

# Aging Tenants and Diminished Capacity

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TOOLS

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# Why Should You Care?

1. Housing Providers are grappling with aging tenant populations with increasing care needs
2. Some tenants plan for future care – Great!
3. Some tenants will not
4. What happens when tenants can't or won't make a decision when their needs have changed? Where does this leave the housing provider?

# An example from our practice

- Long-term tenant (let's call him Hector)
- Substantial physical and mental deterioration over a number of months
- Tenant falling in unit and unable to get up, having difficulty with toileting, difficulty getting in and out of bed
- Repeated calls to security for assistance with above
- Pleaded with staff not to call ambulance
- Tenant determined to stay in-unit and resistant to discussion about supports
- Concerns about mental capacity

# First Things First - Privacy

- Records of incidents likely go into tenant file
- *Personal Information Protection and Electronic Documents Act (PIPEDA)* likely applies
  - Personal health information 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

# 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

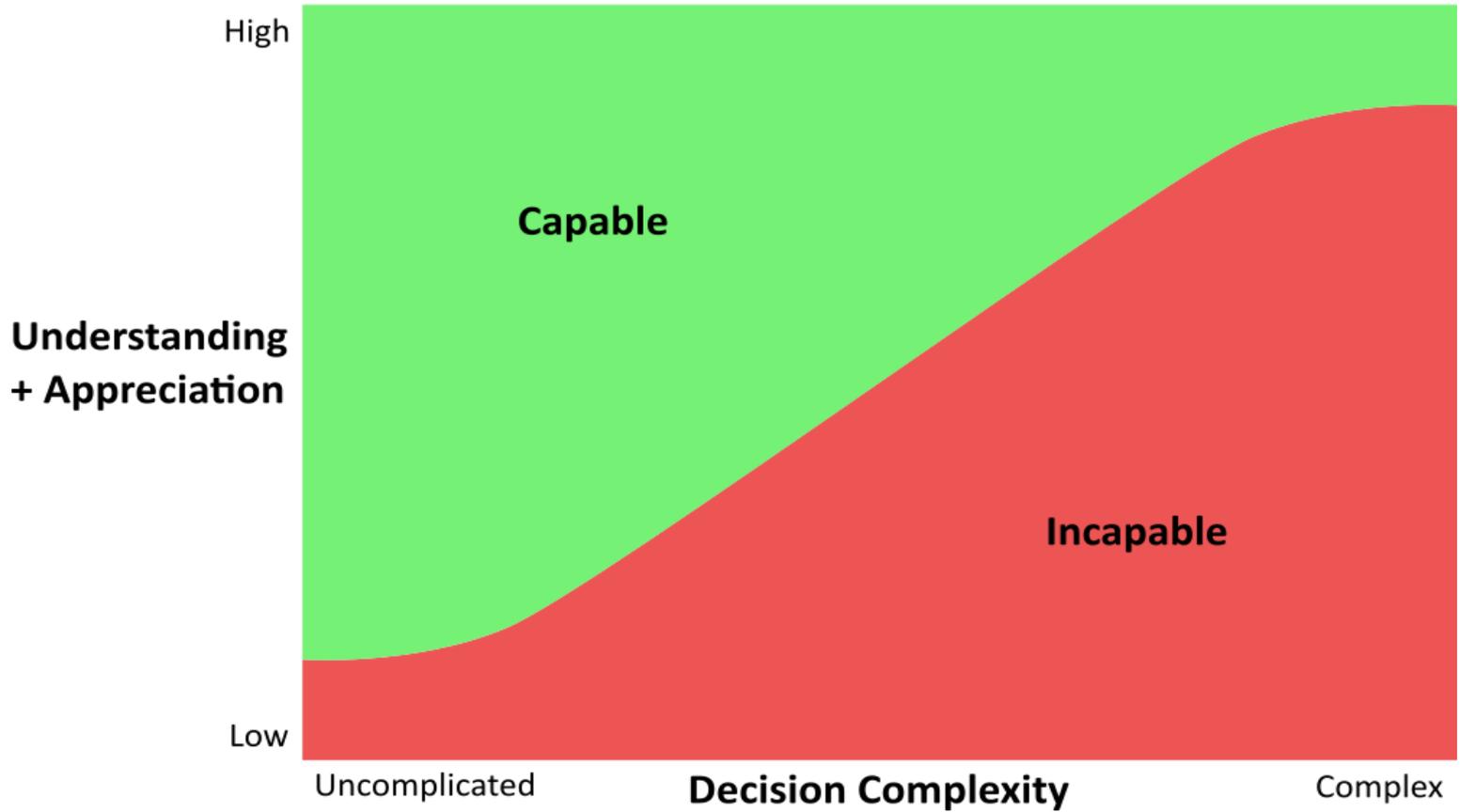
# First Things First – Human Rights

- Remember your obligations under the *Human Rights Code*
  - Prohibits discrimination on the basis of age and disability
  - Must accommodate up to the point of *undue hardship*
  - DOES NOT MEAN housing providers = long-term care provider
  - DOES MEAN housing providers must carefully consider health and safety of tenants and cost of accommodations requested

