

“More must be done to expose, investigate and prevent discrimination, abuse and violence against older persons, especially women who are more vulnerable,” the report says, calling on countries to ensure that aging is a time of opportunity for all”

Dr. Babatunde Osotimehin,
Executive Director, UN
Population Fund (UNFPA),
October 2012

SUMMARY REPORT

“FINANCIAL ABUSE OF SENIORS MEETING”

26 MARCH 2013



The views expressed in this paper are those of the authors, and do not necessarily reflect the views of HRSDC or of the federal government.

INTRODUCTION

There is a growing incidence of financial abuse of older Canadians, particularly amongst older single women¹. Several attributing factors to this alarming trend are identified in the literature including: the rapidly ageing population in Canada, both the increasing wealth but also the volatility of the economic climate impacting all Canadians, and more specifically, the growing population of older people, over 20% of whom will experience mild cognitive impairment, which can negatively impact one's decision-making abilities.

Reports suggest that financial abuse constitutes up to 50% of all reported cases of abuse perpetrated against older Canadians². Financial abuse is also the most difficult kind of abuse for service providers, police services, and judicial systems to provide an adequate response. Most financial abuse is hidden and many victims are unaware of the abuse. Evidentiary difficulties, family attitudes, and low financial literacy all contribute to the low prosecution of offenders.

Proactive solution based responses that counter this serious escalating social issue are urgently required not only by service providers, police, and the judicial system but also individuals and the wider community.

Demographic changes impact the prevalence of financial abuse. With longer life expectancies, many men and women will be at greater risk of financial abuse as a result of decision making disabilities and thereby the declining in ability to manage assets. Today, one in seven citizens are over the age of 65 years, and over the next 25 years, one-quarter of all Canadians (10 million) will be over 65 years. With every projection scenario, the proportion of the oldest-old Canadians (those over the age of 80 years) will increase sharply as well, resulting in vulnerability and declining health status. The celebration of a longer life is often fraught with the complications

FOCUS OF ATTENTION

Financial abuse is a complex social issue, and is considered to be one of the most prevalent forms of elder abuse. Largely because of its complexities and layers of potential actions and reactions from a range of stakeholders from family, to the police, to the legal fraternity and financial institution effective and coherent strategies are not easily manifest. Legal, procedural, attitudinal, and systematic issues are often independently addressed by different sectors and its partners.

According to the National Initiative for the Care of the Elderly (NICE) financial exploitation is the misuse of a person's funds and assets; obtaining property and funds without his / her knowledge and full consent or in the case of an elderly person who is not competent, and is not in his/her best interests⁴.

¹ Statistics Canada. 2012. *Victimization of Older Canadians*. Statistics Canada Catalogue no. 85-002-X. Ottawa.
<http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11627-eng.pdf>.

² Podkieks E. 1992. *National survey on abuse of the elderly in Canada*. Journal of Elder Abuse Neglect. Vol 4, p. 5-58.

⁴ National Initiative on the Care of the Elderly. 2001. *Elder Abuse Assessment and Intervention Reference Guide*.
http://www.nicenet.ca/files/U_of_T_Nice_176064_Police_Tool.PDF

Financial abuse can have significant impact not only on the financial security of seniors, but also on their emotional well-being. “characterized by fear, lack of trust and the onset, often of acute and chronic anxiety”⁵. The loss of a familiar lifestyle, the betrayal experienced, with neither the time nor the opportunity to recover financially is profound for an older adult.

The heterogeneous nature of the older population relating to age, income, acquired assets, health, living arrangements, marital status, family relationships, social networks and ethnic origin gives rise to a wide array of mechanisms through which financial abuse can be perpetrated. In addition to the complex management of various assets such as property, financial resources including benefits and cash, the financial affairs of older people can be additionally complicated by divorce, change in health status, children or step-children, and new friends. Furthermore, the provision of financial activities and management of assets by relatives and friends often raises questions of probity and propriety.

Banks and other financial institutions are in a privileged position in the financial affairs of all citizens. In some jurisdictions, financial institutions could potentially be the first line of defense against abuse by helping to prevent and identifying the abuse at its outset, before assets of the older person have been exploited.

A deeper understanding of stakeholder responsibilities and industry members regarding predisposing factors and affirmative action is required to underpin policy development and practice initiatives in all sectors – health, social and community services, financial services, legal systems – to protect the rights of older people and prevent financial exploitation.

