

**A response to the
Financial and Consumer Services Commission's
Consultation on Financial Abuse of Older Adults**



February 2018

Introduction

The New Brunswick Association of Social Workers (NBASW) is an organization representing more than 1,900 members provincially. Its role is the promotion of excellence in social work practice and protection of the public. Social workers are committed to supporting the wellbeing of all individuals and protecting the most vulnerable in our society. Social workers serve older adults in a variety of settings and capacities in New Brunswick and recognize the importance of addressing the issue of financial abuse using both preventive and protective measures.

In preparing its response to this consultation, the NBASW circulated a survey to its members, seeking their professional opinions about financial abuse of older adults, and what legislative changes, training, tools or resources, are required to prevent and respond to, this issue. The resounding response from New Brunswick social workers clearly identified education as the key to combatting financial abuse of older adults.

Opportunities for Legislative Change

Intended Audience

Before discussing possible opportunities for legislative change, it's important to ensure that there is a common understanding of who these changes are intended to benefit. The New Brunswick Financial and Consumer Services Commission's (FCNB) consultation paper asks for input on the appropriate age to define a senior. The NBASW believes that in order for consumer protection initiatives to be effective, they must reach their intended audience. While the majority of social workers agreed that these types of initiatives should be targeting adults aged 65 and over, it was expressed that many individuals who are 65 do not self-identify, or want to be identified as, seniors. Many individuals in their 60s and beyond are working, volunteering and maintaining active lifestyles. If the goal of educational initiatives is to reach these populations, it is crucial that the language used in these initiatives resonates with the intended audience. The language of 'older adult' has gained acceptance in recent years. Recognizing that the term 'senior' is often used by various levels of government and may therefore be adopted in order to be consistent, the NBASW would encourage the FCNB to consider reviewing this terminology.

Legislative Changes

As explained in the FCNB's consultation document, in New Brunswick, no legislated definition of "financial abuse" exists. The NBASW supports the modification of provincial legislation to include a definition of financial abuse. Specifically, a definition of financial abuse should be added to the *New Brunswick Family Services Act*, and authority should be granted to the Minister of Social Development to investigate cases of financial abuse.

While the majority of social workers who responded to the survey agreed that the *Family Services Act* should allow social workers to investigate and address financial abuse against older adults, it is critical that appropriate training and support accompany this legislative change. Financial abuse is a complex issue, that does not take place in isolation. Identifying, investigating and confirming financial abuse requires specialized knowledge and skills. In order to adopt this new role, it is crucial that dedicated training is provided to social workers about:

- how to recognize and investigate financial abuse;
- the use of financial documents such as Power of Attorney documents; and
- how to support individuals who have experienced financial abuse.

While this training will be necessary for social workers employed with adult protection, it would be valuable to extend this training to long-term care social workers, and social worker employed in hospital and extramural settings, as their roles often place them in situations where they may be the first professional to observe signs of financial abuse. In the United States, there are Multi-Disciplinary Financial Abuse Specialist Teams (FAST) and Forensic Centers, that provide resources and advice to adult protection services and law enforcement, about complex abuse cases. When developing specialized training for New Brunswick social workers, it may be beneficial to reach out to these professionals to consult, since they have expertise in this field.

Because current provincial legislation does not allow for investigation of financial abuse under the *Family Services Act*, current reports of financial abuse must be directed to police or the RCMP for investigation under the Criminal Code of Canada. The NBASW recommends that future training related to addressing financial abuse of older adults be multidisciplinary in nature, bringing together law enforcement professionals along with social workers. This collaborative approach can promote an understanding of the abilities and limitations of provincial and federal legislation when it comes to addressing financial abuse and encouraging interagency collaboration. While modifications to the *Family Services Act* have the potential to address the impact of financial abuse of older adults, this issue cannot be resolved by social workers alone. Although beyond the scope of this consultation, it may be valuable to explore whether modifications to the Criminal Code of Canada are also necessary in order to fully address this issue.

