



Conceptual & Ethical Issues in Guardianship

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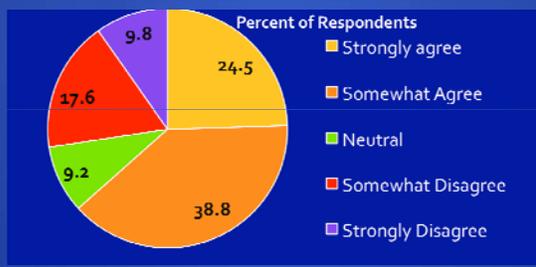
Guardianship and Trusteeship

- Both address decision making.
- Both are intended to protect the individual.
- Trusteeship deals with financial decisions.
- Guardianship deals with other decisions.
- Today's focus is on guardianship, but most of the same principles apply.

Agree or Disagree?

- Once a guardian has been appointed to make decisions for an individual determined to be incompetent, the guardian should make all decisions for the individual.

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Response	Percentage
Strongly agree	24.5
Somewhat Agree	38.8
Neutral	9.2
Somewhat Disagree	17.6
Strongly Disagree	9.8

Survey of 1200 randomly sampled Albertans, Summer, 2009

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Most agreement	Most Disagreement
<ul style="list-style-type: none"> Less education Older Federal Conservative 	<ul style="list-style-type: none"> More education Younger Federal Liberal

Protection from Who?

- Protection from others?
 - Might a vulnerable individual be taken advantage of by others?
- Protection from self?
 - Might an individual with limited understanding of the consequences make a decision that causes harm or denies benefit?
- Protection from Guardian?
 - Might a guardian make a decision for an individual that is not in the individual's best interest?

Finding the Balance.....

Autonomy	Nonmaleficence & Beneficence
<ul style="list-style-type: none"> ● The right to make one's own decisions ● Do we have a right to make our own bad decisions? 	<ul style="list-style-type: none"> ● Protection from harm ● Right to benefit ● Is there always a right and a wrong decision?

Varieties of Decisions

Individual does not indicate preference	Individual assents to guardian's decision	Individual indicates clear preference
Guardian makes decision within normal framework	Guardian assists individual in making decision within normal framework	Guardian supports individual
Guardian makes decision outside normal framework	Guardian assists individual in making decision outside normal framework	Guardian overrules decision
Guardian makes decision that is challenged	Guardian assists individual in making decision that is challenged	Guardian attempts to influence but not control individual

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 - Does it question the perspective from which best interest is determined? Yes.

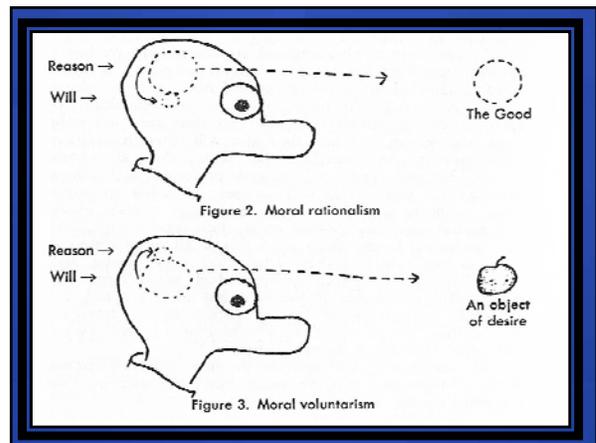
Decision-Making and Best Interest

- Paradigm shift from Physician Paternalism to Respect for Patient Autonomy
- Question: Realistically, what does this paradigm shift accomplish?
 - Does it question the perspective from which best-interest is determined? Yes.
 - Does it question the legitimacy of the best-interest standard? No.

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My Thesis: We fail to recognize the deep (questionable) philosophical assumptions that drive our current legal/ethical conceptions of agency and freedom (both individual and surrogate).



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