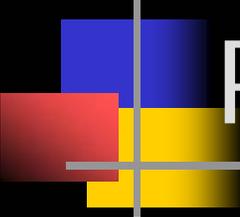


Moving Past Systemic Ageism in Guardianship: A Quebec Community Clinic Experience



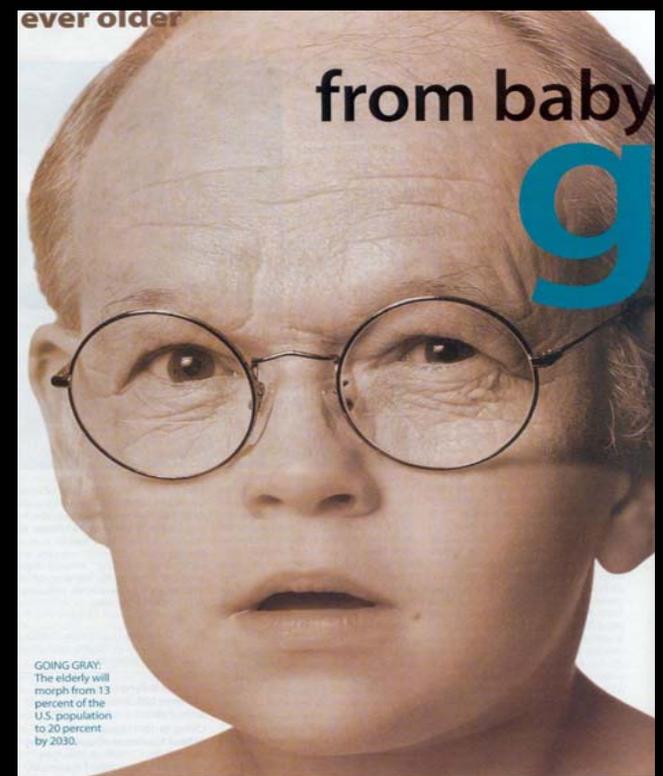
Ann M. Soden. Ad. E.

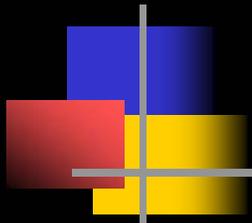
***Director, National Institute of Law, Policy and Aging and Centre for Law and
Aging***



Principle

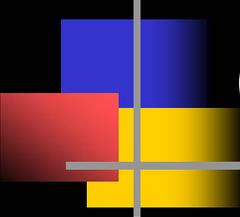
Guardianship requires not just (a degree of) incapacity but a need for formal protection





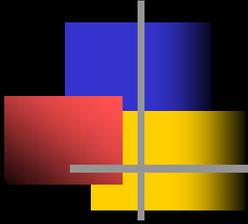
Issues

- Is level of incapacity correctly determined?
- Is there a need? If so, are there alternative means of protection which foster autonomy?
- Will the recommended protective regime, where appropriate, adapted to the individual's abilities?

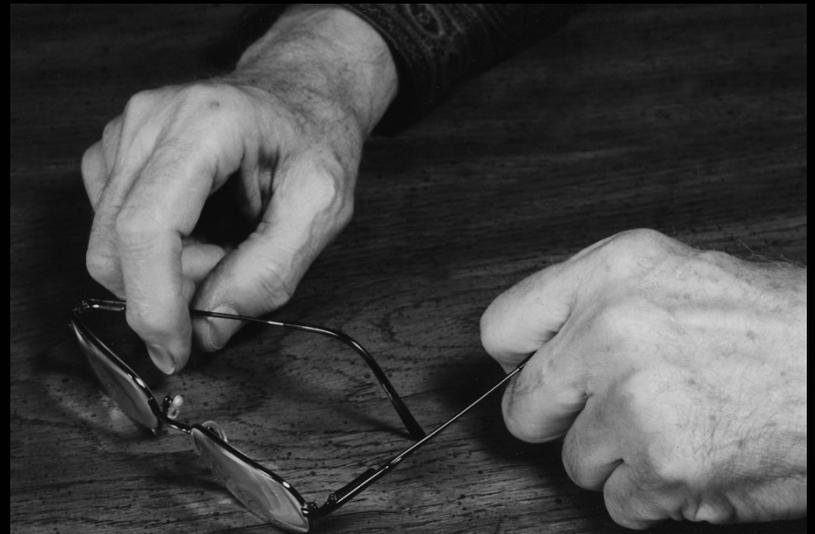


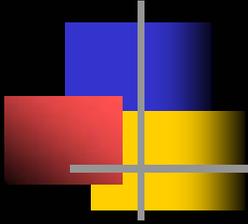
Challenges

- Systemic Ageism:
 - Paternalism
 - Parens patriae role
 - Culture of protection
- Evaluation of Diminished Capacity:
 - How comprehensive?
 - Information furnished by whom? In what context?



