



RECOMMENDATIONS AND RESULTS OF CONSULTATION

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



Executive summary

As part of our mandate to protect consumers, FCNB launched consultations across the province to find solutions to prevent and respond to the financial abuse of New Brunswick's growing population of seniors.

Our consultation paper, entitled *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick*, examined how seniors are often targeted because of factors such as ageism, cognitive impairment, built-up assets, death of a spouse or family member, loneliness and isolation.

The paper was organized around four key themes:

1. Opportunities for legislative change that would provide increased safeguards against financial abuse of seniors.
2. Addressing the challenges in reporting and investigating financial abuse of seniors.
3. Improving best practices for industry, in particular those FCNB regulates, to guide them when they spot signs their clients are being financially abused.
4. Building a more collaborative approach between government departments and agencies to address the issues surrounding the financial abuse of seniors.

After reviewing feedback collected during in-person sessions in six locations around the province as well as written submissions from 17 provincial and national organizations, we compiled a summary of comments ([page 7](#)) and developed 15 recommendations ([page 3](#)) to safeguard seniors from financial abuse.

The recommendations include legislative changes around the definition of financial abuse and protections for those who report it; support for industry professionals who suspect clients may be victims of abuse; educational initiatives to raise awareness of financial abuse and how friends and families may deal with it; as well as promoting inter-agency cooperation to combat the financial abuse of seniors and other vulnerable people.

To support the recommendations, our efforts will now be focused on developing initiatives for which we have the existing mandate to act. Other sentiments ([page 6](#)) collected during our consultation, for which we do not have legislative authority, will be shared with relevant stakeholders.

The recommendations are part of FCNB's Seniors Initiative project, which started in 2014 and has led to a multi-year seniors' strategy focused on preventing financial abuse. Since then, we have collaborated with numerous stakeholders; highlighted the problems of financial abuse through presentations, toolkits and web resources; and developed materials on how to recognize the signs of increased vulnerability.

Summary of findings

After reviewing the summary of comments provided in person and in writing, we provide recommendations on the direction that FCNB might take to safeguard older and vulnerable adults in New Brunswick from financial abuse.

We also provide overall sentiments in areas beyond FCNB's legislated mandate. We believe it is important to share these sentiments so that other government bodies may benefit from the information gathered in our consultation process.

FCNB RECOMMENDATIONS

For ease of reference, the following recommendations are grouped together based on the themes outlined in our consultation paper:



I. Opportunities for legislative change

1. FCNB take a leadership role and develop a framework within its legislative parameters that would allow it to address financial abuse and cognitive decline or impairment among New Brunswick vulnerable adults. This should include:
 - a. Requiring certain registrants and licensees that FCNB regulates to make reasonable efforts to obtain a name of a “trusted contact person” who may be contacted with concerns about potential financial abuse or diminished capacity of a client. This requirement could extend to:
 - ◆ registered securities and investment firms and their representatives
 - ◆ credit unions
 - ◆ insurance agents and brokers
 - b. Requiring those registrants/licensees to obtain a consent form from the client, which would permit them to share/or discuss personal information with anyone indicated as a trusted contact person.
 - c. Permitting certain registrants and licensees to place a temporary hold on disbursements from a client’s account or make a disclosure to a trusted contact person, in the following situations:
 - ◆ when there are concerns that the client may be cognitively impaired such that judgment is impacted.
 - ◆ when they have reason to believe that financial exploitation, abuse or fraud has occurred, is occurring or will occur.

Legislation or regulations would indicate, for example, the type of financial transactions that would fall under such a provision, the length of time for which the hold is permitted and any other supporting documentation.

II. Reporting suspected financial abuse

2. FCNB amend its legislation to define “financial abuse” to ensure those regulated by FCNB can feel confident in reporting financial abuse when they observe it when working in the sectors FCNB regulates.
3. FCNB examine whether a mandatory reporting regime for suspected financial abuse by certain individuals it regulates might be possible and examine what other legislative structure would be required to support mandatory reporting.

III. Improving best practices for industry

4. FCNB develop screening tools to help FCNB registrants and licensees identify potentially abusive situations.
5. FCNB develop and provide guidance for all FCNB registrants and licensees on how to effectively manage a client account and relationship if concerns with a vulnerable adult or older client arise. This might include:
 - a. providing information on how best to encourage supported decision making.
 - b. ensuring registrants and licensees remain connected to their client and are obtaining the necessary particulars from their client to properly provide assistance and communicate with their client at any stage of the client relationship.
 - c. ensuring they have the tools to have uncomfortable conversations about health, wellness, capacity and senior financial exploitation and abuse.



