

FINANCIAL AND
CONSUMER SERVICES
COMMISSION



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AUX CONSOMMATEURS

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Improving Detection, Prevention and Response to
Senior Financial Abuse in New Brunswick



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Introduction

In a national study published in 2004 entitled “the General Social Survey on Victimization (2004),” it was found that approximately 10 per cent of Canadian seniors were the victims of crime each year. It was noted that financial abuse and exploitation appeared to be one of the most prevalent forms of abuse.¹ While a lot remains to be learned about the pervasiveness of crimes against Canadian seniors, including those living in New Brunswick, financial abuse of seniors in the province will only increase with New Brunswick’s aging population. New census data released in May 2017 indicates New Brunswick is tied with Nova Scotia (19.9 per cent) for having the highest percentage of seniors.² If this trend continues, it is expected 31 per cent of New Brunswick’s population will be over the age of 65 by 2038.



As we age, we all become more dependent on others, making us more susceptible to frauds, scams and financial abuse. The Government of New Brunswick has demonstrated a concern for this growing senior demographic as is confirmed in the province’s appointment of the Council on Aging.³ Earlier this year, the Council on Aging presented an aging strategy entitled “We are all in this together: An Aging Strategy for New Brunswick,” (Strategy)⁴ to enable seniors to have the support, financial means and protections to live independently. It included:

- ◆ Recommendations to make the province more age-friendly
- ◆ Steps to establish New Brunswick as a leader in aging research and social innovation

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1. Crime and Abuse Against Seniors: A Review of the Research Literature With Special Reference to the Canadian Situation, www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html.
 2. Statistics Canada, statcan.gc.ca.
 3. The mandate of the Council on Aging is to guide the development of an aging strategy to address both short-term (1-3 years) sustainability and long-term (10 or more years) transformational change. As part of this exercise, the Council will develop a vision for aging in New Brunswick.
 4. [We are all in this together: An Aging Strategy for New Brunswick](#).

The Financial and Consumer Services Commission (FCNB) is responsible for the administration and enforcement of provincial legislation that regulates securities, insurance, pensions, credit unions, trust and loan companies, co-operatives and a wide range of consumer legislation. At FCNB, our priority is to identify ways to address financial abuse, particularly financial abuse of seniors and other vulnerable people, within the industries that we regulate and support the Strategy.

FCNB has identified opportunities to position New Brunswick as a leader in effectively addressing financial abuse of seniors. We held a series of roundtable dialogues with seniors to understand the issues and challenges they face when using financial and consumer services and any personal experiences with financial abuse. The [Senior Engagement Report](#) compiled the issues and comments that participants raised and was the foundation document for further stakeholder consultations. FCNB also hosted the Forum on Senior Financial Abuse to understand the issues facing government departments, agencies and other stakeholders. The [FCNB Forum on Senior Financial Abuse: Summary Report](#) set out key issues discussed during the Forum and generated a list of potential ideas that may protect New Brunswick seniors from financial abuse.

Our Mandate

Protect consumers and enhance public confidence in the financial and consumer marketplaces.





This Consultation Paper serves to continue FCNB's work in addressing the issues around financial abuse of seniors in the province. It examines ways of preventing and responding to financial abuse, and provides an opportunity for stakeholders to comment on proactive solutions based on four themes:

1. **Opportunities for Legislative Change:** Are there opportunities for legislative change that would provide increased safeguards against financial abuse of seniors?
2. **Reporting Suspected Financial Abuse:** How can we address the challenges in reporting and investigating financial abuse of seniors and assist the industries we regulate in reporting suspected abuse?
3. **Improving Best Practices for Industry:** Can we adopt best practices for industry as guidance in handling accounts of clients that are problematic or in handling accounts proactively so they do not become problematic?
4. **Collaboration, Safeguarding and Inter-Agency Cooperation:** Can we customize existing collaborative legal frameworks from other jurisdictions, such as the United States of America (U.S.), that address financial abuse of seniors? How can we build a more collaborative approach between government departments and agencies to address the issues surrounding financial abuse of seniors?

