

CANADIAN CENTRE



CANADIAN CENTRE FOR
ELDER LAW

FOR ELDER LAW

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Submission
to the
Task Force on
Financial Literacy

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Introduction

The Canadian Centre for Elder Law (CCEL) is pleased to contribute to the Task Force on Financial Literacy (Task Force) through this submission, and through CCEL National Director Laura Watts' June 3, 2010 presentation. We applaud the Minister of Finance for appointing the Task Force to undertake this important public policy issue. We look forward to the Task Force's findings, its ensuing recommendations and the national strategy to strengthen the financial literacy of Canadians.

The CCEL is a national, non-profit body dedicated to exploring the particular legal issues that affect older Canadians. The CCEL has its roots in a law reform tradition, which has been part of the legal and governmental landscape in Canada since the 1960s. Our parent body, the BC Law Institute, first began studying "elder law" issues in 1999 and formally established the CCEL in 2003. An important part of the CCEL mandate is to be "reform-minded" and to seek better laws, policies and systems for Canadian and international societies.

We strive to be a leader in law reform by carrying out the best in scholarly law reform research and writing and the best in outreach relating to law reform as they relate to older adults. The CCEL is well recognized for its expertise in elder law issues, both in Canada and internationally.

Canada's population is aging rapidly

The Canadian population is rapidly getting older. Statistics Canada projects the number of seniors in Canada will reach between 9.9 million and 10.9 million by 2036, more than double the 4.7 million in 2009.¹ Seniors are expected to outnumber children aged 14 and under for the first time between 2015 and 2021.² Canada's very elderly population is also projected to grow. By 2036, there could be 3.3 million people aged 80 and over, up from roughly 1.3 million in 2009.³ Further, in 2009, there were about 6,000 centenarians.⁴ This demographic is projected to triple, or even quadruple.⁵

¹ Statistics Canada, "Population projections: Canada, the provinces and territories" *The Daily* (26 May 2010) Statistics Canada Catalogue no. 91-520-XWE, online: <<http://www.statcan.gc.ca/daily-quotidien/100526/dq100526b-eng.htm>>.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

Theme of submission

This Task Force has the unique ability to recommend strategy to the federal government on financial literacy for Canadians. There are a variety of approaches this strategy might take. It is our respectful submission that instead of trying to raise the financial literacy of all Canadians equally (i.e. an increase of 1% across the board), there should be targeted “vertical penetration” particularly focusing on specific vulnerable sections of the population. The CCEL respectfully submits that the group with the most pressing need for targeted increase of financial literacy is older Canadians, both current and future seniors. It is within this context that we will submit ten recommendations that we believe will significantly and positively impact Canadian seniors, their families and supporters, the financial industry and its staff, and the Canadian government.

Elder abuse and neglect in Canada

As a result of Canada’s rapidly aging population, the CCEL identifies the pressing need to address elder financial literacy and abuse. We have few reliable up-to-date statistics on the prevalence of elder abuse and neglect in Canada. The most conservative statistics suggest that 1 in 12 older Canadians are abused or neglected.⁶ Recent indicators suggest, however, that this prevalence may be both higher and on the rise, although a complete prevalence study has not yet been undertaken. Currently, preparatory work for such a prevalence study is being created with support from the federal government. Overall, however, it seems much more likely that the prevalence of elder abuse in Canada is closer to the range of 1 in 8.

Elder abuse and neglect generally

Generally, elder abuse is defined as an action or inaction, by an individual or organization, that results in harm to an older person. Abusers may be family members, friends, caregivers, persons in a position of trust or power, or even strangers. Abuse may take shape as an isolated incident or a pattern of behaviour.

Research suggests elder abuse victims are more likely to have poor health and/or health conditions that limit their activities.⁷ They are also less likely to have someone to trust and confide in or someone who would help them if they became ill.⁸

⁶ Elizabeth Podnieks, “National Survey on Abuse of the Elderly in Canada” (1992) 4:1 *Journal of Elder Abuse & Neglect* 5.

⁷ *Ibid.* at 16.

⁸ *Ibid.*

The most commonly noted types of elder abuse and neglect are financial, physical, emotional and sexual; however, the categories are not closed. Other types include forced restraints, confinement and isolation, medication abuse, and spiritual or cultural abuse.

