

“More must be done to expose, investigate and prevent discrimination, abuse and violence against older persons, especially women who are more vulnerable.”

Dr. Babatunde Osotimehin,  
Executive Director, UN  
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October 2012

BACKGROUND PAPER  
“FINANCIAL ABUSE OF  
SENIORS: AN OVERVIEW OF  
KEY LEGAL ISSUES AND  
CONCEPTS”

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FOR:

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# Background Paper

## Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts

### 1. Introduction

This background paper has been written to set a foundation for discussions being organized by the International Federation on Aging, with support of Human Resources and Skills Development Canada (HRSDC), as part of a National Meeting on Financial Abuse to be held in Toronto on March 26, 2013. The paper is 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 this paper are those of the authors, and do not necessarily reflect the views of HRSDC or of the federal government.

This meeting is an opportunity for dialogue about experiences, challenges and ideas for preventing, detecting and responding to financial abuse of seniors. Given that the way forward is not obvious, and that response is necessarily interdisciplinary and inter-agency in nature, stakeholder dialogue of this nature is crucial.

Few of the practice questions that arise in relation to financial abuse of seniors lend themselves to a simple straightforward answer. This meeting brings stakeholders together to:

- Raise awareness, build networks and create dialogue;
- Discuss the gaps and challenges in preventing, detecting and responding to financial abuse of seniors; and
- Share promising practices and explore how to best address financial abuse of seniors.

Many institutions have made progress in aspects of detecting, preventing and responding to financial abuse of seniors. This meeting will be an opportunity to share some of these successes and learn from colleagues.

This document is intended to provide an overview of key legal issues, concepts and themes, and to identify questions to generate discussion at the meeting. It is organized under the following sections:

- Section 2. Defining the concept—what is financial abuse of seniors?
- Section 3. The existing legal context and amendments on the horizon
- Section 4: Promising practices in responding to financial abuse of older people (including specific examples in Appendix A)
- Section 5. Setting the scene for discussion—highlights of past recommendations in this area and further ideas for exploration

Additional questions have been threaded throughout this background paper to encourage reflection in advance of the meeting. A summary of the questions is attached as Appendix B.

The meeting and background paper are intended to engage stakeholders from across Canada; however, the reality is that legislation is often provincial or territorial, and successful programs operate within provinces/territories or local communities. This paper highlights themes that cross jurisdictional boundaries, and identifies legislation that applies across the country.

This background paper discusses the concept of financial abuse of seniors, also referred to in some contexts as financial elder abuse or abuse of older adults or older people. In this paper we generally use the terms senior, older adult and older person interchangeably. The term elder is not emphasized because it tends to be associated with Indigenous spiritual or community leaders or sages, although the term is used in a number of sources referenced in the paper.

## 2. Defining the Concept—What is Financial Abuse of Seniors?

### a. Abuse of Older Adults

Since this paper is concerned with legal and quasi-legal issues and themes, it is important to clarify at the outset that senior abuse is not a legal term defined anywhere in legislation in Canada. Adult protection legislation discussed below defines “abuse “ and types of abuse, but not senior abuse. One of the definitions of senior abuse most cited by academics, educators and advocates alike is the definition that appears in the Toronto Declaration on the Global Prevention of Elder Abuse:

Elder abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.<sup>1</sup>

HRSDC recently funded the National Initiative for the Care of the Elderly (NICE) to lead research to establish consistent agreed upon definitions of abuse of older adults to support research and analysis in the social science sector, as a precursor to undertaking a national prevalence study.<sup>2</sup> This approach sets Canadian research apart from other countries as being grounded in thorough investigation and evaluation of a definition. NICE has now finalized a definition for Canada that was developed by consensus among key researchers and stakeholders working in this area:

Mistreatment of older adults refers to actions and/or behaviours, or lack of actions and/or behaviours that cause harm or risk of harm within a trusting relationship. Mistreatment includes abuse and neglect of older adults.<sup>3</sup>

Another useful plain language definition of senior abuse was recently developed by the Centre for Research & Education on Violence Against Women and Children at the University of Western Ontario. The definition appears in the series of educational tools entitled “*It’s Not Right!*” *Friends, Neighbours and Families for Older Adults*. The tools characterize senior abuse as, “harm caused to older adults by someone who *limits or controls* their rights and freedoms,” noting further that:

The older adults are *unable to freely make choices* because they are afraid of being hurt, humiliated, left alone or of the relationship ending. Abuse is different from situations where two people are in conflict with each other. These people may do things to hurt each other, and fights can escalate to violence. However, both people have power in the relationship... It is abuse when one person uses their power or influence to take advantage of, or to control, the older adult.<sup>4</sup>

Key themes that emerge from these definitions are: harm to an older person, risk of harm, action or inaction, trust, imbalances of power, using power to control another, and limiting someone’s rights and freedoms. These definitions emphasize abuse of seniors as a form of mistreatment that arises out of the context of an existing relationship of trust. The term “trust” is not used in a legal sense, but indicates relationships where there is an element of reliance, or someone within in a circle of closeness surrounding the older person. This conceptual approach captures abuse by friends, family, neighbours, other loved ones, volunteer caregivers, as well as professionals and service providers such as physicians, nurses, and lawyers, largely excluding common types of consumer fraud that often target seniors, such credit card and lottery fraud. Within this conceptual framework abuse of seniors thus becomes a misuse of power—a reality not unlike our current understanding of domestic or family violence—and “not every harm to an older adult is ‘abuse.’”<sup>5</sup>

### b. Financial Abuse of Seniors

Canadian law contains very few definitions of financial abuse<sup>6</sup> and none that apply specifically to senior abuse. Like broader definitions of senior abuse discussed above, financial abuse is generally defined to be an action or series of actions that occurs as part of an ongoing relationship. The definition of financial abuse used in the 2008 Federal/Provincial/Territorial Forum on Financial Abuse of Seniors was, “the misuse of an older adult’s money or belongings by a relative or person in a position of trust.”<sup>7</sup> The definition developed recently

by NICE is, “an action or lack of action with respect to material possessions, funds, assets, property, or legal documents, that is unauthorized, or coerced, or a misuse of legal authority.”<sup>8</sup> Another broader and more plain language definition of financial abuse is “where someone tricks, threatens or persuades older adults out of their money, property or possessions,”<sup>9</sup> again within the context of an ongoing relationship.

One of the challenges for the financial sector is that many of the legitimate tools that are used for financial and personal planning, financial management, and monetary transactions are precisely those same tools that are commonly used to financially abuse seniors. Financial abuse can occur through:<sup>10</sup>

- Monetary gifts that are involuntary—e.g. gifts made under coercion, undue influence or threats<sup>11</sup>
- Misuse of a credit card or bank card by a friend or family member given access to the PIN number in order to assist the older person with specific activities
- Inter-family loans that are not repaid and repeated borrowing
- Misuse of a power under a general or enduring power of attorney
- Misuse of funds in a joint account created ostensibly to allow another person to assist the senior with financial transactions (however, the person spends the money for their own uses)
- Private care agreements, whereby a senior transfers title of property in exchange for anticipated care that is not provided<sup>12</sup>
- Withholding of the older person’s pension cheque by attorney or other decision-maker or family member with access to the older person’s mail
- Forging the older person’s name or altering documents to get permission to access or dispose of assets, including forging cheques
- Theft of cash, credit cards, bank cards, or valuables
- Cashing in investments without permission
- Forcing a senior to sign over their home or a vehicle
- Predatory marriage<sup>13</sup>
- Pressuring an older person to sign documents that they do not have the capacity to understand.

Financial abuse includes more subtle dynamics such as circumstances where a senior is financially supporting other family members and/or allowing them to live in his or her home, due to pressure or where this dynamic is causing harm to the senior.<sup>14</sup> Further, “special circumstances may create new opportunities for financial victimization. For example, when older adults received large lump sum funds under Common Experience Payments this led to concerns in aboriginal communities about financial exploitation from family, neighbours as well as from outsiders.”<sup>15</sup>

Family loans are frequently undocumented, with the result that there will not necessarily be a common understanding concerning the terms of repayment and related matters.<sup>16</sup> Older people often enter into joint accounts without understanding the legal or financial implications such a decision will have during their lifetime or after death.<sup>17</sup> These factors compound the delivery of services to seniors.

This paper focuses on financially abusive behavior that is a form of abuse of older people, i.e. occurring in the context of a relationship. This approach does not include consumer frauds targeting seniors. As Charmaine Spencer writes, “although there may be superficial similarities between financial abuse and other types of financial victimization, they differ in terms of the existence of the relationship, the underlying factors, the dynamics, the time of which the harm is carried out, victim and abuser profiles, as well as the emotional, physical and financial impact for the individual, families and community.”<sup>18</sup> Still, some of the material in this paper may be helpful in considering how to respond appropriately to consumer fraud of older people. We refer you to other resources for information regarding frauds targeting seniors.<sup>19</sup>

#### **Question**

1. Are there other kinds of examples of financial abuse of seniors not discussed in this background paper that you would like to highlight for discussion?

### **c. Inter-connections between Different Types Abuse of Seniors**

Abuse of seniors is often characterized as types. Different lists of the types of abuse are found in various sources. The most commonly referenced types are physical, psychological (mental or emotional), financial and sexual abuse.<sup>20</sup> Neglect is sometimes included.<sup>21</sup> Other types discussed in Canada (though not defined in legislation) include systemic abuse,<sup>22</sup> abandonment, spiritual abuse,<sup>23</sup> medical abuse,<sup>24</sup> and social abuse.<sup>25</sup>

Financial abuse often occurs in connection with other types of abuse.<sup>26</sup> For example, the attorney who refuses to provide a dependent senior with funds to pay for groceries or other necessities is also neglecting an older person for whom he or she has a degree of responsibility. The adult child who threatens the senior that he will not let her see the grandchildren unless she guarantees a loan is psychologically abusing the senior as well financially abusing her.

