

Presuming Mature Minor Competency for MAID?

Adolescent Development and Decision
Making in Medicine and Law



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Introduction

- Should mature minors be eligible for medical assistance in dying (MAID)?
- 2016: Criminal Code of Canada modified to permit MAID
 - > Eligibility limited to adults over 18
- Child Development Framing: Do mature minors have decisional capacity?
- Legal and Ethical Framing: Should mature minors be presumed competent?

Introduction

Purpose: Analyze minor decision making capacity according to a presumption of competence model

Part A

Minor decisional capacity, child development studies

Part B

Concept of presumption of competence introduced, implications considered

Part C

Problem: inconsistent use of 'presumption of competence' in medicine and law

Part D

Adolescent relationships/ decision-making context resolves this inconsistency

Conclusion

Benefits to presumption of competence model, tentatively suggest MAID eligibility should not be restricted to adults over 18

Part A: Child Development

◉ Buchanan and Brock

Capacity	Found in Minors
<ul style="list-style-type: none">• Communication• Understanding information	'Early adolescence' (14-15)
<ul style="list-style-type: none">• Reasoning• Deliberation	11-13
<ul style="list-style-type: none">• Apply own set of values• Apply conception of the good	14

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Part A: Child Development

- Diekema: mature minors lack...
 - > High-level reasoning
 - > Executive function
 - > Weighing consequences
 - > Planning/organization
 - > Emotional regulation
 - > Rational decision-making

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Part A: Child Development

- Experience with illness has profound effect on competency

Age	Demonstration of Competence
2	knowledge of names and purpose of their cancer drugs
3-4	active, informed, and responsible commitment to health (strict diet, daily injections, medicines or physiotherapy)
4-5	have mapped out their life-long understandings of self, others and relationships, time and space, art and much basic science

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Part B: Presuming Competence

- ◉ Compatible with medicine
 - > Capacity determinations insufficient in DIC (doctrine of informed consent)
 - > Legal authority to consent to treatment
 - > Variability
 - In particular competence of every minor
 - Demands of treatment decisions

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Part B: Presuming Competence

- Presumption of competence: rebuttable categorization of capacity
 - > Subject to case by case evidence on the patient's decision making
- Adults presumed **competent**, must prove **incompetent** to overcome presumption
 - > How defective are one's decision-making abilities?
- Minors presumed **incompetent**, must prove **competent** to overcome presumption
 - > How good are ones decision-making abilities?

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Part A

Part B

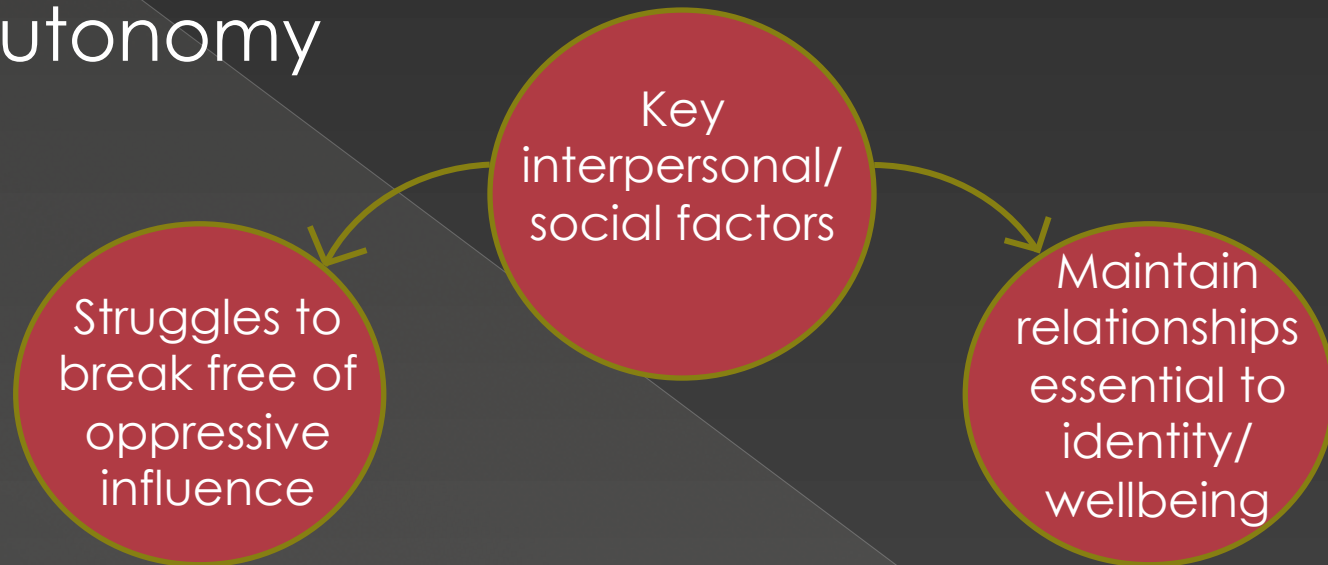
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Part B: Presuming Competence