Many victims of abuse are unaware they are being abused, particularly in cases of financial exploitation. There are also significant challenges to reporting abuse, including risk, shame, punishment, social ostracization, and withholding of contact with friends or family.⁹

Financial abuse

Financial abuse is a key area of vulnerability for older Canadians. Many older adults' social isolation, trusting nature and possession of assets render them especially vulnerable to the various types of financial abuse. Examples of financial abuse include the misuse of funds or property; theft; exploitation or scams; abuse of power of attorney or joint accounts; and fraud or forgery of documents.

Indicators of financial abuse include unpaid bills; no money for basic necessities; absence of aids and medications; sudden appearance of previously uninvolved relatives; forged signature or power of attorney granted under unusual circumstances; older adults' complaints of not knowing where her money or assets have gone; abrupt changes in wills or accounts; and refusal by a family member or representative to spend money on the older adult's behalf.

Financial abuse not only drains away assets, but it is also emotionally devastating for the victim and his or her supporters.

Financial abuse is the most often reported form of elder abuse. It does not, however, exist in isolation; rather, it is often a public indicator of other forms of hidden abuse and neglect.¹⁰

Recommendations

1. Background: Federal Elder Abuse Initiative

In 2008, the Government of Canada launched the Federal Elder Abuse Initiative, investing \$13 million over three years to help seniors and others recognize the signs and symptoms

⁹ *Ibid.* at 47.

¹⁰ *Ibid.* at 41.

of elder abuse and to provide information about support that is available.”¹¹ Under the leadership of Human Resources and Skills Development Canada (HRSDC), the Initiative is an interdepartmental effort involving the Department of Justice Canada, the Public Health Agency of Canada and the Royal Canadian Mounted Police.¹² The Initiative ends March 31, 2011.¹³

The CCEL commends the federal government for funding the Initiative and applauds the departmental agencies for their work to-date. To ensure this important work continues past March 31, 2011, we recommend that the government re-entrench the Initiative into its continuing budget.

Recommendation: The CCEL strongly recommends the continuance and expansion of the Federal Elder Abuse Initiative, lead by the HRSDC, with specific funding to be allocated on an ongoing basis in the federal budget.

2. Background: Increased work on financial literacy and financial elder abuse

The most commonly reported form of elder abuse is financial abuse. As part of the work of the Federal Elder Abuse Initiative, there has been acknowledgement of the need for research, education and services related to reducing and preventing financial abuse. Good financial literacy thus requires an acknowledged component of the importance of reducing and preventing financial abuse. If a person engages in a lifelong program of prudent financial planning pursuant to supports around financial literacy in youth and middle age, it is tragic to then be financially exploited in one’s senior years via common financial instruments or targeted financial scams, which can leave a person penniless overnight. As such, financial literacy and financial abuse education must go hand in hand and be acknowledged as two sides of the same coin.

Recommendation: We recommend that the HRSDC, Department of Justice, Public Health Agency of Canada and the Royal Canadian Mounted Police increase their work

¹¹ Human Resources and Skills Development Canada, “Federal Elder Abuse Initiative Funding Guide,” online: <http://www.rhdcc-hrsdc.gc.ca/eng/community_partnerships/seniors/nhsp/feai/cfp/guide/page03.shtml>.

¹² Treasury Board of Canada Secretariat, “Federal Elder Abuse Initiative,” online: <<http://www.tbs-sct.gc.ca/hidb-bdih/initiative-eng.aspx?Org=117&Hi=89>>.

¹³ *Ibid.*

in the areas of elder financial literacy and financial elder abuse and that this work also be brought to the attention of the Minister of Finance, in appropriate ways and means.

3. Background: Core competencies for consuming-facing financial staff

Currently, there are nearly no core competencies on financial abuse, power of attorney, joint accounts, trusts, targeted frauds and scams, and elder abuse for training certification or ongoing continuing education programs for the financial sector. Both consumer-facing staff and their clients will increasingly need knowledge, training and protocols on competencies to manage both everyday and extraordinary financial transactions. Without such competencies being established and tested, consumer-facing staff are placed at increased risk of malpractice and accidental perpetration or accidental support of financially abusive individuals. Seniors and their supporters already rely heavily on professional staff. Such staff simply must be well trained and supported on these increasingly critical issues. Insurers of the professions will also benefit by having increased risk management for these targeted areas. Such modules are being jointly created by the CCEL and the BC Centre for Elder Advocacy and Support, and could easily be incorporated into core curricula.