Social science research tells us that abuse of older people is not a single phenomenon and does not lend itself to understanding through a single unified theory;<sup>27</sup> rather, different types of abuse denote different kinds of problems impacted by diverse social dynamics that are key to how we understand effective response. For example, abuse of a senior occurring in a domestic violence context presents different factors and challenges from abuse affected through excessive medication of an older care facility resident with dementia.

Financial abuse response appears to raise some unique recurring dilemmas and challenges in relation to privacy rights, reporting obligations, and awareness of the roles of different financial substitute decision-makers. Focusing discussions on financial abuse allows us to structure discussions to pinpoint these key issues; however, it is useful to be aware that the senior who is being financially abused may also live with fears associated with physical or emotional abuse, as these factors may impact on the appropriate response.

### **d. Social Dynamics of Abuse and Impacts on Seniors**

Contrary to portrayals of older people as weak, dependent victims, older adults are most often abused by people who are dependent on them. Adult children who harm their parents often exhibit various health, mental health and financial problems, including financial dependence on the older person, substance abuse, social isolation, and employment issues.<sup>28</sup> The abuser may rationalize the mistreatment with a false sense of entitlement toward the senior's money or belongings: eg. I am the only daughter, I deserve the money, etc.<sup>29</sup> These complex dynamics can make identifying the appropriate response to abuse especially challenging.

For the older person experiencing abuse, the consequences of financial abuse extend beyond monetary impacts; abuse can have social, mental health and health impacts on the senior. As Charmaine Spencer writes, "older people view financial abuse as [a] fundamental violation of their trust by someone close to them, in many cases someone they loved and cared for throughout their lives. Financial abuse at any age often occurs in conjunction with emotional abuse, robbing people of their dignity and sense of worth."<sup>30</sup> Abuse may also undermine an older person's sense of personal power and self-determination.<sup>31</sup>

In spite of these negative impacts, one of "the greatest obstacle[s] to successful intervention is refusal of services by the victim as well as the perpetrator."<sup>32</sup> As noted above, senior abuse is characterized by an abuse of power; as such, as Joan Braun writes, "victims often have trauma reactions and may respond to professionals in ways that impede[d] an investigation."<sup>33</sup> Other reasons older adults resist intervention or assistance include:<sup>34</sup>

- It can be especially hard to consider relationship changes or separation after so many years together
- Stigma on the family
- Resistance to having strangers in the home providing services
- Fear of reprisal by the abuser
- Difficulties saying no to a child with longstanding dependency on the older adult
- Fear of a loss of independence if abuse is reported, especially if assistance by the abuser is helping an adult to stay in his or her home

- Fear of loss of the long time home, and of being placed in an institution or care facility
- Fear and shame of discussing other abuse connected to the financial abuse
- Shame of being hurt by someone in their own family
- Extracting oneself from abusive dynamics can be complicated and the older person may not understand their rights and options

Although criminal prosecution is a possibility in the context of abuse, it is not always the ideal response for various reasons,<sup>35</sup> such as:

- The fact that prosecutions are often difficult, as the victim may be reluctant to cooperate in a prosecution against the loved one;
- The victim may have poor health and possible present or impending mental incapacity;
- The prosecution may take so long that the victim dies before the case goes to court; and
- The perpetrator may be the only significant person in the victim's life and to report and testify against them would result in loneliness and pain from the perceived consequences of the intervention.

#### **Question**

2. Given that financial abuse of seniors is an abuse of power, how can we develop practices for prevention and response that dismantle this pattern of undermining an older adult's will and decision-making autonomy?

### **3. The Existing Legal Framework and Amendments on the Horizon**

There are a number of federal and provincial/territorial laws that may apply to financial abuse of seniors. In the federal jurisdiction there is the *Criminal Code* (the Code),<sup>36</sup> which includes crimes that may apply in the event of abuse; federal privacy legislation also impacts on response. The provinces and territories have addressed abuse of adults through a variety of approaches, including adult protection and guardianship legislation, legislated protection for adults living in residential care, domestic violence legislation, and human rights legislation. Consequently, options (and requirements) for response depend on the region in which a practitioner is delivering services.

#### **a. The *Criminal Code* Context**

##### **i. Legislation**

The Code contains no specific crime of elder abuse or neglect.<sup>37</sup> However, financially abusive behaviour can fit the meaning of various criminal offences, such as:

- Theft (s. 324)
- Theft by a person holding a power of attorney (s. 331)
- Misappropriation of money held under direction (s. 332)
- Criminal breach of trust (s. 336)
- Theft or forgery of a credit card (s. 342)
- Extortion (s. 346)
- Forgery (s. 366)
- Fraud (s. 380)

Moreover, as discussed earlier, financial abuse may be the tip of the iceberg, and the older person may be experiencing other forms of abuse that fall under other provisions of the Code, such as:

- Physical assault (s. 265)
- Sexual assault (s. 271)
- Uttering threats (s. 264.1.)
- Intimidation (s. 423)

- Unlawful confinement (s. 279)
- Failing to provide the necessities of life (s. 215)

See the BC Centre for Elder Advocacy and Support (BC CEAS) publication, “Abuse and Neglect of Seniors: Is it a Crime?” for a useful diagram depicting the overlap and gaps between criminal law and senior abuse.<sup>38</sup>

**Question**

3. Financial and related abuse is not always a criminal act. Can you identify organizations in the community or communities in which you provide services that offer assistance to older people who have been abused?

**b. Provincial and Territorial Legislation relevant to Responding to Financial Abuse**

Each province and territory has taken a unique approach to creating laws and obligations in relation to adult abuse and neglect. The differences in approach reflect differing ideologies regarding the importance of intervention for the purpose of protection versus the need to safeguard as much as possible the adult’s independent decision-making and right to live at risk. Some legal regimes require reporting if an adult has been abused or neglected; others permit or require intervention in the presence of risk to a vulnerable adult.<sup>49</sup> Some laws apply only to adults residing in care facilities; others apply to all adults who meet the statutory definition of an adult in need of protection. In most jurisdictions a number of laws apply to abuse and neglect. The overall options and obligations to respond to abuse or neglect depend on the relationship between the various laws and the specific circumstances of abuse or neglect involved in each case. Generally, the following different types of provincial legislation may apply to abuse of seniors:

- i. Adult protection laws
- ii. Protection for persons in care legislation
- iii. Neglect legislation
- iv. Domestic violence legislation
- v. The Quebec *Charter of Human Rights and Freedoms*
- vi. Public Guardian and Trustee legislation

Like the Code, provincial and territorial legislation laws that may apply to senior abuse are essentially age neutral: no law applies exclusively to older people. Instead, the laws create responsibilities vis-à-vis groups of people, such as adults at risk, adults in need of protection, and adults in care. Below we briefly summarize provincial and territorial legislation that may apply to financial abuse, and refer you to other sources for a more robust summary and comparative analysis.<sup>50</sup> This paper offers no opinion on whether any provincial or territorial approaches are superior to others.

**i. Adult Protection Legislation**

A small number of jurisdictions have adult protection laws that apply to adults who meet a definition of an “adult in need of protection”, regardless of where the adult lives. These jurisdictions are BC,<sup>51</sup> Yukon,<sup>52</sup> Prince Edward Island<sup>53</sup> and New Brunswick<sup>54</sup>. In BC, Yukon, and PEI agencies designated by regulation investigate and respond. There is no duty to report abuse.<sup>55</sup>

Nova Scotia is the only jurisdiction in Canada that can be said to have a regime of mandatory reporting of abuse of adults, and the duty to report applies under certain limited circumstances. Nova Scotia’s *Adult Protection Act*<sup>56</sup> states that:

5 (1) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection shall report that information to the Minister.<sup>57</sup>

The statute defines an "adult in need of protection" to mean: an adult who, in the premises where he resides,

- (i) is a victim of *physical abuse, sexual abuse, mental cruelty* or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or
- (ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention.<sup>58</sup>

In terms of financial abuse, there are a number of limitations to note. First, the provision does not mention financial abuse. As discussed above, financial abuse does sometimes occur hand in hand with other forms of exploitation or cruelty. Therefore, in Nova Scotia, there is arguably a duty to report the financial abuse of a senior linked to physical, sexual or mental abuse or neglect. Second, adult protection legislation generally only applies to adults who, consistent with the section of the *Adult Protection Act* cited above, are not able to access assistance independently or care for themselves, perhaps due to a mental or cognitive impairment. Many circumstances of adult abuse will not be captured by adult protection legislation.

In Newfoundland and Labrador there is a general duty on everyone to report neglect.<sup>59</sup> Financial abuse that points to neglect could give rise to a duty to report. Note: Newfoundland and Labrador is in the process of revising its adult protection laws; the new *Adult Protection Act*,<sup>60</sup> which is not yet in force, will require the province to respond to reports of abuse, but does not make reporting of abuse mandatory for anyone. It is not clear when the *Adult Protection Act* will take effect, but when it does, it will repeal the *Neglected Adults Welfare Act*.<sup>61</sup>

Both these laws make it clear that the duty to report applies to confidential information.<sup>62</sup> In sum, there is a duty to report in two jurisdictions in Canada, but this duty does not apply to financial abuse *per se*.

