

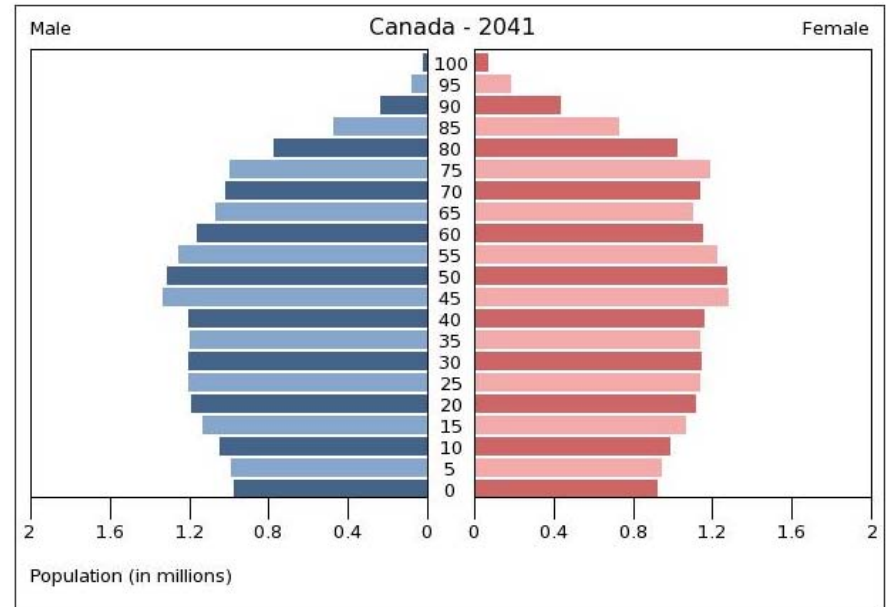
# **AGING AND THE LAW SERIES**

**What Every Professional Needs to Know**

# **ADVANCE CARE PLANNING *and* HEALTH CARE CONSENT**

*Faculty: Laura Watts, LL.B., National Director, CCEL*

# Orientation



Canadian  
Services are  
Not Prepared

**33 Million Pop**  
**1.8 Over 65**  
**Now**  
**1.4 By 2041**

# What is the single issue most commonly asked about?



## Advance Care Planning and Substitute Health Care Consent

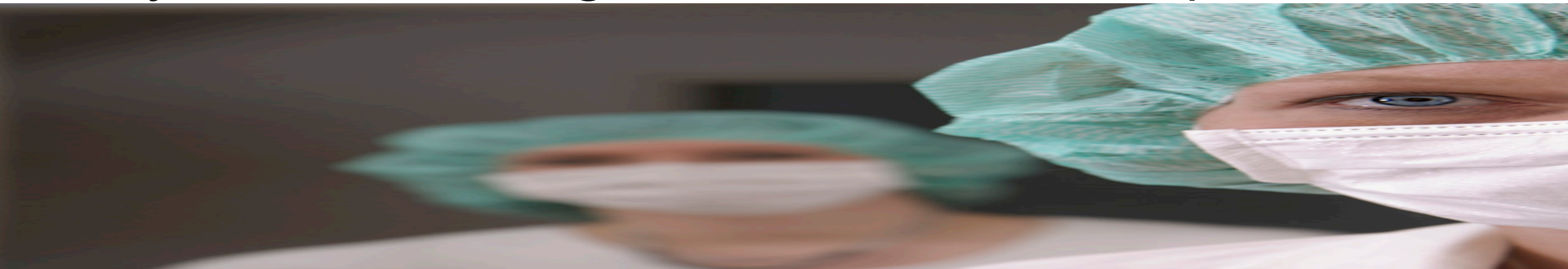
# Current approach in Canada

- Laws are provincial / territorial (not uniform)
- Percentage of people who plan - 34%
- Entirely voluntary to plan or not to plan

