

# The Ulysses Contract: An Advanced Personal Care Directive

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# Introduction

- **Acute episodes of mental illness can render a person unable to give informed consent to treatment.**
- **Once episode occurs, the person may not realize they are sick, and therefore refuse help.**

# Emergency Intervention – Form 1

- In an emergency situation, the police can take the person to hospital.
- Once at the hospital, a Form 1 is required to hold the person for 72 hours for an assessment (*Mental Health Act*).
- **Form 1 - Application by Physician for Psychiatric Assessment:**
  - The person must be *at risk* of causing bodily harm to the person or others.
  - Enables the person to be assessed, but not treated unless he/she consents.

# Emergency Intervention – Form 3

**At the end of 72 hours**

**either**



**The person  
agrees to stay  
in hospital**



**OR**

**A Form 3 is required  
to continue to hold  
the person**

# Emergency Intervention – Form 3

- **Form 3 – Certificate of Involuntary Admission**
  - Patient is suffering from a mental illness that *likely will* result in serious bodily harm to the person or others.
  - Patient may be held for a further 14 days.
  - Renewable.
  - At each renewal, the patient can challenge the finding of incapacity before the Consent and Capacity Board.

# Consent and Capacity Board

- **Independent body**
- **Review the finding of incapacity**
- **Finding:**
  - **Capacity**  **Patient can demand release.**
  - **No Capacity**  **Patient held for 14 days.**

# Scenario – Mr. Smith

- Diagnosed with bipolar disorder (formerly, “manic-depressive illness”), Mr. Smith was having an acute manic episode.
- Sending his daughter multiple emails bragging he was a movie star.
- Mr. Smith’s daughter asked police to take her father to hospital.
- Police attended at Mr. Smith’s home.
- Found that Mr. Smith was behaving strangely, but did not pose a threat to himself or others.

# Discussion

- **Mr. Smith is suffering symptoms of psychosis, but not severe enough to warrant emergency intervention.**
- **Threshold for emergency intervention: risk of harm to himself or others.**



# Scenario, cont'd.

## Fast-forward one week:

- **Police find Mr. Smith in front of his house in a Superman costume darting out into the street.**
- **Now at risk of causing harm to himself or others.**
- **Police take Mr. Smith to emergency.**
- **Form 1 is completed and he is admitted.**
- **A few weeks of treatment will bring him back to his old self.**
- **Hospital required to release him after 72 hours.**

# Discussion

- Mr. Smith has been held for 72 hours, but his symptoms are not severe enough to warrant admission.
- Threshold for admission against his will: suffering from a mental disorder that *likely will* result in harm to himself or others.

# Scenario, cont'd.

## Fast-forward 3 days:

- **Mr. Smith is arrested for reckless driving.**
- **Psychosis made him believe he was in a drag race.**
- **Mr. Smith placed in a jail cell at the police station and family is contacted.**

## Scenario, cont'd.

- **Before his illness, Mr. Smith was a mild-mannered accountant.**
- **When he takes his medication, he is still that person.**
- **When he is off his medication, he becomes delusional and reckless.**
- **Sometimes when Mr. Smith is detained for 72 hours, he is fine when released.**
- **Other times the behaviour escalates.**

# Scenario, cont'd.

- **Manic episodes have**
  - **given Mr. Smith a criminal record; and**
  - **cost Mr. Smith his marriage, his career and his savings.**

# Discussion – Requirements for intervention

- **Mr. Smith requires early medical intervention.**
- **System has thresholds before intervention:**
  - risk of harm (Form 1 – 72 hours)
  - behaviour likely will result in harm (From 3 – 14 days)

# Discussion – Protections

- **Thresholds are required.**
- **This protection is good for citizens.**
- **Balance right of autonomy vs. risk of harm.**
- **Presents issues for people suffering from a serious mental illness.**
- **May result in**
  - a risk of harm
  - escalation in psychosis**before intervention can occur.**

# Mr. Smith's Options – Guardianship

## Guardianship Order

**Application to the Court to have the Court appoint a substitute decision-maker to make personal and health care decisions.**



# Mr. Smith's Options – Guardianship

- **Guardianship Order**
  - **Someone else (not Mr. Smith) makes the application.**
  - **Court chooses who is appointed.**
  - **Expensive.**
  - **Cumbersome.**
  - **Person must lack mental capacity for Order to be granted.**

# Mr. Smith's Options – Power of Attorney

## Power of Attorney for Personal Care

**Enables Mr. Smith to appoint someone make personal and health care decisions on his behalf.**

# Mr. Smith's Options – Power of Attorney

- **Power of Attorney for Personal Care**
  - **Much less expensive than a Guardianship Order.**
  - **The Grantor chooses who is appointed.**
  - **Easy and accessible:**
    - **any estate planning lawyer can prepare a POA for Personal Care, or**
    - **forms online if he wants to do it himself.**

# Mr. Smith's Options – Power of Attorney

- **POAs tend not to work for those suffering from a serious mental illness:**
  - Revoked when regain capacity.
  - Health care providers cannot force treatment at the request of the Attorney when patient adamantly refuses it.
  - Family members reluctant to take on appointment; and if they do, may later resign.