## ii. Other Provincial and Territorial Legislation

In a number of jurisdictions—BC,<sup>63</sup> Alberta,<sup>64</sup> Manitoba,<sup>65</sup> Ontario,<sup>66</sup> Nova Scotia<sup>67</sup>—employees or operators of care facilities have a statutory duty to report and investigate abuse. In many instances the definition of abuse includes financial abuse. In Manitoba, the *Vulnerable Persons Living with a Mental Disability Act* imposes a duty on people providing care, support services or related assistance, substitute decision-makers or committees to report abuse or neglect, or likely abuse or neglect, but this legislation applies only to an adult who has had a mental disability since childhood and meets other criteria—a specific sub-group of older adults, but certainly not all older people.<sup>68</sup>

In Quebec the *Commission des droits de la personne et droits de la jeunesse* accepts reports of exploitation of older people, which has been interpreted to include circumstances of financial abuse.<sup>69</sup> Article 48 of the *Charter of Human Rights and Freedoms* states, “every aged person and every handicapped person has the right to protection against any form of exploitation.” The meaning of exploitation has been interpreted fairly broadly to encompass different forms of elder abuse where there was an element of dependency and vulnerability present on the part of the older person. In one decision, the Commission clarified:

The “aged person” is not defined in article 48; it refers simply to a person who is elderly and the notion of exploitation refers to a state of dependence that aged persons could find themselves in. Exploitation includes the notion of profiting from a position of force to the detriment of the interest of the vulnerable person. It is not limited to economic exploitation; it could also be physical, psychological, social or moral.<sup>70</sup>

In some jurisdictions domestic violence legislation provides remedies in the event of senior abuse associated with family violence, and family violence is generally defined to include financial abuse.<sup>71</sup> The primary purpose of domestic violence statutes is to provide authority to obtain protection orders and short-term emergency protection orders in circumstances where family violence has occurred.

In some provinces and territories the public guardian and trustee (PGT)<sup>72</sup> has some powers to intervene in circumstances of financial abuse or abuse by a power of attorney, guardian, trustee or other substitute decision-maker, but there is no duty to report to a PGT. In Yukon, BC, Alberta, Saskatchewan, Ontario and Quebec the PGT has the power to investigate abuse.<sup>73</sup> In BC the PGT may investigate financial abuse of any individual even in the absence of a power of attorney, guardian, representative or substitute decision-maker having been previously appointed.<sup>74</sup> Under *The Public Guardian and Trustee Act* of Saskatchewan, financial institutions may freeze the funds of a vulnerable adult's account for up to 5 business days if the institution has reasonable grounds to believe that another person is subjecting the adult to financial abuse.<sup>75</sup> There is considerable variability across the country in terms of when and if the PGT has the power to intervene under legislation, and as to intervention practices of the PGT offices across the country. For national organizations this variation creates significant challenges to policy development.<sup>76</sup>

#### Questions

4. What has been your experience of working with the PGTs to respond to financial abuse of seniors?
5. Can you identify some promising practices or experiences in terms of using provincial or territorial legislation to assist an older person who is being financially abused? Why was the intervention successful?

### c. The Impact of Mental Capacity Law on Abuse and Neglect of Older Adults

At its core, mental capacity is about decision making.<sup>77</sup> A person with mental capacity has the right to make his or her own decisions. Although mental capacity legislation varies from province to province, most jurisdictions espouse the underlying principle that all adults of legal majority are presumed to be mentally capable of making their own decisions unless and until the contrary has been proven.<sup>78</sup> This proposition applies regardless of age, although some medical conditions, such as those characterized by dementia, may impact capacity.

Definitions of capacity vary across jurisdictions and have evolved over the years. However, the key to recently revised definitions is the notion that a capable adult must be able to understand information and appreciate the consequences of decisions.<sup>79</sup> In this sense capacity is about a person's decision-making *process*, and it is neutral as to the outcome of that process. Therefore, all adults retain the right to make unwise or risky decisions, where they make these choices with capacity, regardless of age, disability or illness—even in the context of abuse. Guardianship laws do not restrain adults who are mentally capable of choosing to take risks. For example, an adult who has been a habitual gambler cannot be prevented from continuing to take financial risks just because the person is older, and, in the absence of a court order, capable adults retain the right to choose the people with whom they live or associate—including people who treat them poorly or are abusive.

In a number of provincial and territorial legal systems a determination of incapacity requires the presence of a disabling condition or diagnosis.<sup>80</sup> The trend in revised, more modern, guardianship legislation has been to dispense with this requirement. However, definitions of capacity still vary with respect to whether a determination is global (also called plenary), or whether capacity is domain or decision-specific.<sup>81</sup> A finding of incapacity may, for example, be limited only to financial matters or a particular subset of personal care decisions, and a person may be incapable of some types of decisions only. Ultimately, mental capacity legislation varies significantly across the country, making generalizations about capacity law problematic.

Some abusive treatment is inherently connected to the abused person's lack of capacity and the abuser's knowledge of the older adult's compromised decision-making ability. For example, in terms of financial abuse, if a person knowingly persuades an older adult who is mentally incapable to grant the other access to the older adult's funds by signing a power of attorney or other legal instrument, that is arguably financial abuse. The mentally incapable person cannot consent to the power of attorney because this person cannot appreciate the consequences of this choice; the financial abuser is taking advantage of vulnerability.

Although a legal process is required to formally deem a person incapable, there is often an aspect of informal capability assessment to practice. Many practitioners, including those in the financial sector, must assess capacity every time a client or member requests a transaction or signs a document. Likely many of us evaluate capacity unconsciously, and without any formal training in this area. We become focused on capacity when we think a client cannot understand the meaning or impact of a legal document or financial transaction; in these circumstance serving the adult becomes more complex. Many capacity assessment tools exist.<sup>82</sup>

In the everyday experience of people with mental capacity issues, capability may improve, decrease, or fluctuate.<sup>83</sup> You may be able to apply strategies to enhance the ability of a person to participate in decision-making, for example, by carefully choosing the time of day to meet with an individual with capacity issues or by choosing a meeting place where the person will feel most calm.<sup>84</sup> Making such changes may require greater familiarity with the older person's circumstances.

#### **Question**

6. Can you identify a capacity assessment strategy or resource that has been helpful in your work?
7. How can you ensure that your use of capacity screening tools is non-ageist?

#### **d. Privacy Law**

In Canada, the use, collection and disclosure of personal information is governed by multiple federal, provincial and territorial statutes. The issue of which statute applies to particular circumstances of disclosure can be a complex question that depends on a number of factors, including the jurisdiction in which an individual resides, the nature of the information, and the type of industry or organization. For the purposes of this paper, we focus on the federal privacy legislation, *Personal Information Protection and Electronic Documents Act* (PIPEDA), as it applies to a federal “work, undertaking or business”, defined in the statute to include banks.<sup>85</sup> Provincially regulated organizations include credit unions.<sup>86</sup>

According to the Act, the purpose of PIPEDA is a balancing of the goals of, on the one hand, personal information protection, and on the other hand, enabling reasonable commercial practices with respect to the collection, use, and disclosure of personal information.<sup>87</sup> The general rule is that consent is required to disclose a person's information. However, few laws create absolute rules and privacy law is no different: it is legal to disclose a person's information without consent in various circumstances set out in section 7(3) of the Act.

Very few of the exceptions currently set out in PIPEDA are applicable to circumstances where a financial sector customer service representative believes a person is experiencing financial abuse and would like to disclose information without the older person's consent. Section 7(3)(d)(i) permits disclosure to “to an investigative body, a government institution or a part of a government institution” where “the organization has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed.”<sup>88</sup> The language of this exception captures circumstances where a crime has been committed or is about to be committed. The broad language does not include to circumstances where an organization believes a crime *may* be committed and there is no notion of risk imbedded into the subsection (3)(d)(i).

Disclosure is permitted where “required by law”.<sup>89</sup> This exception could permit disclosure without consent to report abuse in a jurisdiction where it is mandatory to report financial abuse. However, as noted earlier, there is no mandatory reporting of financial abuse in Canada. It also appears to be legal to disclose without consent where an emergency “threatens the life, health or security of an individual.”<sup>90</sup>

In terms of compliance with other laws, there may be a duty to disclose information at the request of an investigatory body, such as the police or a public trustee. Some provincial legislation makes it clear, even without reference to the PIPEDA, that there is a duty to provide information to a public trustee investigating

financial abuse.<sup>91</sup> But all these circumstances apply to an investigation initiated by another body. In terms of financial abuse, at the time of writing, the ability to act is very much tied to the occurrence of a criminal act.

#### i. Anticipated Amendments to PIPEDA

On September 29, 2011 the Ministry of Industry introduced C-12, an *Act to amend the Personal Information Protection and Electronic Documents Act (Safeguarding Canadians' Personal Information Act)*.<sup>92</sup> Bill C-12 proposes a number of amendments to subsection 7(3) of PIPEDA. Two new subsections to be inserted following subsection (d) could expand the ability to disclose information without consent in circumstances of financial abuse. Under Bill C-12 an organization may disclose personal information without the knowledge or consent of the individual if the disclosure is:

- (d.1) made to another organization and the disclosure is necessary
  - (i) to investigate a breach of an agreement, or a contravention of the laws of Canada or a province, that has been, is being or is about to be committed, or
  - (ii) **to prevent, detect or suppress fraud** when it is reasonable to expect that the disclosure with the knowledge or consent of the individual would undermine the ability to prevent, detect or suppress the fraud;

or

- (d.2) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and
  - (i) the organization has reasonable grounds to believe that the individual has been, **is or may be the victim of financial abuse**, and
  - (ii) the disclosure is made solely for purposes related to preventing or investigating the abuse<sup>93</sup>

These amendments were informed by concerns expressed by the Canadian Bankers Association and by many in the public guardian and trustee community during the Parliamentary review of PIPEDA.<sup>94</sup> Subsection (d.2) permits disclosure to a defined but still broad group of people—a government institution, a part of the government institution, a next of kin, or authorized representative—if the organization believes a person has been, is or may be, the victim of financial abuse, imbedding into PIPEDA for the first time a notion of prevention, even in the absence of a crime. The term “financial abuse” is not defined in the act or the bill; nor, as noted above, is it defined in any federal statute; but the separation of law contravention and financial abuse under distinct subsections suggests that the intention is that financial abuse include more strictly criminal acts.

