

DEALING WITH ELDER ABUSE - VIDEO TRANSCRIPT

I'm Paul Bourque, President and CEO of the Investment Funds Institute of Canada. IFIC is preparing materials to assist advisors and firms in managing effective and productive relationships with their aging clients. It's important to remember that aging clients have special requirements in order to protect their financial well-being. For example, they may need help in preparing decision-making documents for when they're less able to manage their financial investments or perhaps to recognize signs of elder abuse or diminished capacity. IFIC is partnering with CARP to develop videos in three very important areas-- elder abuse, consent and decision-making, and elder friendly practices for your firm. We hope these resources, along with other resources that are available at IFIC.ca, can help you in managing these very important relationships. Thank you for watching.

My name is Laura Tamblin Watts, and I'm National Director of Law, Policy, and Research at CARP. Today, we're partnering with IFIC to look at some of the issues raised by elder abuse and neglect and substitute decision-making across the country. It's important to note that the laws of elder abuse and neglect and the laws regarding substitute decision-making, most commonly known as powers of attorney or a default substitute decision-making, are different province by province and territory by territory. So at the end of the videos, some of our materials will also have links that you can go to to make sure that you get the detailed information that you need for the jurisdiction that you're in. So I'm going to be talking a bit in the broad strokes.

First, I want to talk a little bit about what elder abuse and neglect is, its prevalence, and how to spot it. What are some of the red flags that you need to look for? Then I'm going to talk about powers of attorney, and how you can plan in advance, and what you as folks in the financial sector need to know about getting a power of attorney. How do you know if it's real? What are some of the concerns that you may have when you look at the face of it? And what do you do if you think to yourself that things maybe are just not quite right? And last we're going to talk about what the defaults are in each jurisdiction. What if people don't have a power of attorney? What happens then? Elder abuse and neglect is one of the most under-reported forms of abuse in Canada.

And actually, when we look at the statistics, we did a national prevalent study in 2015. It was a one year look back study. So it asked older adults across the country had they been subject to abuse and neglect in the last one year. And a staggering 8.2% of older adults admitted that they had been subject to some form of abuse and neglect. What we know is that financial abuse is one of the most common forms of abuse. But in fact, it's slightly less prevalent than emotional and psychological abuse. But what we see is them paired together. So we're going to focus a bit more on financial abuse during our talk today.

But it's really important to understand all the dynamics of abuse and neglect, and to make sure that you understand that where there's one form of abuse, you should be looking very carefully at your client to see if there's another form hidden behind. So we know the national prevalence study in a one year look back is about 8.2%. But I can tell you we just finished a poll with CARP members and member respondents indicated that 35% of them knew someone who'd been subject to abuse or neglect. A recent study in BC indicated that older people, 40% of them, had experienced financial abuse.

So what you can be sure of is the numbers are under reported. What you can also be sure of is right now you have clients who are being abused and neglected. So this is stuff that you need to think about in your practice every day. So we talk about abuse and neglect, but what does it mean? What's the definition? Quite simply, it's an action or inaction that causes harm to another person. And that's done by a person or can be done by an institution.

DEALING WITH ELDER ABUSE - VIDEO TRANSCRIPT

When we think about institutions, we often think about abuse and neglect that happens in long term care. So when we think about the different kinds of abuse and neglect, what are the categories that we're looking for? Well, we've talked about financial abuse. We talked a little bit about emotional and psychological abuse. Of course, there's physical abuse. There's sexual abuse, which is one that we really don't talk about as much as we should. It's a very difficult thing to discuss, sexual abuse of anyone, let alone sexual abuse of a vulnerable, older person. But it certainly does happen.

We also probably have heard about chemical abuse, really often found in the over-medication of older adults. And sometimes in particular, we hear about it in long term care homes, where older people are given some type of anti-psychotic medication to kind of keep them passive. And it really can have terrible effects.

It's important when you're working in different cultural and diverse communities as well to think about things like cultural and spiritual issues when it comes to abuse. If that person is an observant Jew and keeps kosher, but is being force fed bacon, and that does happen, you know, has a huge impact. If you're a person that prays in a certain way or attends a certain faith community, and you're being prevented from engaging in that prayer or faith community, it has a huge impact as well. So abuse and neglect is not just about financial. It's really looking at the entire picture.

So who's doing it? You know, some people will not be too shocked to know that overwhelmingly the people who are abusing older adults, 2/3 of whom are family members. So very often in our practice we'll think to ourselves, I'll reach out to the adult son. I'll reach out to the adult daughter. I know that person. They're closest to the older adult. I'll just reach out to them.