# Mr. Smith's Options – Ulysses Contract

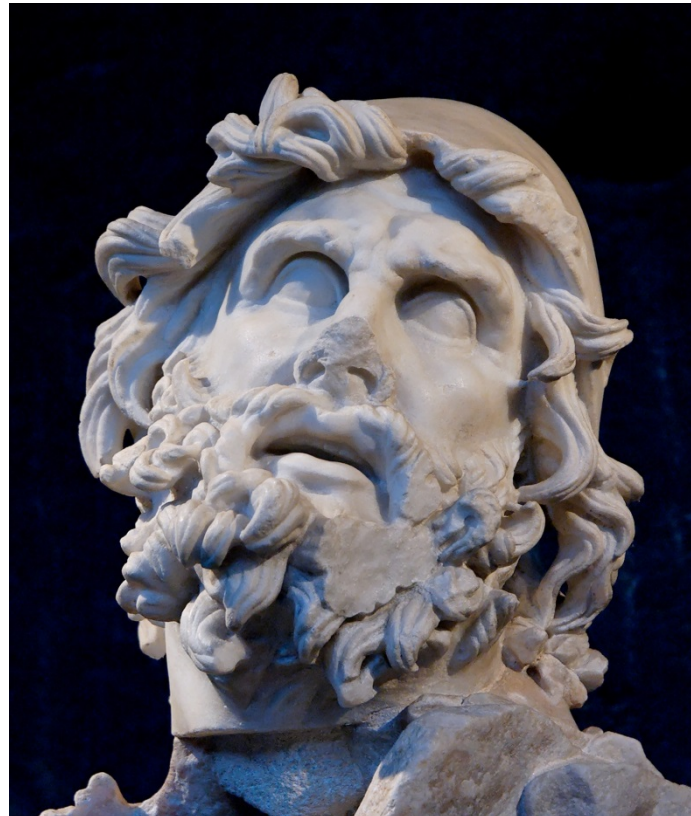
- **Power of Attorney for Personal Care with Special Provisions, or “Ulysses Contract”**
  - Autonomy to
    - choose his own substitute decision-maker,
    - select the degree of authority provided to that person, and
    - approve the use of force or restraint in treatment.

# What is a Ulysses Contract?



# Greek mythology primer

- **Odysseus (a.k.a. Ulysses) was a legendary Greek king renowned for his brilliance, guile and versatility.**



# Greek mythology primer, cont'd.

- One day, Ulysses was sailing on a ship with his men.
- Before long, the ship approached the Sirens, renown for luring nearby sailors with their enchanting music and voices to shipwreck on the rocky coast of their island.





# Greek Mythology primer, cont'd.



# Ulysses contract in psychiatric context

## Power of Attorney for Personal Care (Ontario)



# Power of Attorney for Personal Care

- **Enables a person (the Grantor) to appoint another (the Attorney) to make personal and health care decisions on her behalf in the event the Grantor loses the mental capacity to make them himself.**
- **Revocable by the Grantor, provided she has capacity.**

# Ulysses Contract - Provisions

- Regular provisions
- **“Special Provisions” that may include Attorney’s authority to direct the use of force that is reasonable and necessary to have the Grantor**
  - undergo a capacity assessment,
  - go for care or treatment, and
  - be admitted to a hospital or other treatment facility.

# Ulysses Contract – Provisions, cont'd.

- Grantor may also waive the right to apply to the Consent and Capacity Board under the *Health Care Consent Act* for a review of a finding of incapacity.

# Getting into a Ulysses Contract

- **The Grantor must, with 30 days *after* signing the Ulysses contract,**
  - (1) sign a statement that he/she understood**
    - the effect of signing the Ulysses contract; and
    - that the Grantor will need a capacity assessment before he/she can revoke it.
  - (2) undergo a capacity assessment by a trained assessor confirming the Grantor is capable of personal care and of understanding (1) above.**

# Getting out of a Ulysses Contract

- **The Grantor must, within 30 days *before* signing the revocation**
  - **undergo a capacity assessment by a trained assessor confirming he/she is capable of personal care before the Grantor can revoke the Ulysses contract.**

# Safeguard

- **As a safeguard, the Grantor may request a capacity assessment, and the Attorney must arrange for the Grantor be assessed.**
- **However, such assessments cannot occur more often than every six months.**



# Making a Ulysses Contract – Client interview

- **Important for the lawyer to understand:**
  - the client's illness,
  - history of psychotic episodes,
  - whether client was hospitalized and for how long,
  - how the client has been coping, and
  - how the family has been supporting the client and coping.

# Making a Ulysses Contract – Client's understanding

## ■ The client must

- have the ability to understand whether the proposed Attorney has a genuine concern for their welfare;
- appreciate that the client may need the Attorney to make health care decisions for them; and
- understand
  - the special provisions (i.e. use of force) the client is giving to the Attorney,
  - that the client cannot enter into the Ulysses Contract without a capacity assessment, and
  - that the client cannot revoke the Ulysses Contract without a capacity assessment.