This Consultation Paper will pose questions throughout to solicit specific feedback related to these themes. We welcome comments or clarifications on any of the issues raised in this Consultation Paper.

Financial Abuse and Why Seniors are at Risk

WHAT IS FINANCIAL ABUSE OF SENIORS?

Financial abuse of seniors in this Consultation Paper refers to misuse of an older adult's money or property by coercion or other means, sometimes by a relative or person in a position of trust. Poor financial or investment decisions are not necessarily financial abuse. Examples of financial abuse may include⁵:

- ◆ Misuse of a power of attorney document, for example, using the power of attorney document to take money out of the owner's account without their knowledge to pay for an item that in no way benefits the person whose money it is
- ◆ Withholding of a person's funds, pension cheque or other income
- ◆ Cashing in investments without permission
- ◆ Pressuring a person to sign documents that they do not have the capacity to understand
- ◆ Coercing, forcing or deceiving a person into lending money or selling their home
- ◆ Coercing and tricking a person to sell their assets for much less than they are worth
- ◆ Tricking a person to purchasing unsuitable financial and consumer products
- ◆ Pressuring a person into providing food, shelter, housekeeping or childcare, for example, without payment
- ◆ Forcing someone to change a will, for example, an adult child forcing their parent to change a will to disinherit another sibling⁶

5. Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts, Canadian Centre for Elder Law (March 2013).

6. www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html#fin



While scholars and social service providers began recognizing child abuse and domestic violence as major social problems more than 40 years ago, the issue of financial abuse of seniors has only come to the forefront in the last 15 to 20 years.

Financial abuse of seniors is often called “the invisible crime” because of how frequently it goes unidentified and unreported.^{7, 8} Determining the true impact of financial abuse of seniors is challenging due to the underreporting of this misconduct. In a 2017 FCNB provincial survey, 25 per cent of adults surveyed reported they personally know a senior who has or may have been a victim of financial abuse. However, 78 per cent of those who knew of or suspected financial abuse did not report it.

A fragmented investigation approach, combined with low reporting, poses a challenge to identifying and combatting financial abuse of seniors. In New Brunswick, no legislated definition of “financial abuse” exists. While New Brunswick’s *Family Services Act* protects seniors and vulnerable adults from physical or sexual abuse, mental cruelty and neglect, financial abuse is not included under the definition of abuse.⁹ The legislation suggests, and our research confirms, that

7. www.forbes.com/sites/nextavenue/2015/02/13/why-elder-financial-abuse-is-such-a-slippery-crime/#142bbc8e6f90

8. www.vancity.com/SharedContent/documents/pdfs/News/Vancity_Seniors_Financial_Abuse_Report.pdf

9. *Family Services Act*, R.S.N.B., C. F-2.2

the current legislative framework would only allow the Department of Social Development to investigate financial abuse if it is uncovered during investigations for other forms of abuse defined within the *Act*. If reported, police can investigate complaints about financial scams and theft, and FCNB can investigate suspected consumer or investment fraud, but there is no obligation to report instances of financial abuse or suspected financial abuse under the current legislative framework in New Brunswick.

Contributing to the challenge of identifying and investigating these crimes is that the perpetrators are often trusted family and friends to the victim. Because those who perpetrate financial abuse of seniors are often adult children, relatives, family friends, trusted caregivers or advisors,¹⁰ the senior may resist help for fear of:

- ◆ Retaliation
- ◆ Loss of support
- ◆ Loss of independence
- ◆ Perceived stigma, shame or embarrassment
- ◆ Perceived lack of other options for care and assistance



10. The terms ‘advisor’ and ‘financial advisor’ generally refer to a financial professional, and do not indicate a category of registration or licence. The registration category and type of licence is more important than a title.

WHY ARE SENIORS TARGETED?

