

2016 ONPHA Conference and Trade Show

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Expect the unexpected: Working with tenants and their families

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Expect the unexpected: the legal framework



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Legislative overview

- *Residential Tenancies Act*
<https://www.ontario.ca/laws/statute/06r17#BK46>
- *Health Care Consent Act*
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm
- *Substitute Decisions Act*
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_92s30_e.htm
- *Personal Information Protection and Electronic Documents Act (PIPEDA)*
<http://laws-lois.justice.gc.ca/eng/acts/p-8.6/>
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
<https://www.ontario.ca/laws/statute/90m56>



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Crisis mode

- Capacity issues, death of a tenant, mental health crisis.....
- Housing Providers often find themselves “stuck” in the middle
- Want to support tenants, but don't want to take on additional responsibilities or liabilities
- Difficult decisions need to be made on tight timelines
- Want to make sure those decisions are legally sound



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Privacy

- Who can the Housing Provider talk to? What should Housing Providers do with information they collect?
- *Personal Information Protection and Electronic Documents Act (PIPEDA)* likely applies
 - Personal information = any information that *is capable* of identifying an individual
 - Includes “information concerning the physical or mental health of the individual”
 - Obligation to protect the personal information of tenants
 - Knowledge and consent of individual usually required for disclosure
 - May disclose in circumstances where life, health or security of individual is threatened OR where required to by law
- Other laws may apply



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Checklist for disclosing personal information

- Get consent
 - Where possible, obtain consent from the tenant directly
- If getting consent is not possible
 - Consult your organization's privacy policy
 - Be responsive
 - Minimize the disclosure
 - Document the disclosure
 - Notify the individual



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Human Rights

- Remember your obligations under *Human Rights Code*
 - Prohibits discrimination on basis of age, disability, family status etc.
 - Must accommodate up to point of *undue hardship* when known or ought to have known
 - Accommodation has to be reasonable, DOES NOT have to be perfect
 - DOES NOT MEAN housing providers = care providers
 - DOES MEAN housing providers must carefully consider health and safety of tenants and cost of accommodations requested



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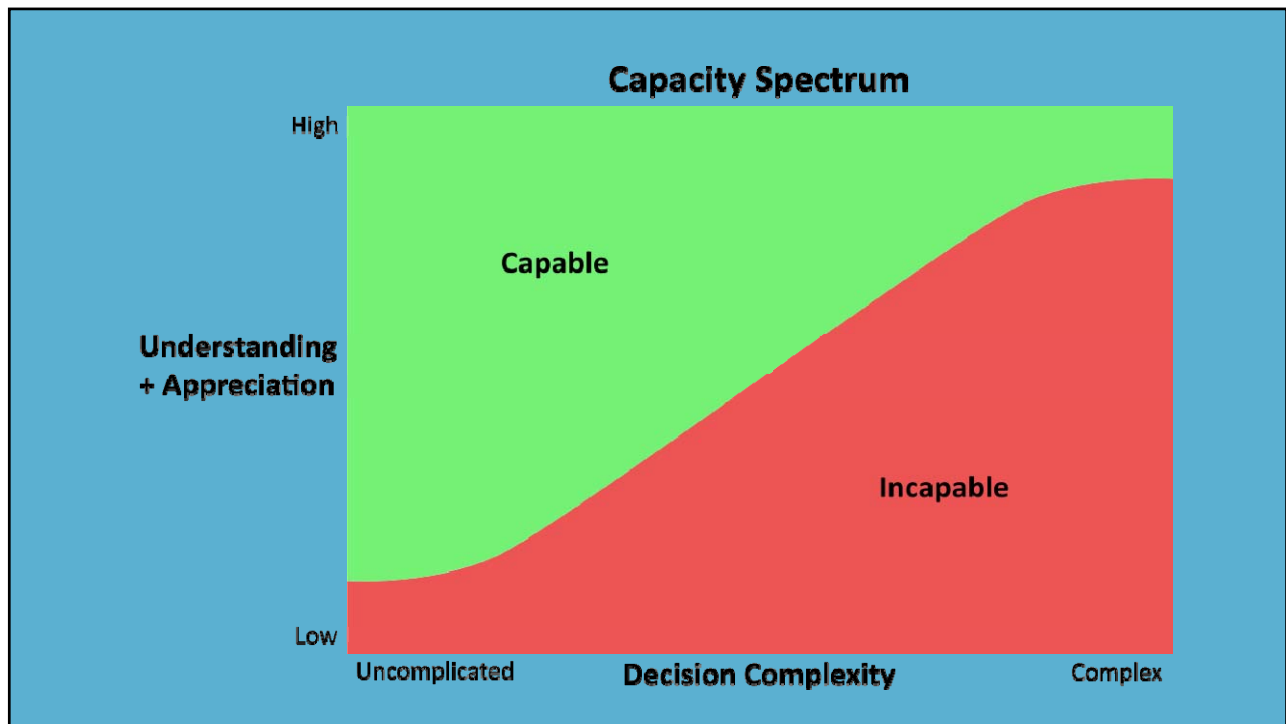
Capacity

