

# At the Core of the ADMCA



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Drilling Deep into the ADMCA

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# Guiding Principles: The Compass of the ADMCA

Apply to all interventions in respect of a 'relevant person'

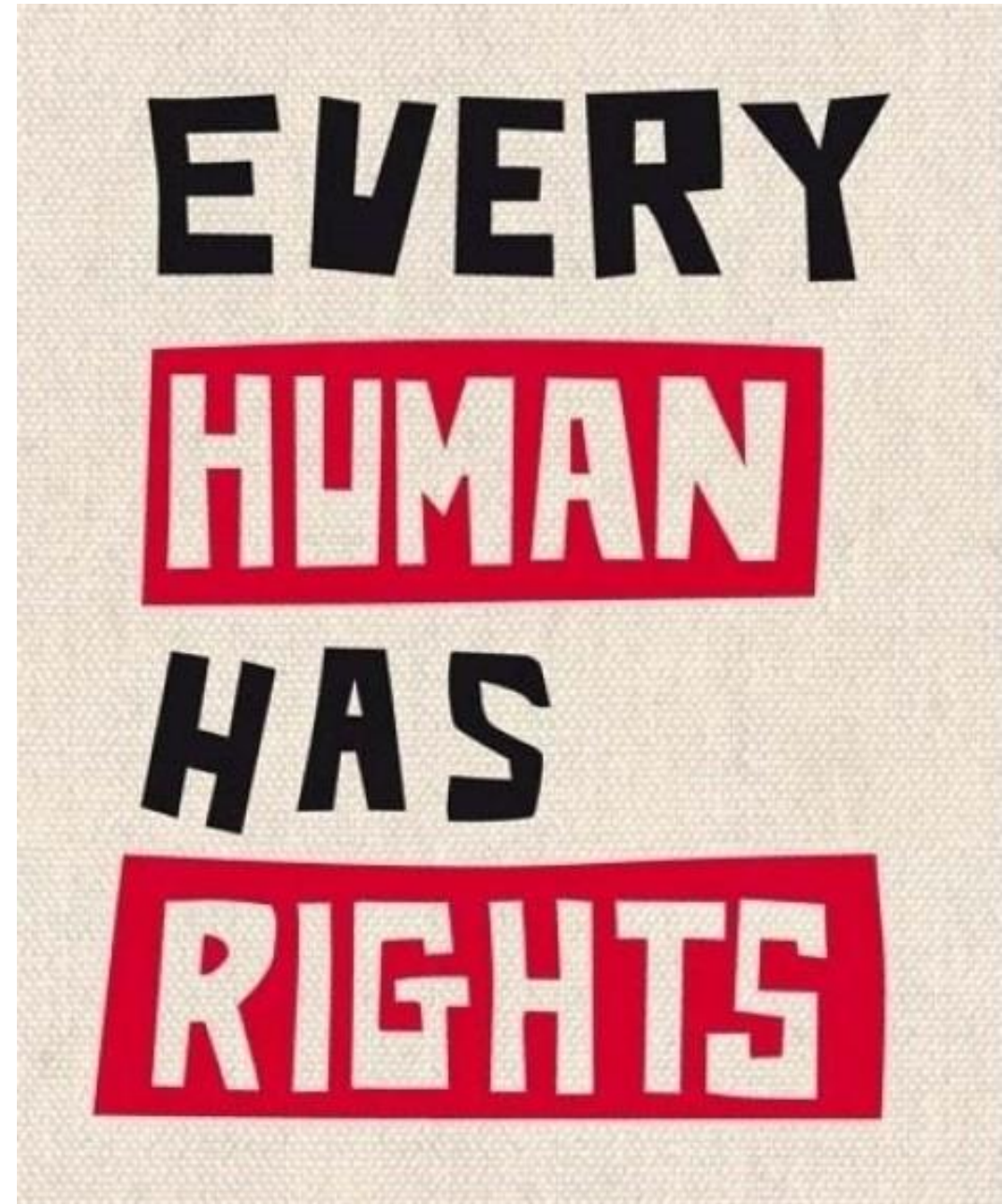
- Person whose capacity is in question or may shortly be in question in respect of one or more matters
- Person who lacks capacity in respect of one or more matters