Ageism as a Contributing Factor

One of the most significant factors contributing to all forms of exploitation of seniors is ageism. Ageism is a socially constructed way of thinking about older persons based on negative attitudes and stereotypes about aging.¹¹ These negative attitudes toward aging and stereotypes of seniors can result in abusive behaviours. Financial abuse is usually perpetrated by family members or those close to a senior who may¹²:

- ◆ Stand to inherit and feel the money or assets will eventually be theirs
- ◆ Fear that their older family member will use up their savings, depriving the perpetrator of an inheritance
- ◆ Feel a sense of “entitlement” to the senior’s money or assets because of past grievances or because they are currently helping the senior with daily activities
- ◆ Want to prevent other family members from acquiring or inheriting the senior’s assets
- ◆ Have substance abuse, gambling or financial problems



11. www.ohrc.on.ca/en/ageism-and-age-discrimination-fact-sheet

12. National Committee for Prevention of Elder Abuse (http://www.preventelderabuse.org/elderabuse/fin_abuse.html)

Preying on Emotions

Seniors are often the target of investment frauds and scams because they are more likely to have built up assets (such as retirement savings, property, etc.). They may also be concerned with outliving their savings or leaving outstanding debt for family members and so are more willing to listen and consider these “too good to be true” scams. Seniors may be more likely to experience life events and situations that increase their risk of being victimized, such as a health crisis or the death of a spouse, partner or close family member or friend. In these cases, seniors may be less likely to think critically and more likely to make an emotional decision. Seniors may also experience isolation, loneliness and increased dependence on another individual, which can increase vulnerability to fraud and financial abuse. Scam artists target seniors during particularly trying and emotional periods to purposefully take advantage of their victims when they are most vulnerable.



Cognitive Impairment and Declining Capacity

Mentally competent seniors who do not suffer a cognitive impairment, and who are very capable of handling various everyday affairs, are still at risk to becoming victims of financial abuse. Through the regular aging process, our ability to recognize risk and determine if someone is acting in good faith can decline. Adults and seniors who suffer from a cognitive impairment or lack capacity, either due to aging or a medical condition, are at an increased risk of being victims of financial abuse.

What is Mental Capacity? Mental capacity is having the ability to make decisions and understand the consequences of those decisions. A person may have capacity to do certain tasks, but lack capacity for others. A person's abilities may change with age or vary over a day depending on stressors, energy levels and other factors.

What is Financial Capacity? Financial capacity is the combination of attitude, knowledge, skills and self-efficacy needed to make and exercise money management decisions and manage financial affairs in a manner that best fits the circumstances of one's life, within an enabling environment while appreciating any financial and legal consequences. This includes, but is not limited to, access to appropriate financial services.^{13,14}

Warning Signs of Declining Financial Capacity:

- ◆ Taking longer than usual to complete everyday financial tasks
- ◆ Reduced attention to detail in financial documents
- ◆ Decline in everyday math skills
- ◆ Decreased understanding of financial concepts and contracts
- ◆ Difficulty identifying risks in a financial opportunity

Impact of Financial Fraud and Abuse

In some cases, a senior may not feel at risk because they do not have large amounts of savings or access to large sums of money. However, financial fraud and abuse generally involve small amounts of money (\$10,000 or less¹⁵). Perpetrators hope that, by taking smaller sums, their illicit actions will go unnoticed. Systematic and repeated theft of smaller amounts could have a significant impact on a senior's ability to provide for day-to-day living expenses. Retired seniors who are the victim of financial abuse have less time to recover lost savings, and many feel an impact well beyond monetary loss. The 2007 *CSA Investor Study: Understanding the Social Impact of Investment Fraud*¹⁶ found that victims often withdraw socially and participants reported that their mental and physical health suffered.

13. <https://cfi-blog.org/2013/11/01/what-is-financial-capability/>

14. www.igi-global.com/dictionary/financial-capacity/54394

15. 2016 CSA Investor Index: www.securities-administrators.ca/investortools.aspx?id=1011

16. www.securities-administrators.ca/investortools.aspx?id=1011

Theme 1: Opportunities for Legislative Change

LACK OF LEGAL DEFINITION

The lack of inclusion of financial abuse within the scope of the *Family Services Act (Act)* and any other provincial legislation poses several challenges. As mentioned above, the *Act* only permits the Department of Social Development to investigate financial abuse if it is uncovered during investigations for other forms of abuse. Additionally, where financial abuse is not a part of the legislated mandate, likely due in part because it is an emerging and underreported problem, the Department of Social Development may not



have adequate resources to undertake in-depth investigation into personal financials. A lack of definition also poses a problem for those who suspect financial abuse and want to report it. Without a clear definition of financial abuse, parties may be reluctant to report acts they suspect may be financial abuse for fear of breaching client confidentiality and running afoul of privacy requirements.