# What is 'Capacity'

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

# Capacity Spectrum



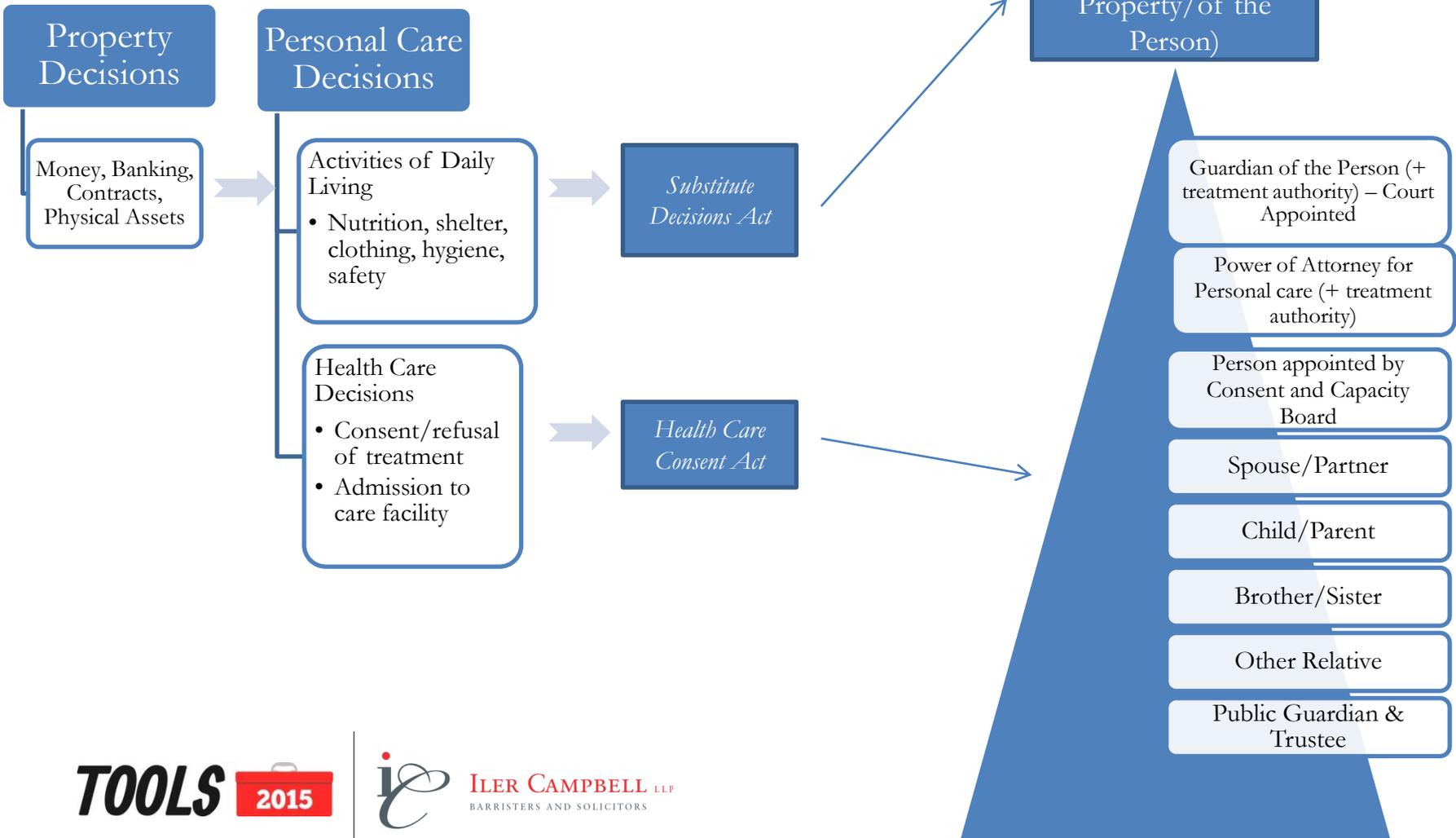
# Decision Making 101

1. Governed by *Health Care Consent Act, Substitute Decisions Act* and *Mental Health Act*
2. Two broad categories – Personal Care and Property
3. Autonomy is overriding principle
  - Right to make decisions for yourself, as long as you are **mentally capable** of making decision
  - everyone presumed to mentally capable of making decisions
4. Capacity is decision-specific
5. Mental Capacity (or lack of) determined in different ways, but NEVER by housing provider