6. Develop best practices across industries for communicating with clients, including:
 - a. giving them the tools to support aging investors as they change their investment strategy.
 - b. using plain language in documents.
 - c. developing plain language template forms/checklists etc.
7. FCNB build upon its available resources for older investors and consumers, their family and friends and those that provide services to older investors and consumers in relation to consumer protection, estate planning and detecting financial abuse and exploitation in an effort to build widespread awareness on the prevalence and prevention of financial abuse.
8. FCNB create webinars for industry on how to recognize the signs of senior financial abuse.
9. FCNB to work with Canadian Securities Administrators (CSA) counterparts to advance investor protection of vulnerable adults.
10. FCNB work in collaboration with other self regulatory organizations and other professional bodies affiliated with our licensees and registrants to provide education and outreach activities that will assist them when serving older or more vulnerable adult clients.
11. FCNB expand outreach to families and representatives of older or vulnerable adults. Include materials that will support them as their older friends, family members and client's access information about financial and consumer services in a manner that's safe and meaningful for them.

IV. Collaboration

12. FCNB contact the Office of the Privacy Commissioner of Canada to seek guidance on subsection 7(3)(d.3) of the *Personal Information Protection and Electronic Documents Act* (S.C. 2000, c. 5).
13. FCNB champion a provincial inter-agency task force to determine how to effectively handle complaints and investigations of senior financial abuse. This might include incorporating financial abuse into protective statutes.
14. FCNB work in collaboration with professional groups and associations and seniors groups (for example the New Brunswick College of Physicians and Surgeons, New Brunswick Law Society and Canadian Bar Association, local Lions clubs) to distribute our power of attorney documents and general information on power of attorney issues with the expectation the material is circulated to the general public.

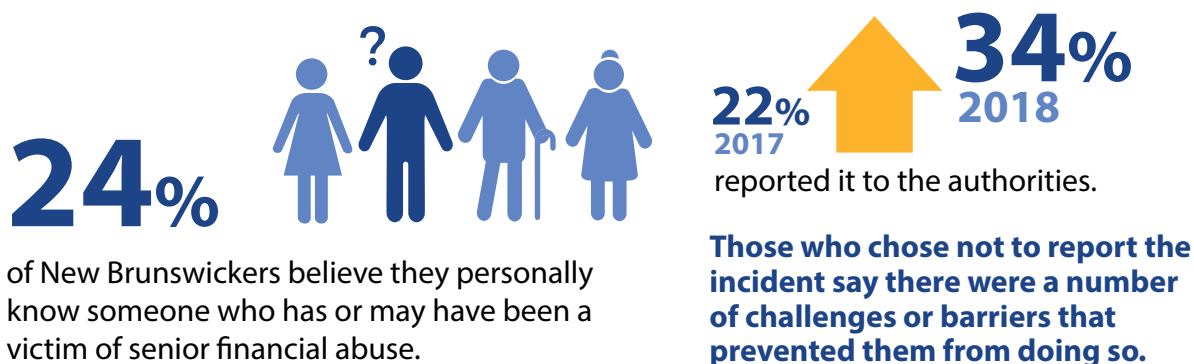
V. Other

15. Create an awareness campaign on the importance of estate planning and collaboratively managing finances in an effort to prevent financial abuse, using multiple communication channels (online, media and in person).

SENTIMENTS FOR OTHER AGENCIES AND DEPARTMENTS

FCNB also received many valuable comments in areas over which FCNB does not have legislative authority. These comments are nonetheless pertinent to combatting financial abuse of seniors and vulnerable adults in New Brunswick, and may support future government policy initiatives. We found the following comments were repeatedly raised in our in-person consultation sessions and from written responses to our consultation paper:

1. Various government stakeholders should come together to discuss legislative and policy change to determine how to effectively handle complaints and investigations of senior financial abuse. This might include incorporating financial abuse into protective statutes.
2. There needs to be one department or agency that seniors or vulnerable adults can contact for all of their needs. This department should handle reports of financial abuse of seniors or vulnerable adults, and the department should have the authority to investigate these reports and hold those that perpetrate the abuse accountable.
3. Revisit provincial power of attorney legislation and update it to clearly define the roles and capacity of the donee of a power of attorney. It should contain protective measures to ensure that there is a way to adequately review the actions of a donee who does not appear to be acting in the donor's interest.
4. There should be an expedited court process for those seeking civil redress against perpetrators of financial abuse that is easy to navigate. By the time lawyers are hired and court dates obtained, those who are being financially abused have often had assets and money misappropriated, making it impossible to recoup or not worth the legal cost to proceed.
5. Consider whether there might be overall cost savings in funding a regime where legal aid covers the cost of basic estate planning, such as drafting of power of attorney documents for those who are unable to afford the cost themselves.
6. Consider examining whether a mandatory reporting regime for suspected financial abuse, either by certain individuals in a position of trust or by the general public, might be beneficial.



2018 FCNB awareness survey

Summary of Comments



INTRODUCTION

As part of our mandate to protect consumers, the Financial and Consumer Services Commission (FCNB) launched consultations across the province to find solutions to prevent and respond to the financial abuse of New Brunswick's growing population of seniors.

Our consultation paper, entitled *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick*, examined how seniors are often targeted because of ageism, accumulated assets, death of a spouse or family member, loneliness and isolation and cognitive impairment.

The paper was organized around four key themes:

- 1. Opportunities for legislative change that would provide increased safeguards against financial abuse of seniors.**
- 2. Addressing the challenges in reporting and investigating financial abuse of seniors.**
- 3. Improving best practices for industry, in particular those that FCNB regulates, to guide them when they spot signs their clients are being financially abused.**
- 4. Building a more collaborative approach between government departments and agencies to address the issues surrounding financial abuse of seniors.**

We received feedback on the paper during the in-person sessions held in Edmunston, Bathurst, Miramichi, Moncton and Saint John and by mail during a 90-day consultation period. Respondents at the in-person sessions included representatives of nursing homes, the investment industry, the real estate industry, accounting firms, police forces, the health-care sector, government departments and the senior population. The following organizations and individuals provided comment in writing:

- New Brunswick Association of Social Workers
- Canadian Bankers Association
- Canadian Foundation for Advancement of Investors Rights (FAIR)
- Canadian Centre for Elder Law
- Guy Martin
- Investment Funds Institute of Canada (IFIC)
- Investors Group Financial Services Inc.
- Leitha Barton
- Loch Lomond Villa, Inc.
- Robert B. Jackson
- Muriel McQueen Fergusson Centre
- New Brunswick Association of Nursing Homes
- New Brunswick Legal Aid Services Commission-Public Trustee Services
- Royal Canadian Mounted Police
- Residence Melanson Inc.
- New Brunswick Senior's Advocate
- Advocis - the Financial Advisors Association of Canada
- Victoria Glen Manor Inc.



The following is a summary of comments received throughout the consultation period, organized according to theme.

I. Opportunities for legislative change

1. Support for government involvement

The majority of comments suggest there is a broader role for government agencies and FCNB to play in preventing and combatting financial abuse of New Brunswick's vulnerable and aging population.

One commenter suggested that the federal and provincial governments should liaise on the issue. An additional commenter suggested FCNB should play a leadership role in bringing various stakeholders together while another suggested FCNB should be the first point of contact for reporting instances of financial abuse.

2. Support for government department that can address financial abuse

One commenter suggested government create an agency that would have powers to investigate allegations of financial abuse and that would be able to hold people that perpetrate abuse of vulnerable and aging New Brunswicker's accountable.

At our in-person sessions, we heard support for the above comment. In-person attendees also stipulated that this type of agency must have proper staffing and resources to adequately assist seniors to eradicate the exploitive behaviour and recoup monies/assets lost in a timely manner. In-person attendees were quick to point out that time is of the essence when a vulnerable person is being financially abused or exploited. Some in-person commenters said pursuing these cases through the regular civil court process is ineffective because it is too costly and time prohibitive: By the time court dates are obtained and appearances have happened, most if not all assets are depleted. It was noted those who have been victims of financial abuse deserve to have recourse to the civil courts and criminal justice system, which should have adequate resources provided to address these issues in a timely manner such that these efforts are not futile.

Not only was there the suggestion for a need of a streamlined process for investigation and hearing of these types of cases but commenters suggested certain individuals and organizations should have the authority to freeze accounts or assets for a period of time if financial abuse is suspected and/or if they suspect the client is lacking capacity to handle their affairs. This ability to freeze an account would be to preserve the vulnerable adult's assets while investigation is pursued.