Under the *Family Services Act*, a professional person¹⁷ (primarily those involved in providing medical care) may disclose confidential personal information without consent if that individual suspects abuse or neglect and is acting in good faith. Because financial abuse is not included in the definition, someone who reports it may not be protected for any breach of confidentiality or privacy requirements.

17. See subsection 35.1(5) of the *Family Services Act*: “Professional person” means a worker in any adult daycare centre or residential or institutional facility, a vocational counsellor or trainer, an educator, a physician, a nurse, dentist or other health or mental health professional, a hospital administrator, a social work administrator, a social worker or other social service professional, a police or law enforcement officer, a psychologist, a guidance counsellor or a recreational services administrator or worker, and includes any other person who by virtue of his/her employment or occupation has a responsibility to discharge a duty of care toward an elderly person or a disabled adult.

Many individuals registered and licensed through FCNB have ongoing relationships with senior clients – some that span years and even decades – and often assist them in making financial decisions. FCNB registrants and licensees may have the opportunity, more than other service providers, to uncover misuse of a senior's money or property by deception, coercion or other means. That being said, since there is no legislated definition of financial abuse, there may be reluctance to report what they suspect may be financial abuse for fear of professional repercussions associated with a potential privacy breach.

Other New Brunswick legislation offers limited protection to adults who may be mentally incompetent. Under the *Public Trustees Act*¹⁸, the Public Trustee can protect the interests of a person suffering from a mental incompetency¹⁹ when that person requires care, supervision and protection, and no one else is able and willing to provide this care and protection. The Public Trustee cannot investigate cases of financial abuse, as this is outside his/her mandate, but will make appropriate referrals to law enforcement if necessary.



The *Infirm Persons Act*²⁰ applies to a mentally incompetent person.²¹ The *Infirm Persons Act* is usually used when a person becomes incompetent, is unable to handle their affairs and does not have a power of attorney document in place. A family member or a friend, the Attorney General by way of the Public Trustee or anyone else concerned for the person's well-being can apply to have a committee appointed to handle the person's affairs. A proceeding under the *Infirm Persons Act* requires proof that the person is mentally incompetent. This may require various medical opinions and involves a costly and time consuming court process. Neither the *Public Trustees Act* nor the *Infirm Persons Act* includes a definition of financial abuse.

18. *Public Trustee Act*, SNB 2005, c P-26.5

19. As defined under the *Infirm Persons Act*.

20. *Infirm Persons Act*, R.S.N.B. 1973 c. I-8.

21. A mentally incompetent person means a person: (a) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or (b) who is suffering from such a disorder of the mind that he/she requires care, supervision and control for his/her protection or welfare or for the protection of others or for the protection of his/her property.

Financial abuse of seniors may be captured by more general offences under the federal *Criminal Code*, such as:

- ◆ Theft (s. 324)
- ◆ Theft by 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. 332)
- ◆ Extortion (s. 346)
- ◆ Forgery (s. 366)
- ◆ Fraud (s. 380)



These offences are not specific to seniors; however, the *Criminal Code* specifies the following aggravating circumstances should be taken into consideration on sentencing:

- ◆ Evidence the offender abused a position of trust or authority (s. 718.2(iii))
- ◆ The offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation (s. 718.2(iii.1))

Because seniors are most often abused by someone they know, they may be reluctant to involve police. At the same time, police may be reluctant to pursue criminal charges where a senior may be unwilling due to the relationship with the perpetrator, or unable due to declining health or capacity issues, to provide evidence.