Beyond the problems that we have with thinking about things like privacy or whether or not you might be liable for reaching out, beyond that, what's really important to know is, statistically speaking, probably 2/3 of the time the person who you have met may in fact be the abuser. It makes it very difficult for third parties, like folks in the financial industry, to really know what to do. But there are things to do.

First of all, look for the red flags and warning signs. If you are coming from the financial sector, some of those warning signs may be really important changes in spending habits. If that person has recently gone online, or has gotten debit cards, or their investments have always been very safe and secure, and they know your client has been very clear, if there's big changes to those, those should be red flags for you.

If unpaid bills come and that person has always paid those bills, but all of a sudden those bills are not being paid. Or alternatively, large amounts of money are flowing through in strange ways. We see people come in, and when they're subject to abuse and neglect, very often the finances within the bank will be cleared out first. Because often that money is a bit more accessible to the abuser. Once that money runs out, then usually the investments are there. So if you're seeing investments being cashed out or really high risk investments being used when that has not been the case, those should be red flags. But what do you do if you have the older person and there's somebody with them there? Look, we know that we have a professional obligation to meet with the older person alone. What we're looking for here is not just abuse and neglect, but also undue influence. So this is where the will of somebody else overtakes the will of that client. This you probably have seen in your practices once or twice. It's that unsuccessful son in the basement that won't leave the meeting with the mom. This is the case where that overbearing daughter

DEALING WITH ELDER ABUSE - VIDEO TRANSCRIPT

says that they know best and keeps correcting mom. This is the time where mom feels very shrunken and small, or the father, or an older person, neighbor, and friend is accompanied by a new best friend, who now all of a sudden they keep looking to in order to kind of get permission.

And when you tell them that you have an ethical obligation to meet with your client alone, they don't want that to happen. And they may be quite resentful. You may have to have a good, solid explanation by letting them know that later it may be possible to come in. Sometimes that's a bit challenging when you're looking for a support person who may say, well, I'm here to help my mother, or help my father, or help this person understand better. You still have to say you need to meet with the person alone.

Part of it is you need to make sure that that person understands and appreciates that they are capable of making the financial decision. So while you're looking for elder abuse and neglect and undue influence, you're also looking for any type of diminished capacity. These things all go hand-in-hand. If you feel confident the person is not subject to abuse and neglect, and not subject to undue influence, and able to understand and appreciate, really that's the opportunity to kind of take forward with instructions at that point. But it's required of each of us to ask questions and receive answers.

It can be really hard to know who the decision-maker is. And what if that person is starting to become foggy? Well, it may not be a question of abuse or neglect, but it may be a question of diminished mental capacity. And if that happens, we lead into things like who gets to make the decision, which is the second part that we're going to talk about today. So in Canada, across the country, a person over the age of majority gets to make their own decisions. And they have the right to do that, particularly of course, in the area of finances. But if a person loses the ability to understand and appreciate-- so get the information and wrestle with it. Be able to explain the what ifs.

So if you're trying to probe to see if that person understands, ask them some questions where they need to answer some what if questions. What if the market went up, what would you do then? What if you saw that this asset depreciated, can you tell me what you would do? How do you plan on living on this amount of money than that? What that does is it gets people to extrapolate and answer open-ended questions.

What we know is that closed questions, yes or no, are really easy to kind of nod yes to or look like they're following. So you need to ask people to really wrestle with the information and feel confident that they know what's going on in their financial decisions. So when we talk about powers of attorney, we're really talking about appointing somebody while you're capable to make decisions for you while you're incapable. So imagine you're on one side of the street and you get hit by the bus, you're taken off to the hospital, and you're in a coma.

That's really the only time that we think about a person being completely capable or completely incapable. What we know is often there's a fluctuation. It could be a fluctuation because of blood sugar or medications. It could be because of a urinary tract infection or a bladder infection. It could be because they're on kind of a medication which is affecting them. It could be because of drugs and alcohol. Or it could be because of some form of dementia. So we're trying to figure out their mental capacity.

Is it something that's going to be passing? Are they going to get better because the medication will stabilize, or their surgery will resolve itself, or their urinary tract infection will be treated, at which point they regain the capacity to understand and appreciate? Or are we looking for more of a long term issue, where we know that dementia is going to be on a downward plane? If so, across the country, you can appoint somebody to be the decision-maker for you.