Financial abuse is (unfortunately) a fact of the lives for many Canadians and older people around the world. It is incumbent on all stakeholders to bring their ‘best game’ to the table to create solutions that are robust, comprehensive and coherent. Promising practices and initiatives in the detection and prevention of financial abuse exist at local, provincial and national levels yet the gathering of this intelligence is a rare occurrence.

FINANCIAL ABUSE OF SENIORS MEETING

The Department of Human Resources and Skills Development asked the International Federation on Ageing to host a high-level meeting on the financial abuse of seniors to:

- To raise awareness, build networks, and create a dialogue on the financial abuse of seniors;
- ☐ To discuss the gaps and challenges existing in preventing, detecting and responding to financial abuse of seniors; and
- To share promising practices and explore how to best address the financial abuse of seniors.

The Meeting was purposefully developed as a neutral platform that brought together key industry parties to develop a proactive preventative approach to combating financial abuse of older people.

⁵ Graycar, A. & James, M. 2000. *Preventing Crime Against Older Australians*. Research and Policy Series. No.32, p. 101-106.

BACKGROUND PAPER

The background paper entitled “Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts” authored by the Canadian Centre for Elder Law (CCEL) is a foundational piece of work that sets the scene for discussions prior to and during the Meeting. The paper was directed at the anticipated audience of stakeholders working in the financial sector, government officials, and individuals and organizations with expertise in the area of abuse of older people.

The views expressed in the paper are those of the authors, and do not necessarily reflect the views of HRSDC, neither the federal government nor the International Federation on Ageing (IFA). The Background Paper is attached and Annex A.

SUMMARY OF THE MEETING ON FINANCIAL ABUSE OF SENIORS

Opening Remarks

Mr. Guy Morissette, Director, Senior Policy Division, HRSDC welcomed delegates and highlighted the many different sectors and agencies present at the Meeting.

SESSION 1 - SETTING THE SCENE

Mr. Greg Shaw, Director International and Corporate Relations of the International Federation on Ageing (IFA) provided delegates with an overview of the meeting objectives and a short presentation on a global perspective of population ageing in the context of elder abuse and the important role that Canada has played in addressing this issue.

Facts from the Opening Presentation – Population Ageing (Mr Greg Shaw, IFA)

- Globally 58 million people turn 60 years of age every year
- In 2050 there will be approximately 2 billion people over the age of 60 years of age
- Significant life expectancy variation exists between developed and developing countries
- WHO projections show that non-communicable diseases (NCDs) will be responsible for a significantly increased total number of deaths and disability in the next decade
- Front line staff in financial institutions are one group of personnel that ‘see’ the financial abuse of seniors in their daily work

SESSION 1 - SETTING THE SCENE

Ms. LAURA TAMBLYN-WATTS, REPRESENTING THE CANADIAN CENTRE FOR ELDER LAW (CCEL)
“BEYOND THE FEDERAL/PROVINCIAL/TERRITORIAL FORUM ON THE FINANCIAL ABUSE OF SENIORS, JUNE 2008”

Ms. LINDA ROUTLEDGE, DIRECTOR, CONSUMER AFFAIRS, CANADIAN BANKERS ASSOCIATION
“PROTECTING CONSUMERS”

Ms. JANE ROONEY, DIRECTOR, FINANCIAL LITERACY AND CONSUMER EDUCATION, FINANCIAL CONSUMER AGENCY OF CANADA
“MINIMIZING FINANCIAL ABUSE THROUGH FINANCIAL LITERACY”

MODERATOR: MR. GREG SHAW, DIRECTOR INTERNATIONAL AND CORPORATE RELATIONS, (IFA)

Ms. Laura Tamblyn-Watts provided delegates with an overview of the background paper prepared by the Canadian Center for Elder Law (CCEL). Ms. Linda Routledge provided an

outline of the efforts being undertaken within the banking sector to minimize and limit financial abuse of seniors. Ms. Jane Rooney in her presentation focused on the work of the Financial Consumer Agency of Canada, highlighting the importance of consumer materials and education to better inform older people on issues of financial abuse.

SESSION 1 - KEY MESSAGES

Legislation

- The Personal Information Protection and Electronic Documents Act (PIPEDA) allows for the disclosure of specific information only when banks have reasonable belief that there is a contravention of the law
- Suggested amendments to *PIPEDA* under Bill C-12 are 1) to allow disclosure without contravention of the law and 2) to allow disclosure to other persons and agencies other than police or government such as next of kin.

