informally by clinicians, without using structured assessment methods, recourse to courts or formal legal processes. ○ should still be documented in the person’s medical record ● Formal assessments: <ul style="list-style-type: none"> ○ assessments that are required to provide an opinion (often with a medical certificate) under the adult guardianship law (PPPR Act) or for other legal proceedings, or for some other legal purpose. ○ intrinsically more formal <ul style="list-style-type: none"> used to support, for example, the activation of an Enduring Power of Attorney (EPOA) or an application to the Family Court to appoint a welfare guardian, or they may take the form of advice to a lawyer or other professional on whether to accept a person’s capacity to make a certain decision, such as the making of a will ● the decision to move into supported accommodation, may also require a formal assessment of capacity <p>Stage One: Preparing for the Assessment</p> <ul style="list-style-type: none"> ● Triggers: why is this person’s capacity being questioned now? ● Identifying the Decision: what is the capacity decision to be assessed? <ul style="list-style-type: none"> ○ Clarify what the decision is that the person needs to make, why it needs to be made now, what information would be needed for anyone making a similar decision, what are the alternative options available, and what are the reasonably likely consequences of those options or of not making a decision at all. ○ For the appointment of a welfare guardian or property manager, it is important to identify the kinds of decisions or aspects of them that will be relevant to a person’s current circumstances and those decisions that will need to be made in the foreseeable future ● Legal test: what is the legal test against which capacity is to be assessed, under the PPPR Act or other laws? (for example, “wholly” or “partly” lacking capacity) ● Gathering Information: do you have all the relevant information about the decision, including the circumstances and details of the choices available? <ul style="list-style-type: none"> ○ It is vital that all relevant information to the decision is accurate and complete ○ It may be helpful, or even essential, to obtain background history from an informant, a friend or family member, particularly where the person has dementia and there is likely to be a progressive decline in the person’s capacity. ● Medical history: does the person have a medical condition that impairs their capacity and does this need treatment before the assessment can be done? <ul style="list-style-type: none"> ○ Consider whether there are any medical conditions that could be impairing the person’s capacity and if so, what treatment is being given and how effective it is. This step includes reviewing medical notes and contacting the person’s usual doctor if required
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	<ul style="list-style-type: none"> ○ Once all the relevant information has been gathered, the clinician assesses capacity by interviewing the person. ● Support measures: what can be done to assist the person to make the decision? <ul style="list-style-type: none"> ○ All reasonable attempts that have been made to support the person make a decision should be documented, including what these attempts have entailed. ○ Where necessary, arrange to have the assistance of a professional interpreter with appropriate accreditation and experience in health interpreting. ● Cultural considerations: is cultural support needed? <ul style="list-style-type: none"> ○ Involvement of family/whānau and support ○ It is a matter of judgment as to whether an immediate family member should be present for the assessment interview ○ Where the person being assessed is Māori, consider the relevant cultural competencies and tikanga Māori ○ Hearing, visual and communication aids, where used, should be brought to the interview. ● Where and when: what is the best time and place for the assessment? <ul style="list-style-type: none"> ○ Consider the time and place for the interview; ensure that enough time is available for the interview to be conducted at an easy pace and that the place chosen for the interview is comfortable and private. It is important to avoid interviewing later in the day for older persons when they may be suffering from fatigue or “sundowning” <p>Stage Two: The Assessment Interview</p> <ul style="list-style-type: none"> ● Engagement: have you explained who you are and the purpose of the assessment? ● General health and cognition: what is the person’s mental state? Is there a medical condition that is currently active and is impairing the person’s cognitive function? If so, can you measure its severity using a cognitive screening test? ● Legal test: have you asked questions to determine whether the person is able to understand, retain, use or weigh the information or, communicate the decisions by any means? <p>Stage Three: After the Interview</p> <ul style="list-style-type: none"> ● Decide: do you have enough information to decide if the person has capacity or not: is a second interview necessary? ● Communicate: have you told the person, and where appropriate their family, the outcome of the assessment? ● Document: have you recorded your reasons in the person’s clinical records that the person has or lacks capacity for a particular decision? Is a medical certificate or report request <ul style="list-style-type: none"> ○ Record your assessment <p>Seepage 8 - 14 for more details on each stage</p>
<p>Who is involved in assessing decision making capacity?</p>	<p>Health practitioners, including doctors, psychologists, nurses, occupational therapists (clinicians)¹ and social workers when assessing an adult’s capacity to make a decision(s).</p> <p>Who should carry out the assessment?</p>

	<ul style="list-style-type: none"> • Medical decision: the clinician who is providing the treatment should assess the person’s capacity to consent to that treatment, though they may consult others for assistance • Personal welfare, living arrangements or property matters: usually best for a clinician who is well-known to the person, for example, the family GP, to do the assessment. Where this is not the case, particular attention will need to be given to the process of engagement, and, in the case of Māori, whakawhanaungatanga • Cases of doubt, or complex major decisions: it may be advisable to collaborate with other health practitioners with experience in relation to the needs of the person, such as a nurse, occupational therapist, psychologist, or speech and language therapist. • Consent for treatment: final responsibility rests with the person intending to carry out the proposed medical procedure, not with other health practitioners advising about capacity
Other references	<ul style="list-style-type: none"> • Douglass, 2019, Assessment Of Mental Capacity: A New Zealand Guide For Doctors And Lawyers http://www.barristerschambers.co.nz/mcap/assets/Assessment-of-Mental-Capacity.pdf • Hawe’s Bay District Health Board, Performing Capacity Assessments - Information for GPs https://hawkesbay.health.nz/assets/Publications/Performing-Capacity-Assessments-electronic-booklet.pdf • Government of New Zealand, 2017, Guideline on Capacity to Make Decisions about Treatment for Severe Substance Addiction https://www.health.govt.nz/system/files/documents/pages/guideline-assessing-capacity-make-decisions-treatment-severe-substance-addiction-nov17.pdf • Young, 2018, What do doctors know about assessing decision-making capacity? New Zealand Medical Journal https://journal.nzma.org.nz/journal-articles/what-do-doctors-know-about-assessing-decision-making-capacity
Web links	<ul style="list-style-type: none"> • Law Foundation of New Zealand, 2020, 7C: The First Step - A Toolkit for Assessing Capacity http://www.barristerschambers.co.nz/mcap/7_C.html • Vara, (no year given), Presentation on Decision-Making Capacity Assessment - The experiences and education https://www.health.govt.nz/system/files/documents/pages/guideline-assessing-capacity-make-decisions-treatment-severe-substance-addiction-nov17.pdf
Contact	alison.douglass@barristerschambers.co.nz