- 'Capacity' - legal term and refers to ability of a person to understand and appreciate consequences of their decisions.
- broken down into two general decision-making categories: property and personal care
- **every adult** has capacity to make decisions about their property and personal care
- On a spectrum

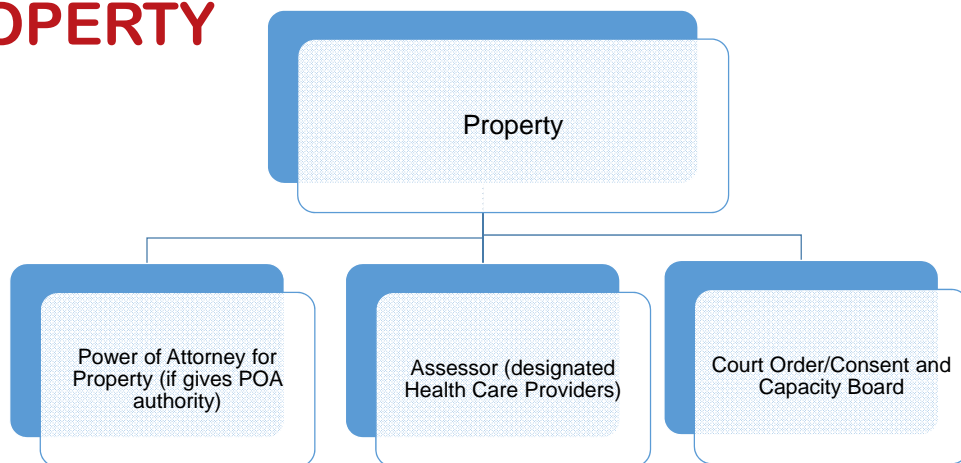


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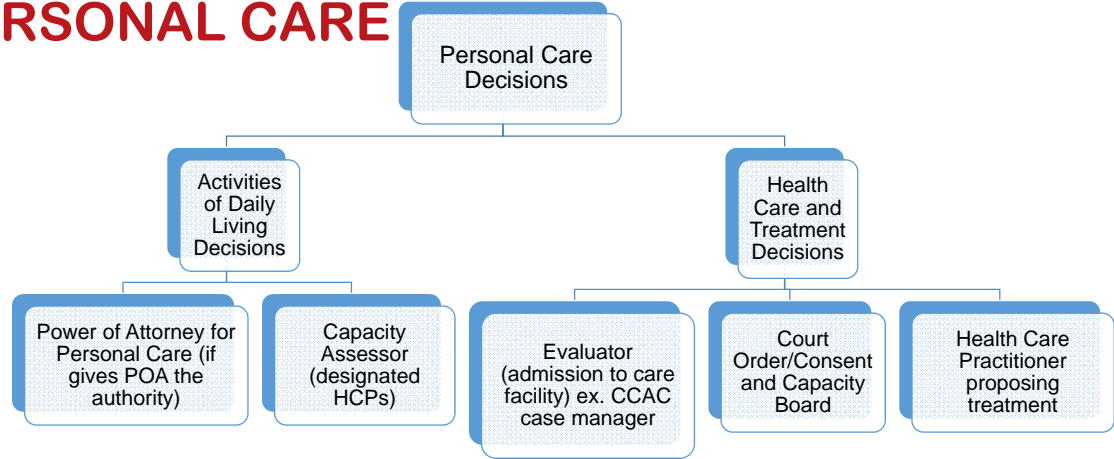
Who Determines Incapacity? PROPERTY