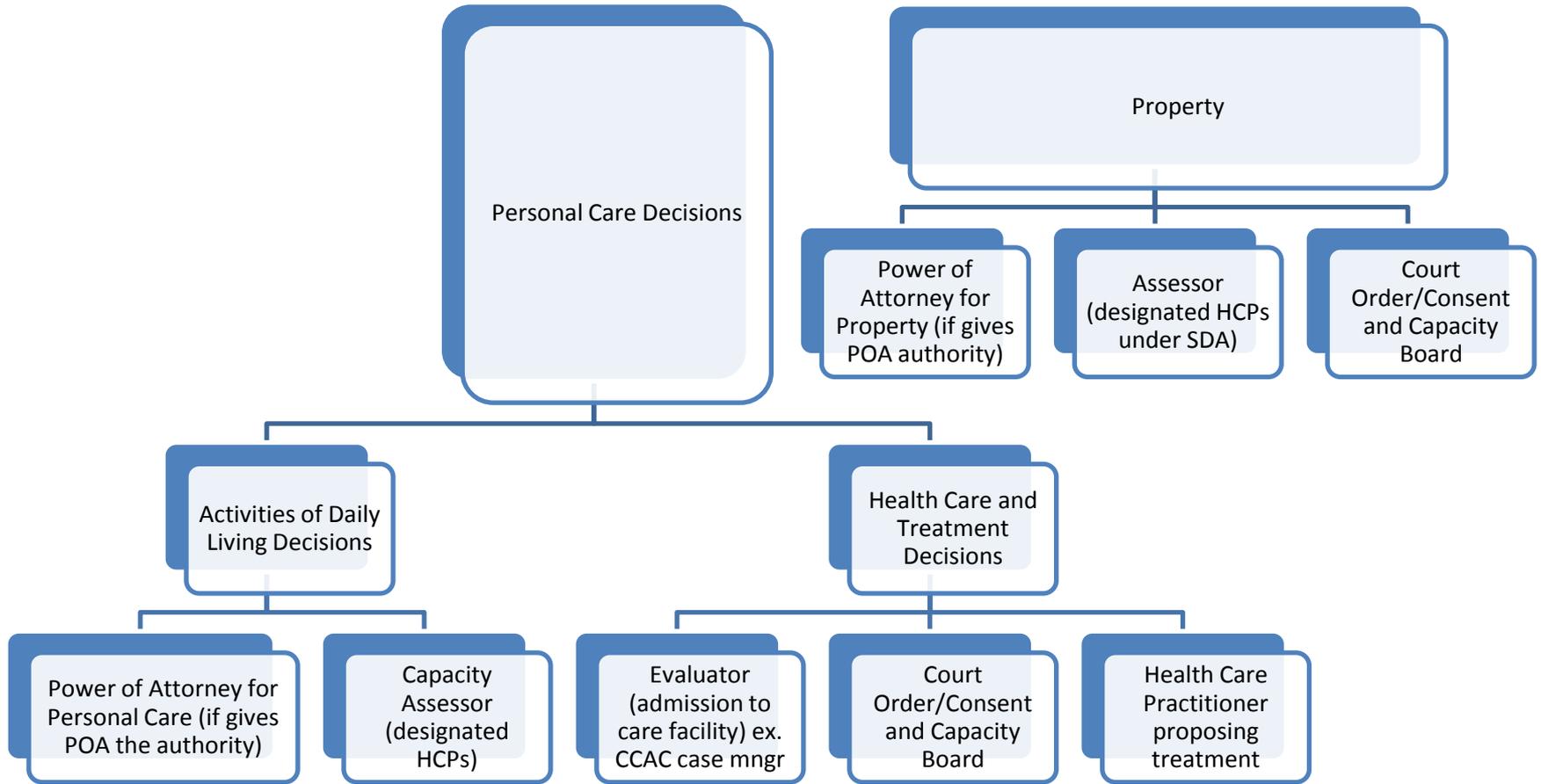
# Decision Types

# Legislation

# Possible Substitute Decision Makers



# Who Determines Incapacity?



# Power of Attorney

- Two types
  - Continuing Power of Attorney for Property
  - Power of Attorney for Personal Care (PAPC)
- POA – Property
  - Restricted to financial decisions
- PAPC
  - Decisions regarding health treatment, shelter, clothing, nutrition, hygiene and safety

# Health Care Decisions

- Health decisions include treatment decisions, admission to long-term care facilities, and personal assistance services
- Hierarchy of substitute decision makers means there is *always* someone that can make health care decision

# Hierarchy of Substitute Decision Makers

1. Power of Attorney for Personal Care
2. Guardian of the Person
3. Someone appointed by Consent and Capacity Board
4. Spouse
5. Child/Parent
6. Brother/Sister
7. Other Relative
8. Public Guardian and Trustee

# Considerations for Substitute Decision Makers

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

# BUT what if.....

- I don't know whether someone has been found to be incapable?
- The substitute decision maker doesn't think any action is necessary?
- The additional supports are inadequate?

# Last Resort

- Ontario Public Guardian and Trustee
- Community Care Access Centre
- Emergency Services

# Tips on Best Practices

- Employ preventative measures
- 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!

# Case Studies - #1

- Sanjiv is 86 years old and has been living in his unit for 12 years. He has been a model tenant and has always paid his rent by delivering a cheque to the office on or before the first of the month. Over the last 18 months, Sanjiv has made inconsistent payments and has fallen into arrears. Caroline, the property manager, discusses her concerns with Sanjiv. Over the course of the conversation, Sanjiv reveals to Caroline that he has been having trouble keeping track of the date and when rent is due.