The term “government institution” is also not defined by the bill or the statute. In some jurisdictions the public guardian or trustee may have powers to investigate abuse and so this proposed amendment may permit reporting in those instances. The provision would also permit an organization to contact a next of kin or authorized representative, that is, a legal guardian or person with power of attorney, or possibly another person in the family who is not a formal substitute decision-maker.

#### Questions

- 8. How can your organization address financial abuse of seniors while also ensuring privacy protection?
- 9. Are there any organizations in your jurisdictions of practice that investigate non-criminal forms of financial abuse?

#### e. Enduring Power of Attorney Legislation in Canada

As noted early in this paper, while a power of attorney can be a useful tool for personal and financial planning, the document can also be used for financial abuse. Misuse of a power of attorney can be deliberate or inadvertent,<sup>95</sup> but the consequences may still be a significant loss for the older person.

The enduring power of attorney was created by statute, in order to enable a mentally capable adult to designate a financial or legal substitute decision-maker who could retain their authority even after the adult loses mental capacity, or to name an attorney whose authority would take effect upon the adult's incapacity.<sup>96</sup>

Although every province and territory has legislation in relation to powers of attorney, there is:

[C]onsiderable variety among these statutes. Some Acts are detailed and modern; many others are terse and out-of-date. As a result, it is difficult to make general statements about Canadian statutory law on powers of attorney, except to say this: no *Power of Attorney Act* in Canada tells the entire tale. Some of the law on powers of attorney can only be found in cases. This law may be less well known, and less certain, than the statutory law.<sup>97</sup>

Faced with the increasing prevalence of power of attorney abuse, the increasing mobility of Canadians, and significant legislative diversity across the country, in 2004 the Western Canada Law Reform Agencies commenced the Harmonized Powers of Attorney Project. The goal was to propose changes that would simply, clarify and somewhat harmonize power of attorney law and practices across the four Western Canadian provinces. One of the areas where the Project's Final Report recommends a degree of harmonization is around the reporting and investigating of misuse of a power of attorney, including the designation of a public official with that mandate, and investigations being initiated at that official's discretion.<sup>98</sup> Greater harmony in other areas of enduring power of attorney law is also viewed as helping to prevent misuse.

#### **f. Financial Sector Practitioners: Obligations to Licensing Bodies and under Codes of Ethics**

A review of provincial statutes governing licensed professionals in the financial sector suggests that there is no duty to report or act on suspected financial abuse.<sup>99</sup> The importance of protecting confidentiality does come up in legislation: Ontario's *Credit Unions and Caisses Populaires Act* requires that every director, officer, member of a committee of a credit union keep all information respecting members of the credit union confidential.<sup>100</sup>

The federal financial institution framework provides certain requirements around duty of care and the reporting of suspicious transactions. For example, in the area of anti-money laundering: The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* requires financial institutions and intermediaries to identify their clients, keep records, have internal compliance procedures in place and report suspicious and certain other prescribed transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>104</sup> FINTRAC's mandate is to facilitate the prevention and detection of these activities. It is the Government of Canada's view that this legislative framework, which is consistent with international standards, provides key tools to help detect, deter and prevent money laundering and terrorist financing. The federal Government considers effective anti-money laundering legislation and enforcement to create a hostile environment for criminals and protect the financial sector from abuse by criminals. The Government of Canada takes the position that effective anti-money laundering legislation therefore makes financial crime, such as frauds targeting seniors, less attractive to criminals. The federal consumer protection framework also provides for certain protection of financial consumers against fraud in the area of credit and debit cards.

Many associations representing financial industry professions have codes of conduct that require members to "know their clients", which typically includes understanding essential facts about a client, including the client's financial circumstances, including net worth, existing investment holdings, and employment situation, the client's investment needs and objectives, the client's level of financial knowledge and awareness, and the client's risk tolerance. There is an associated ongoing requirement to keep up to date with any material changes in the client's circumstances that would impact on these factors.<sup>106</sup> Some organizations, like the Canadian Association of Accredited Mortgage Brokers, the Mortgage Brokers Association of BC, the Financial Planning Standards Council, and the Registered Insurance Brokers of Ontario, have codes of conduct that require members as part of their practice to keep high standards of integrity, good faith, and due care, and impose strict confidentiality requirements which forbid the disclosure of client information to anyone without express consent from the client.

**Questions**

10. Many codes of ethics require professionals to “know their client”. What does this mean in a context of financial abuse?
11. Where there is potential abuse of an attorney involved, who is the client—the older person or the substitute decision-maker? Does this scenario create any conflict of interest?

**4. Promising Practices and Resources**

Across Canada there have been significant efforts in local communities to respond to concerns about adults who have been abused or financially abused. A background paper of this length cannot thoroughly reflect all of the excellent work being done to address financial abuse in this country.<sup>107</sup> Therefore, with those apologies in advance, this paper provides a summary of only some of promising practices in Appendix A.

Addressing financial abuse of older people in Canada requires the involvement of multiple sectors, including government, legal services, policing, financial institutions and community. Appendix A outlines different kinds of approaches for responding to financial abuse of seniors that demonstrate innovation and that have achieved some critical acclaim.<sup>108</sup> This is not a summary of best practices, which are practices whose effectiveness has been proven through evaluation and evidence.<sup>109</sup> Indeed, there are no agreed upon best practices with respect to abuse of older people.

The absence of best practices has been identified as a barrier for moving forward effectively to address abuse of seniors, and writers in this area indicate “there is an immediate need for more information on the effectiveness of various practices aimed at older adults who are being abused.”<sup>110</sup> Further sharing of experiences of stakeholders may be useful in clarifying promising practices or developing an agreed upon methodology for identifying them. This National Meeting on Financial Abuse will be a useful opportunity for participating in this process.

**Questions**

12. What are some policies, protocols and training initiatives that your organization has undertaken that demonstrate promise in the areas of detection, prevention and response to financial abuse of seniors?
13. What processes have you put in place for evaluating the effectiveness of financial abuse practices within your organization?
14. What would be some of the hallmarks of a promising practice in relation to financial abuse of seniors?

**5. Conclusion: Setting the Scene for Discussion**

Financial abuse of seniors is a complex phenomenon. The appropriate response for each scenario will never be exhaustively mapped out in policy and law, but will instead always depend on a variety of facts, including needs and limitations of a particular older person, emergent circumstances, the specific financial circumstances of the individual, mental capacity factors, access to support and assistance within the local community whether the adult lives independently or in a care facility regulated by the province or territory, as well as the older person’s perception of the circumstances.<sup>111</sup> This means that problem solving will remain an inherent aspect of practice in this area.<sup>112</sup>

Five years ago, in 2008, stakeholders from law, policing, finance, community and health gathered in Ottawa to discuss financial abuse of seniors. The 2008 Federal/ Provincial/ Territorial Forum (the F/T/P Forum) commenced with the similar goals to those identified at the outset of this backgrounder as being the foundation for this meeting on financial abuse of seniors:

- Increase awareness and education about financial abuse of seniors;

- Build relationships and promote collaborative opportunities among key stakeholders, from across sectors and jurisdictions; and
- Engage key stakeholders in discussions about how to assist seniors.

Many recommendations came out of the working groups that took place as part of the F/T/P Forum. Below is a list of some of the recommendations most relevant to the stakeholders participating in the upcoming National Meeting on Financial Abuse:

1. An awareness campaign on a national scale is required regarding financial abuse being a crime.
2. Restorative justice should be explored.
3. Front line responders require tools in the area of screening for abuse, assessment, intervention and risk assessment.
4. Increase the number of elder abuse response units to include a greater number of communities.
5. Greater financial literacy should be promoted to support seniors to protect themselves from abuse.
6. Frontline workers must be educated to be aware that financial abuse often occurs concurrent with other forms of abuse—look beyond the individual and see what is happening within the family.
7. Older adults need access to legal advice.
8. Resource community response networks as they can provide a coordinated, systemic, multidisciplinary response to financial abuse of seniors.
9. Banks need to have policies and protocols in place to respond to financial elder abuse.
10. A power of attorney document that is standard across the country—greater harmonization is warranted.
11. There should be greater accountability and monitoring of attorneys appointed pursuant to a power of attorney—mishandling of responsibility should have greater civil or criminal repercussions—although stakeholders were not clear on how to affect these outcomes.
12. Education for substituted decision-makers and people acting under powers of attorney is needed.
13. Government must anticipate and enhance resourcing for local organizations responding to a greater number of requests for assistance as an outflow of increased awareness of financial abuse.
14. Privacy legislation across the country should be harmonized in order to enhance the capacity of financial institutions to respond to abuse—diversity is a barrier to policy development.
15. Education is needed to demystify the role of the police and inform seniors of how and when to contact the police—with attention to diverse cultural communities.

There has been a tremendous amount of work since 2008. In recent years, in part thanks to funding from the deferral New Horizons for Seniors Program (NHSP) and the Federal Elder Abuse Initiative (FEAI), there is increased awareness of the occurrence of abuse of older people in our communities.<sup>113</sup> Many promising tools have been developed and law reform has addressed some areas of adult protection, substitute decision-making and privacy law. Most of the promising practices and resources highlighted in this paper were produced or have grown since 2008. Much has been achieved in recent years and this meeting is an excellent opportunity to share these victories..

That being said, many of the same challenges identified at the 2008 meeting remain in 2013. Hopefully this meeting will create greater space for speaking frankly about these challenges and for sharing ideas on how best to address the financial abuse of seniors.

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<sup>1</sup> The Toronto Declaration is an international call to action jointly authored by the World Health Organization, the University of Toronto, and the International Network for the Prevention of Elder Abuse. Toronto Declaration on the Global Prevention of Elder Abuse (2002) online: <[http://www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)> [Toronto Declaration].