In addition to the training needs described above, an important and sometimes neglected aspect of addressing financial abuse is the provision of support for the abuser. Social workers are well positioned to provide this support, by educating caregivers about what constitutes financial abuse, ensuring supports are in-place to assist caregivers who may be overwhelmed, and working to maintain the family relationship where possible. Given that financial abuse often involves family members, offering education and support to abusers may help to address concerns about reporting financial abuse within families. Dedicated training about how to effectively support abusers should be introduced. In order to effectively carry out the expanded mandate described above, additional human resources must be allocated to adult protection services.

While the NBASW believe the inclusion of a definition of financial abuse will be most impactful in the *Family Services Act*, the NBASW recommends that the same definition also be added to the *Public Trustee Act* and *Infirm Persons Act* to allow for consistency across all relevant provincial legislation.

Power of Attorney Documents

The FCNB's consultation document explains that the authority to appoint a Power of Attorney in New Brunswick is currently embedded in the *Property Act* and the *Infirm Persons Act*. Feedback received from social workers confirms that there is a great deal of misunderstanding and lack of awareness among the general public regarding Power of Attorney documents. The NBASW recommends that New Brunswick introduce stand-alone legislation regarding Power of Attorney documents. Common areas of misunderstanding about Power of Attorney documents, identified by social workers include: the responsibilities of donees, what powers the document provides, and when the document becomes effective. Defining these responsibilities and powers within legislation can allow for the standardization of Power of Attorney documents provincially and allow for more effective educations about these important financial documents.

While Power of Attorney legislation could set restrictions on the powers of the donee, or on the selection of a donee, there are several important considerations that must be taken into account. Power of Attorney documents are an important financial tool, that many New Brunswickers rely upon to manage their

financial affairs. It is therefore imperative that the process to appoint a Power of Attorney not become too onerous for the older adult or for the donee, whom they appoint. There must be balance between protective mechanisms to reduce the likelihood of, or to address, financial abuse, and respecting the rights of older adults to autonomy and self-determination. While strict protective measures can seem appealing, it is important to recognize that the majority of individuals who act as a donee, do so in the best interest of the older adult. The NBASW does not intend to diminish the importance of safeguards, but rather cautions against the adoption of an overly rigid system, that may create additional barriers to individuals using this important financial tool.

With this in mind, the NBASW believes that certain protective measures should be *explored* in the creation of stand-alone Power of Attorney legislation. Specifically:

- measures that restrict transactions where there is a perceived or actual conflict of interest between the best interest of the older adult and the personal interests of the donee;
- limitations on who can act as a donee (for example, individuals who have been charged with a financial crime or abuse in the past); and
- restrictions on modifications to insurance or pension beneficiaries.

While it has been suggested that restrictions could be implemented to prevent transactions over certain amounts unless there is oversight from a financial advisor, the NBASW believes this type of measure places undue restrictions on how an older adult can spend their money. According to the brochure *What every older Canadian should know about financial abuse* published by the Federal/Provincial/Territorial Ministers Responsible for Seniors, financial abuse is often a pattern of behaviour, in which an abuser may steal or misuse small sums of money over the course of months or years. As a result, measures that target only large sums may not be effective. Rather, the NBASW would suggest that legislation should allow for intervention by professionals when there is evidence or threat of abuse. Further suggestions on this issue will be discussed under the improving best practices for industry section of this document. It should be noted, that restrictions should not impede a donee from carrying out legitimate tasks that may be required to ensure the best interest of an older adult living with dementia.

While the NBASW believes that the introduction of stand-alone Power of Attorney legislation can assist in addressing financial abuse of older adults, this measure alone is not sufficient. A more robust educational campaign to inform New Brunswickers about how of Power of Attorney documents work, and the importance of selecting a donee carefully, is necessary. Many social workers who responded to the NBASW survey shared that there is limited knowledge among the general public about Power of Attorney documents and the rights and responsibilities that these documents provide. There is also a lack of clarity among professionals about the different types of Power of Attorney documents, and when they become effective. The FCNB along with the Government of New Brunswick, Public Legal Education and Information Services of New Brunswick (PLEIS-NB), and other financial and legal professionals, could play a role in the development and dissemination of this education.