One commenter felt the government should set up a resource centre for capable but vulnerable seniors who are victims of senior financial exploitation and noted support should be available in places where seniors are most likely to access them.

3. Specific legislative change in the financial services industry

One commenter felt there should be legislated safe harbour provisions for financial advisers and dealers to delay acting on instructions from clients suffering from cognitive impairment or dementia. Adviser or dealer firms that suspect financial abuse need greater certainty when it comes to steps they can take to protect clients. One commenter noted it sometimes comes down to deciding what rule to break – do they refuse to execute on instructions or breach privacy.

Another commenter pointed to rules established by The North American Securities Administrators Association and the Financial Industry Regulatory Authority as models New Brunswick and FCNB might look to emulate. A second commenter agreed and added New Brunswick needs to look at protective measures

like those offered in some jurisdictions of U.S. where legislation allows temporary delays on financial transactions, and the ability to refuse power of attorney directions when it is suspected that the senior is a victim or at risk of being victimized. However, the same commenter cautions that legislation must be balanced to protect financial autonomy of older adults. This commenter offers five recommendations if New Brunswick pursues similar legislation:

- a. defining the financial transactions to fall under this type of provision.
- b. defining the time in which the hold is permitted to take place.
- c. outlining what supporting documentation would be required to justify the triggering of the legislation.
- d. requiring financial professionals to report suspected abuse to appropriate authorities.
- e. financial professionals who can delay transaction be required to use consultation services or supervision.



Another commenter suggested the province consider legislation that would mandate firms make a “reasonable effort” to obtain the name of a trusted contact on an account. This contact information could then be utilized by the adviser in situations of suspected misuse of a power of attorney and/or if there were concerns regarding capacity so that the adviser could reach out to the trusted contact in hopes the trusted contact might intervene, to the extent they were able in the circumstance, to ensure the client is protected.

One commenter noted there is no agency that firms can turn to for guidance or to report suspected financially exploitive and abusive behaviour, including abuse of power of attorney and/or when they suspect there are issues surrounding cognitive decline. This commenter suggested there is a real need for a reporting agency and mechanism in which to properly report financial exploitation and abuse with guidance on reporting.

4. Support for definition of financial abuse

There is overwhelming support for the inclusion of a definition of “financial abuse” in provincial legislation. Some commenters say it should reference vulnerable persons and should be non-exhaustive. The majority of commenters felt that a definition would better support reporting as individuals would know and understand what behaviours to look for and what qualifies as financial abuse.

One commenter did not support a definition of financial abuse, noting it might be limiting in its scope. This commenter suggested that if a definition were used, it should be non-exhaustive.

5. Should we define “senior” and should it be 65?

The overwhelming majority of commenters indicated that the test should not be age prescriptive but rather should focus on protecting all “vulnerable” adults. One commenter noted that older age should be understood as a strongly co-related factor to financial abuse due to ageism and social vulnerability.

Another commenter suggested that rather than use an age, such as 65, as a defining factor, we might consider using life benchmarks, like retirement or qualifying for CPP.





6. Power of attorney (POA) legislation: Additional safeguards and criteria

There is general support for stand-alone power of attorney legislation, which clearly defines the roles and capacity of the donee to the power of attorney. One commenter noted that harmonized legislation across Canadian jurisdictions would be beneficial.

One commenter noted that greater awareness of the risks and benefits of powers of attorney would be valuable to people as well as more awareness on the duties and obligations of the donees. One commenter suggested that lawyers should be responsible for distributing educational information about the role of a donee at the time a power of attorney is drafted.

A number of commenters at our in-person sessions had experience caring for seniors in varying settings. Some reported seeing family or friends acting in a donee role cancel what they considered “non-essential” items for a senior in what they perceived to be an effort to ensure more money was left to the estate. These reported non-essential items ranged from eyewear and cable television to money for hair appointments and toiletries. Commenters also reported instances of donees taking money from the senior’s accounts before housing and health care for the senior could be paid.

A number of commenters suggested requiring an annual accounting by the donee of any transactions involving the donor’s property. They felt it would create greater accountability on the part of the donee and lessen risks of misuse of powers of attorney. Another commenter suggested that if an accounting process was implemented, it be kept simple so as not to detract people from wanting to act in the role. At our in-person consultation sessions, one person suggested that, once a POA takes control of a vulnerable person’s regular banking and other accounts, the money should be held in a trust account and audited as is done with trust accounts in other industries.