<sup>2</sup> National Initiative for the Care of the Elderly, *Defining and Measuring Elder Abuse and Neglect: Synthesis of Preparatory Work Required to Measure the Prevalence of Abuse and Neglect of Older Adults in Canada (Synthesis Report)*, online: <<http://www.nicenet.ca/detail.aspx?menu=52&app=234&cat1=709&tp=2&lk=no>> [*Defining and Measuring Elder Abuse*].

<sup>3</sup> *Ibid.*

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<sup>4</sup> Neighbours, Friends and Families, *It's Not Right! Neighbours, Friends and Families for Older Adults*, (Ottawa: Government of Canada, 2010) online: <[neighboursfriendsandfamilies.ca/about-us/its-not-right.html](http://neighboursfriendsandfamilies.ca/about-us/its-not-right.html)>

(emphasis in the original) [Neighbours, Friends and Families]. This definition was recently adopted in an educational tool developed by the Nova Scotia Government: Nova Scotia Department of Seniors, *Understanding Senior Abuse: A Toolkit for Community Champions* (Halifax: Communications Nova Scotia, 2012) at 18.

<sup>5</sup> Charmaine Spencer, *Financial Abuse of Older Adults* (Ottawa: Human Resources and Skills Development Canada, 2012) at 5 [*Financial Abuse of Older Adults*].

<sup>6</sup> A number of statutes and regulations do define financial abuse in the care setting: see *Community Care and Assisted Living Act*, BC Reg 96/2009, Schedule D at s 1; *Retirement Homes Act*, O Reg 166/11, s 1(1); and *Long Term Care Homes Act*, O Reg 79/10, s 2(1). *The Public Guardian and Trustee Act*, SS 1983, c P-36.3, s 40.5(1), defines financial abuse as “the misappropriation of funds, resources or property by fraud, deception or coercion” specifically for the purposes of section 40.5 (suspend the withdrawal or payment of funds from a person’s account for up to five business days).

<sup>7</sup> Federal/Provincial/Territorial Forum on Financial Abuse of Seniors, Summary of Proceedings, (June 19-20, 2008) F/T/P Safety and Security for Seniors Working Group at 3.

<sup>8</sup> *Defining and Measuring Elder Abuse*, *supra* note 2.

<sup>9</sup> Neighbours, Friends and Families, *supra* note 4.

<sup>10</sup> These types of abuse are discussed in: Kathleen Cunningham, *Financial Abuse: The Ways and Means* (Vancouver: Canadian Centre for Elder Law, 2012), online: <<http://www.bcli.org/blog/ways-and-means-financial-abuse>>; Joan Braun, Elder Abuse: An Overview of Current Issues and Practice Considerations” (Paper delivered at a Continuing Legal Education course given in Vancouver, 2009), Continuing Legal Society of BC, at 10.1.3 [Elder Abuse: An Overview]; *Financial Abuse of Older Adults*, *supra* note 5 at 12. This list of examples is not exhaustive.

<sup>11</sup> For a discussion of undue influence see BC Law Institute, *Project on Undue Influence: Recommended Practices for Wills Practitioners* (Vancouver: BC Law Institute, 2011) online: <<http://www.bcli.org/bclrg/projects/project-potential-undue-influence-recommended-practices-wills-practitioners>>. The publication includes a helpful 4-page tool of red flags and key considerations. Although the resource was designed in response to anticipated statutory changes to the role of undue influence in estate law in BC, the resource contains useful suggestions that would apply outside BC and to other legal and financial transactions.

<sup>12</sup> For a full discussion of the legal issues related to family care agreements see BC Law Institute, *Report on Private Care Agreements between Older Adults and Friends and Family Members* (Vancouver: BC Law Institute, 2002), online: <<http://www.bcli.org/bclrg/projects/private-care-agreements-between-older-adults-and-friends-or-family-members>>.

<sup>13</sup> Predatory marriage is the expression used to characterize relationships where a person marries an older person in order to get access to their money and assets.

<sup>14</sup> *Financial Abuse of Older Adults*, *supra* note 5 at 12.

<sup>15</sup> BC Association of Aboriginal Friendship Centres, cited in *Financial Abuse of Older Adults*, *supra* note at 5 at 13.

<sup>16</sup> BC Law Institute, *Financial Arrangements between Older Adults and Family Members: Loans and Guarantees* (Vancouver: BC Law Institute, 2004) online: <[http://www.bcli.org/sites/default/files/Financial\\_Arrangements\\_Rep.pdf](http://www.bcli.org/sites/default/files/Financial_Arrangements_Rep.pdf)>.

<sup>17</sup> *Financial Abuse: the Ways and Means*, *supra* note 10 at 16.

<sup>18</sup> *Financial Abuse of Older Adults*, *supra* note 5 at 5.

<sup>19</sup> Competition Bureau Canada, *Little Black Book of Scams* (Gatineau: Competition Bureau Canada, 2012) online: <[http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Little-Black-Book-Scams-e.pdf/\\$FILE/Little-Black-Book-Scams-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Little-Black-Book-Scams-e.pdf/$FILE/Little-Black-Book-Scams-e.pdf)>; Canadian Centre for Elder Law, *Financial Literacy 102: A Knowledge-based Approach to Preventing Abuse of Older Adults—A Guide for Professionals* (Vancouver: BC Centre for Elder Advocacy and Support, 2010), online: <<http://www.bcli.org/ccel/projects/financial-literacy-102>>; Federal, Provincial & Territorial Seniors Forum, *What Every Older Canadian Should Know About Frauds and Scams* (Ottawa: Government of Canada, 2010) online: <[http://www.seniors.gc.ca/images/upload/canada/176/ftp\\_176\\_eng.pdf](http://www.seniors.gc.ca/images/upload/canada/176/ftp_176_eng.pdf)>; AgeUK, *Avoiding Scams: Smart Ways to Protect Yourself* (London: AgeUK, 2013) online: <[http://www.ageuk.org.uk/Documents/EN-GB/Information-guides/AgeUKIG5\\_Avoiding\\_scams\\_inf.pdf?dtrk=true%3E](http://www.ageuk.org.uk/Documents/EN-GB/Information-guides/AgeUKIG5_Avoiding_scams_inf.pdf?dtrk=true%3E)>; Seniors Against Investment Fraud, *Protect Yourself Against Fraud, 2<sup>nd</sup> Edition* (Sacramento: California Department of Corporations), online: <[http://www.corp.ca.gov/Consumer/SAIF/Pubs/SAIF\\_2nd\\_Edition\\_Web.pdf](http://www.corp.ca.gov/Consumer/SAIF/Pubs/SAIF_2nd_Edition_Web.pdf)>.

<sup>20</sup> Lynn McDonald, “Elder Abuse and Neglect in Canada: The Glass is Still Half Full” (2011) 30:3 Canadian Journal on Ageing 3 437 at 439 [McDonald]; Canadian Centre for Elder Law, *Legal Definitions of Elder Abuse and Neglect*, (unpublished report prepared for the Department of Justice Canada in 2009), at 7 [*Legal Definitions*].

<sup>21</sup> *Legal Definitions*, *ibid*.

<sup>22</sup> The Advocacy Centre for the Elderly (ACE) defines systemic abuse as “when government or institutional policies and regulations create or facilitate harmful situations.” See Joanne Preston & Judith Wahl, “Abuse Education, Prevention and Response: A Community Training Manual for those who want to address the Issue of the Abuse of Older Adults in

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their Community, 3<sup>rd</sup> Ed.” (ACE 2002), at 5, online: <[http://www.advocacycentreelderly.org/elder\\_abuse\\_publications.php](http://www.advocacycentreelderly.org/elder_abuse_publications.php)>.

<sup>23</sup> The RCMP defines spiritual abuse or neglect as “restriction or loss of a person's spiritual practices, customs, or traditions” and/or “using religious or spiritual beliefs to exploit an older person”. See BC RCMP, *Recognize and Report the Abuse of Older Adults*, online: BC RCMP <<http://bc.cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=87&languageId=1&contentId=770>>. It may also include using an older person's religious or spiritual beliefs to exploit; attacking a person's spiritual beliefs; and not allowing the older person to attend the church, synagogue, or temple of his or her choice.

<sup>24</sup> Medical or medication abuse has been defined as “the misuse of an older person's medications and prescriptions. It can include: withholding medication; overmedicating; sedation; not complying with prescriptions refills. See Alberta Elder Abuse Awareness Network, *Types of Elder Abuse*, online: Alberta Elder Abuse Awareness Network <<http://www.albertaelderabuse.ca/page.cfm?pgID=6>>.

<sup>25</sup> Restriction of social freedom and isolation from family and friends.

<sup>26</sup> Elder Abuse: An Overview, *supra* note 10 at 10.1.3.

<sup>27</sup> Joan Harbison et al., “Understanding ‘Elder Abuse and Neglect’: A Critique of Assumptions Underpinning Responses to the Mistreatment and Neglect of Older People” (2012) 24:2 *Journal of Elder Abuse and Neglect* 88, at 89 and 100.

<sup>28</sup> M. Lundy and S. Grossman, as cited in *Elder Abuse: An Overview*, *supra* note 10, at 10.1.5.

<sup>29</sup> *Financial Abuse of Older Adults*, *supra* note 5 at 17-18.

<sup>30</sup> *Ibid.* at 10.

<sup>31</sup> CCEL, *Moving From Scrutiny to Strategy: An Analysis of Key Elder Abuse and Neglect Cases* (Discussion Paper) (Vancouver: CCEL, 2009) online: <<http://www.bcli.org/ccel/publications/counterpoint-project—discussion-paper>>, at 72 [*Moving From Scrutiny to Strategy*].