# Respect for Rights

An intervention must have due regard to the need to respect the person's right to

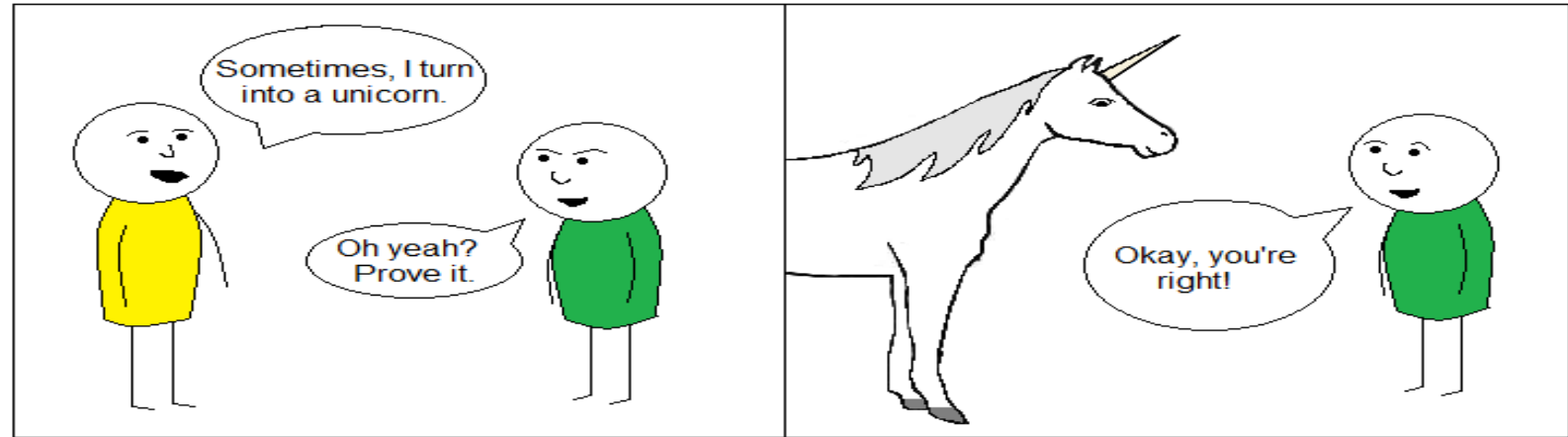
- Dignity
- Bodily Integrity
- Privacy
- Autonomy
- Control over financial affairs and property