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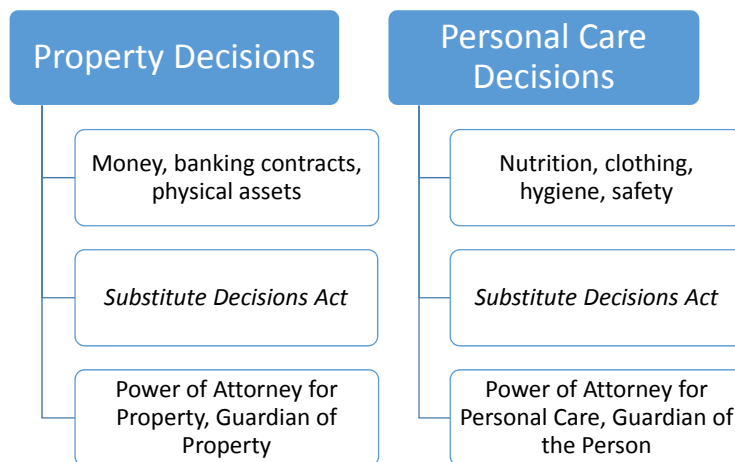
Who Determines Incapacity? PERSONAL CARE



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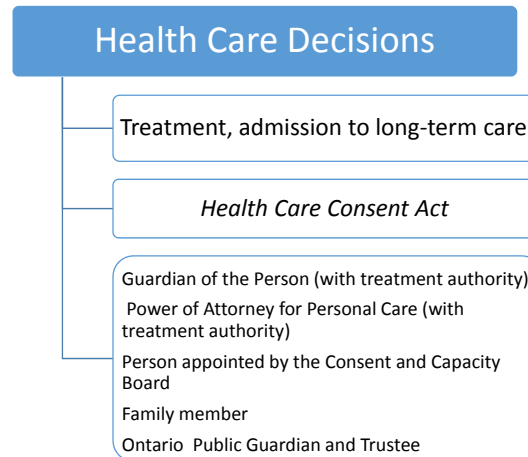
Possible Substitute Decision Makers



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Possible Substitute Decision Makers



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Considerations for Substitute Decision Makers

- Must make decision in best interests of incapable person
 - Includes wishes of incapable person
- Must choose least intrusive option



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Disposing of Property

- Death or abandonment of unit
- What to do with property left in the unit? Who can access the unit?
 - Death - sections 91 and 92 of *Residential Tenancies Act*
 - Abandonment – sections 41 and 42 of *Residential Tenancies Act*
 - Access – next-of-kin – obtain declaration and indemnity if possible
 - Pets



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Domestic Violence

- How might the Housing Provider become involved?
 - Complaints from neighbours
 - Peace bonds or bail conditions limiting contact
 - Request to terminate tenancy early
- Recent amendment to *Residential Tenancies Act* allow tenants experiencing domestic violence to end tenancy on 28 days notice
- Strict confidentiality requirements on Housing Providers under the new amendments regarding reported violence



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Case Study 1

- CD is a 27 year old woman with mental health challenges and also involved with criminal justice system. She lives independently in a one bedroom unit in a multi-residential complex.
- CD was not coping well. Her mental health deteriorated very rapidly and became very demanding and intimidating.
- Building had a child daycare centre and CD continuously interfered with children and staff. CD felt that these children were part of her extended family and insisted that they play with her



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What happens now?

- Who would you call?
 - reassess CD's needs, involving CD through the process supports (community partners)
 - make realistic referrals, physicians, mobile crisis team, family (if appropriate)
- Is there a consent issue?
 - Focus on issues, behaviour
 - Limit what is shared and with whom
 - Consent should be discussed with tenant before crisis occurs
- Is there duty to accommodate?
 - we would look at a duty to accommodate
 - Work with landlord to explore options to accommodate
 - Focus to keeping her and other tenants safe in building



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The outcome

- Reassessed needs, developed 24/7 on-call for landlord
- Provided crisis numbers for CD
- Worked with other community agencies to develop individualized care plan
- Alternate resolution:
 - Eviction prevention
 - Consider relocating tenant
 - Reassess location and housing model



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Case Study 2

- GS is an 80 year old woman diagnosed with Post Polio
 - Market rent tenant, living independently in one-bedroom accessible unit fitted with overhead lifts, roll in shower, etc.
 - Has 24 hour Attendant Care Program since 1995
 - Lease with housing provider and service agreement with support agency
 - Housing staff do not provide personal support or care needs
- The building is fully integrated
 - seniors, young families, and persons with disabilities living in the building
- Estranged from her family except for niece who tries to help
- GS becomes increasingly hostile with care staff, other tenants and children
 - Refuses to go to Long-Term-Care despite recommendation from physician
 - As pain levels increase she is heard screaming and complaints are received
- GS becomes bedridden and passes away with staff by her side



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What happens now?

- Who do you call when tenant is palliative?
 - CCAC to ensure services are in place
- Do you require consent?
 - Not applicable in this case
 - Medical professionals, CCAC and family already involved
- Do you have duty to accommodate her wishes?
 - Explore accommodations with family/POA



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What happens now?