<sup>32</sup> Maxine Lithwick et al., “The Mistreatment of Older Adults: Perpetrator-Victim Relationships and Interventions” (2000) 11:4 *Journal of Elder Abuse & Neglect*, 95 at 104 [Lithwick].

<sup>33</sup> Elder Abuse: An Overview, *supra* note 10 at 10.1.4.

<sup>34</sup> Lithwick, *supra* note 32; Elder Abuse: An Overview, *ibid.*, at 10.1.5.

<sup>35</sup> Elizabeth Podnieks, “Elder Abuse: The Canadian Experience” (2008) 20:2 *Journal of Elder Abuse & Neglect* 126. 129.

<sup>36</sup> *Criminal Code*, RSC 1985, c C-46.

<sup>37</sup> In this respect Canada differs from the United States. In the US many states have created specific crimes against older people, and the term “elder abuse” appears in legislation.

<sup>38</sup> BC Centre for Elder Advocacy and Support, *Abuse and Neglect of Seniors: Is it a Crime?*, BC Centre for Elder Advocacy and Support online <<http://bcccas.ca/wp-content/uploads/factsheet-abuse-neglect-crime-english.pdf>>.

<sup>39</sup> Also, some jurisdictions discussed later on in this section are silent regarding reporting.

<sup>40</sup> CCEL, *A Practical Guide to Elder Abuse and Neglect Law in Canada* (Vancouver: CCEL, 2009) online: <<http://www.bcli.org/ccel/publications/practical-guide-elder-abuse-and-neglect-law-canada>> [*Practical Guide*]; CCEL, *Moving From Scrutiny to Strategy*, *supra* note 31.

<sup>41</sup> *Adult Guardianship Act*, RSBC 1996, c 6.

<sup>42</sup> *Adult Protection and Decision Making Act*, SY 2003, c 21, Sch A.

<sup>43</sup> *Adult Protection Act*, RSPEI 1988, c A-5.

<sup>44</sup> *Family Services Act*, SNB 1980, c F-2.2.

<sup>45</sup> The *Family Services Act* of New Brunswick, *ibid.*, states that a professional may report abuse.

<sup>46</sup> *Adult Protection Act*, RSNS 1989, c 2.

<sup>47</sup> *Ibid.*, s 5(1). Emphasis added.

<sup>48</sup> *Ibid.*, s 3(b).

<sup>49</sup> *Neglected Adults Welfare Act*, RSNL, c. N-3, s 4.

<sup>50</sup> *Adult Protection Act*, SNL 2011, c A-4.01 [not yet in force].

<sup>51</sup> *Ibid.*, s 40.

<sup>52</sup> *Adult Protection Act*, RSNS *supra* note 56; *Neglected Adults Welfare Act*, RSNL, *supra* note 59 at s 4(2).

<sup>53</sup> *Community Care and Assisted Living Residential Care Regulation*, BC Reg 96/2009, Schedule D.

<sup>54</sup> *Protection for Persons in Care Act*, SA, 2009, c.P-29.1

<sup>55</sup> *The Protection for Persons in Care Act*, CCSM, c P144.

<sup>56</sup> *Long-Term Care Homes Act*, SO 2007, c 8.

<sup>57</sup> *Protection for Persons in Care Act*, SNS 2004, c 33.

<sup>58</sup> *Vulnerable Persons Living with a Mental Disability Act*, CCSM c V90.

<sup>59</sup> The *Charter of Human Rights and Freedoms*, RSQ c C-12, art. 48.

<sup>60</sup> *Commission des droits de la personne c. Brzozowski*, 1994 CanLII 1792 (QC T.D.P.).

<sup>71</sup> These jurisdictions include Alberta, Saskatchewan, Manitoba, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Nunavut, and Northwest Territories. See *Protection Against Family Violence Act*, RSA, c P-27; *The Domestic Violence and Stalking Act*, SM 1998, c 41; *Family Violence Prevention Act*, R.S.Y. 2002, c 84; *Victims of Family Violence Act*, RSPEI 1998, c V-3.2; *Domestic Violence Intervention Act*, SNS 2001, c. 29; *Family Violence Protection Act*, SNL 2005, c F-31; *Family Abuse Intervention Act*, SNU 2006, c 18; *Protection Against Family Violence Act*, SNWT 2003, c.24; *Victims of Domestic Violence Act*, SS 1994, c V-6.02.

<sup>72</sup> In this paper we use the generic term PGT; however, different designations are used in different provinces and territories and some jurisdictions split the functions between two separate individuals appointed by government., i.e., the Public Guardian and the Public Trustee.

<sup>73</sup> *Public Guardian and Trustee Act*, SY 2003, c 21, Sch. C, Part 2., s 9(1); *Public Guardian and Trustee Act*, RSBC 1996, c 383, s. 17; *The Adult Guardianship and Trusteeship Act*, SA 2008, c.A-4.2, ss 75-77; *The Public Guardian and Trustee Act*, SS 1983, c P-36.3, s 40.7; *Public Curator Act*, RSQ c. C-81, s 27; *Substitute Decisions Act*, SO 1992, c 30, s 27.

<sup>74</sup> *Public Guardian and Trustee Act*, RSBC, *ibid.* s 17(1) (b).

<sup>75</sup> *The Public Guardian and Trustee Act*, SS, *supra* 73 s 40.5(2).

<sup>76</sup> At the time of writing Kathleen Cunningham is working on a Canadian comparative reference tool on PGTs.

<sup>77</sup> Mental capacity is also referred to in some sources as “mental capability” or “mental competency.”

<sup>78</sup> See for example, *Adult Guardianship Act*, *supra* note 51, s 3; *Representation Agreement Act*, RSBC 1996, c 405, s 3; *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181, s 3; *Adult Guardianship and Trusteeship Act*, *supra* note 73, s 2; *Adult Guardianship and Co-decision-making Act*, SS 2000, c A-5.3, s 3; *Vulnerable Persons Living with a Mental Disability Act*, *supra* note 68, Preamble; *The Health Care Directives Act*, CCSM c H27, s 4; *Substitute Decisions Act*, *supra* note 73, s 2; *Code civil du Québec*, LRQ, c C-1991, s 154; *Health Care Consent Act*, 1996, SO 1996, c 2, Schedule A, s 4(2); *Consent to Treatment and Health Care Directives Act*, RSPEI 1998, c C-17.2, s 3; *Hospitals Act*, RSNS 1989, c 208, s 52; *Advance Health Care Directives Act*, SNL 1995, c A-4.1, s 7; *Guardianship and Trusteeship Act*, SNWT 1994, c 29, s 1.1; *Guardianship and Trusteeship Act*, SNWT (Nu.) 1994, c 29, s 1.1; *Adult Protection and Decision-Making Act*, SY 2003, c 21, Schedule A, s 3.

<sup>79</sup> *Adult Guardianship and Trusteeship Act*, *ibid.* s 1; *The Health Care Directives Act*, *ibid.* s 2; *Health Care Directives and Substitute Health Care Decision Makers Act*, S.S. 1997, c H-0.001, s 2; *Advance Health Care Directives Act*, *ibid.* s 14; *Personal Directives Act*, SNS 2008, c 8, s 2; *Adult Guardianship and Co-decision-making Act*, *ibid.* s 2; *Consent to Treatment and Health Care Directives Act*, *ibid.* s 7.

<sup>80</sup> *Patients Property Act*, RSBC 1996, c 349; *Incompetent Persons Act*, RSNS 1989, c 218; *Infirm Persons Act*, RSNB 1973, c I-8;

<sup>81</sup> Under modern guardianship regimes the powers of the guardian are expressed and limited rather than plenary: See, for example, *Adult Guardianship and Trusteeship Act*, *supra* note 73, s 33; *Guardianship and Trusteeship Act*, SNWT, *supra* note 78, s 11; *Adult Guardianship and Co-decision-making Act*, *supra* note 78, s 15. In Ontario a guardian of the person may be full or partial: *Substitute Decisions Act*, *supra* note 73, s 58.

<sup>82</sup> Deborah O'Connor, *Incapacity Assessments: A Review of Assessment and Screening Tools (Final Report)*, (Vancouver: Public Guardian and Trustee, 2009) online:

<[http://www.trustee.bc.ca/pdfs/STA/Incapacity\\_Assessments\\_Review\\_Assessment\\_Screening\\_Tools.pdf](http://www.trustee.bc.ca/pdfs/STA/Incapacity_Assessments_Review_Assessment_Screening_Tools.pdf)>.

<sup>83</sup> BC Adult Abuse and Neglect Prevention Collaborative, *Provincial Strategy Document: Vulnerable Adults and Capability Issues in BC* (Vancouver: CCEL, 2009) at 17, online: <http://www.bcli.org/ccel/publications/provincial-strategy-document-vulnerable-adults-and-capability-issues-bc>.

<sup>84</sup> *Practical Guide*, *supra* note 50 at 12.

<sup>85</sup> *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, s 2 (PIPEDA).

<sup>86</sup> For a comparison of when disclosure without consent is permitted under provincial privacy legislation see *Moving From Scrutiny to Strategy*, *supra* note 31, at 45-54.

<sup>87</sup> PIPEDA, *supra* note 85, at ss 3 and 4.

<sup>88</sup> Organization is defined to include a person. See *ibid.*, s 2.

<sup>89</sup> *Ibid.*, s 7.3(i).

<sup>90</sup> *Ibid.*, s 7.3(e).

<sup>91</sup> For example, *The Public Guardian and Trustee Act*, *supra* note 73 and *Adult Guardianship Act*, *supra* note 51, at s 62. Under *The Public Guardian and Trustee Act*, financial institutions may freeze the funds of a vulnerable adult's account for up to 5 business days if the institution has reasonable grounds to believe that another person is subjecting the adult to financial abuse (s 40.5(2)). Financial abuse “means the misappropriation of funds, resources or property by fraud, deception or coercion” (s 40.5(1)(a)). Vulnerable adult “means an individual, 16 years of age or more, who has an illness, impairment, disability or aging process limitation that places the individual at risk of financial abuse” (s 40.5(1)(c)). Financial institutions must immediately advise the Public Guardian and Trustee of the suspension (s 40.5(3)).