Consultation Questions

1. Should FCNB or other government agencies seek a larger role in preventing and responding to financial abuse of seniors? If they should play a larger role, how?
2. Would a definition of financial abuse be helpful to protect seniors? If so, how?
3. For the purposes of consumer protection, is the age of 65 appropriate to define a senior? If not, what age is more appropriate?

ABUSE OF POWER OF ATTORNEY

Power of Attorney (POA) documents may provide safeguards to protect against potential abuse. There are many different types of POA documents. The information contained in the box below briefly outlines the different types of POAs and some specific terminology associated with POA documents.

Power of Attorney: A legal document, often used in estate planning, to give a person the authority to conduct financial transactions in place of someone else and manage their financial and property decisions.

Donor: The person giving the power.

Donee: The person appointed to act in the place of the donor. The donee has certain obligations, including acting within the authority of the POA document, accounting for expenditures and acting in the best interest of the donor.

General power of attorney: The donee has the power to manage your finances and property only while you are mentally capable. It starts immediately and ends upon incapacitation.

Specific or special power of attorney: The donee has the power to manage your finances and property only for a specific transaction (for example, sell this car) or a limited time (for example, while you are out of the country).

Continuing or enduring powers of attorney: Comes into effect before the donor becomes mentally incapable and continues afterwards.

Springing powers of attorney: First comes into effect only once a donor become mentally incapable and continues afterwards.²²

22. www.canadianelderlaw.ca/Power%20of%20Attorney.htm

New Brunswick does not have specific POA legislation²³ that sets out the duties, powers or liability of the donee of the POA, but rather the authority to make a POA in New Brunswick is currently imbedded in the *Property Act* and the *Infirm Persons Act*. Since the authority conveyed in the POA document can vary, it may be confusing for those accepting instructions from the donee (such as FCNB registrants and licensees) to determine whether the POA document provides authority for a specific transaction or the donee is acting in the donor's best interest.

FCNB registrants and licensees may be faced with questions like:

- ◆ Can the donee of the POA change insurance or pension beneficiaries?
- ◆ Are there certain transactions that a donee does not have the authority to complete?
- ◆ Are there any restrictions on transactions where there is a conflict – or perceived conflict – of interest between the personal interests of the donee and the interests of the donor?

Although most POA documents are used for the purpose of legitimate estate planning, with no legislative safeguards, a POA is vulnerable to abuse. It may be costly to correct or change a POA document when abuse has been identified, particularly if the donor no longer has the legal capacity to change it, necessitating an application before a court for a change.



23. The *Property Act* deals with powers of attorney; however, it addresses specific circumstances (such as irrevocable POAs, or POAs for under one year) and does not address the powers, duties or liability of the attorney. The *Infirm Persons Act* addresses power of attorneys for personal care.

One option to stop abusive or fraudulent use of a POA document is to pursue criminal action. The *Criminal Code* has provisions²⁴ regarding the proceeds of crime to prevent an offender from benefitting from his or her criminal conduct. Proceeds of a crime may include any property obtained or derived directly or indirectly from the offence. For example, funds transferred from a donor's account to another account that the donor does not control is an offence of theft by power of attorney.²⁵ That's because the power of attorney provides transactional authority (the authority to provide instructions for transactions), not transfer authority. Where there are reasonable grounds to believe that an offence occurred, the police may make an application for restraint orders²⁶ to secure the property.

Another option is to seek a civil remedy through the courts, such as:

- ◆ Compelling an accounting by the donee
- ◆ Pursuing monies that may have been wrongly converted or transferred
- ◆ Appointing a Committee under the *Infirm Persons Act* to replace the donee

These options are costly and time consuming and there may be a reluctance to pursue any of these avenues since the donee may be a family member, primary caregiver, or both.

Given the predicted growth of the older population in the province in the coming years, FCNB believes there is appetite and opportunity for improved legislation to address these emerging issues and provide greater safeguards to protect the interests of seniors.²⁷

Consultation Questions

4. What additional safeguards, criteria or regulations would be helpful to protect seniors from the misuse of power of attorney documents?
5. What conditions, if any, should restrict a person from acting as a donee under a power of attorney document?