Data Extraction – United Kingdom

Assessing Capacity in Adults (Scotland, UK)

Name of assessment	Assessing Capacity in Adults
Jurisdiction	Scotland, UK

<p>Main source</p>	<p>Scottish Government (2008) Adults with incapacity: guide to assessing capacity (LINK)</p> <ul style="list-style-type: none"> • This guide has been produced to support professionals in assessing the capacity of individuals who may come under protection of the Adults with Incapacity (Scotland) Act 2000. • This guide does not cover the assessment of capacity in relation to medical treatment decisions or consent to medical research
<p>Capacity definition</p>	<ul style="list-style-type: none"> • Capacity is the ability to understand information relevant to a decision or action and to appreciate the reasonably foreseeable consequences of taking or not taking that action or decision.
<p>Purpose of assessment/ Domains assessed</p>	<ul style="list-style-type: none"> • The purpose of the assessment is to assess the capacity of individuals who may come under protection of the Adults with Incapacity (Scotland) Act. • Personal care
<p>Relevant legislative acts</p>	<ul style="list-style-type: none"> • Adults with Incapacity Act 2000
<p>Trigger for assessment</p>	<ul style="list-style-type: none"> • The Act covers people whose incapacity is caused by a mental disorder such as dementia, learning disability, acquired brain injury, severe mental illness or personality disorder. It also covers people who are unable to communicate due to a physical condition such as a severe stroke or sensory impairment. A diagnosis of any of these conditions does not mean that the decision-making capacity of the person is impaired. There are, for example, many people with dementia or learning disabilities who are capable of making all or nearly all decisions for themselves. However, if someone with a mental disorder appears to be struggling to make or act on financial, welfare or healthcare decisions, the possibility of some incapacity should at least be considered. • There may be cause for concern if an individual repeatedly makes unwise decisions and place him/her at significant risk of harm or serious exploitation. Concern may be triggered if a person makes a particular decision which defies all notions of rationality and/or is markedly out of character. In these situations it would be relevant to look at the person's past decisions and choices. While such situations should not automatically lead to the conclusion that capacity is lacking, they might raise doubts about capacity and indicate the need for further investigation.
<p>Assessment process</p>	<p>The presumption of capacity</p> <ul style="list-style-type: none"> • The starting point for assessing someone's capacity to make a particular decision is always the assumption that the individual has capacity. <p>A person is not to be treated as unable to make a decision merely because he/she makes an eccentric/unusual or unwise decision.</p> <ul style="list-style-type: none"> • Presented with similar circumstances many of us will make different decisions because we give greater weight to some factors rather than others. Factors influencing our decisions will be our own values, preferences and previous experiences. However, there may be cause for concern if an individual repeatedly makes unwise decisions and place him/her at significant risk of harm or serious exploitation.