Stakeholder Responsibilities

- Banks are acutely aware of the incidence of financial elder abuse that exists amongst their customers, and are often also aware of the abuser.
- Banks try to balance de facto diminishing capacity versus presumed capacity; the protection of a client's right to privacy versus preventing abuse, and the challenge of responding to the specific and often complex circumstances of each case of suspected abuse within large organizations that require standards.
- Establishing, implementing and maintaining standards for branch staff for every location, for every instance of financial abuse is a gold standard but not the reality (in any industry).
- Increasingly, clients are using alternative non-branch channels, such as ATMs and online banking, and therefore lose oversight that is evident in face to face interactions and the flagging of atypical transactions or consumer behavior is lost.
- Collaboration across disciplines and sectors is critical in order to identify and develop appropriate responses (immediate, mid and long term).

Education

- Common materials are developed for front line staff: red flags, common scenarios and Power of Attorney (as examples) to assist staff to identify and escalate suspected cases of abuse to the appropriate section of the bank.

The Consumer

- It is believed that as individuals age they can become more confident, to the extent of being overconfident and as a result may be more vulnerable to fraud.
- A decrease in a person's cognition, which can be associated with older age, is often indicative of decreased financial literacy and therefore, the ability to manage finances.
- The existing relationship between the victim and the perpetrator could be a risk factor, as older adults are often very trusting.
- There are many changes during retirement that occur therefore worthy of consideration is the reframing of retirement within the life course approach.

SESSION 2 - DETECTING AND RESPONDING TO SUSPECTED CASES OF FINANCIAL SENIOR ABUSE

Frontline professionals with experience, expertise and case studies presented the issues, the development of promising practices and also the challenges experienced over many years. The complexity of financial abuse seen through the eyes of academia, the banking industry, the legal fraternity and the police enforcement demonstrated the gravity of each and every situation where an older Canadian is abused. .

DETECTION OF ABUSE AND POTENTIAL OF ABUSE

Ms. MARGARET EASTON, PRESIDENT, MERIDIAN AGING PROJECT

“TECHNOLOGY SOLUTIONS IN MINIMIZING ABUSE”

Mr. STEPHEN ALSACE, SENIOR COUNSEL, CIBC LEGAL DEPARTMENT – BANKING REPRESENTATIVE

“BANKING INDUSTRY TRAINING AND PRACTICES TO REDUCE THE RISK OF FINANCIAL ABUSE AGAINST SENIORS”

CAPACITY ASSESSMENTS

Ms. LAUREN BATES, SENIOR LAWYER, LAW COMMISSION OF ONTARIO

“REDUCING RISK THROUGH CAPACITY ASSESSMENTS”

REPORTING TO APPROPRIATE AUTHORITIES

Ms. KATHLEEN CUNNINGHAM, MANAGER, LEGAL AND LEGISLATIVE PROJECTS, PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

“THE DECISION TREE - A TOOL BEING PILOTED IN BRITISH COLUMBIA (BC) TO HELP FINANCIAL INSTITUTIONS DETERMINE THE APPROPRIATE AUTHORITY TO REPORT SUSPECTED CASES OF ABUSE”.

CONSTABLE PATRICIA FLEISCHMANN, TORONTO POLICE SERVICE

“A POLICING PERSPECTIVE”

MODERATOR: MR. DOUG MELVILLE, OMBUDSMAN & CEO, OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS (OBSI)

SESSION 2 - KEY MESSAGES

Legislation

- The complexities of law, coupled with a lack of consensus with and across provinces makes for a ‘patchwork’ of issues and solutions. “Joined up” solutions are required to give Canadians confidence that financial abuse will be detected and dealt with in an appropriate manner. Premeditated miscommunication, conveying false messages through translation, etc. are considered cases of financial abuse when the victim is competent.
- Jurisdictional differences affect not only the mechanisms to detect and deal with financial abuse but also capacity assessments, response teams, power of legislation and the disconnect between public awareness and private sector capacity.

The Consumer

- Older people often seek assistance in financial management because of: a lack of confidence; experiencing dementia or confusion; may have a disability or experience poor health. As a result, powers of attorney, joint accounts, and loans are often sought by an individual without having a full appreciation and understanding of the technicalities and also the associated risks.