Reporting Suspected Financial Abuse

Mandatory versus Voluntary Reporting

The proposed inclusion of financial abuse in the *Family Services Act* brings with it questions regarding the reporting of this type of abuse. The majority of social workers who completed the NBASW survey indicated that they believe reporting of financial abuse should be mandatory for everyone. While having strong, enforceable legislation is important, consideration must also be given to the *Family Services Act* in its entirety. Under the current *Family Services Act*, reporting of any type of abuse involving vulnerable adults

is currently voluntary (section 35.1(1)). If financial abuse is added to the Act, reporting requirements should be in line with reporting for other forms of abuse. This may require that reporting requirements for all forms of abuse against vulnerable adults be re-examined.

Of the social workers who responded to the survey, approximately half indicated that they would be comfortable reporting suspected financial abuse under the current *Family Services Act*, while the other half indicated they would be reluctant to report because of confidentiality concerns, but, would feel more confident reporting if the Act were amended to include financial abuse. This result speaks to the importance of having a definition of financial abuse, and associated reporting requirements, entrenched in legislation and regulations.

Access to Consultation Services

Currently, registered social workers in New Brunswick have access to consultation services when navigating challenging ethical decisions. Social workers can consult with the NBASW Registrar, or submit written questions to the NBASW's *Practice Issues, Ethics and Professional Standards Committee*. While not providing legal advice, this consultation service provides guidance and resources to social workers, to support them in making ethically sound decisions. The NBASW recommends that a similar type of service be made available to professionals (including financial professionals) to allow them to consult about their responsibilities to report financial abuse, and to receive support around decision making.

In addition to consultation services, training should be made available to professionals in a variety of formats (in-person, online) to assist them in recognizing financial abuse and to educate them about their responsibility to report. This type of training should be mandatory for financial professionals, as well as for individuals working in certain social service and law enforcement roles. Examples of such training includes Investor Protection Trust's *Elder Investment Fraud and Financial Exploitation (EIFFE) Prevention Program*, North American Securities Administrators Association's *SeniorSafe* program, and Prevent Elder Abuse Manitoba's *Financial Abuse of Older Adults: Recognize, Review, Respond* program. These types of programs could be spearheaded by financial institutions in collaboration with community partners.

Improving Best Practices for Industry

Education for Professionals

Social workers believe that education is key to preventing and responding to financial abuse of older adults. Training materials tailored for professionals can assist in identifying potentially abusive situations and allow for early intervention. The NBASW recommends that screening tools to identify financial abuse be researched and adapted for use in New Brunswick. Such tools should be available for financial professionals, health professionals (doctors, nurses, social workers), legal professionals, and other helping professionals. Training modules for professionals about the use of screening tools and responsibilities about reporting financial abuse, should also be made available. Professional associations may wish to consider developing guidelines about the reporting of financial abuse, and educational institutions offering professional programs, may want to incorporate this content into their curriculum. Education should be reinforced with promotional campaigns in the workplace, to encourage a culture of open communication about this issue, and ensure it remains at the forefront of professionals' minds.

Protective Measures

While education and prevention efforts can be highly effective, these strategies must be paired with protective measures, that can be triggered in situations where financial abuse is suspected. Some jurisdictions in the United States (State of Washington) have legislation that allows financial professionals

to *temporarily* delay or refuse a financial transaction — contrary to the explicit instructions of the older adult or their Power of Attorney — when it appears that the older adult is being defrauded or exploited. The NBASW recommends that similar legislation be *explored* in New Brunswick, but strongly cautions that such measures should not be implemented without consideration of how this may impact the self-determination of older adults. While this type of legislation could serve as a safeguard against financial abuse, it is crucial that this power is not used to restrict the financial autonomy of older adults or create unnecessary barriers to the effective use of Power of Attorney documents. After further investigation, if the Province of New Brunswick chooses to grant financial professionals the ability to restrict financial transactions, the NBASW recommends that:

- restrictions on financial transactions be permitted for defined, limited periods of time only. The period must be long enough to allow for necessary investigation by authorities, but not so long as to create financial burden for the older adult by causing delays in the payment of bills or limiting their ability to purchase daily necessities.
- financial professionals be required to document the justification for their decision to restrict financial transactions. This measure must not be used to impose personal values about the appropriate or responsible use of money.
- financial professionals who restrict financial transactions be required to report the suspected abuse to the appropriate authorities (law enforcement and the Department of Social Development)
- financial professionals with the authority to delay financial transactions be required to make use of consultation services or supervision. This ensures that decisions about restricting transactions are not left to the judgement of one individual.
- the introduction of these measures be accompanied by interagency training for financial professionals, law enforcement, and adult protection workers to ensure mutual understanding of this tool and the collaborative process for investigation and response.