A number of individuals at our in-person sessions suggested any potential POA legislation mandate the appointment of a second individual to act as the monitor of the POA. This person should also have the authority to ask for regular accountings of the POA. Some suggested this be a government official and others suggested appointment of family or a friend.

Other in-person attendees voiced the opinion that nobody would want to act in the role if the responsibilities of a POA were made too onerous. Numerous attendees at our in-person sessions voiced the opinion that legal aid should be available to those who could not afford but who would like to have a POA drafted and executed. Some medical professionals who attended the in-person sessions voiced concern that seniors who cannot afford to have a POA drafted are often left occupying hospital beds as nursing homes are reluctant to take new residents, particularly those with capacity issues, without knowing with whom they can speak concerning the senior and concerning payment.

A common comment from attendees at the in-person sessions was that free province-wide sessions on the importance of estate planning and particularly on the power of attorney instrument would be beneficial. It would serve to give attendees information about making a POA and acting in the capacity of a POA. Some went as far to suggest that a donee to a POA should be made to take a government-run course outlining the obligations placed upon a person acting as a donee to a POA.

Those that attended our in-person sessions also noted a need for consistency and guidelines on how banks handle and accept POA documents.

A couple of commenters suggested a central database be established to register power of attorney documents.

7. Restrictions on those acting as donee under a POA

There was overwhelming support for the idea that there be restrictions on whom may act as donee under a POA. Some who commented noted that restrictions in new legislation should not be too onerous such that donors would be prevented from appointing those who they might want to act as a donee.

It has been suggested by multiple commenters that those who have proven to lack the integrity to discharge the role should be disqualified (those with a criminal record or who have been sanctioned by a regulator or professional body for misconduct) or those for whom it would not create an immaterial conflict of interest (financial services representative of the donor acting as a donee of a power of attorney for example).

One commenter suggested that, if you are going to act as a POA, you should have to take a course, have a credit check and that a surety bond should be mandatory. Some commenters also suggest bankruptcy and consumer proposal within a certain period should preclude a person from acting in the role, as should being found guilty of a crime of fraud or theft. One commenter suggested that a minimum age of 19 for a person to act as POA is reasonable.

II. Reporting suspected financial abuse

1. The need for reporting structures

One commenter urged governments and regulators to build the reporting mechanisms and other structures needed to address elder financial abuse and investment fraud (also often perpetrated against vulnerable adults.) The comments indicate that collaborative approaches are needed that are open, transparent and accountable. It is suggested by one commenter that, once a reporting structure is in place, victim advocates should be put in place to help seniors who have been financially abused navigate the system and process.

A number of those who commented indicated a reporting structure will allow better tracking of the prevalence and scope of the problem. A number of attendees at our in-person sessions verbalized the need for one government organization or 1-800 number that concerned family members could use if they had concerns about senior financial abuse. Some in-person attendees also noted that it's not enough to put reporting structures in place without the ability to follow-up with investigation and real consequences for the person perpetrating the abuse.

2. Reluctance surrounding reporting – is privacy an issue?

Those that commented were split on whether they were concerned about breaching privacy obligations. Organizations that had the confidence to report have established protocols that provide their employees with support in reporting. It was noted by multiple commenters that smaller organizations might not have the same supports and guidance for reporting.



One commenter noted the following groups may be reluctant to report because of privacy concerns: individual family members, neighbours, friends, and individuals working in financial or legal roles who have to consider risk management, client relationships and public perception. One commenter suggested that those who have concerns with reporting might be able to report anonymously through Crime Stoppers or a similar service.

3. Clarity for reporting with a definition of financial abuse?

The general consensus by commenters was that a definition of financial abuse would provide greater clarity and guidance, which would promote and improve reporting of financial abuse or financial exploitation.

One commenter suggested a prescriptive definition of financial abuse should not be added to New Brunswick legislation, as it may fail to capture and address the full spectrum of abusive activities. However, if the New Brunswick legislature decides that such a definition is required, this commenter suggested it should be non-exhaustive.

4. Mandatory vs. voluntary reporting

The written comments on whether there should be a regime of mandatory or permissive reporting were diverse with no consensus on this point. Some commenters advocated for mandatory reporting regime by certain individuals that are in a position of trust. At least one commentator suggested that everyone be obligated to report senior financial abuse and yet another commenter suggested that there be no mandatory reporting regime for anyone.