	<p>Impaired capacity</p> <ul style="list-style-type: none"> • In order to decide whether an individual has capacity to make a particular decision you need to consider: • Does the person have a mental disorder (which includes mental illness, learning disability, dementia and acquired brain injury), or severe communication difficulty because of a physical disability (such as stroke or severe sensory impairment)? If so, • Has it made the person unable to make the decision or decisions in hand? • For the purposes of the 2000 Act a person is unable to make a decision for him/herself if, due to mental disorder or inability to communicate because of physical disability, he/she is incapable of <ul style="list-style-type: none"> ○ Acting; or ○ Making decision; or ○ Communicating decisions; or ○ Understanding decisions; or ○ Retaining the memory of decisions. <p>Applying the criteria</p> <ul style="list-style-type: none"> • Understanding the information relevant to the decision • First, you need to be clear about the decision or decisions to be made and what the options may be. • The next step is to consider carefully how best to put across relevant information for the person concerned. Such information will include: <ul style="list-style-type: none"> ○ The action or decision needed; ○ Why the action/decision is needed; ○ The likely effects of making the decision; ○ The likely effects of not making the decision; and ○ Any other choices or options open to the person. • How information is given will affect the ability of the individual to understand. Use broad terms and simple language (or other method appropriate to the person) to explain the proposed action or decision. It will not always be necessary to explain everything in great detail. <p>What do we mean by 'understand'?</p> <ul style="list-style-type: none"> • There are two strands to 'understanding' <ul style="list-style-type: none"> ○ There is having a grasp of the facts; and ○ The ability to weigh up the options and foresee the different outcomes or possible consequences of one choice rather than another. <p>Factual knowledge base</p> <ul style="list-style-type: none"> • The key here is the individual's awareness of his/her personal and financial circumstances. For personal care this would mean probing the person's knowledge of his/her living arrangements, safety and healthcare needs. For financial assessments, questions will be about the person's understanding of his/her assets, outgoing expenses and financial obligations. <p>Understanding the options - use and weigh up the information as part of making the decision - being able to act on the decision.</p>
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	<ul style="list-style-type: none"> • Faced with choices, a person should be able to understand and weigh up information about options and any risks involved - and act on the decision made. <p>Unable to communicate the decision (whether by talking, using sign language or any other means)</p> <ul style="list-style-type: none"> • Before concluding that someone is totally unable to communicate and therefore lacks capacity, strenuous efforts must first be made to assist and facilitate communication <p>Retain the information relevant to the decision</p> <ul style="list-style-type: none"> • The person may be able to understand their circumstances and be able to make a decision but not be able to remember all relevant information due to short-term memory loss. This should not automatically mean that the person is incapable of making the decision in hand. Aids such as videos and voice recorders could be used to support the person's memory, and record his/her responses. You may need to talk with the person several times to go over the information and to see if his/her response is consistent (even if the person cannot remember having been asked before). If the person's response is consistent then this may be taken as a signal that he/she has sufficient capacity to understand the decision in hand. <p>Steps to take for a capacity interview for personal care</p> <p>Step 1: Explore the factual understanding of current personal care circumstances</p> <ul style="list-style-type: none"> • Points to consider: <ul style="list-style-type: none"> ○ Is there a substantial discrepancy between the person's description of his/her daily routine or current living arrangements and that known or reported by others? ○ Is the person aware of his/her responsibilities or obligations to dependants? (if appropriate). ○ Is the person aware of the important decision-making demands faced in meeting personal care needs? <p>Step 2: Identify areas of unmet need in each personal care domain being investigated</p> <ul style="list-style-type: none"> • Points to consider: <ul style="list-style-type: none"> ○ Does the person admit to any problems in meeting personal care needs? If so, does he/she seek appropriate assistance? ○ Is there evidence of recent change in the person's ability to self-manage? For example, has there been a deterioration in his/her appearance, self-care, living environment - house less clean and tidy than before, lack of food in the cupboard, etc. ○ Can the person recognize risky situations and respond accordingly? ○ Could the person ask others for help in an emergency? ○ Does the person encounter safety or physical health risks because of memory problems? <p>Step 3: Explore decision-making within critical areas of unmet need</p> <ul style="list-style-type: none"> • Areas of unmet need in terms of the person's personal care will be identified through the assessment and review process. The next stage will be to explore the person's ability to make decisions in relation to how these might best be met. • First, ask questions designed to uncover the degree of insight the person has in relation to his/her self-care limitations. • Secondly, ask the person specific questions to test their 'understanding and appreciation' of the choices available. • Thirdly, look for evidence of reasoned choice • Points to consider:
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	<ul style="list-style-type: none"> ○ Is the person able to understand crucial information relevant to making decisions about his or her particular personal care needs? ○ Is the person able to remember crucial information and/or is there evidence of consistency of choice over time? ○ Can the person say what is likely to happen if his/her personal care needs are not met? Is the person's assessment realistic? Is he/she focusing on possible minor consequences and overlooking major ones? ○ Are the person's stated reasons for his/her choice relevant to the decisions in hand? ○ Are the person's actions or choices consistent with his/her expressed goals and priorities? ○ Even if the person is unable or refuses to articulate the reasons for his/her personal care choices, are actions consistent with his/her expressed values or beliefs?
Who is involved in assessing decision making capacity?	<ul style="list-style-type: none"> ● This guide is primarily for social work and healthcare staff in Scotland, including: <ul style="list-style-type: none"> ○ Care managers and other health and social care staff involved in carrying out community care assessments where the person appears to have difficulties in making decisions or acting in their own interests due to a mental disorder or a severe communication difficulty caused by a physical condition; ○ Health and social care staff, including clinical psychologists, involved in the capacity assessment process where a formal intervention under the adults with incapacity act is being applied for; ○ Medical practitioners involved in both the early stage of a multi-disciplinary assessment process and/or where a formal assessment of capacity is needed because an intervention under the act is being proposed. Doctors have principal responsibility for the formal assessment of capacity - in relation money management under part 3 (access to funds) and financial and/or personal welfare decision-making under part 6 (intervention orders and guardianship). However the importance of multi-disciplinary assessment is stressed here and in the codes of practice.
Other references	N/A
Web links	<ul style="list-style-type: none"> ● Scottish Government (2008) Adults with incapacity: guide to assessing capacity
Contact	None given

Mental Capacity Assessment (England and Wales, UK)

Name of assessment	Mental capacity assessment
Jurisdiction	England and Wales, UK
Main source	The Stationery Office on behalf of the Department for Constitutional Affairs (2007) Mental Capacity Act 2005 Code of Practice (LINK)

	<ul style="list-style-type: none"> • The legal framework provided by the Mental Capacity Act 2005 is supported by this Code of Practice (the Code), which provides guidance and information about how the Act works in practice. • The Code of Practice provides guidance to anyone who is working with and/ or caring for adults who may lack capacity to make particular decisions. It describes their responsibilities when acting or making decisions on behalf of individuals who lack the capacity to act or make these decisions for themselves. In particular, the Code of Practice focuses on those who have a duty of care to someone who lacks the capacity to agree to the care that is being provided. • What does the Code of Practice actually cover? <ul style="list-style-type: none"> ○ Chapter 4 explains how the Act defines ‘a person who lacks capacity to make a decision’ and sets out a single clear test for assessing whether a person lacks capacity to make a particular decision at a particular time. ○ Chapter 10 describes the role of Independent Mental Capacity Advocates appointed under the Act to help and represent particularly vulnerable people who lack capacity to make certain significant decisions. It also sets out when they should be instructed.
Capacity definition	<ul style="list-style-type: none"> • Mental capacity is the ability to make a decision. <ul style="list-style-type: none"> ○ This includes the ability to make a decision that affects daily life – such as when to get up, what to wear or whether to go to the doctor when feeling ill – as well as more serious or significant decisions. ○ It also refers to a person’s ability to make a decision that may have legal consequences – for them or others. Examples include agreeing to have medical treatment, buying goods or making a will.
Purpose of assessment/ Domains assessed	<ul style="list-style-type: none"> • The purpose of the assessment is to informally assess mental capacity of individuals in line with the Mental Capacity Act 2005. • The Act covers a wide range of decisions made, or actions taken, on behalf of people who may lack capacity to make specific decisions for themselves. These can be decisions about day-to-day matters – like what to wear, or what to buy when doing the weekly shopping – or decisions about major life-changing events, such as whether the person should move into a care home or undergo a major surgical operation.
Relevant legislative acts	<ul style="list-style-type: none"> • Mental Capacity Act 2005
Trigger for assessment	<ul style="list-style-type: none"> • There are a number of reasons why people may question a person’s capacity to make a specific decision: <ul style="list-style-type: none"> ○ The person’s behavior or circumstances cause doubt as to whether they have the capacity to make a decision ○ Somebody else says they are concerned about the person’s capacity, or ○ The person has previously been diagnosed with an impairment or disturbance that affects the way their mind or brain works, and it has already been shown they lack capacity to make other decisions in their life.
Assessment process	<p>Assessing capacity</p> <ul style="list-style-type: none"> • Anyone assessing someone’s capacity to make a decision for themselves should use the two-stage test of capacity.