Recommendation: We recommend that the Minister of Finance work with Industry to develop increasing levels of core competencies and elder sensitivity for consumer-facing financial staff on areas of priority concern to seniors, including power of attorney, joint accounts, trusts, targeted frauds and scams, and elder abuse.

4. Background: Professional sensitivity and competencies-based modules for professional associations

Professional associations play a key role in training and preparing their professional staff to respond to the current and increasing future needs of their client base. It is clear with the marked demographic shift that this client base will be predominately older Canadians within the next fifteen years. Currently, professional associations do not have competencies-based modules or exam questions focused on targeted areas such as power of attorney, joint accounts, trusts, targeted frauds and scams, and elder abuse. Additionally, these associations do not yet have competencies-based modules and testing for ensuring that services provided by their professionals are free of the taint of ageism, exclusion and discrimination. In the way that professional associations rose to meet the needs of other

social groups and clients, so to should these associations address the current and inevitable needs of this demographic trend. Such modules are being jointly created by the CCEL and the BC Centre for Elder Advocacy and Support, and could easily be incorporated into core curricula.

Recommendation: We recommend that the professional regulators and appropriate professional associations have general sensitivity and competencies-based modules on power of attorney, joint accounts, trusts, frauds and scams, and elder abuse, including but not limited to the Canadian Securities courses, Canadian Accredited Insurance Broker courses, Certified Financial Planner courses, and trust fund certification courses.

5. Background: Harmonized financial regulatory initiatives

Financial regulators play a key role in oversight and identification of trends that challenge their constituents. Older Canadians and their supporters are continually flummoxed and frustrated by the disparate regulation, policies and laws associated with financial literacy and financial elder abuse issues in Canada. A greater degree of harmony and coordination would benefit all Canadians, particularly older Canadians in targeted areas.

Recommendation: Since this issue is an area of mixed federal and provincial jurisdiction, we recommend that the Joint Forum of Financial Market Regulators be specifically tasked with coming up with harmonized financial regulatory initiatives for older Canadians, specifically including power of attorney, joint accounts, trusts, frauds and scams, and elder abuse.

6. Background: Harmonized power of attorney legislation

One of the most common documents that any adult Canadians makes is a power of attorney, which allows someone to appoint another adult to make financial decisions on his or her behalf. Power of attorney documents are both an efficient and effective way to transact financial affairs both in the present and as a planning tool for possible future incapacity. However, they are also one of the top three most common methods of financial abuse of older Canadians. One of the ways in which this abuse is perpetrated is by taking advantage of the somewhat confusing provincial / territorial-based laws governing power

of attorneys. There has been a strong movement by Canadian law reform agencies¹⁴ and indeed statements by provincial, territorial and federal government about the benefit of harmonizing or unifying power of attorney legislation in the country. The financial industry has been strongly in favour of simplifying these documents across the country, recognizing the increased mobility of Canadians across jurisdictions. As power of attorney documents are key elements of any financial literacy program, a simplification and harmonization of governing legislation would significantly reduce confusion, risk exposure and potential abuse.

Recommendation: We recommend that the Task Force encourage the Department of Justice to make a recommendation to the Uniform Law Conference of Canada to support and work on unifying or harmonizing power of attorney legislation in Canada.

7. Background: Financial elder abuse criminal investigatory teams

In many cases, elder abuse is a crime. Yet many perpetrators feel quite free and emboldened to target seniors, as there has been less reliable and robust investigation by police of abuse of seniors. In the predominance of cases, there has been some form of financial elder abuse that has been perpetrated. In some areas, such as Ottawa, Toronto, Saskatoon, Vancouver and New Westminster, elder abuse investigatory teams have been established. Often these teams pair criminal investigatory powers with social workers. These units are modeled somewhat on past work with other targeted vulnerable groups, such as victims of domestic violence and child abuse. By all reports, in the areas where specialized teams have been established, significant inroads have been made in investigating and prosecuting criminal financial abuse of seniors. Yet these teams, effective and increasingly needed, remain the exception rather than the rule in Canada. Clearly, the need for police services in this area is significant now and will only markedly increase in the immediate future. In order for financial literacy to be effective, there must be appropriate criminal remedies which criminal financial abuse has been perpetrated.