Stakeholder Responsibilities

- Banks are faced with a variety of competing interests; balancing the interests of the client who may or may not have the capacity to manage their finances, and the role and responsibilities of the power of the attorney.
- Banks (e.g. CIBC) have taken efforts to explore the instances and processes to detect and prevent financial elder abuse by layering mechanisms and developing specific tools.
- Staff turnover on the frontline of banking institutions significantly challenges the efforts of addressing financial abuse and the use of POAs.
- Active monitoring and if possible, separate accounts for the attorney and for the client to ensure persons are acting in good faith is necessary and feasible.

SESSION 3 - ADDRESSING THE MISUSE, ABUSE OF POWERS OF ATTORNEY, JOINT BANK ACCOUNTS

Ms. JUDITH WAHL, EXECUTIVE DIRECTOR, ADVOCACY CENTRE FOR THE ELDERLY (ACE)

“POWERS OF ATTORNEY”

Ms. ANN SODEN, EXECUTIVE DIRECTOR NATIONAL INSTITUTE OF LAW, POLICY AND AGING

“FINANCIAL EXPLOITATION: DOES QUEBEC OFFER SOME MITIGATING PRACTICES”

Ms. KIMBERLY A. WHALEY, PRINCIPAL, WHALEY ESTATE LITIGATION

“HOW CAN LITIGATION BE MINIMIZED”

Ms. CYNTHIA M. HIEBERT-SIMKIN, PARTNER, TRADITION LAW LLP ESTATES AND TRUSTS

“POAs AND JOINT ACCOUNTS”

MODERATOR: DR. JANE BARRATT, IFA

In order to address the misuse and abuse of Powers of Attorney (POA), professionals from civil society, legal practices and national institutes on elder law describe ‘real situations’ in the context of ‘the law’, while paying attention to the provincial differences and the nuances and interpretation of the law.

The expert panelists differed in their views on how best to address this situation, which in large part demonstrates the multidimensional nature of the situation and the varying reactions from consumers and their families (who may be the perpetrators), to financial institutions who responsibly admits that this is not ‘their skill-base’, to promotional ‘push’ to have a POA without appreciation of the risks associated with this financial instrument.

SESSION 3 - KEY MESSAGES

Legislation

- POA legislation is often considered a “knee jerk” response. Questions that need an answer include: what happens after financial abuse is detected and who is responsible?
- Legislation tends not to address cultural differences that may compete or conflict with documents such as POAs.
- Joint accounts are often created to avoid paying probate taxes, giving the opportunity to exploit. However many older adults and family members are not aware of the risks associated with this financial instrument.

Powers of Attorneys

- The intent of POAs is to protect and to serve in the best interest of the client. It is publicized as the “go-to” document that is easy to use, solves all the problems of financial management, and promotes security and protection.
- POA and joint accounts were developed to assist in financial management and protection, however these are often the tools used to financially exploit older adults. It is highly suggested that joint accounts are not used and alternative methods are recommended.
- There should be three critical aspects of a POA
1) the listing of duties of the attorney, 2) giving notice when the attorney is acting alone, and 3) the duty to account and record the provisions of financial activity.
- There is more legislative control of POAs than joint accounts and consequently, there are more cases of abuse with joint accounts than there are with POAs. Furthermore, if the only asset of the individual is the joint account, then the risk is just as severe as it would be with a POA.
- POAs are complex and require sophisticated financial literacy, and a high cognitive functioning to follow the necessary steps.
- There is information overload in respect to POAs, which in turn appears to be creating confusion and uncertainty.
- Abuse of POAs can exist beyond death. There are cases where attorneys do not disclose death and will continue to collect CPP and OAS from the deceased donor.
- In Quebec specifically, POAs only exist while the individual is capable of making his/her own decisions. When incapacity is suspected, mandates then come into effect and a court process in order. Roles and responsibilities of the attorney are clearly stated however, homologation of mandates are costly, and do not capture abusers operating under a general banking POA.
- The rights of survivorship on joint accounts vary across Canada.
- A registry of POAs will be useful however there is a question of validity.