One commentator felt that mandatory reporting will support better collection of statistics, which can be used in future. Many of those that commented in writing and in-person noted that the lack of clarity on where to report to and lack of outcome in reporting stops people from reporting. Laws need to be clearer and reporting structures and processes well defined.

III. Improving best practices for industry

1. Training opportunities

The general sentiment is that regulators should create best practices that set out the steps that firms and representatives should take to identify and protect vulnerable persons.

The general consensus of those that provided comment is that they would support mandatory training on identifying senior financial abuse for client-facing employees and those who would have direct relationships with clients. One commenter suggested the development of screening tools for New Brunswickers to help financial, health, legal and other helping professionals identify potentially abusive situations.

At least one commenter acknowledged some businesses may not have the resources or knowledge to develop their own training regimes or tools. In that regard, they noted it is important for FCNB to develop materials related to capacity and the financial abuse of seniors, which businesses can use to augment their staff training and make available to their customers to increase awareness in NB.

IV. Collaboration, safeguarding and inter-agency cooperation

1. What might a collaborative approach entail?

Overall strategy

One commenter suggested that there needs to be development of a harm prevention strategy for seniors, with protection against financial abuse as one of its primary objectives. This commenter said the process should include all major stakeholders, with an aim to develop an evidence-based abuse and neglect prevention strategy, with targeted and measurable goals.

One commenter suggested provincial government funding for initiatives (for example, this consultation process) and government bodies (for example, Public Guardians and Trustees) is an effective way to encourage collaboration in reducing financial abuse. These investments provide stakeholders with the opportunity to move beyond their respective silos and engage and work with well-funded, identifiable government bodies when faced with particularly difficult issues (example of Council to Reduce Financial Abuse in British Columbia).

A commenter noted some police forces are establishing a role of a specialist dedicated to investigating reports of suspected financial abuse, gathering evidence to support any charges to be laid, and working with other agencies to help support the victim. Instances of financial abuse are often crimes and their prosecution may be a deterrent to prevent the same person from financially abusing another senior. Police are a necessary part of any future strategy.

One commentator suggested a task force or advisory group be formed with a mandate clearly established to report to an oversight board or committee, ideally FCNB or the agency tasked with dealing with financial fraud and abuse.



Coordinated outreach to those who provide service to seniors

One commenter suggested a collaborative approach be used to create coordinated education on senior financial abuse targeting both the public and older adults. Professional associations and unions for legal and health professionals, non-profit organizations serving seniors, provincial government departments and financial institutions can play a role in developing and disseminating educational materials and training.

There was a comment that education for professionals must be delivered in relevant work settings, like in-house training to hospital staff, assisted living facilities staff, nursing home or home support workers as well as their managers and administrators. Professional associations can play a role in this education. At least one commenter offered to partner with FCNB in that regard.

One commenter stated consumer education is a necessary and effective tool in dealing with financial abuse. These materials help to raise awareness about financial abuse among seniors, their families and representatives, which can help to prevent financial abuse before it starts. FCNB was encouraged to develop further material on financial abuse and related issues. Businesses that lack the resources to create their own material can share these with their clients to raise awareness about financial abuse.



Outreach to seniors

One commenter suggested awareness is by far the best crime prevention technique. Police should be leading the way in educating seniors in recognizing the signs of frauds and scams.

A comment we heard a number of times was that to reach seniors, information must be provided in settings that seniors frequent and formats accessible and comfortable to them, like medical offices, hospitals and community centres. Material needs to be in plain language, audio and other accessible formats. Educational materials must be developed to respect cultural differences in discussing money and abuse. One commenter suggested information be disseminated through informational brochures, seniors seminars, online resources and a presence by regulators and agencies at community events.

A commenter also noted that it's critical to also reach isolated seniors in their homes. This commenter recommended focusing on incorporating information on financial abuse and reporting into existing programs that seniors are already accessing. For example, at the provincial level, it could take place 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 the federal level, when individuals are applying for Old Age Security, the Guaranteed Income Supplement or the Canadian Pension Plan.

A commenter suggested looking at adapting *Money Smart for Older Adults* curriculum, used in the U.S. These education sessions should take place in living facilities, nursing homes, apartment complexes and community centres serving older adults.

Outreach in general

One commenter suggested that there be inclusion of training in secondary school curriculum. Additionally, they felt newspaper articles or television documentaries describing what financial abuse looks like, how to report it, how to guard against it and existing resources and how to access them would be advantageous to informing others as to the problem.