

# BC LAW AND THE TREATMENT OF SUBSTANCE USE DISORDERS

GERRIT W. CLEMENTS, BARRISTER AND SOLICITOR  
ADJUNCT PROFESSOR, HEALTH LAW, UNIVERSITY OF VICTORIA  
HEALTH LAW AND ETHICS, UNIVERSITY OF NORTHERN BRITISH COLUMBIA

# VOLUNTARY TREATMENT

Must be “capable” of consenting as defined in the *Health Care (Consent) and Care Facility (Admission) Act* (HCCCFAA)

# IF INCAPABLE

Temporary Substitute Decision Maker (TSDM) may be appointed to give substitute consent. However, the Act does not address the situation in which the client is incapable and refuses to cooperate. Moreover, the treatment is supposed to be “temporary”.

# ADVANCE DIRECTIVE (AD)

Since health care is involved, AD is possible. However:

- (a) advance consent may be respected, whereas
- (b) advance refusal must be respected

# ADVANCE DIRECTIVE (CONT.)

- Complicated: (*e.g.*) fails if evidence that person changed their mind after signing the AD
- Also no specific authority to address issue of non-cooperation. However, essence of AD involves providing care when client is incapable

# S. 12 HCCCFAA

- Urgent need to intervene due to risk to life or serious physical or mental harm or treat severe pain
- Incapacity
- No committee of person or authorized representative
- If practicable: 2<sup>nd</sup> opinion

## S. 12 HCCCFAA (CONT.)

- However (although unlikely) person could utilize s. 12.1 (informal refusal in advance)
- As with AGA (below): how long does “emergency” last?

# *REPRESENTATION AGREEMENT ACT*

- Much more promising: s. 9 representation agreement with *Ulysses* features



# *ADULT GUARDIANSHIP ACT*

- “Designed” for the purpose
- Support and assisted plan
- Support and assistance order
- “Emergency”: s. 59 BUT: how long effective? (*A.H. v. Fraser Health Authority*)

# *PATIENTS PROPERTY ACT*

- Archaic legislation under which court may appoint “committee of person” (or estate or person and estate)
- No definition of “incapability” or how to determine but, weirdly, specifically refers to the “use of drugs”

# USE OF THE *MENTAL HEALTH ACT*?

s. 22 criteria:

- Mental disorder
- Requires “psychiatric” treatment
- (Mental or physical) deterioration or protection from harm
- Not suitable as voluntary patient

# CONTROVERSIAL

- Not least because no patient or substitute consent required
- As yet no supporting court or Mental Health Review Board decisions

# POSSIBILITY OF SPECIFIC LEGISLATION?

- Historical: *Heroin Treatment Act*
- Still 'on the books' but not in effect: ss. 91-93 *Offence Act* (intoxication and "chronic alcoholism")

# DISCUSSION