<sup>92</sup> C-12, *An Act to amend the Personal Information Protection and Electronic Documents Act*

<sup>93</sup> *Ibid* at ss 7(3)(d.1) and (d.2).

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- <sup>94</sup> Canadian Bankers Association, Submission to Industry Canada (January 2008) at 8, online: <[http://www.cba.ca/contents/files/submissions/sub\\_20080117\\_01\\_en.pdf](http://www.cba.ca/contents/files/submissions/sub_20080117_01_en.pdf)>.
- <sup>95</sup> Western Canada Law Reform Agencies, Enduring Powers of Attorney: Areas for Reform (Final Report, 2008) at 51, online: < [www.law.ualberta.ca/alri/docs/WCLRA-EPA%20report.pdf](http://www.law.ualberta.ca/alri/docs/WCLRA-EPA%20report.pdf)> [Western Canada].
- <sup>96</sup> Laura Watts and Kevin Zakreski, *Powers of Attorney: Moving Toward Best Practices in Canada* (Vancouver: CCEL, 2006) at 2.
- <sup>97</sup> *Ibid.*
- <sup>98</sup> Western Canada, *supra* note 95 at 68-69. See also Recommendation 13 at 73.
- <sup>99</sup> See for example, *Financial Institutions Act*, RSBC 1996, c 141; *Mortgage Brokers Act*, RSO 1990, c M39; *Mortgage Brokers Act* (MB), *Mortgage Brokerages, Lenders and Administrators Act*, SO 2006, c 29; *Financial Consumers Act* (AB), *Credit Union Act* SNL 2009, c C-37.2; *Mortgage Brokers Act*, RSNL 1990, c M-18; *Trust and Loan Companies Act*, SNS 1991, c 7; *Investment Management Corporation Act*, SA 2007, c A-26.5, *Trust and Loan Corporations Act*, SS 1997, c T-22.2.
- <sup>100</sup> *Credit Unions and Caisses Populaires Act*, SO 1994, c 11.
- <sup>104</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, ss 6, 7, 7.1, and 9.
- <sup>106</sup> Professional associations that have such requirements include the Mutual Fund Dealers Association of Canada and the Certified Financial Analyst Institute.
- <sup>107</sup> For a more lengthy and thematic focused discussion of promising practices in the area of financial abuse of seniors see, *Financial Abuse of Older Adults*, *supra* note 5 at 52-63.
- <sup>108</sup> This section focuses on approaches that are particularly relevant to financial abuse. For a summary of promising approaches relevant to abuse of older people more generally, see Canadian Network for the Prevention of Elder Abuse, *Outlook 2007: Promising Approaches in Prevention of Abuse and Neglect of Older Adults in Community Settings in Canada* (Ottawa: Public Health Agency of Canada, 2007) [*Outlook 2007*].
- <sup>109</sup> *Outlook 2007*, *ibid.*, at 6-7.
- <sup>110</sup> *Ibid.*, H. Kalaga et al. cited in Paul Stolee et al., “Flying by the Seat of Our Pants’: Current Processes to Share Best Practices to Deal with Elder Abuse” (2012) 24:2 *Journal of Elder Abuse and Neglect* 179 at 188.
- <sup>111</sup> Judith Wahl, “The Duty (or not) to Report: Options in Elder Abuse Response”, online: Advocacy Centre for the Elderly <[http://www.advocacycentreelderly.org/elder\\_abuse\\_-\\_publications.php](http://www.advocacycentreelderly.org/elder_abuse_-_publications.php)>.
- <sup>112</sup> No amount of law reform or policy development can completely narrow the grey zone, and response will continue to be hampered by the reality that communities may lack resources to assist older people who are being harmed. Moreover, the diversity across the country in terms of services and legislation will likely continue to create challenges for national institutions developing policies and protocols.
- <sup>113</sup> McDonald, *supra* note 20, at 438.

## **Appendix A**

### **Promising Practices in Responding to Financial Abuse of Older People<sup>1</sup>**

#### **a. Tools for Raising Awareness within the Community**

##### **Honouring Our Elders: Elder Abuse Awareness and Prevention<sup>2</sup>**

Honouring Our Elders was developed by the BC Association of Aboriginal Friendship Centres with funding from the New Horizons for Seniors Program (NHSP). The Toolkit takes an inter-generational approach, and includes a package of resources, such as train-the-trainer tools, that support elders and youth to facilitate community discussions aimed at raising awareness of abuse and developing community specific responses. The resources embed traditional teachings, describe forms of financial abuse you might find in Indigenous and reserve communities in Canada, offer ways to support elders and older community members to have greater financial literacy and more options if they are mistreated, and discuss victimization as part of the larger social history including residential school survival, noting “many Elders are more vulnerable to further abuse as they continue their life-long journey of recovery and healing from their experiences at the schools.”<sup>3</sup>

##### **“It’s Not Right!” Friends, Neighbours and Families for Older Adults<sup>4</sup>**

*“It’s Not Right!” Friends, Neighbours and Families for Older Adults* is a series of senior abuse awareness raising tools developed by the Centre for Research & Education on Violence Against Women and Children at the University of Western Ontario, with funding through the FEAI. The resources include brochures and a PowerPoint presentation. A number of features show particular promise. The design strategy is particularly effective, keeping the audience engaged by using visuals to denote complex concepts. The tools developed the simple response tag, “See it, Name it, Check it,” which captures well some of the important initial response steps even sophisticated professionals need reminders about. The tools are ideologically focused on an inquiry strategy that engages the older person who may be being harmed, providing clear, non-judgmental language for approaching older people, and basic steps for follow up.

##### **Older Women and Financial Literacy: Bridging the Income Gap<sup>5</sup>**

NICE has developed a series of eight financial literacy tools for older low-income women, using funding provided by Status of Women Canada. The need for the project is grounded in literature indicating that older women demonstrate much lower levels of financial literacy than their male counterparts. The tool development process engaged low-income older unattached and immigrant women working in partnership with agencies in three cities. The package of tools includes legal, tax and personal planning information, addressing the following eight topics: personalized financial planning; retirement and savings options; income tax issues; effective banking practices; credit and debt management; pensions and public benefits; the legal dimensions of financial literacy, such as the power of attorney; and how to prevent and intervene in situations of financial abuse. Versions of this series of tools have been developed for BC, Ontario and Quebec, and NICE partnered with a number of community based organizations to launch the tools in the three provinces.

#### **b. Resources for Professionals in the Financial Sector**

##### **Who to Call if you Suspect Abuse, Neglect or Self-Neglect? (Decision Tree, BC Edition)<sup>6</sup>**

In BC three of the key agencies that respond to adult abuse in the province—the Public Guardian and Trustee, the RCMP E Division, and the BC Health Authorities—are currently working collaboratively to develop a practical, two-page tool that various organizations and individuals, including the financial sector, can use for problem solving about how to respond to concerns about abuse and neglect of adults. The tool identifies: under what circumstances would you call any of those three agencies; how to contact the

organizations; what information you will be asked to provide if you call; and what actions might flow from your call. The tool being piloted in BC includes a one-page table and a one-page diagram.

### **Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide<sup>7</sup>**

In 2011 the BC Law Institute published the guide, *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence*, as part of its Project on Potential Undue Influence. Undue influence is essentially pressure on an adult making a document that undermines the free will of the adult, resulting in circumstances where the document will no longer express the true intentions of the adult. The impetus for this project was the enactment of section 52 of the *Wills, Estates and Succession Act*, which, when it comes into force, will change the onus of proof in circumstances where allegations of undue influence of the testator are raised. The Guide includes as an appendix a four-page reference aid for preventing and recognizing undue influence. The project was funded by the Notary Foundation of BC and the Lawyers Insurance Fund of BC to assist wills practitioners; however, undue influence can arise in the context of senior abuse in relation to other legal documents, such as powers of attorney, and the reference aid is a useful tool for detecting and preventing senior abuse in relation to other legal and financial decisions or documents.

### **Meridian Aging Project<sup>8</sup>**

The Meridian Aging Project (MAP) is a for-profit enterprise that offers training to individuals, businesses and government in how to identify, prevent and respond to financial abuse of older adults. MAP offers a one-day training course for the financial sector called “Preventing, Detecting and Reporting Financial Abuse of Older Adults”, which combines instructional expertise and best practice advice to assist front-line staff.

#### **c. Innovative Projects**

### **The Finding Home Initiative<sup>9</sup>**

Founded in 2006 by Jessie Sutherland, Finding Home brings people in communities together to help them develop their own tools and strategies to address pressing issues. The Association of Neighbourhood Houses of BC received funding from the NHSP to work with Finding Home and three ethno-cultural communities to develop financial abuse awareness tools. They worked with Afghan, Punjabi and Iranian seniors whom they reached through community organizations, developing tools that responded to the social dynamics that are common in their communities, and using approaches that were culturally appropriate. For example, the Afghan group created a presentation through a puppet show, and the Punjabi group focused on the impact of the exclusion of daughters and women from financial matters on financial abuse of older people in their communities. Seniors in those communities have been using the tools to educate seniors and professionals.

### **Financial Literacy 101: Protect Yourself!<sup>10</sup>**

*Protect Yourself!* (also known as Financial Literacy 101) is a self-contained train-the-trainer binder that allows agencies and communities to train their own volunteers to deliver educational workshops on financial literacy for older adults, following a peer education model. The binder includes the material for two workshops, including PowerPoint presentations, as well as handouts for teaching volunteers to lead workshops. There are 2 workshops, and workshop 1 is focused on powers of attorney and joint accounts, including information on financial abuse. The workshops were focus-tested in the Vancouver lower mainland and developed and enhanced with feedback from seniors. The BC CEAS developed the tools with the CCEL, with funding from the NHSP. BC CEAS has developed a financial literacy program utilizing these tools, training its own older adult volunteers to deliver the workshops, offering the workshops throughout the Vancouver area, and travelling to various BC communities to train local volunteers and staff to become workshop leaders.