While the NBASW believes that protective tools such as the one discussed above merit further investigation, it is recommended that such measures only be introduced once provincial legislation has been amended to grant authority for the investigation of financial abuse under the *Family Services Act*.

Collaboration, Safeguarding and Interagency Cooperation

Education for Older Adults

Addressing financial abuse of older adults is a significant issue, and one that needs to be well resourced in order to be addressed appropriately. Combatting financial abuse will require well coordinated educational efforts targeting the general public, as well as older adults themselves. Fortunately, this is an area where a collaborative approach to addressing financial abuse can be highly effective. Professional associations and unions representing legal and health professionals, non-profit organizations serving older adults, provincial government departments, and financial institutions, can all play a role in the development and dissemination of educational materials and training.

When working to reach older adults with information about financial abuse, social workers agree that information must be provided in settings that older adults frequent, and in formats that are accessible and most comfortable for them. This means providing educational materials in medical offices, hospitals and community centres. Resources should be available in plain language, audio and other accessible formats, and written materials should be distributed in both hardcopy and electronic formats. Education must also be developed to respect cultural differences in discussing money and abuse. The development

of curriculum for older adults about recognizing, preventing and reporting financial abuse may be valuable. Resources that exist in other jurisdictions, such as the *Money Smart for Older Adults* program, used nationally in the United States, could be adapted for use in the New Brunswick context. The delivery of such education sessions should take place in assisted living facilities, nursing homes, apartments complexes and community centres serving older adults. This information must be brought to the individuals, rather than expecting individuals to seek out the information.

Recognizing that not all older adults are active in the community, and some may be experiencing social isolation, it is critical that outreach activities also seek to reach people in their homes. While specific campaigns about financial abuse can be useful, the NBASW recommends that focus be placed on incorporating information about financial abuse and reporting into existing programs that older adults are already accessing. While discussing financial abuse can be a sensitive topic, incorporating this information into the larger conversation about age-friendly communities can help create safe environments for discussions about mistreatment. Information about financial abuse could be included during evaluations for in-home supports with Social Development's Long-Term Care Program, during routine medical visits, or as part of *The Seniors Health, Well-Being and Home Safety Review* service. At a federal, rather than provincial level, information about financial abuse could be provided to all individuals applying to access Old Age Security, the Guaranteed Income Supplement, or Canada Pension Plan. Continually sharing information about financial abuse through a variety of sources can ensure wide distribution of this important information and help normalize discussions about financial abuse. A shift to incorporate content about financial abuse into existing programs must be supported by corresponding human and financial resources, to make this additional workload feasible, and to avoid putting further pressure on an already stressed system.

In the same way that education about financial abuse must be provided to older adults in settings that are convenient for them, education for professionals must be delivered in relevant work settings. This could mean in-house training being provided to staff in hospitals, assisted-living facilities, nursing homes, or to home support workers. In addition to education for frontline workers, training must be provided to managers and administrators who are responsible for supervising and supporting frontline staff. The NBASW believes that professional associations can play a role in this education and would be pleased to partner with the FCNB to develop webinars and other training resources for social workers.