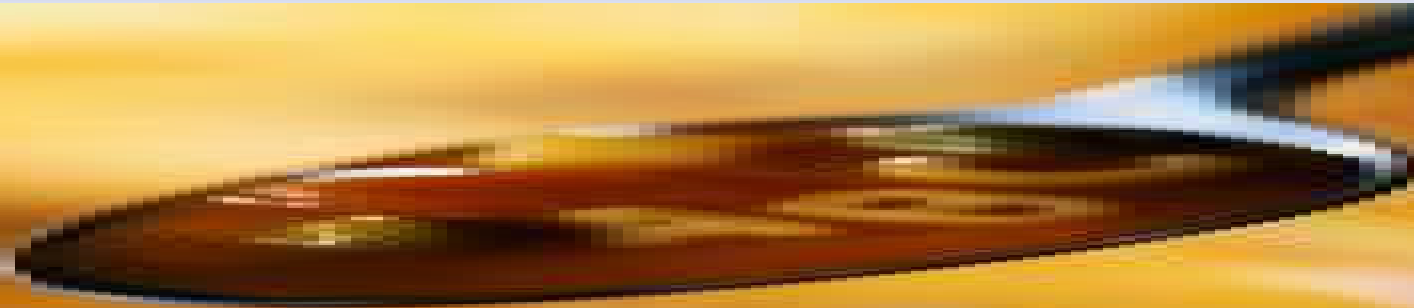


# Fears

- I'll be left on feeding tubes and ventilators forever...
- No one will decide what I want and I won't have a say...
- They won't resuscitate me because I'm old...
- They will never let me die naturally...
- My cultural and religious values won't be respected...



# Alphabet Soup



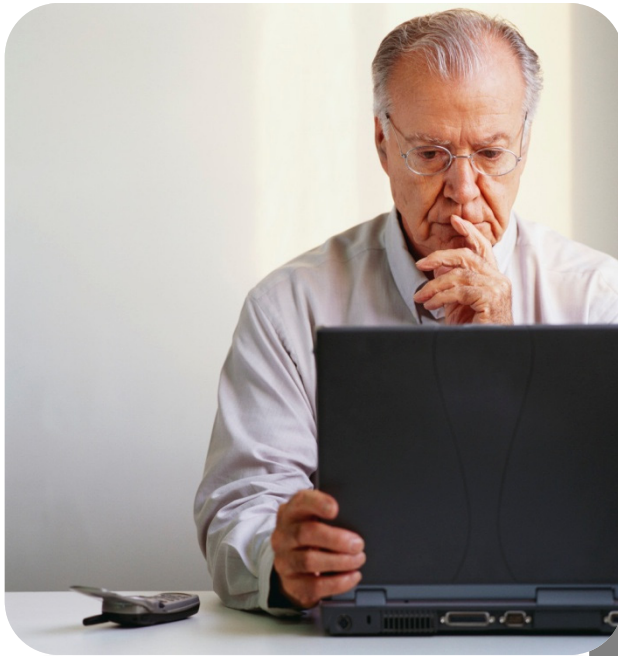
Advance directives?

Health care directives?

Living wills?

Advance care planning?

# What is Advance Care Planning Anyway?





# Planning For Future Decisions

**NEXUS OF  
CAPABILITY**

**OFTEN A "GREY"  
ZONE**

**CHANGING  
CAPABILITY**

<b>CAPABLE</b>	<b>INCAPABLE</b>
<b>You Decide</b>	Someone Else Decides (SDM)

# What is Advance Care Planning



- Describes care and treatment that a person wants in the future when he or she is no longer mentally capable for decision making about treatment.
- May focus on end of life care or also include wishes about care and treatment over course of life.
- May provide information on patients values and beliefs to guide SDM's decision-making when the patient is mentally incapable.