- How do you verify Power of Attorney (POA) and next of kin/executor?
 - Copies of legal documents
 - Emergency contact
 - Affidavit, identification
- What are your responsibilities after tenant dies?
 - Support Services provider
 - If palliative care team in place, call them
 - Assist family, as best as possible
 - ensure access by support staff is removed
 - Landlord
 - If no care team, call 911
 - Tenancy continues for 30 days after death, work with family/executor
 - Secure unit, change locks
 - Review legal documents prior to giving next of kin/executor access to unit



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The outcome

- GS deemed palliative
 - Power of Attorney (family member) worked with palliative care nurse to keep her comfortable and minimize her pain
 - North East Community Care Access Centre (CCAC), family member, family physician and 24 hour support staff monitored her medical and personal care needs
 - Documentation provided for POA/executor to act as substitute decision maker and to take possession of unit
- All community agencies were called in to help with her care plan based on her wishes
- Housing and support services working together made it easier to ensure community partners were involved



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Case Study 3

- Alex and Javier are in a relationship and have signed a 1-year lease together
- Neighbours have complained of fighting coming from their unit
- Police have visited on several occasions
- Javier is hospitalized after recent violent incident
- Javier gets restraining order against Alex
- Javier's mother asks housing provider to notify her and police if Alex returns
- Javier and Alex are witnessed coming and going from unit together
- Javier has made confidential request (LTB Form N15) to housing provider to vacate unit



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What happens now?

- Who would you call? Police? Javier's mother?
 - Confidential consultation with Javier – disclosure of information provided by his mother
 - Absent specific instruction from Javier, restraining order is for Javier to enforce (or not)
 - Exception - imminent and serious risk to the health and safety of Javier – Housing Provider to proceed very cautiously – take cues from Javier
- How do you respond to Javier's request?
 - Landlord must allow Javier out of the lease on 28 days notice with a completed LTB Form N15 and a copy of restraining order (within last 90 days) or statement that he fears for his safety
 - Housing provider could consider even shorter notice
 - Communication with Javier must remain confidential from Alex – work out a confidential communication plan with Javier
- How do you respond to complaints from neighbours?
 - Assure tenants that issue is being addressed
 - Maintain strict confidentiality
- Does any action need to be taken against Alex?
 - Possible grounds to evict include substantial interference with reasonable enjoyment or illegal act
 - Amendments do not allow disclosure of notice without the consent of Javier for safety reasons – cannot use the notice against the remaining tenant without permission – likely difficult to enforce



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The outcome

- Javier creates “vacancy plan” with housing provider – vacates while Alex is at work - housing provider ensures elevators are available
- Alex remains – Housing Provider *may* disclose the fact that notice was given by Javier after vacancy and that Javier is no longer subject to any lease agreement with the HP
- Under RTA, Alex retains the benefit of any rent deposit
- Alex gives 60 days’ notice in accordance with RTA



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Tips on Best Practices

- Build community
- Check your assumptions
- Individualize
- Know who can make decisions on behalf of a tenant
- Encourage tenants to consider advance care planning
- Get emergency contact info when tenants move in
- Implement (if not already) Accommodation Policy
- Document, document, document
- Know your limits!



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Preparing for the unexpected

- Best practices
 - Housing provider/landlord must be included in care planning
 - Have clear expectations of roles and responsibility between service provider and tenant
 - Have service agreements, policies and procedures that include how to deal with the unexpected
 - Tenancy agreements should include clauses on death of tenant, disposing of property



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Resources

- Handouts available to conference delegates
 - Online after conference
- Advocacy Centre for the Elderly (ACE)
<http://www.advocacycentreelderly.org/>
- Advance Care Planning
<http://yourlegalrights.on.ca/webinar/Advance-Care-Planning>
- Powers of Attorney
<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/incapacity/poa.php>



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Resources (cont'd)

- Available for ONPHA Members:
 - ONPHA's Linking Vulnerable Tenants to Support Services: A Housing Provider's Guide to Privacy
 - Info ON – Death of Tenant
 - Info ON – Aging Tenants with Diminished Capacity



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How can ONPHA help you?

- 1. Visit ONPHA online:**
onpha.on.ca
 - handbooks and guides
 - sample policies
 - Info Ons
- 2. ONPHA Member Support Hotline:** 1-800-297-6660
- 3. ONPHA Education Program**
 - Online courses: RGI, RTA, Finance and Governance
 - Webinars
 - In-person training
- 4. ONPHA Conference**
 - Join us in 2017 in Niagara Falls, November 3 - 5



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Thank you!

ONPHA values your opinion. Please complete a workshop evaluation.