# Making a Ulysses Contract - Drafting

- **Draft Ulysses Contract and send to client for review.**
- **Meeting for review of document.**

# Making a Ulysses Contract - Process

- **Client signs the Ulysses contract after a line-by-line review and much discussion about the document.**
- **Client and both witnesses initial every page.**

# Making a Ulysses Contract - Process

- **Client signs a Form 5 – Statement of Grantor under Section 50(1) of the SDA**
  - Understands he is waiving his rights
  - Understands he is giving a power to someone who otherwise would not have the power
  - Is capable of personal care and understanding the powers given to his Attorney
  - Is signing of his own free will

# Making a Ulysses Contract - Process

- **Client signs a Direction**
  - confirming number of originals executed, and
  - instructing BLG to hold a certain number in our vault.

# Making a Ulysses Contract – Capacity Assessment

- **Recommendation: Do not wait up to 30 days for assessment.**
- **Instead,**
  - **lawyer leaves the room after documents are signed; and**
  - **assessor enters the room and performs the capacity assessment.**

# Making a Ulysses Contract – Capacity Assessment

- **Capacity assessment – about 90 minutes**
- **Assessor provides**
  - a comprehensive report – placed in file, not disclosed
  - a Form D – Statement of Assessor – stating that the client had the requisite capacity to make the Ulysses Contract.



# Making a Ulysses Contract – Process

- **Process must be robust.**
- **Document**
  - any client comments or concerns;
  - relevant parts of our discussion; and
  - the process itself.
- **Notes are taken commensurate with the meeting and further notes dictated afterward.**

# Discussion regarding Mr. Smith

- **A Ulysses contract would have enabled Mr. Smith to**
  - appoint a trusted person to make decisions for him,
  - choose the degree of intervention, and
  - ensure he got the help he needed.

# Discussion regarding Mr. Smith

- **Mr. Smith required early intervention.**
- **Ulysses contract - daughter could have directed that Mr. Smith be**
  - taken to hospital
  - admitted
  - treated

# Successful use of Ulysses Contracts

- **No perfect solution.**
- **May be an option for persons suffering from serious mental illness.**
- **Has been used**
  - by a spouse who agreed to stay if Ulysses in place.
  - as a condition to enable a mother to keep custody of her children; and
  - as a condition of release of a person in legal custody.

# Successful use of Ulysses Contracts

- **A Ulysses Contract is an important part of a patient's support framework.**
- **Everyone involved in the patient's support must be aware of it and understand it.**
- **When determining what clauses are required, speaking with the family may be helpful.**

# Caution regarding Ulysses Contracts

- **Extra care is taken due to**
  - authority to use force; and
  - waiver of rights.
- **Prevent misuse by**
  - discussions with the client about proposed Attorney;
  - appointing co-Attorneys to act together.

# Ulysses Contract – Used in Ontario

- **Ulysses contracts are not widely used.**
- **Many people, including some doctors, are not aware of their existence.**
- **Not aware of their use in Canada outside of Ontario.**

# Ulysses Contract for Power of Attorney for Property

- **No similar legislation for Attorney for Property, therefore, no Ulysses Contract over property.**
- **We have prepared a “beefed up” Power of Attorney for Property with Ulysses-like provisions.**
- **Capacity Assessor completes a Form A – Statement of Assessor.**
- **Client provides that capacity assessment is required to revoke, but mere statement of a wish.**



# Scenario 1

**Mr. Smith has a Ulysses Contract.**

**His daughter, Joanie, calls you and says that her father has been awake for over 48 hours arranging and rearranging his furniture because he believes Steven Spielberg is coming over to offer him the lead role in his next big movie. He wants his place to look just right. Contract.**

## Scenario 1, cont'd.

Joanie has contacted police and they attended at Mr. Smith's home, but determined Mr. Smith was not at risk of harm to himself or others.

Joanie is in a meeting with the police right now, and you are on speaker phone. The police want to know whether they can take Joanie's instruction to take her father to emergency.

**What do you do?**

## Scenario 1, cont'd.

The SDA permits a “special provision” that

***“ . . . authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances to take the grantor to any place for care and treatment, to admit the grantor to that place and to restrain the grantor in that place during the care or treatment”.***

*Substitute Decisions Act, ss. 50(2)*

## Scenario 2

Betty was diagnosed with Schizophrenia about 10 years ago. She experiences 2-3 psychotic episodes per year. Betty tells you that she does not want a Ulysses Contract, but her husband, John, told her that he will leave her if she does not have one and that she must appoint him as her Attorney.

**What do you do?**

## Scenario 3

**What if Betty's treating physician and her family have participated in an intervention and they all agree with John? After the intervention, Betty has reluctantly agreed to make a Ulysses Contract.**

**What do you do?**

**Thank you**