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The Potential Impact of the Mental Capacity Act on the Elderly in Singapore

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Background to Mental Capacity Act

Why introduce the *MCA*?

- Ageing population
- Out of date
- Empower individuals
- Protect vulnerable individuals

Background to Mental Capacity Act

What impact does the MCA have on decision making for persons who may lack capacity to make decisions themselves?

- Statutory Principles
- Test for Mental Capacity
- Proxy Decision Making
- Healthcare Decisions
- Property Decisions

MCA – Statutory Principles - Implications

- Assume a person has capacity unless you establish the opposite.
- Take all practicable steps to help a person make a decision.
- A person has the right to make an unwise decision.
- Always act in the person's best interests.
- Choose the less restrictive option.

What is Capacity?

- Does the patient have capacity?
- Presume capacity unless otherwise proven.
- Capacity is a 2 stage clinical and functional test.
 - Disorder or condition of the mind or brain &
 - Affects patient's ability to make the decision when it needs to be made
- Capacity is time and decision specific.
- A person can have capacity to make some decisions but not others.

MCA – Capacity Test Expanded

- A person is unable to make a decision if she cannot do one or more of these things at the time the specific decision needs to be made:
 - Understand the information
 - Remember the information
 - Weigh up the information
 - Communicate the decision
- Query: What about fluctuating capacity?

MCA – Proxy Decision-Makers

- Empowers adults with capacity to appoint one or more proxy decision-makers, by making a Lasting Power of Attorney (LPA – a legal document) to make personal welfare (including healthcare) and/or property and affairs decisions on their behalf when they no longer have the capacity to do so.
- The court can appoint a Deputy to make personal welfare (including healthcare) decisions on behalf of the person lacking capacity if the person did not make a LPA but this will be rare.

Healthcare Decision-Making

- A personal welfare donee cannot make decisions on
 - life-sustaining treatment on P or
 - any other treatment on P which a person providing health care reasonably believes is necessary to prevent a serious deterioration in P's condition.

- What does this mean?

What is Best Interests?

- Under the MCA, **all** decisions made for adults who lack capacity must be made in their best interests.
- NOT just medical best interests.
- The MCA provides a non-exhaustive list of factors to consider including:
 - Whether it is likely the person will regain capacity at some time in the future in relation to the specific matter and when that is likely to happen.

What is Best Interests (factors cont'd)?

- The beliefs and values likely to affect that person's decision if he or she had capacity; e.g. cultural background, religious beliefs and past behaviour or habits.
- The person's past and present wishes and feelings, especially if they were written down when the person had capacity.
- What does this mean?

Banks & Permanent Incapacity

Section 13(10) MCA:

“...a person dealing with a donee in matters relating to P’s property may require the donee to produce a certificate from a registered medical practitioner stating that P’s lack of capacity is likely to be permanent, and if the donee fails to produce such certificate, the person may refuse to accept the donee’s authority to make decisions for P in such matters.”



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