24. See s. 462.33 of the *Criminal Code*.

25. See s. 331 of the *Criminal Code*.

26. See s. 462.33 of the *Criminal Code*.

27. In Law Reform Notes # 38 (April 2016) and # 39 (May 2017) the Legislative Services Branch of the Office of the Attorney General sought input from the public on power of attorney legislation in New Brunswick. The commentary period closed on 7 July 2017.

Theme 2: Reporting Suspected Financial Abuse

PRIVACY ISSUES

Professionals – like doctors, medical professionals, clergy and many FCNB registrants and licensees – are often in a position to witness financial abuse of seniors. However, FCNB believes that the under-reporting of suspected financial abuse by these professionals and others is related in part to concerns with violating the *Personal Information Protection and Electronic Documents Act*²⁸ (*PIPEDA*). The purpose of *PIPEDA* is to protect personal information while also enabling reasonable commercial practices in the collection, use and disclosure of personal information. Most FCNB registrants and licensees are subject to *PIPEDA*.

Under *PIPEDA*, organizations may only use and disclose personal information for the purposes for which it was collected. *PIPEDA* contains some exceptions where disclosure of personal information is permitted without the person's consent:

- ◆ In the context of fraud detection or prevention²⁹
- ◆ Where there are reasonable grounds to believe that the person is or may be the victim of financial abuse³⁰
- ◆ For the sole purpose of preventing or investigating the abuse, where it is reasonable to expect that the disclosure with the consent of the individual would compromise the ability to prevent or investigate the abuse³¹
- ◆ Where there is a requirement by law to disclose³²

28. *Personal Information Protection and Electronic Documents Act*, SC 2000, c.5

29. Section 7(3)(d.2) permits disclosure for the purposes of detecting or suppressing fraud, or preventing fraud.

30. Section 7(3)(d)(i) permits disclosure 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 contravention of the laws of Canada, or a province. This exception permits disclosure where financial abuse is an offence, such as *Criminal Code* violations.

31. Section 7(3)(d.1)

32. Section 7(3)(i) permits disclosure where required by law. This exception could permit disclosure without consent of the individual to report abuse in a jurisdiction where it is mandatory to report financial abuse.

In practice, these exemptions are difficult to interpret, creating uncertainty as to whether professionals, including FCNB registrants and licensees, who work closely with seniors can rely on these exemptions. For example, our stakeholders have indicated that client-facing staff offering financial and consumer services may see indicators of declining capacity and signs of financial abuse. However, without further guidance, they are unsure as to whether these indicators meet the threshold of “reasonable grounds to believe” that a client is being abused, particularly because *PIPEDA* does not provide a definition of financial abuse that may provide guidance. Without a definition of financial



abuse in the legislation and without a requirement to report suspected abuse, there is a reluctance to report and involve the police, potentially losing the trust of their clients while opening them up to a complaint of privacy breach.

Consultation Questions

6. Would you be reluctant to report suspected financial abuse because of privacy concerns? Why or why not?
7. Would having a definition of financial abuse clarify the ability to report suspected financial abuse and protections for reporting under privacy legislation? Why or why not?
8. What are your thoughts on mandatory versus voluntary reporting of suspected financial abuse?
9. If you have not reported suspected financial abuse, what kept you from reporting? How could the process be improved?
10. If you have reported suspected financial abuse, what challenges or barriers did you face in reporting? How could the process be improved?

Theme 3: Improving Best Practices for Industry

POTENTIAL FOR FINANCIAL ABUSE WITHIN FCNB REGULATED SECTORS

Professionals who work closely with seniors, including FCNB registrants and licensees, are in a position to be among the first to spot the warning signs of financial abuse. They may help their client make important financial decisions, spend time in the client's household, be keenly familiar with their client's financial habits, and be aware of their client's existing relationships with family and other service providers. The nature of the professional/client relationship is one of trust and in some cases spans many years. In this regard, FCNB's registrants and licensees are in a unique position to recognize signs their clients may be the victims of financial abuse, either by other industry professionals, or by friends or family members.