# Case Studies - #2

- Erhard moved into his unit after the death of his wife. He lives alone and is noticeably frail. Other than for trips to the pub across the street, Erhard spends most of his time in his unit. Erhard is generally pleasant and always pays his rent on time and in full. Recently, Erhard has been spending time with a waitress from the pub. Erhard's daughter approaches the staff and expresses concern that her father's new friend might be a 'golddigger'. She explains that her mother only recently died and that she'd like the staff to notify her when her father's new friend visits

# Case Study - #3

- Alec and Meena, each 65 years old, have been married for 35 years and have no children. They have appointed each other as attorneys for property and personal care. Meena has early onset Alzheimer's Disease and her health has declined rapidly over the last year. Alec had been making decisions on Meena's behalf and acting as her primary care giver. Alec has a sudden heart attack. After Alec's death, Meena is left on her own with the occasional support of her niece, Hera. Hera's support is not enough. Meena has been found on several occasions wandering the halls in her pyjamas, has been aggressive with staff and other tenants when they have offered assistance and has had incidents of incontinence in common areas. It also appears that Meena is losing weight.

# Case Study - #4

- Elena is 91 and lives independently in her unit. She has had two stovetop fires, the most recent of which landed her in the hospital for smoke inhalation. On each occasion, Elena had forgotten to turn off the stove after cooking breakfast

Good luck!

It won't be easy, but you're not  
alone!



# Resources



- Advocacy Centre for the Elderly (ACE)  
<http://www.advocacycentreelderly.org/>
  - National Initiative for Care of the Elderly (NICE)  
<http://www.nicenet.ca/>
  - *Health Care Consent Act*  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_96h02\\_e.htm](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](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_92s30_e.htm)
- Advance Care Planning:  
<http://yourlegalrights.on.ca/webinar/Advance-Care-Planning>