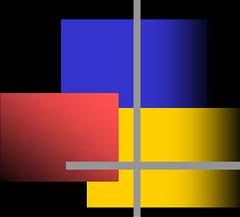
- Family Dynamics:
 - control
 - greed
 - conflicting values





- Failure of Due Process:
 - rigor and scrutiny in capacity evaluations
 - legal representation: who represents the person whose rights are at issue?
 - audi alteram partem*
 - preservation of autonomy
 - least restrictive approaches to protection
 - honoring wishes, obtaining consent

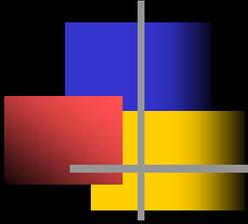




Moving Past Ageism

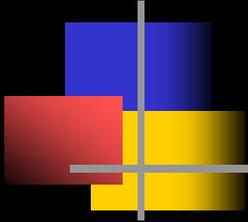
- Laws, policies and practices:
applied and/or adapted to societal
conditions and needs
- Recording wishes/protecting rights:
 - legal instruments
 - family meetings
- Education:
 - of public and professionals
 - as to rights of individual
 - duties of legal representative



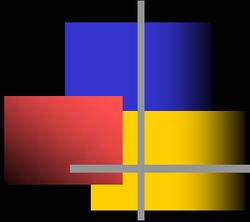


- Access to Justice:
 - representation by lawyer
 - specialized division of Court
 - mandatory mediation in all contested cases





- Philosophy of Autonomy and Protection:
 - understanding of residual capacity and task-specific capacity
 - preserving autonomy
 - protective measures which are the least restrictive of autonomy
- Collaboration:
 - multi-disciplinary team approach to evaluation and case management
 - ending isolation: building community

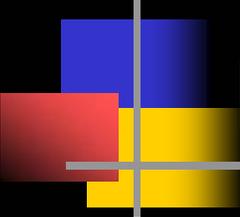


- Dispute resolution:

- Informal Mediation

- Mandatory Mediation

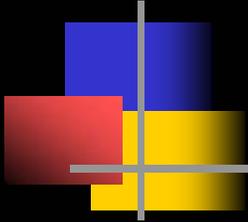
- Specialized (division) of Court



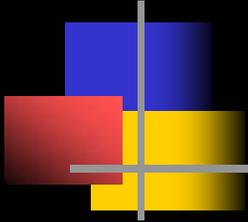
Case Studies from a Community – based Legal Clinic:

Capacity Issues:

- Mr. Verdun: Son had competent father confined for psychiatric evaluation because he wanted control over father's assets.
- Mr. N.D.G.: 89-year old, financially astute, music teacher, with no family and moderate dementia, wants to go home.

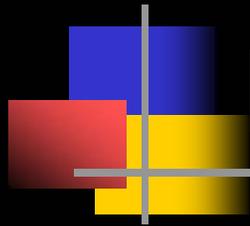


- Rosetta of Newfoundland: mental illness, advancing age and problem of family who feel she should be in nursing home.
- Mr. Valentin: Russian school principal who does not want to trouble family abroad but mismanages pension cheques, has difficult behavior and had a recent 'cerebral' incident.



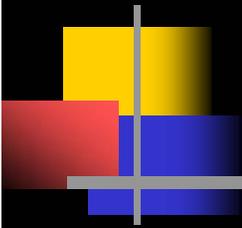
Family Squabbles:

- Family "D" and family "L" are divided as to who has "custody" of parent
- Wishes and (residual) capacity of parent at issue
- Techniques:
 - Mediation in collaboration with social services – family "L"
 - Mediation in court – family "D"



Protection through Community

Mme Laval: Woman in seniors' residence with two adopted adult children, one of whom had sold family home under a POA, is about to purchase a nursing home in the Laurentians and is harassing mother to move there.



Thank You

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