Some examples of situations where financial abuse of seniors may occur within the areas that FCNB regulates are:

- ◆ Theft, financial exploitation, affinity fraud or abuse of POA by friends or family members
- ◆ Undue influence, pressure or requests to:
 - Make fraudulent or unsuitable investments
 - Make changes to their investments that are not in line with the senior's investment goals or that would trigger increased fees or commissions
 - Transfer their investments into a fund that the perpetrator may have access to
- ◆ Sudden change of a beneficiary on an insurance policy that is not in the interest of the senior, but benefits the perpetrator
- ◆ Fraudulent insurance claims for health and medical services the senior never received (for example, if the senior is pressured to purchase unnecessary products that benefit the perpetrator rather than the senior)
- ◆ Undue influence to refinance, sell or change title on a property the senior owns
- ◆ Detection of signs of neglect or financial abuse during home visits (for example, during a home visit to discuss the sale of the property, or a door-to-door sales call)
- ◆ Unnecessary purchase of funeral insurance (for example, a senior who already has purchased a pre-arranged funeral plan is pressured to buy a funeral insurance policy by the perpetrator who stands to benefit as its beneficiary)
- ◆ Undue influence to make inappropriate or unsuitable changes to pensions or other locked-in or registered funds that could have negative tax implications or jeopardize their eligibility for income-dependent government benefits

Consultation Questions

11. What training opportunities or tools would help you identify, respond and deal with issues related to capacity or financial abuse of seniors?
12. Should this type of training be mandatory?

Theme 4: Collaboration, Safeguarding and Inter-Agency Cooperation



The U.S. has well developed programs and initiatives respecting the protection of seniors and vulnerable persons. They also have had similar challenges regarding privacy and the underreporting of financial abuse. While not an exhaustive list of programs and initiatives, some of the more significant legislative changes are outlined here.

In 1999, the *Gramm-Leach-Bliley Act*³³ (*GLBA*) was introduced. While imposing a strict privacy regime, it also carved out exceptions that permitted sharing personal information for the purpose of reporting suspected financial abuse. The introduction of the *GLBA* and the directives on how to report this type of information provided comfort that reporting suspected financial abuse would not be breaching privacy legislation.

In 2016, the North American Securities Administrators Association (NASAA) released model legislation³⁴ to help state securities regulators, investment advisers and broker-dealers, and Adult Protective Services agencies work together to protect vulnerable adults from financial exploitation. The model legislation identified five core features intended to improve

collaboration between the investment industry and law enforcement for the reporting and prevention of financial exploitation of seniors³⁵:

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33. *Financial Services Modernization Act of 1999*, (Pub.L. 106–102, 113 Stat. 1338, enacted November 12, 1999)
 34. NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation, adopted 22 January 2016: <http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf>
 35. Financial Exploitation under the model act means: “(a) the wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property of an eligible adult; or (b) any act or omission taken by a person, including through the use of a power of attorney, guardianship or conservatorship of an eligible adult, to: (i) Obtain control, through deception, intimidation or undue influence over the eligible adult’s money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or (ii) Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.”

1. **Mandatory reporting of suspected financial abuse** by “qualified individuals” of broker dealer and investment advisers
2. **Notification of potential financial exploitation to third parties** that clients have previously identified on their account (provided that the third party is not the suspected exploiter)
3. **The authority to temporarily delay a disbursement** for up to 15 business days
4. **Immunity from civil and administrative liability** for reporting, notifications and delays
5. **Mandatory sharing of records** related to exploitation with the state adult protective services agencies and with various law enforcement agencies

The mandatory reporting requirement and the immunity provision are seen as creating a “safe harbour” that encourages reporting of potential financial exploitation as early as possible. Timely intervention may prevent or limit the harm to victims of financial exploitation. After its release, various states began to adopt the NASAA model rule or similar variations.

In 2017, the Financial Industry Regulatory Agency (FINRA) adopted a new rule to address financial exploitation that will come into effect February 5, 2018.³⁶ This rule permits its members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. Additionally, amendments to the FINRA rule regarding customer account information will require members to make reasonable efforts to obtain the name and contact information of a trusted contact person for a customer's account.