	<ul style="list-style-type: none"> ○ Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent.) ○ If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made? <p>Assessing ability to make a decision</p> <ul style="list-style-type: none"> ● Does the person have a general understanding of what decision they need to make and why they need to make it? ● Does the person have a general understanding of the likely consequences of making, or not making, this decision? ● Is the person able to understand, retain, use and weigh up the information relevant to this decision? ● Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful? <p>Assessing capacity to make more complex or serious decisions</p> <ul style="list-style-type: none"> ● Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)? <p>Stage 1: Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?</p> <ul style="list-style-type: none"> ● Stage 1 requires proof that the person has an impairment of the mind or brain, or some sort of or disturbance that affects the way their mind or brain works. If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under the Act. ● Examples of an impairment or disturbance in the functioning of the mind or brain may include the following: <ul style="list-style-type: none"> ○ Conditions associated with some forms of mental illness ○ Dementia ○ Significant learning disabilities ○ The long-term effects of brain damage ○ Physical or medical conditions that cause confusion, drowsiness or loss of consciousness ○ Delirium ○ Concussion following a head injury, and ○ The symptoms of alcohol or drug use. <p>Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?</p> <ul style="list-style-type: none"> ● For a person to lack capacity to make a decision, the Act says their impairment or disturbance must affect their ability to make the specific decision when they need to. But first people must be given all practical and appropriate support to help them make the decision for themselves (see chapter 2, principle 2). Stage 2 can only apply if all practical and appropriate support to help the person make the decision has failed. See chapter 3 for guidance on ways of helping people to make their own decisions. <p>Practical steps for assessing capacity</p> <ul style="list-style-type: none"> ● Anyone assessing someone's capacity will need to decide which of these steps are relevant to their situation. <ul style="list-style-type: none"> ○ They should make sure that they understand the nature and effect of the decision to be made themselves. They may need access to relevant documents and background information (for example, details of the person's finances if assessing capacity to manage affairs). See chapter 16 for details on access to information.
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	<ul style="list-style-type: none"> ○ They may need other relevant information to support the assessment (for example, healthcare records or the views of staff involved in the person’s care). ○ Family members and close friends may be able to provide valuable background information (for example, the person’s past behavior and abilities and the types of decisions they can currently make). But their personal views and wishes about what they would want for the person must not influence the assessment. ○ They should again explain to the person all the information relevant to the decision. The explanation must be in the most appropriate and effective form of communication for that person. ○ Check the person’s understanding after a few minutes. The person should be able to give a rough explanation of the information that was explained. There are different methods for people who use nonverbal means of communication (for example, observing behavior or their ability to recognize objects or pictures). ○ Avoid questions that need only a ‘yes’ or ‘no’ answer (for example, did you understand what I just said?). They are not enough to assess the person’s capacity to make a decision. But there may be no alternative in cases where there are major communication difficulties. In these cases, check the response by asking questions again in a different way. ○ Skills and behavior do not necessarily reflect the person’s capacity to make specific decisions. The fact that someone has good social or language skills, polite behavior or good manners doesn’t necessarily mean they understand the information or are able to weigh it up. ○ Repeating these steps can help confirm the result. <ul style="list-style-type: none"> ● For certain kinds of complex decisions (for example, making a will), there are specific legal tests (see paragraph 4.32 above) in addition to the two-stage test for capacity. In some cases, medical or psychometric tests may also be helpful tools (for example, for assessing cognitive skills) in assessing a person’s capacity to make particular decisions, but the relevant legal test of capacity must still be fulfilled. <p>When to involve professionals</p> <ul style="list-style-type: none"> ● The decision that needs to be made is complicated or has serious consequences ● An assessor concludes a person lacks capacity, and the person challenges the finding 59 chapter 4 how does the act define a person’s capacity to make a decision and how should capacity be assessed? Mental capacity act code of practice ● Family members, carers and/or professionals disagree about a person’s capacity ● There is a conflict of interest between the assessor and the person being assessed ● The person being assessed is expressing different views to different people – they may be trying to please everyone or telling people what they think they want to hear ● Somebody might challenge the person’s capacity to make the decision – either at the time of the decision or later (for example, a family member might challenge a will after a person has died on the basis that the person lacked capacity when they made the will) ● Somebody has been accused of abusing a vulnerable adult who may lack capacity to make decisions that protect them ● A person repeatedly makes decisions that put them at risk or could result in suffering or damage.
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<p>Who is involved in assessing decision making capacity?</p>	<ul style="list-style-type: none"> • The person who assesses an individual’s capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made. This means that different people will be involved in assessing someone’s capacity to make different decisions at different times. • For most day-to-day decisions, this will be the person caring for them at the time a decision must be made. For example, a care worker might need to assess if the person can agree to being bathed. Then a district nurse might assess if the person can consent to have a dressing changed. • If a doctor or healthcare professional proposes treatment or an examination, they must assess the person’s capacity to consent. In settings such as a hospital, this can involve the multi-disciplinary team (a team of people from different professional backgrounds who share responsibility for a patient). But ultimately, it is up to the professional responsible for the person’s treatment to make sure that capacity has been assessed. • For a legal transaction (for example, making a will), a solicitor or legal practitioner must assess the client’s capacity to instruct them. They must assess whether the client has the capacity to satisfy any relevant legal test. In cases of doubt, they should get an opinion from a doctor or other professional expert. • More complex decisions are likely to need more formal assessments (see paragraph 4.54 below). A professional opinion on the person’s capacity might be necessary. This could be, for example, from a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker. But the final decision about a person’s capacity must be made by the person intending to make the decision or carry out the action on behalf of the person who lacks capacity – not the professional, who is there to advise. <p>The categories of people that are required to have regard to the Code of Practice include anyone who is:</p> <ul style="list-style-type: none"> • An attorney under a Lasting Power of Attorney (LPA) (see chapter 7) • A deputy appointed by the new Court of Protection (see chapter 8) • Acting as an Independent Mental Capacity Advocate (see chapter 10) • Carrying out research approved in accordance with the Act (see chapter 11) • Acting in a professional capacity for, or in relation to, a person who lacks capacity working • Being paid for acts for or in relation to a person who lacks capacity. <p>The last two categories cover a wide range of people. People acting in a professional capacity may include:</p> <ul style="list-style-type: none"> • A variety of healthcare staff (doctors, dentists, nurses, therapists, radiologists, paramedics etc.) • Social care staff (social workers, care managers, etc.) • Others who may occasionally be involved in the care of people who lack capacity to make the decision in question, such as ambulance crew, housing workers, or police officers.
<p>Other references</p>	<p>N/A</p>
<p>Web links</p>	<ul style="list-style-type: none"> • Care quality commission, Mental Capacity Act 2005 Guide for providers: https://www.cqc.org.uk/sites/default/files/documents/rp_poc1b2b_100563_20111223_v4_00_guidance_for_providers_mca_f_or_external_publication.pdf