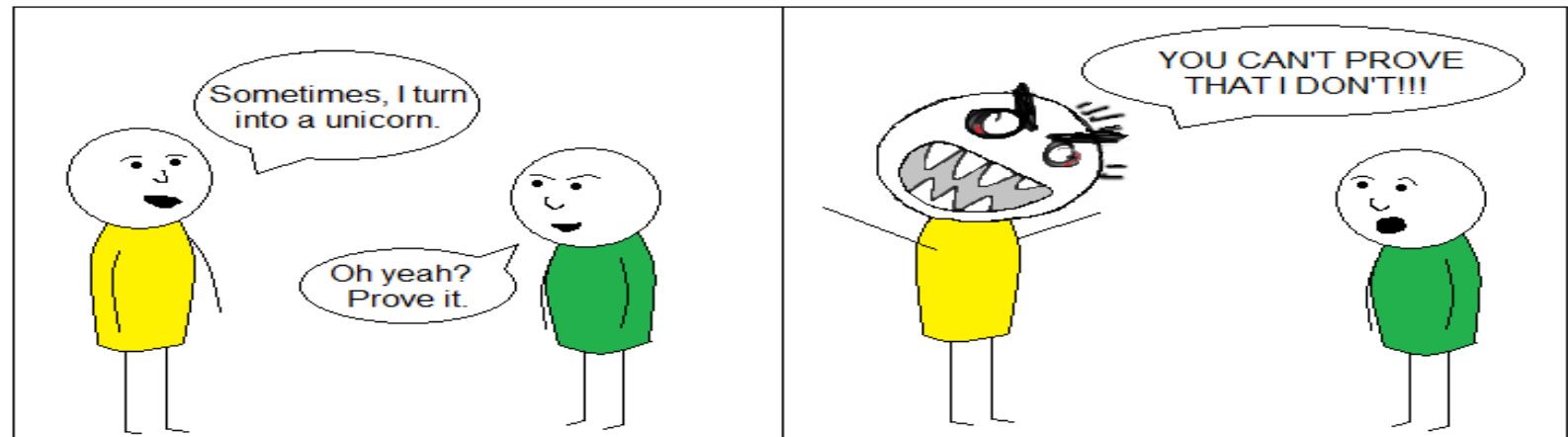
# Presumption of Capacity

Presumption that a 'relevant person' whose capacity is in question or may shortly be in question has capacity in respect of the matter concerned unless the contrary is shown in accordance with the Act