# "Mrs. Edna James"

- Married 40 years
- She is a devout Jehovah's Witness
- No blood transfusions; specific other restrictions
- Husband is Catholic
- Has best friend who was a social worker



# "Mrs. Sandra Smythe"

- Mother, 2 aunts and sister all died of breast cancer
- Specific ideas of what she did **\*not\*** want
- Wrote it down – advance directive
- Paper spread everywhere
- Changed her mind once she got pregnant
- "Plug" almost pulled – despite changing her mind



# "Mr. Sun Yi"

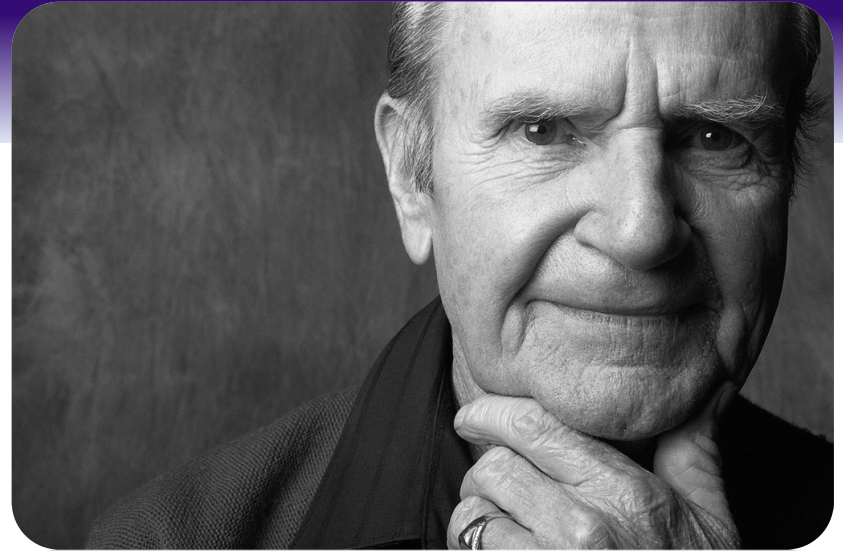
- Traditions very important to him
- Culturally – talk of death is upsetting and dishonorable
- Wants not to be told
- Wants children to decide





# "Mr. Jim Harris"

- Gay man in his 80's
- Never been "out"
- Partnered, quietly, with Bob
- Families do not know and doesn't want them to know
- Does not live with Bob but has long-term relationship
- Wants Bob to be the decision-maker



# Advance Care Planning Documents



- Vigorous debate re: who document “speaks to”
- Different in each Canadian jurisdiction
- Many advance health care planning documents are not valid in other jurisdictions
- Cultural aspects key

# Substitute Health Care Decisions



- Most Provinces have a ranking default list (*not AB / NB*)
- Default list may work well for you or not!
- Often “ties” in rankings...



# Which Comes First?

1. Court appointed person ('guardian')
2. Substitute decision-maker you pick (different names in each jurisdiction in Canada)
3. Usually a default list of people who can make the decision for you...



# Changes in Defaults

Several jurisdictions are  
rethinking their default lists...

# Current Default List: BC



1. Representative – Appointed in a Rep Agreement
2. Spouse
3. Child
4. Parent
5. Brother or sister
6. Anyone else related by birth or adoption to the adult
7. Public Guardian and trustee as last resort

# Proposed New Default List: BC



1. Representative – Appointed in a written Representation Agreement
2. Spouse
3. Child
4. Parent
5. Brother or sister
6. Grandparent
7. Grandchild
8. Anyone else related by birth or adoption to the adult
9. Close friend
10. A person immediately related to the adult by marriage
11. Public Guardian and Trustee as last resort