	<ul style="list-style-type: none"> • Mental Capacity Assessment Tool Guidance August 2015 https://www.scie.org.uk/files/mca/directory/mca-tailored-for-you/health/pan-london-commissioner-toolkit/beh-capacity-assessment-tool-guidance.pdf?res=true
Contact	Office of the Public Guardian, Birmingham: customerservices@publicguardian.gov.uk

Appendix B:

Additional Resources from Canadian and International Jurisdictions

Below we list additional resources from Canadian and International jurisdictions that did not meet full inclusion criteria for the main report summary tables and detailed appendix tables. For the most part, the brief description column included in these tables is taken verbatim from source documents.

Canadian Jurisdictions: Resources Not Included in Main Report Summary Tables or Appendix Tables

Jurisdiction	Source (LINK)	Brief Description
Alberta	Office of the Public Guardian (2008) Guide to Capacity Assessment under the Personal Directives Act. Alberta, Canada (LINK)	<ul style="list-style-type: none"> This guide provides general information about capacity assessments under the Personal Directives Act (the Act). The guide is intended for the public, people who write a personal directive (makers), people who are named as decision makers in a personal directive (agents), and those who may have a role in conducting capacity assessments (someone named to assess capacity in a personal directive, physicians and psychologists, and service providers). The Office of the Public Guardian (OPG) can provide further information about capacity assessment
British Columbia	N/A	<ul style="list-style-type: none"> All relevant resources included in Appendix A table.
Manitoba	College of Occupational Therapists of Manitoba (2012) Practice Guideline Informed Consent in Occupational Therapy (LINK)	<ul style="list-style-type: none"> A COTM guideline sets forth principles to assist members in assessing situations which they encounter in practice and provides a recommended approach. Guidelines are intended to support, not replace, the exercise of professional judgment by the therapist in particular situations One will find that determining capacity to provide consent is referenced a number of times in this guideline; informal assessment of capacity is an important issue that is not the subject of this guideline. For that reason you may find that you may continue to have ongoing questions regarding capacity. In common law, it is unclear if informed consent is required for assessment. Therefore, it is prudent to obtain consent for assessment as well as treatment.