## Conventional Logic



## Shifting the Burden of Proof





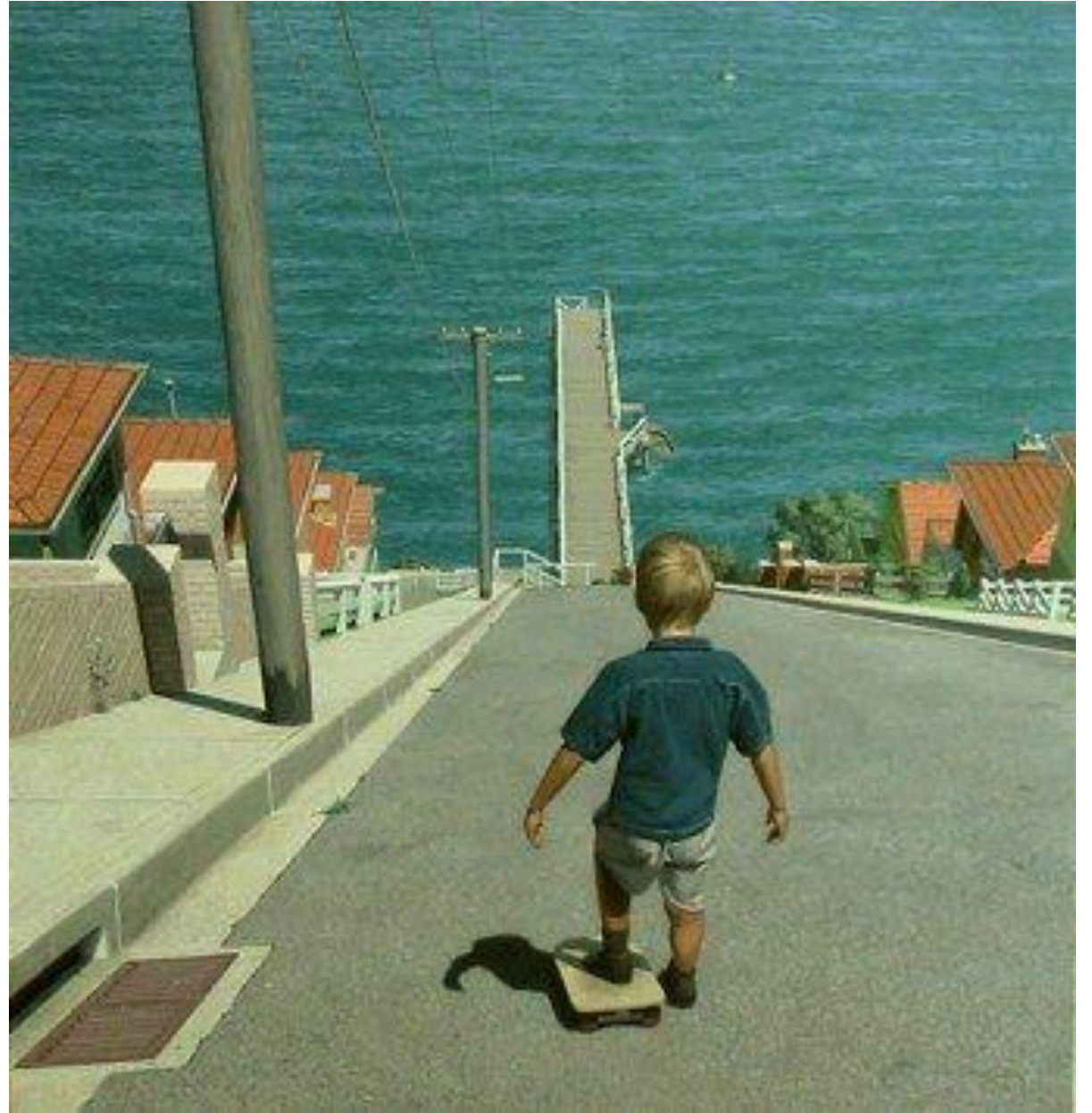
# Centrality of Support



- A person whose capacity is in question or may shortly be in question shall not be considered as unable to make a decision unless all practicable steps have been taken, without success, to help him or her to do so
- Establishing of Legal mechanisms for support

# Rethinking Risk

A person whose capacity is in question shall not be considered as unable to make a decision **merely** by reason of making, having made, or being likely to make, an unwise decision.



# Need for Intervention



There shall be no intervention unless it is necessary to do so having regard to the individual circumstances of the person



# Least restrictive alternative



Any intervention must be made in a manner that minimises the restriction of the person's rights and freedom of action



# Proportionate

An intervention must be proportionate to the significance and urgency of the matter



# Limited Duration

An intervention must be as limited in duration in so far as is practicable after taking into account the particular circumstances of the matter the subject of the intervention



# Participation

The intervener, in making an intervention must:

Permit, encourage and facilitate, in so far as is practicable, the person to participate, or to improve his or her ability to participate, as fully as possible in the intervention



# Will and preferences

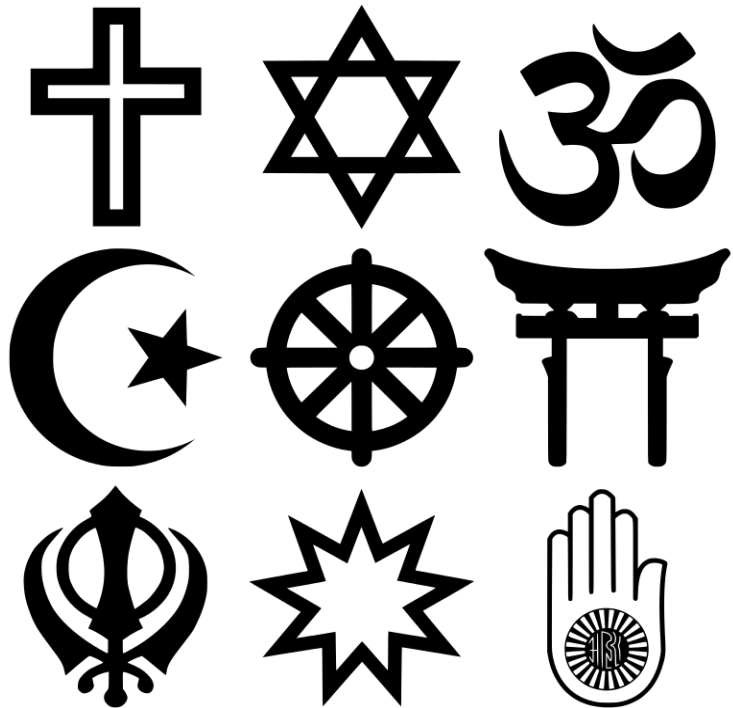
The intervener, in making an intervention must:

Give effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable





# Beliefs and Values



The intervener, in making an intervention must:

Take into account the beliefs and values of the person (in particular those expressed in writing), in so far as these are reasonably ascertainable