Recommendation: We recommend that the Canadian Chiefs of Police be strongly encouraged to support the development and maintenance of elder abuse teams with

¹⁴ Western Canada Law Reform Agencies, *Enduring Powers of Attorney: Areas for Reform – Final Report 2008*, online: Alberta Law Reform Institute <<http://www.law.ualberta.ca/alri/docs/WCLRA-EPA%20report.pdf>>.

specific education on investigating financial abuse, and promoting positive financial literacy.

8. Background: Designated Crown Counsel for financial elder abuse cases

Where able criminal police investigation has been undertaken in the area of financial elder abuse, the prosecution of the crimes must not fail at the level of Crown Counsel. In other areas of specific prosecution, such as domestic violence and child abuse, learned and designated Crown Counsel have been appointed to more ably usher these cases through designated police / Crown processes. As many of the other forms of abuse have taught us, dedicated Crown Counsel are an invaluable tool in effective prosecution of abuse cases. It is clear that the prevalence of financial elder abuse is currently significant and on the rise in Canada. To effectively deter financial abusers and to bring justice to their victims, an effective designated elder abuse program at the Crown Counsel is required.

Recommendation: We recommend that the Solicitor General and Minister of Justice be strongly encouraged to seriously investigate and prosecute criminal financial abuse of seniors in Canada by establishing designated Crown Counsel and general training of Crown Counsel on elder and financial abuse issues.

9. Background: Elder friendly materials

Outcomes and recommendations of the Task Force are certain to recommend improvements in information and resources for the financial literacy of Canadians. It is critical that an accessible and anti-ageist approach be taken to this endeavor. Task Force recommendations, programs and materials should adhere to this inclusive, accessible and elder-friendly approach. As such, it is important to ensure that all financial literacy material and services are sensitive to, or can be adapted to, the specific needs of many older adults. Some of these steps are very easy to undertake, such as ensuring that font size can be increased appropriately for readability, that websites and publications reflect a life course approach by including photos of and references to older Canadians, and that there be a vigorous audit of materials for implicit and / or explicit ageist attitudes or policies.

Already many financial services are not elder friendly, and with increased movement towards electronic resources and methods, many seniors are financially penalized by not adopting these new modalities. For example, fees now may be levied to clients who choose to visit a banking teller in person rather than using a debit card. Visiting the teller indeed may be a wise choice for seniors; debit card fraud is a key area of financial abuse, and a

strong relationship with financial consumer-facing staff has been identified as a deterrent to financial abuse.

Additionally, many seniors may find the significant requirement to use pre-programmed telephone trees very challenging and confusing, and if their technology at home is not able to mesh with the centralized banking systems they will suffer discrimination and increased financial vulnerability.

As such, all materials, systems and representations of financial literacy area must be designed and audited to ensure universal access and elder friendly status.

Recommendation: We strongly recommend the Task Force adopt an inclusive and “elder friendly framework” including for any changes to financial literacy education, services and materials, to ensure equal access to Task Force outcomes and recommendations.

10. Background: Consumers’ rights to complain

A key challenge in this area is appropriate restitution where financial difficulties, challenges or complaints validly exist. By definition, people who have been financially exploited will have significant difficulty accessing justice, retaining counsel or pursuing an appropriate resolution against a financial institution. This is even more the case for older adults who have been financially exploited due to increased likelihood of social isolation and vulnerability, mobility or language challenges, or limited access to telephones or technology to establish and pursue complaints. It is within this context that the various ombudspersons for financial services play a critical role.

Recommendation: We recommend that the federal government take steps to make all consumers, and especially older Canadians, aware of their rights to complain about problems they have with their financial service providers and inform them of the processes and support available to them and to ensure that all ombudservices are themselves “elder-friendly”, with staff competencies in issues related to aging and financial abuse.

Conclusion

The CCEL applauds the Task Force for its work and we support the development of a national strategy to promote financial literacy. Improving the financial literacy of Canada's aging population will play a vital role in decreasing the financial abuse and neglect of older adults.

We look forward to receiving the Task Force's recommendations and are pleased to have participated in this important process.

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