Consultation Questions

13. What might a collaborative approach to addressing financial abuse of seniors look like? What agencies and groups should be involved?
14. What information, tools, programs or community resources could effectively reach and assist seniors from becoming victims of financial abuse?
15. Are there alternative solutions to relying on the courts (criminal or civil) to combat financial abuse and exploitation?
16. What can be done to make it easier for seniors to access the services and support they need when faced with financial abuse?

36. FINRA Rule 2165

Providing Feedback

FCNB is publishing this Consultation Paper for a 90-day comment period. Please send your comments in writing on or before **5 February 2018**. All submissions should refer to “**FCNB Consultation Paper - November 2017**”. This reference should be included in the subject line if the submission is sent by email. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word format.

Please address your submission to:

Seniors Initiative Committee, c/o Deborah Gillis
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, NB E2L 2J2

Telephone: 506 658-3060
Toll Free: (866) 933-2222 (within NB only)
Fax: (506) 658-3059
E-mail: fcnb@fcnb.ca

We cannot keep submissions confidential as they may be subject to a request under the *Right to Information and Protection of Privacy Act*. Additionally, a summary of the written comments received during the comment period may be published; therefore, you should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission.

If you have any questions, please refer them to:

Deborah Gillis
Senior Legal Counsel, General Counsel Division
Financial and Consumer Services Commission
Tel: (506) 643-7112
Email: deborah.gillis@fcnb.ca

Appendix A - FCNB Legislation

Financial and Consumer Services Commission Act

Auctioneers Licence Act

Collection Agencies Act

Commissioners for Taking Affidavits Act

Consumer Product Warranty and Liability Act

Co-operative Associations Act

Cost of Credit Disclosure Act

Credit Unions Act

Direct Sellers Act

Franchises Act

Gift Cards Act

Insurance Act

Loan and Trust Companies Act

Mortgage Brokers Act

Nursing Homes Pension Plans Act

Pension Benefits Act

Pre-arranged Funeral Services Act

Premium Tax Act

Real Estate Agents Act

Securities Act

Securities Transfer Act

Summary of Consultation Questions

OPPORTUNITIES FOR LEGISLATIVE CHANGE

1. Should FCNB or other government agencies seek a larger role in preventing and responding to financial abuse of seniors? If they should play a larger role, how?
2. Would a definition of financial abuse be helpful to protect seniors? If so, how?
3. For the purposes of consumer protection, is the age of 65 appropriate to define a “senior”? If not, what age is more appropriate?
4. What additional safeguards, criteria or regulations would be helpful to protect seniors from the misuse of power of attorney documents?
5. What conditions, if any, should restrict a person from acting as a donee under a power of attorney document?

REPORTING SUSPECTED FINANCIAL ABUSE

6. Would you be reluctant to report suspected financial abuse because of privacy concerns? Why or why not?
7. Would having a definition of financial abuse clarify the ability to report suspected financial abuse and protections for reporting under privacy legislation? Why or why not?
8. What are your thoughts on mandatory versus voluntary reporting of suspected financial abuse?
9. If you have not reported suspected financial abuse, what challenges or barriers kept you from reporting? How could the process be improved?
10. If you have reported suspected financial abuse, what challenges or barriers did you face in reporting? How could the process be improved?

IMPROVING BEST PRACTICES FOR INDUSTRY

11. What training opportunities or tools would help you identify, respond and deal with the effects of diminished capacity or senior financial abuse?
12. Should this type of training be mandatory?

COLLABORATION, SAFEGUARDING AND INTER-AGENCY COOPERATION

13. What might a collaborative approach to addressing financial abuse of seniors look like? What agencies and groups should be involved?
14. What information, tools, programs or community resources could effectively reach and assist seniors from becoming victims of financial abuse?
15. Are there alternative solutions to relying on the courts (criminal or civil) to combat financial abuse and exploitation?
16. What can be done to make it easier for seniors to access the services and support they need when faced with financial abuse?