And

Any other factors which the person would be likely to consider if s/he were able to do so, in so far as these are reasonably ascertainable

# Consultation



Unless s/he **reasonably** considers it is not appropriate or practicable to do so:

The intervener must consider the views of:

Any person named by the person as a person to be consulted on this matter or a similar matter

And

Any decision-making assistant, co-decision-maker, decision-making representative or attorney

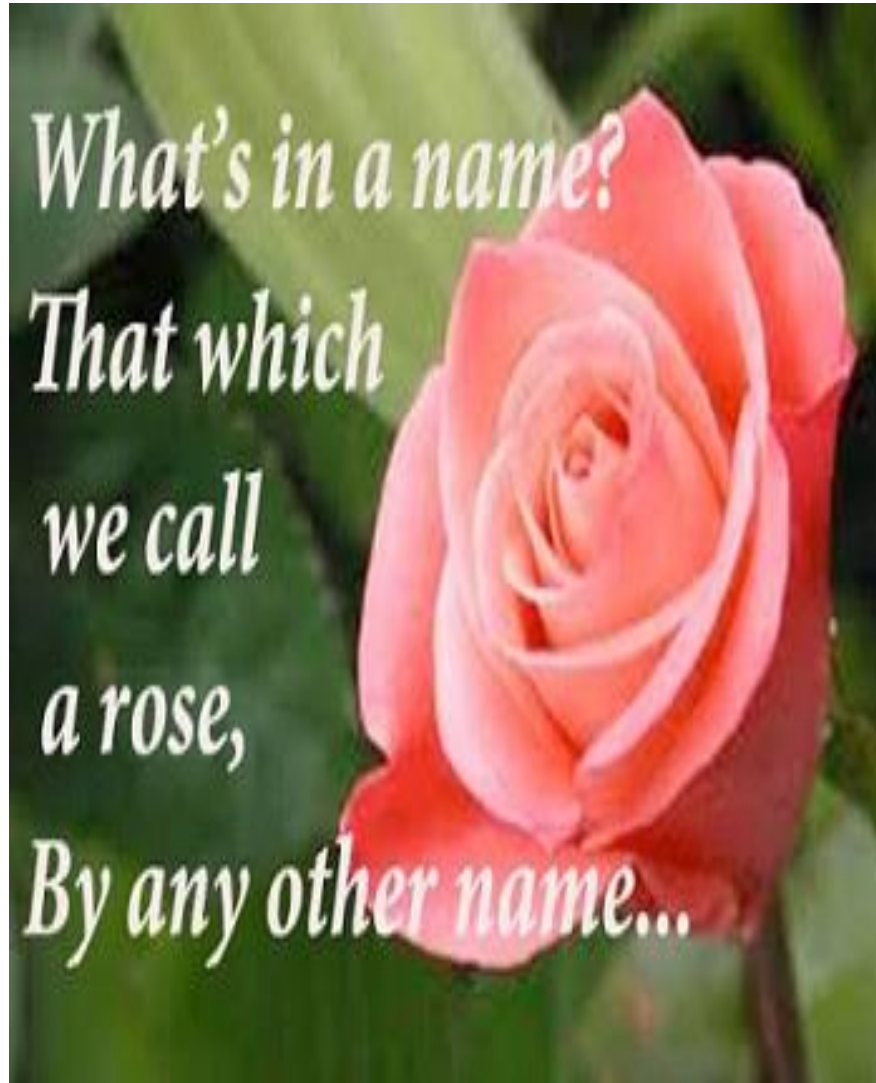
# Views of Others

The intervener, in making an intervention **may** consider the view of:

- Any person engaging in caring for the relevant person
- Any person who has a *bona fide* interest in the welfare of the relevant person
- Healthcare professionals



# Good Faith/Benefit



The intervener, in making an intervention must:

Act at all times in good faith and **for the benefit** of the relevant person



# In summary

- Putting the person at the centre
- Evolution not revolution
- Legislative change reflects current best practice