Jurisdiction	Source (LINK)	Brief Description
	Manitoba Law Reform Commission (1999) Informal Assessment of Competence (LINK)	<ul style="list-style-type: none"> This Report is the product of a process that began with a request to the Commission from the Ethics Committee of Winnipeg’s Golden West Centennial Lodge Personal Care Home in 1992. Workers in the home were having difficulty determining whether elderly residents were mentally competent to make decisions about themselves, and were looking for some assistance in that process. Ultimately, the Commission established an Advisory Committee in 1996 to consider the issue, and to advise on the appropriate response. In this Report, the Commission will focus mainly on informal testing of competence by people who are not specially trained to conduct such assessments. Formal assessments of mental capacity, such as those required for Formal assessments of mental capacity, fall squarely within the ambit of The Mental Health Act and are and are therefore outside the scope of this Report Two parts in this document <ul style="list-style-type: none"> One part explains what happens informally The other part gives recommendations on how to develop standard guidance on performing informal assessments of competence
New Brunswick	College of Physicians and Surgeons New Brunswick (2021?) Informed Consent: Helping patients make informed decisions about their care (LINK)	<ul style="list-style-type: none"> This guideline is an attempt to cover most of the anticipated issues and difficulties that may arise. If additional assistance is required, such can be accessed through the College or the Canadian Medical Protective Association. Includes sections on informed consent, helping patients make informed decisions, factors to consider before going through with treatment decisions, when a patient lacks capacity for consent etc.
	Law Society of New Brunswick (2020) Update on Enduring Powers of Attorney Act (LINK)	<ul style="list-style-type: none"> On July 1, 2020 New Brunswick’s Enduring Powers of Attorney Act, SNB 2019, c.30 came into force. The Act made many fundamental changes that affect the practice of law in relation to powers of attorney. See Government of New Brunswick (2019) Enduring Powers of Attorney Act (S.N.B. 2019, c.30) (LINK) See Public Legal Education and Legal Service webpage on Health Law (Enduring Powers of Attorney) (LINK) for updates to guidance documents on new legislation.
Newfoundland and Labrador	N/A	All relevant resources included in Appendix A table.
North West Territories	Department of Justice, NWT, In force January 1 (2006) Personal Directives Act S.N.W.T. 2005,c.16 (LINK)	<ul style="list-style-type: none"> Determination of lack of capacity: for the purposes of a Personal Directive coming into effect, a person’s condition must be assessed and make a written and dated declaration that a person lacks capacity According to the Act - two persons, each of whom is either a medical practitioner or a psychologist, jointly or separately assess the director’s condition and make a written and dated declaration that the director lacks capacity

Jurisdiction	Source (LINK)	Brief Description
		<ul style="list-style-type: none"> Specific process of assessing capacity not outlined in the Act
Nova Scotia	College of Occupational Therapists of Nova Scotia (2014) Practice Guideline: Informed Consent (LINK)	<ul style="list-style-type: none"> Practice Guideline: Informed Consent The purpose of this document is to act as a guideline to help occupational therapists use best practice to obtain and document informed consent. Information on determining capacity to give consent is on p. 3
	College of Physicians and Surgeons of Nova Scotia (2017) Professional standard and guidelines regarding informed patient consent to treatment (LINK)	<ul style="list-style-type: none"> Professional standard and guidelines regarding informed patient consent to treatment This document is a physician standard and guidelines approved by the Council of the College of Physicians and Surgeons of Nova Scotia. A standard reflects the minimum professional and ethical behaviour, conduct or practice expected by the College of Physicians and Surgeons of Nova Scotia. Physicians licensed with the College are required to be familiar with the College standards. Guidelines contain recommendations endorsed by the College of Physicians and Surgeons of Nova Scotia. The College encourages its members to be familiar with and follow its guidelines whenever possible and appropriate. Note that guidelines may contain references to College standards.
	Province of Nova Scotia (2016) Nova Scotia Hospitals Act (LINK)	<ul style="list-style-type: none"> This is the Nova Scotia Hospitals Act, chapter 208 of the revised statutes. There is a section titled “Factors in determining capacity or competence” on p. 6
Ontario	Scott (2008) Toolkit for Primary Care: Capacity Assessment, Regional Geriatrics Program, Geriatric Interprofessional Interorganizational Collaboration, St. Joseph’s Healthcare (LINK)	<ul style="list-style-type: none"> This educational resource kit has been prepared for the Ontario primary care sector (Family Health Teams and Community Health Centres) to use as a learning tool for understanding capacity and capacity assessments in older adults. It can be used as a self-directed learning package, as well as, a resource tool for the interprofessional primary care health team. This toolkit includes information on capacity and capacity assessment, decision aids/tools that can be used during the process of assessing capacity, a knowledge test and case studies.
PEI	Government of Prince Edward Island (2016) Adult Protection Act (LINK)	<ul style="list-style-type: none"> This document, prepared by the Legislative Counsel Office, is an office consolidation of this Act, current to December 15, 2016. It is intended for information and reference purposes only. This document is not the official version of the Act. The Act and the amendments as printed under the authority of the Queen’s Printer for the province should be consulted to determine the authoritative statement of the law. P.8 has a reference to capacity assessment under - Court order re investigation <ul style="list-style-type: none"> (2) On hearing an application made under subsection (1), the court may make any order the court considers necessary for the purposes of the investigation, including an order

Jurisdiction	Source (LINK)	Brief Description
		<ul style="list-style-type: none"> ■ (a) allowing the Minister access to the adult and entry to a premises to facilitate that access; ■ (b) requiring the adult to participate in a capacity assessment;.....
	Government of Prince Edward Island (2019) Consent to Treatment and Healthcare Directives Act (LINK)	<ul style="list-style-type: none"> ● This document, prepared by the Legislative Counsel Office, is an office consolidation of this Act, current to November 28, 2019. It is intended for information and reference purposes only. ● Has a section on capacity that says “In determining a patient’s capacity with respect to treatment, a health practitioner shall apply such criteria and follow such standards and procedures as may be prescribed. 1996,c.10,s.10”
Saskatchewan	College of Physicians and Surgeons (2017) POLICY - Informed Consent and Determining Capacity to Consent (LINK)	<p>This policy is intended to</p> <ol style="list-style-type: none"> 1. inform physicians of the requirements to obtain informed consent from patients; 2. guide physicians in Saskatchewan when determining if their patients have capacity to consent to treatment; 3. guide physicians in addressing situations where patients do not have capacity to consent to treatment; and, 4. facilitate communication between physicians, patients and their families relating to medical treatment. <ul style="list-style-type: none"> ● Policy includes four basic steps for assessing capacity to consent to treatment
Yukon	N/A	All relevant resources included in Appendix A table.