Addressing Fears about Reporting

For older adults who experience financial abuse, the decision to report and seek support can be complicated by fears of retaliation, loss of support or independence, or embarrassment. Because abusers are often family members or close friends, older adults may be reluctant to report financial abuse. They may fear potential repercussions or believe that these types of issues are private family matters. To address these fears, the NBASW recommends that educational campaigns acknowledge these fears, provide clear messaging about what constitutes financial abuse and promote that support is available. Among these supports, the NBASW recommends that an investment be made in victim advocates specializing in prevention of, and response to, financial abuse of older adults. These professionals could assist older adults in navigating complex service systems, connect them to needed resources, and assist them in understanding their financial rights. Victim advocates could also support older adults who may wish to explore ways to address financial abuse outside the formal court system. Models such as Family Group Conferencing have been used successfully within the child protection system to preserve family relationships, while also implementing accountabilities and safeguards. Social workers have a great deal of experience with Family Group Conferencing and could be a valuable resource in adapting this process

for use with older adults. This model adopts a holistic approach to resolving issues, focused on restitution, and provides support not only to the older adult, but to their family as well.

While the decision to report abuse may be difficult, the NBASW believes that promoting the availability of support and alternative justice approaches can help older adults feel more comfortable in disclosing abuse. Mechanisms to protect referral sources who report abuse, and confidential, user-friendly, provincial telephone hotlines (such as Quebec's, *La Ligne Aide Abus Aînés*) for information about financial abuse, can also encourage reporting.

Conclusion

Financial abuse of older adults is often overlooked, despite the increasing importance of recognizing this issue. Modern technology has created more ways in which older adults can be vulnerable to financial abuse. Online banking, online shopping, and online gambling have created settings where financial abuse can happen more easily and less visibly. In addition, the population of New Brunswick is aging, with predictions that by 2038, 31.3% of the population of New Brunswick will be over the age of 65. These realities reinforce the need to prioritize efforts aimed at preventing and responding to financial abuse of older adults.

While this consultation focuses on older adults, it is important to note that financial abuse can happen to any vulnerable adult. The recommendations contained within this document may be beneficial in addressing financial abuse in other contexts. While these recommendations reflect the opinion of the NBASW, further research is required to fully understand the scope of financial abuse in New Brunswick. The implementation of changes to, or introduction of new, provincial legislation will require further consultation, research and collaboration between stakeholders.

The NBASW believes that education is key to preventing financial abuse, and to empowering citizens and professionals to respond to abuse when it does occur. Addressing financial abuse is not something that can happen effectively in silos, and requires communications and collaboration between private citizens, professionals, community organizations, government, criminal justice systems and protective services.

Summary of Recommendations

In order to most effectively address the issue of financial abuse of older adults, the NBASW presents the following recommendations to the New Brunswick Financial and Consumer Services Commission:

- A definition of financial abuse should be added to the *New Brunswick Family Services Act*, and authority should be granted to the Minister of Social Development to investigate cases of financial abuse. To effectively carry out this expanded mandate, social workers must be provided dedicated training about investigating financial abuse, how to support older adults, and how to support abusers. Additional human resources must be allocated to adult protection services.
- Future training related to addressing financial abuse of older adults should be multidisciplinary in nature, bring together law enforcement professionals along with social workers.
- A definition of financial should be added to the *Public Trustee Act* and *Infirm Persons Act* to allow for consistency across all relevant provincial legislation.

- New Brunswick should introduce stand-alone legislation regarding Power of Attorney documents. The inclusion of restrictions or protective measures within this legislation should be considered but must not create additional barriers to individuals using this financial tool. A more robust educational campaign about Power of Attorney documents for the public and professionals is required.
- Consultation services should be made available to professionals (including financial professionals) to allow them to consult about their responsibilities to report financial abuse and to receive support around decision making.
- Screening tools to identify financial abuse should be researched and adapted for use in New Brunswick. Such tools should be available for financial professionals, health professionals (doctors, nurses, social workers), legal professionals, and other helping professionals.
- Legislation to allow financial professionals to temporarily delay or refuse financial transactions, when it appears that an older adult is being defrauded or exploited, should be explored. If such legislation is enacted, the NBASW recommends that certain requirements and restrictions be implemented.
- Focus should be placed on incorporating information about financial abuse and reporting into existing programs that older adults are already accessing. Education must be provided in formats and locations that are accessible and comfortable for older adults.
- An investment should be made to hire victim advocates specializing in prevention of, and response to, financial abuse of older adults. Alternative approaches to addressing financial abuse, such as Family Group Conferencing should be explored. Protecting referral sources who report abuse, and a confidential, user-friendly, provincial telephone hotline may also encourage reporting.