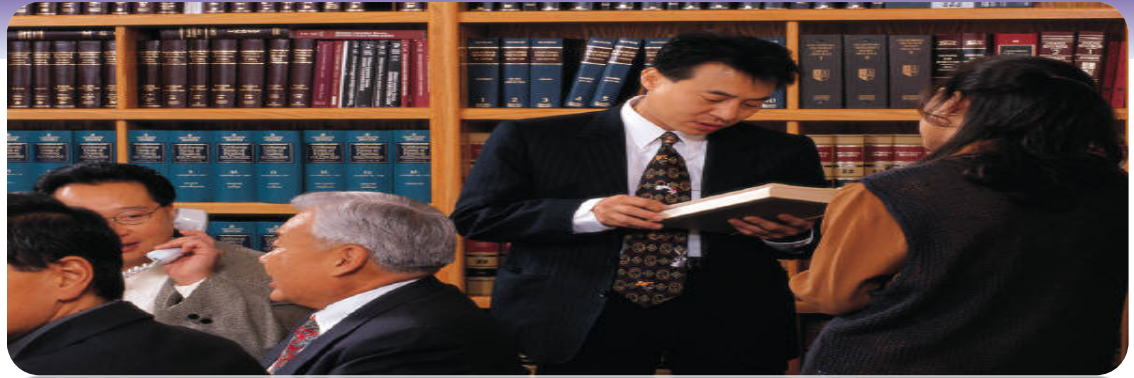


# Nexus of Capability Health Care SDM (BC)

## HEALTH DECISIONS ONLY

CAPABLE	INCAPABLE
You Decide	Guardian
	Representative
	Spouse
	Child
	Sibling
	Grandparent
	Grandchild
	Any other relation
	Close friend
	In laws
	PG&T

# It is all About Consent



- Who gives consent to a third party when an adult is legally incapable of doing so him/herself?
- Various methods for health choices and / or financial choices
- The capable adult can decide to appoint someone, express written wishes, or rely on a default list for health care choices
- Financial documents such as a Power of Attorney often have no bearing for health care choices (example – B.C.)

# You Have to Talk to The Person



- It is not the job of the health care provider or anyone else to do advance care planning or “get someone” to do advance care planning.
- It is a choice each capable adult makes – can also choose not to plan – this is a valid option as well.

# Client / Patient Choice

- Goals are to support the individual adult.
- Support independence, freedom to choose.
- An adult **NEVER HAS** to do advance care planning as part of admission, to get care or for any other reason – it is a choice





# Why Doesn't it Always Work?



# PLANNING

MUCH WORK REMAINS TO BE DONE BEFORE WE CAN ANNOUNCE  
OUR TOTAL FAILURE TO MAKE ANY PROGRESS



# 5 Problems Faced

1. Doctors and health care providers don't know the laws of substitute decision-making.
2. Hospitals are not 'set up' to deal with advance planning documents.
3. If more than one SDM – often a tie is a problem.
4. No one knows if the document is current / reflective of current situation or needs.
5. No one knows where the document is located.

# 5 Tips for Good Practice for The Maker of an ACP



## Ask your client if:

1. They have previously made an advance care plan.
2. Their advance care plan is formalized in a written document, or if it is oral or otherwise.
3. They have someone who they trust to advocate for their values, wishes and beliefs.
4. They have reviewed their advance care plan recently.
5. Others know about the advance care plan / document.

# 5 Tips for Advising the SDM/Proxy



1. After meeting with the client, meet also with the SDM.
2. Assist, if appropriate, the 'conversation'.
3. Ensure that the SDM understands it is the wishes of the donor they must invoke.
4. Find out if the SDM is willing / able to act.
5. Explain that they need to consult as much as possible with the incapable adult and where appropriate, other involved parties (e.g. family or friends)

# When To Discuss



*"Let's drop the enquiry and agree to henceforth leave each other alone."*

# Additional Resources

For information about how you can become a Certified Professional Consultant on Aging (CPCA) visit us at our website [www.agefriendlybusiness.com](http://www.agefriendlybusiness.com)

For information about the Canadian Centre for Elder Law visit us at our website [www.bcli.org](http://www.bcli.org)

# THANK YOU!

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