International Jurisdictions: Resources Not Included in Main Report Summary Tables or Appendix Tables

Jurisdiction	Source (LINK)	Brief Description
Australia	Australia Capital Territory Government (2020) ACT Capacity Toolkit: A Guide for Assessing Capacity (LINK)	<ul style="list-style-type: none"> ● This document has been prepared by Legal Aid ACT for general information purposes ● This Toolkit is for you if you have concerns about the ability of an adult to make decisions for themselves. You may need to assess, or seek an assessment of, a person’s capacity in your personal or professional life ● This Toolkit applies only to the civil (non-criminal) areas of law. It does not relate to an assessment of a person’s capacity under criminal law
	Australia Capital Territory Government (2020) A Practical	<ul style="list-style-type: none"> ● This publication provides general information of an introductory nature for solicitors regarding the assessment of whether a client has the capacity to give instructions or make legal decisions. It is a general

Jurisdiction	Source (LINK)	Brief Description
	Guide for Legal Practitioners (LINK)	guide only and is not exhaustive of issues which may be encountered. <ul style="list-style-type: none"> This guide provides the ACT legal profession with a framework to assess whether a client has capacity to give instructions and outlines the steps that should be adopted when a client’s capacity is in doubt. It also sets out in greater detail the relevant legal tests for capacity (such as making a will or power of attorney, giving instructions to a solicitor, or managing one’s affairs generally). Finally, it includes several pro forma resources that practitioners can use and adapt.
	Capacity Australia, (various years) Mini-legal kit Series (LINK)	<ul style="list-style-type: none"> ‘Capacity Mini-legal Kits’ have been developed by Capacity Australia for use by healthcare professionals (Psychiatrists, Geriatricians, General Practitioners, Psychologists, Nurses and others) in assessing decision-making capacity. The Kits are B4, 8 page, coloured brochures with essential information on capacity fundamentals. They present the formal legal test for capacity in each decision-making domain in an easy to follow, but comprehensive manner. While the Kits focus on dementia, they are also applicable to other impairments or disabilities which may affect a person’s decision-making capacity. See New South Wales Snapshot report summary table entry in main report Also have kits specified for other regions of Australia including Queensland, South Australia, Tasmania, Victoria; Western Australia; and A guide for Healthcare Professionals in the Hong Kong Special Administrative Region (HKSAR)
	Tasmanian Government PPT (2021) Decision-Making Capacity for Clinicians: Tasmania’s Mental Health Act (LINK)	<ul style="list-style-type: none"> PowerPoint Presentation with information on What is capacity? • Why is capacity important? • Key features of capacity • When should capacity be assessed? Includes tips for assessing decision-making capacity
	Chief Psychiatrist of Western Australia (2014) Capacity and the Mental Health Act 2014 - A Presentation for Authorised Mental Health Practitioner’s Clinical Facilitation Support and Education Team (CFSET) (LINK)	<ul style="list-style-type: none"> This presentation is about capacity with regard to consenting for treatment under the Mental Health Act 2014 Considers <ul style="list-style-type: none"> What is capacity and why is it important Key features of capacity Capacity and the Mental Health Act Tips for assessing capacity Documentation
New Zealand	N/A	<ul style="list-style-type: none"> All relevant resources included in Appendix A table.

Jurisdiction	Source (LINK)	Brief Description
<p>United Kingdom (England and Wales)</p>	<p>British Medical Association (2016) Mental Capacity Act Toolkit (LINK)</p>	<ul style="list-style-type: none"> • The Mental Capacity Act 2005 provides a legal framework in England and Wales for decision making on behalf of people aged 16 or over who cannot make decisions themselves. It also sets out the law for people who wish to make preparations for a time in the future when they may lack capacity to make decisions. • The purpose of this tool kit is to act as a prompt to doctors when they are providing care and treatment for people who lack, or who may lack, the mental capacity to make decisions on their own behalf. In our view, this is likely to be the majority of doctors. The tool kit consists of a series of cards relating to specific areas of the Act, such as how to assess capacity, the Act’s basic principles, advance refusals of treatment, research and Lasting Powers of Attorney (LPAs). Although each of the cards refers to separate areas of the Act, there is inevitably a degree of overlap. • This tool kit is not intended to provide definitive guidance on all the issues surrounding the Mental Capacity Act. Card 1 lists alternative sources of guidance that should be used in conjunction with the cards. In cases of doubt, legal advice should be sought. The tool kit is designed to raise doctors’ awareness of the Act, and to provide an aid for good decision making.
	<p>National Health Service (2015) Mental Capacity Assessment Tool Guidance (LINK)</p>	<ul style="list-style-type: none"> • This guidance has been produced to help support the use of the mental capacity assessment tool now available to Barnet, Enfield and Haringey GPs on EMIS and VISION IT systems. • For detailed information on the Mental Capacity Act 2005 (MCA) and Code of Practice (2007) please visit: http://www.legislation.gov.uk/ukpga/2005/9/contents and https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice • The legislation applies in England and Wales to all those who work in health and social care, and is involved in the care of a person over the age of 16 who may lack the capacity to make a decision about their treatment and care.
	<p>National Institute for Health and Care Excellence (2018) Decision Making and Mental Capacity NICE Guideline, UK (LINK)</p>	<ul style="list-style-type: none"> • This guideline covers decision-making in people 16 years and over who may lack capacity now or in the future. It aims to help health and social care practitioners support people to make their own decisions where they have the capacity to do so. It also helps practitioners to keep people who lack capacity at the centre of the decision-making process. • This guideline should be read in conjunction with the Mental Capacity Act 2005. It is not a substitute for the law or relevant Codes of Practice. <ul style="list-style-type: none"> • The guideline focuses on the following key areas: <ul style="list-style-type: none"> ○ Advance care planning ○ Supporting decision-making Decision-making and mental capacity ○ Assessment of mental capacity to make specific decisions at a particular time • Best interests decision-making for individuals who are assessed as lacking capacity to make a particular decision at a particular time

Jurisdiction	Source (LINK)	Brief Description
	Scottish Government (2010) Adults with incapacity: code of practice for medical practitioners (LINK)	<ul style="list-style-type: none"> ● Adults with incapacity: code of practice for medical practitioners <ul style="list-style-type: none"> ○ Guidance for health practitioners authorised to carry out medical treatment or research under the Adults with Incapacity Act.