The NBASW appreciates the opportunity to offer these recommendations and would be pleased to partner with the FCNB to support the implementation of these recommendations. The Association recognizes the valuable role that professional associations like the NBASW can play in the education of the public and of its members regarding financial abuse of older adults. The NBASW would like to reinforce its willingness to work with the FCNB to develop and deliver such education and would encourage the FCNB to seek out similar partnerships with other professional organizations.

References

- Canadian Network for the Prevention of Elder Abuse. (2015, March). *Collaborating to recognize and address financial abuse of older adults*. Retrieved from <https://cnpea.ca/en/about-cnpea/blog/126-collaborating-to-recognize-and-address-financial-abuse-of-older-adults?highlight=WyJmaW5hbmNpYWwiLClnZmluYW5jaWFsliwiYWJ1c2UiLCInYWJ1c2UnLilslidhYnVzZSciLCJhYnVzZSculiwiZmluYW5jaWFsIGFidXNlIl0=>
- Consumer Financial Protection Bureau Office for Older Americans. (2014). *Protecting residents from financial exploitation. A manual for assisted living and nursing facilities*. Retrieved from http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf
- Consumer Financial Protection Bureau Office for Older Americans. (2016). *A Resource Guide for Elder Financial Exploitation Prevention and Response Networks. Office for Older Americans*. Retrieved from http://files.consumerfinance.gov/f/documents/082016_cfpb_Network_Resource_Guide.pdf
- Consumer Financial Protection Bureau Office for Older Americans, & Securities and Exchange Commission Office of Investor Education and Advocacy. (2015, June). Planning for diminished capacity and illness. *Consumer Advisory and Investor Bulletin*. Retrieved from http://files.consumerfinance.gov/f/201505_cfpb_consumer-advisory-and-investor-bulletin-planning-for-diminished-capacity-and-illness.pdf
- Family Services Act. (1980, c.16, s.1). Retrieved from <https://www.canlii.org/en/nb/laws/stat/snb-1980-c-f-2.2/latest/snb-1980-c-f-2.2.html>
- Federal /Provincial /Territorial Ministers Responsible for Seniors. (2010). *What every older Canadian should know about financial abuse*. Retrieved from <https://www.canada.ca/content/dam/esdc-edsc/documents/corporate/seniors/forum/brochure-07-eng.pdf>
- Federal /Provincial /Territorial Ministers Responsible for Seniors. (2013). *What every older Canadian should know about powers of attorney (for financial matters and property) and joint bank accounts*. Retrieved from http://publications.gc.ca/collections/collection_2013/rhdcc-hrsdc/HS4-118-2013-eng.pdf
- Financial and Consumer Services Commission. (2015). *FCNB Senior Engagement Sessions: Final Report*. Retrieved from http://0104.nccdn.net/1_5/27f/21f/2cc/Senior-Engagement-Session-Report-Final-EN.pdf

Financial and Consumer Services Commission. (2016). *FCNB Forum on Senior Financial Abuse: Summary Report*. Retrieved from http://0104.nccdn.net/1_5/327/0c8/1db/FCNB-Senior-Forum-Report--2016-08-31-EN-FINAL-Website-version.pdf

Financial and Consumer Services Commission. (2017) *Consultation Paper: Improving detection, prevention and response to senior financial abuse in New Brunswick*. Retrieved from http://0104.nccdn.net/1_5/249/3a8/07d/Seniors-Consultation-Paper-EN-Web.pdf

Financial exploitation of vulnerable adults. RCW 74.34.215 Retrieved from <https://app.leg.wa.gov/rcw/default.aspx?cite=74.34.215>

Fleming, R.A. (2015, February 5). *Protecting Elderly Investors from Financial Exploitation: Questions to Consider*. The American Retirement Initiative Winter Summit. Washington, D.C. Retrieved from <https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html>

Province of New Brunswick. (2017). *We are all in this together: An Aging Strategy for New Brunswick*. Retrieved from <http://www2.gnb.ca/content/dam/gnb/Departments/sd-ds/pdf/Seniors/AnAgingStrategyForNB.pdf>