## **Pigeon Park Savings<sup>11</sup>**

In 2004, Vancity Credit Union and PHS Community Services Society supported the creation of Pigeon Park Savings, with the goal of providing low income people living in Vancouver's Downtown Eastside—one of the poorest inner city communities in Canada—with access to basic, affordable, financial services in their community. Previously lack of access to bank accounts was one of the barriers to people getting their welfare cheques, managing their funds, protecting themselves from theft, and avoiding financial abuse. Members can get an account package for a flat fee of \$5 per month, which includes cheque cashing, unlimited withdrawals, bill payments, money orders and ATM card access, and the cooperative has flexible rules that recognize the barriers to banking poor and homeless people face, such as providing picture identification and a mailing address. Pigeon Park Savings also provides cheque cashing for a flat fee, so people can avoid businesses that charge high interest rates. The culture of the bank is focused on making services accessible to a population that often feels excluded and unwelcome in financial institution, and staff include social workers that have training in working with a client base that includes people with addictions and mental health issues.<sup>12</sup>

### **d. Successful Models**

#### **Anti-ageist Policy Lenses**

One of the challenges in developing a policy or program in order to respond to concerns about financial abuse is to ensure the protocol is not ageist in its ideology or methodology. A number of tools have been developed to support policy and program development in this area. One of the first was the Prevention of Elder Abuse Policy and Program Lens,<sup>13</sup> developed in Ontario to support the government, the non-governmental sector and service providers in developing and assessing policies, programs and practices. The tool contains a lengthy series of questions to consider. More recently, the Law Commission of Ontario published its comprehensive *Framework for the Law as it Affects Older Adults*.<sup>14</sup> The report includes a 28-page Framework that articulates a principled, eight-step approach for developing and evaluating laws, policies and practices to ensure they take into account the realities and circumstances of older people.

#### **Legal Services for Older Adults<sup>15</sup>**

In Canada there are now a number of legal clinics delivering various legal services to older adults. The pioneer was Advocacy Centre for the Elderly (ACE) in Toronto, which provides direct legal services to low-income seniors (age 60 and older), undertakes public legal education, and engages in law reform activities on issues of significance to older adults in Ontario. An elder law clinic approach means staff have significant experience working with an older clientele, including both knowledge in the subject area and an ideology of being anti-ageist and accessible to older clients. Staff also brings an awareness of the systemic barriers facing older adults, other support services available to seniors, and the dynamics of abuse of older adults. In recent years elder law clinics have been set up in Vancouver (BC CEAS) and Kingston (Queen's University).<sup>16</sup>

#### **Elder Abuse Policing Units**

A number of Canadian city or region police departments have created elder abuse units.<sup>17</sup> Like other community policing units, these units can respond by supporting an investigation and prosecution, but also intervene by offering supportive referrals for an older person in crisis.

#### **Community Response and Elder Abuse Networks**

In various provinces different networks have emerged to help raise awareness regarding abuse of older adults in the community and connect people working in this area. The BC Association of Community Response Networks<sup>18</sup> has developed networks throughout the province, providing training and ongoing support to community mentors who deliver local leadership. The Association maintains a website with links to local

networks and conducts province-wide public education and outreach around senior abuse issues. Local networks hold educational events, and include membership from across discipline, including health, policing, and business. The Ontario Network for the Prevention of Elder Abuse (ONPEA) is focused on raising awareness about abuse of seniors, providing training events throughout the province, and acting as a clearinghouse for Ontario resources, including a number of training manuals form professionals. In recent years ONPEA has also been running the Seniors Safety Line, which takes public calls regarding abuse of seniors and links people to resource agencies. Networks have emerged in other provinces and cities.

## Appendix B

### Summary of Questions for Consideration

1. Are there other kinds or examples of financial abuse of seniors not discussed in this background paper that you would like to highlight for discussion?
2. Given that financial abuse of seniors is an abuse of power, how can we develop practices that dismantle this pattern of undermining the older adult's will and decision-making autonomy?
3. Financial and related abuse is not always a criminal act. Can you identify organizations in the community or communities in which you provide services that offer assistance to older people who have been abused?
4. What has been your experience of working with the PGTs to respond to financial abuse of seniors?
5. Can you identify some promising practices or experiences in terms of using provincial or territorial legislation to assist an older person who is being financial abused? Why was the intervention successful?
6. Can you identify a capacity assessment strategy or resource that has been helpful in your work?
7. How can you ensure that your use of capacity screening tools is non-ageist?
8. How can your organization address the financial abuse of seniors while also ensuring privacy protection?
9. Are there any organizations in your jurisdictions of practice that investigate not criminal forms of financial abuse?
10. Many codes of ethics require professionals to “know their client”. What does this mean in a context of financial abuse?
11. Where there is potential abuse of an attorney involved, who is the client—the older person or the substitute decision-maker? Does this scenario create any conflict of interest?
12. What are some policies, protocols and training initiatives that your organization has undertaken that demonstrate promise in the areas of detection, prevention and response to financial abuse of older people?
13. What processes have you put in place for evaluating the effectiveness of financial abuse practices with your organization?
14. What would be some of the hallmarks of a promising practice in relation to financial abuse of seniors?

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<sup>1</sup> Appendix A outlines different kinds of approaches for responding to financial abuse of seniors that demonstrate innovation and have achieved some critical acclaim. For a summary of promising approaches relevant to abuse of older people more generally see Canadian Network for the Prevention of Elder Abuse, *Outlook 2007: Promising Approaches in Prevention of Abuse and Neglect of Older Adults in Community Settings in Canada* (Public Health Agency of Canada) [*Outlook*

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2007]. This document is not a summary of best practices, whose effectiveness has been proven through evaluation and evidence.<sup>1</sup> There are no agreed upon best practices in the area of abuse of older people.

<sup>2</sup>BC Association of Aboriginal Friendship Centres, Elder Programs, BCAAFC Elder Abuse Awareness and Prevention, online: <<http://www.bcaafc.com/programs/eldersprograms>>.

<sup>3</sup> *Ibid* at 15.

<sup>4</sup> Neighbours, Friends and Families, *It's Not Right! Neighbours, Friends and Families for Older Adults*, (Ottawa: Government of Canada, 2010) online: <[neighboursfriendsandfamilies.ca/about-us/its-not-right.html](http://neighboursfriendsandfamilies.ca/about-us/its-not-right.html)>.

<sup>5</sup> NICE, Financial Literacy Series for Older Adults Resources, online <<http://www.nicenet.ca/detail.aspx?menu=52&app=236&cat1=677&tp=2&lk=no>>, and Older Women and Financial Literacy Project, online: <<http://www.nicenet.ca/detail.aspx?menu=52&app=236&cat1=653&tp=2&lk=no>>.

<sup>6</sup> This tool is being piloted. For further information including supporting materials or if you wish to participate in a pilot using this Decision Tree, please contact [aleaney@trustee.bc.ca](mailto:aleaney@trustee.bc.ca).

<sup>7</sup> BC Law Institute, *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence*, (Vancouver: BC Law Institute, 2011) online: <<http://www.bcli.org/bclrg/projects/project-potential-undue-influence-recommended-practices-wills-practitioners>>.

<sup>8</sup> Meridian Aging Project, online: <<http://www.meridianaging.com>>.

<sup>9</sup> Finding Home, online: <<http://findinghome.ca>>.

<sup>10</sup> BC Centre for Elder Advocacy and Support, online <<http://bcceas.ca/programs/education-outreach/workshops-presentations>>.

<sup>11</sup> Vancity, *Basic Banking*, online: Vancity

<<https://www.vancity.com/MyCommunity/OurChangeProductsAndServices/FinancialLiteracyAndBasicBanking/BasicBanking>>.

<sup>12</sup> Change is Everything (Vancity), *Pidgeon Park Savings: Vancouver's Eastside community Financial Cooperative*, online: <<http://changeeverything.ca/blog/kate/pigeon-park-savings-vancouver-eastside-community-financial-co-operative>>.

<sup>13</sup> Prevention of Elder Abuse Working Group, *Prevention of Elder Abuse Policy and Program Lens* (Toronto: Ontario Seniors' Secretariat and the Elder Health Coalition, 2008) online:

<[http://www.seniors.gov.on.ca/en/elderabuse/docs/ElderAbuse\\_Engl\\_web.pdf](http://www.seniors.gov.on.ca/en/elderabuse/docs/ElderAbuse_Engl_web.pdf)>.

<sup>14</sup> *A Framework for the Law as it Affects Older Adults: Advancing Substantive Equality for Older Persons through Law, Policy and Practice* (Toronto: Law Commission of Ontario, 2012) online: <<http://www.lco-cdo.org/en/older-adults-final-report-framework>>.

<sup>15</sup> Advocacy Centre for the Elderly, online: <<http://www.advocacycentreelderly.org>>.

<sup>16</sup> BC CEAS, *Legal Programs*, online: <<http://bcceas.ca/programs/legal-programs/>>; Queen's University, Faculty of Law, *Elder Law Clinic*, online: <<http://law.queensu.ca/students/queensElderLawClinic.html>>.

<sup>17</sup> Communities with elder abuse units include Vancouver, New Westminster, Edmonton, Calgary, Toronto, Halton, Durham, Hamilton, Niagara, Ottawa, Waterloo,

<sup>18</sup> BC Association of Community Response Networks, online: <<http://www.bccrns.ca>>.