“The outcomes we have are only as good as the process; and at the end of the day we can’t deem a bad decision as elder abuse”

Education

- Existing financial literacy and educational documents do not effectively address risks, prompt the right questions or adequately describe the roles and responsibilities of the attorney.
- Educational materials are important and have to be elevated through different methods and systems. However, it is also important to empower individuals/clients to understand their own situation(s).
- Grantor and Grantee education is critical – there needs to be knowledge that POAs can be tailored to the needs of both parties involved.
- Some seniors may not understand that a POA prepared by their bank is not applicable to any other financial assets they may have outside of this financial institution.
- Poor English or French language skills can leave immigrant seniors more vulnerable to financial abuse.

Consumer related information

- Prematurely divesting property is common, often times family dynamics and pressures imposed onto the older adult are indicative of the risk of exploitation.
- Civil remedies exist but are cost consuming and often require the depletion of someone else's funds. There needs to be reasonable evidence to indicate fraudulent behavior.
- Family dynamics are complex and vary. Discussions with the client and cautions of the risks are important to have. Shedding light to the risks is imperative.

SESSION 4 – CROSSWALKS BETWEEN SECTORS: THE BENEFITS IN HARMONIZATION?

Ms. SUZANNE MICHAUD, SENIOR ADVISORY COUNSEL IN RBC LAW GROUP

Ms. JAN HOPPER, ASSISTANT CORPORATE SECRETARY & CHIEF PRIVACY OFFICER, CREDIT UNION CENTRAL OF CANADA (CUCC)

Mr. PETER J M LOWN QC, UNIFORM LAW CONFERENCE OF CANADA AND DIRECTOR, ALBERTA LAW REFORM INSTITUTE

Ms. LAUREN BATES, SENIOR LAWYER, LAW COMMISSION OF ONTARIO

MODERATOR: DR. PATRICIA HUGHES, EXECUTIVE DIRECTOR, LAW COMMISSION OF ONTARIO

The consensus going into the Financial Abuse of Seniors Meeting was that each individual, sector, discipline and agency has a role to play in addressing and moving to prevent financial abuse.

Internal and external barriers, including provincial differences, in addressing financial abuse were identified and discussed. With respect to POA legislation, Mr. Peter Lown, Director of the Alberta Law Institute, stated "If we can get past the provincial boundaries then we can talk, but if we don't and we don't set a benchmark we risk becoming the lowest common denominator; and that is not good enough."

SESSION 4 - KEY MESSAGES

Harmonization

- Legislation is important because it is the most powerful tool we have; politically and socially accepted. A collaborative approach to policy development is necessary but not to the point of systemic paralysis. Social supports are required to build a strong foundation after legislation.
- In the case of POAs, jurisdictional differences cause significant barriers to preventing financial elder abuse.
- A collaborative approach across all disciplines is important and imperative.
- As a nation that attracts and welcomes people from countries globally, it is necessary to ensure a deeper understanding of foreign POAs.
- Credit unions are provincially regulated and have national activities that include financial abuse as one of their committees.

Education

- To ensure an effective POA several items must exist 1) a contractual agreement that was not created under duress, with witnesses and is a self-proving document, 2) depicts clear roles and responsibilities for the attorney (do's and don'ts), 3) is open and transparent, 4) someone to report suspected cases of POA abuse who have the authority to investigate the report, and 5) strategies to mitigate risks when a suspected case of POA abuse is identified (ex. freezing of bank accounts).
- The skill is to balance between autonomy and protection.
- There is a large implementation gap and a need to increase knowledge on every level of government and service providers (including bank tellers).
- In the new federal budget there are allocated funds for financial literacy and also consultations on graduated rate of taxes on estates –this could be an opportunity to look for changes in legislation.

CLOSING REMARKS

The Government of Canada has demonstrated commitment through actions to the senior citizens of Canada against financial abuse. The intent of this Meeting, the work at HRSDC and various other federal ministries was to stimulate and facilitate discussions on how best to address the financial abuse of seniors.

Many good practices exist, but it is evident that these practices and knowledge are often embedded and protected in a single sector as opposed to the preferred reality -- working together and with governments facilitating this exchange.

Raising awareness is an important way to help prevent the financial abuse of seniors, however, a challenge remains in trying to convey complex information (e.g. the risks and duties associated with POAs) using plain language that is accessible to the general public.

Agents of trust, among whom are banks and other financial institutions, as well as lawyers, health professionals and advocates are key groups of stakeholders that have demonstrated a willingness to collaborate to create a deeper understand of the current impediments in this field and to consider efficiencies and mechanisms for subtle yet important changes to improve the lives of vulnerable older Canadians.