Appendix C:

Supplementary Reference List

Below we provide a list a Guidance Documents and Research Articles on Decision-Making Capacity Assessments that we compiled during the course of gathering information for this report. These references fell outside the inclusion criteria for the Snapshot format but provide additional knowledge and support about decision-making capacity assessments from general guidance documents and research articles published from 2016-2021. For more details on these articles please see the Online Companion Document linked on our website here:

<https://www.nlcahr.mun.ca/CHRSP/CapacityAssessOCD2022.pdf>

The references included below explore several themes:

- They describe processes used to assess decision-making capacity;
- They provide recommendations on how to carry out and/or improve assessment of decision-making capacity; and
- They report on barriers and facilitators of recommended capacity assessment processes, among other outcomes.

The references are organized alphabetically by article type and are divided into two main sections:

1. **Guidance Articles** - These include references that provide clinical guidance or guidance from experts in the field about aspects of decision-making capacity assessments; and
2. **Research Articles** – These include research studies with particular methodologies and are subdivided into the following article types:
 - Scoping Reviews,
 - Systematic Reviews,
 - General Reviews and
 - Primary Research Studies.

Guidance Articles on Decision-Making Capacity Assessment

- Barstow C, Shahan B, Roberts M. **Evaluating Medical Decision-Making Capacity in Practice**. Am Fam Physician. 2018 Jul 1; 98(1):40–6. ([LINK](#))
- Bourgeois J, Tiamson-Kassab M, Sheehan K, Robinson D, Zein M. **Resource Document on Decisional Capacity Determinations in Consultation-Liaison Psychiatry: A Guide for the General Psychiatrist** [Internet]. American Psychiatric Association; 2019. ([LINK](#))

- Ehrman SE, Norton KP, Karol DE, Weaver MS, Lockwood B, Latimer A, et al. **Top Ten Tips Palliative Care Clinicians Should Know About Medical Decision-Making Capacity Assessment.** J Palliat Med. 2021 Apr 1; 24(4):599–604. ([LINK](#))
- Stuart RB, Thielke S. **Protocol for the Assessment of Patient Capacity to Make End-of-Life Treatment Decisions.** J Am Med Dir Assoc. 2018 Feb 1; 19(2):106–9. ([LINK](#))
- Wong SP, Sharda N, Zietlow KE, Heflin MT. **Planning for a Safe Discharge: More Than a Capacity Evaluation.** J Am Geriatr Soc. 2020 Apr; 68(4):859–66. ([LINK](#))

Research Articles on Decision-Making Capacity Assessment

Scoping Reviews

- Charles L, Parmar J, Brémault-Phillips S, Dobbs B, Sacrey L, Sluggett B. **Physician education on decision-making capacity assessment: Current state and future directions.** Can Fam Physician Med Fam Can. 2017 Jan; 63(1):e21–30. ([LINK](#))
- Usher R, Stapleton T. **Assessment of older adults' decision-making capacity in relation to independent living: A scoping review.** Health Soc Care Community. 2021 [Internet]. [cited 2021 Nov 18];n/a(n/a). ([LINK](#))

Systematic Review Articles

- Gasparini M, Moro V, Amato S, Vanacore N, Gambina G. **The evaluation of capacity in dementia: ethical constraints and best practice. A systematic review.** Ann Ist Super Sanita. 2021 Sep; 57(3):212–25. ([LINK](#))

Review Articles

- Kan JYL. **Rethinking the Assessment of Decision-Making Capacity and Making Treatment-Related Decisions.** J Clin Ethics. 2020; 31(1):60–7. ([LINK](#))
- Palmer BW, Harmell AL. **Assessment of Healthcare Decision-making Capacity.** Arch Clin Neuropsychol. 2016 Sep; 31(6):530–40. ([LINK](#))
- Wade DT. **Determining whether someone has mental capacity to make a decision: clinical guidance based on a review of the evidence.** Clin Rehabil. 2019 Oct 1; 33(10):1561–70. ([LINK](#))

Primary Articles

- Brémault-Phillips SC, Parmar J, Friesen S, Rogers LG, Pike A, Sluggett B. **An Evaluation of the Decision-Making Capacity Assessment Model.** Can Geriatr J. 2016 Sep 30; 19(3):83–96. ([LINK](#))
- Cairncross M, Peterson A, Lazosky A, Gofton T, Weijer C. **Assessing Decision-Making Capacity in Patients with Communication Impairments: A Case Study.** Camb Q Healthc Ethics. 2016 Oct; 25(4):691–9. ([LINK](#))
- Charles L, Torti JM, Brémault-Phillips S, Dobbs B, Tian PG, Khera S, et al. **Developing a Decision-Making Capacity Assessment Clinical Pathway for Use in Primary Care: a Qualitative Exploratory Case Study.** Can Geriatr J. 2021 Feb 18; 24(1):26–35. ([LINK](#))

- Jayes M, Palmer R, Enderby P. **An exploration of mental capacity assessment within acute hospital and intermediate care settings in England: a focus group study.** Disabil Rehabil. 2017 Oct 9; 39(21):2148–57. ([LINK](#))
- John S, Schmidt D, Rowley J. **Decision-making capacity assessment for confused patients in a regional hospital: A before and after study.** Aust J Rural Health. 2020 Apr; 28(2):132–40. ([LINK](#))
- Jones S, Gill P, Kenkre J. **Nurse managed patient focused assessment and care: A grounded theory of qualified nurses in acute and critical care settings assessing the mental capacity of adult patients.** J Clin Nurs. 2020; 29(7–8):1254–66. ([LINK](#))
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