- DIC assumes individualistic conception of autonomy



- Application of relational autonomy to DIC can affect presumption of competence
 - > Especially in cases of **triadic relationship**

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Part C: Comparing Society & Law

SUPREME COURT OF THE UNITED STATES

Syllabus

ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* SIMMONS

CERTIORARI TO THE SUPREME COURT OF MISSOURI

No. 03–633. Argued October 13, 2004—Decided March 1, 2005

Held: The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. Pp. 6–25.

Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood”).

- Adolescents characterized with immaturity/irresponsibility in society and law
 - Voting
 - Jury duty
 - Marriage (without parental consent)
- Roper v Simmons: abolish juvenile death penalty
 - Diminished criminal culpability
 - Higher likelihood of reform

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Part C: Comparing Society & Law

Her Majesty The Queen *Appellant* v.
D.B. (a young person within the meaning of
the *Youth Criminal Justice Act*) *Respondent*

INDEXED AS: R. v. D.B. and
Attorney General of Canada, Attorney
General of Quebec, Attorney General of
Nova Scotia, Attorney General of Manitoba,
Attorney General of British Columbia and
Justice for Children and Youth *Interveners*

Neutral citation: 2008 SCC 25.

File No.: 31460.

2007: October 10; 2008: May 16.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel,
Deschamps, Fish, Abella, Charron and Rothstein JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR
ONTARIO

Held (Bastarache, Deschamps, Charron and
Rothstein JJ. dissenting in part): The appeal should be
dismissed.

If the young person fails to
persuade the court that a youth sentence is sufficiently
lengthy based on the factors set out in s. 72(1) of the
YCJA, an adult sentence must be imposed. This forces
the young person to rebut the presumption of an adult
sentence, rather than requiring the Crown to justify
an adult sentence.

By depriving them of
this presumption because of the crime and despite their
age, and by putting the onus on them to prove that they
remain entitled to the procedural and substantive pro-
tections to which their age entitles them, including a
youth sentence, the onus provisions infringe a principle
of fundamental justice. [5] [70] [75-77]

- R v. D.B.
 - Adult sentencing in cases of 'presumptive offences' unconstitutional
 - Adolescents entitled to presumption of diminished moral culpability
 - Due to ↑ vulnerability, ↓ maturity, ↓ capacity for moral judgement

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Part C: Comparing Society & Law

A.C. et al. *Appellants* v.

Director of Child and Family
Services *Responde* and

Attorney General of Manitoba, Attorney
General of British Columbia, Attorney
General of Alberta and Justice for
Children and Youth *Interveners*

INDEXED AS: A.C. v. MANITOBA (DIRECTOR OF
CHILD AND FAMILY SERVICES)

Neutral citation: 2009 SCC 30.

File No.: 31955.

2008: May 20; 2009: June 26.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps,
Abella, Charron and Rothstein JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR
MANITOBA

[71] There is considerable support for the notion that while many adolescents may have the technical ability to make complex decisions, this does not always mean they will have the necessary maturity and independence of judgment to make truly autonomous choices.

- A.C. v. Manitoba
 - Adolescent claims to autonomy in tension with protective duties of state
 - Technical ability to make decisions not indicative of competence, need
 - Maturity
 - Independence of judgement

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Part D: Competence in Context

- Influence of environment, network of relationships
 - Impulsivity/peer influence/transitory characters
- ...affect competence when situations elicit them



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Part D: Competence in Context

- ◉ Which situations do not diminish competence?
 - > Full information can be provided
 - > Unhurried logical reflection
 - > Access to experts
- ◉ Examples
 - > **Medical decision-making**
 - > Legal proceedings
 - > Consenting to research studies

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Conclusion and Further Research

1. Presumption of competence compatible with medicine, considers relationships and context
 2. Used differently in medicine and law
 - > presumption of competence dependent on minor's situation
- Applied to MAID: findings suggest adolescents 14/15 + are capable
 - Further research on
 - > Adolescent values
 - > Is informed consent for MAID different from informed consent for other treatments?

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References (in slides)

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