



Aging Without Violence
is sponsored by OAITH
and funded by the
Government of Ontario



WORD TO THE WISE

Knowledge of capacity, violence and risk is vital in supporting older women

ISSUE 6 - JANUARY 2019

For more
information, visit
www.oaith.ca

What is important to know about capacity issues when working with older women experiencing violence?

Understanding capacity laws and utilizing capacity-related resources and supports may be useful if an older woman you are working with has capacity issues, is experiencing abuse from a caregiver or from her Power of Attorney or is caring for an abusive spouse/family member.

In Ontario, matters related to mental capacity are governed by the **Substitute Decisions Act**, the **Health Care Consent Act**, and the **Mental Health Act**.

Threats to try to have an older woman's rights taken away by means of capacity assessment or misuse of Power of Attorney may be used by an abusive partner or family member as a tactic of power and control. Providing information about her rights, offering support during appointments, and connecting her with a resource to provide more information (such as the **Seniors Safety Line** 1-866-299-1011) can help increase her safety and provide choices.

Under the Ontario Human Rights Code, "before determining that a person lacks capacity, an organization, assessment body, evaluator, etc. has the duty to explore accommodation options to the point of undue hardship."¹

Never assume capacity issues or ability limitations due to age. If you are unsure if an older woman is capable, presume capacity and work with her to get a Capacity Assessment through **the Capacity Assessment Office (CAO)**: CAO@ontario.ca 1-866-521-1033

If an older woman is deemed incapable by a capacity assessor, work with the older woman and her **Power of Attorney (POA)** or substitute decision maker to access services and support.

If the POA or substitute decision maker is abusive, call the Office of the Public Guardian of Trustees (OPGT): Toll Free: 1-800-518-7901 TTY: 1-877-425-0575

If the older woman is capable of making decisions she will choose if she wants to report to police, however if she is living in long term care or a retirement home the service provider is obligated to report abuse.

If an older woman has been assessed and disagrees with the incapacity finding, a review can be requested from the **consent and capacity board**: ccb@ontario.ca Toll free: 1-866-777-7391 TTY: 1-877-301-0889

Capacity & intimate relationships

In Ontario, decisions related to marriage, separation and divorce only require a low level of capacity on the "competency hierarchy". One Ontario Court of Appeal case found a woman in the early stages of Alzheimer's disease had the capacity to decide to leave her husband, although she had been deemed as lacking the capacity to understand financial and legal issues and instruct council.²

Capacity & sexual consent

When a person with cognitive impairments is deemed incapable, this does not mean they are mentally incapable for all purposes at all times. The assessment of sexual consent capacity is complex, and distinct from other types of capacities due to the fluidity of intimate relationships, barriers to usage of substitute decision-makers or guardians, and lack of assessment and diagnosis strategies.^{3,4}

¹ Ontario Human Rights Commission, "Consent and Capacity" <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/16-consent-and-capacity>

² Ibid.

³ Steele, D. and Syme, M. (2016) "Sexual Consent Capacity Assessment with Older Adults." *Clinical Neuropsychology*, Volume 31, Issue 6.

⁴ For more information and legal considerations see Renshaw-Walker, B.(2012). "Assessing Capacity to Consent to Sexual Activity: Legal Considerations." *Journal of Ethics in Mental Health*. https://jemh.ca/issues/v7/documents/JEMH_Vol7AssessingCapacitytoConsenttoSexualActivity.pdf