DEALING WITH ELDER ABUSE - VIDEO TRANSCRIPT

In some jurisdictions, it's called a little bit different. In Ontario, it's called a continuing power of attorney. In British Columbia, it's called an enduring power of attorney. In Quebec, it's called a mandate. But on the whole, what it is is it's a document that allows you to choose somebody. Whether or not you are able to do that by yourself, kind of at the kitchen table, or whether you're going to need a lawyer will depend on what jurisdiction you're in. So the links that we're providing you provide you an opportunity to check in.

But if you ever have any questions, you can also go to the Ministry of Attorney General's website in your jurisdiction to double check whether or not you need a lawyer. It's about half and half in the country. And so you can pick somebody now to be your decision-maker later. You can pick one person or more than one person. But if you're going to pick more than one person to be your financial decision-maker, find a way to make sure that if they are in a locked issue that there's a tiebreaker. So you may say it's these two people, but if they can't agree it's this third person. Alternatively, you can say that I'm going to appoint two people, but I don't really care which one agrees. They don't have to agree with each other, it's just one of these two people. Really commonplace would be I have two children, I don't mind which one makes the decision, and that's fine. Alternatively, it may be I have two children and I want both of them to make the decision and they have to agree. If you have to agree, make sure there's some type of a tiebreaker in there.

And you as a financial person, when you're trying to get instructions and you're presented with a power of attorney, it's critically important that you read not only the name, of course, of the person who's the decision-maker, but whether or not it's a joint decision where two people need to agree, or a several decision, which means either person can agree. Also make a note if there's a backup person. Because what if they're traveling together or that person pre-deceases? So you really need to pay attention to what the document says. Also when you're receiving instructions from a power of attorney, make sure to take ID. Ask for picture identification, take a picture of that on your photocopier, scan that document, and make sure that it's also the correct person.

Because often people will say I have a power of attorney, but they may not realize that it's not just a general document that will let anyone in the family use it. It's only for one specific person. You also have to make sure it's a power of attorney for the right thing. So powers of attorney across the country are divided into two categories-- the ones that look at health and personal care, which are called something like a power of attorney for personal care or a health care power of attorney. In British Columbia, it would be called a Representation Agreement Act. Same as in the Yukon, a Representation Agreement. It's called different things, but really it's just, again, the same document where you pick somebody to make your health care decision-maker.

Well, why am I mentioning that? Well, because very often people don't know what kind of power of attorney they are. So we need to make sure that we read the documents very carefully and ensure that when we're taking instructions we're taking the right kinds of instructions from the right person. The exact document needs to say that it's a power of attorney that would allow financial transactions and not the kind of power of attorney that would be used for health care. It sounds easy, but so often it gets missed. And people may be coming to you quite innocently. But it's our responsibility to make sure that we review that document and make sure it's the right person and it's the right thing. So powers of attorney can be used and abused.

What we know is that power of attorney abuse is one of the most prevalent forms of elder abuse. And when we're looking at elder abuse financially, a new power of attorney, particularly a new power of attorney from somebody who is then is spending a lot of that person's money, is a clear red flag. So if you're introduced to someone you've never

DEALING WITH ELDER ABUSE - VIDEO TRANSCRIPT

met before, they're presenting you with a new power of attorney and a lot of financial transactions are starting to come, or a change in the type of financial transactions, that could be a clear red flag for you that abuse pursuant to power of attorney may be happening.

Another way that financial abuse often happens is through the use of joint accounts. I don't know what it is, but people really hate to pay probate fees, even though they tend to be a very small margin of a total asset of estates. So quite often people will recommend that matters get put into a joint account. So whether it's the house or an investment that they put joint account. What they often don't think about is that it also transfers ownership to that person. So they're not just holding it in a trust, it's actually an ownership transfer.

I often say to people, I know that you're saying you'd like to put this investment into a joint with your son or daughter, partner or friend, but do you realize that if there is a divorce that that becomes family property and that asset then can be pulled apart if that son or daughter or family friend gets divorced? Often people don't think about when things go wrong.

They just try to think about avoiding probate. So important to know joint accounts aren't necessarily good or bad, powers of attorney aren't necessarily good or bad, but they can be used for good, and they could be used for terribly bad things as well.

The last thing I just want to highlight to you is making sure that when we put these things together that we're looking at them in the context of always, always supporting capacity. So older people have the right to live at risk and they are allowed to make risky financial decisions as well. So we're not trying to protect older people from themselves. We're trying to ensure that they have every right to act the way they want, to spend the money the way they want, which may include spending the money foolishly. But it's our job to make sure that they're not subject to abuse and neglect, not subject to undue influence, and not subject to a lack of capacity. And we should always assume capacity, but be on alert for some of the key red flags that we see.

So elder abuse and neglect isn't going to end. But it's important that steps like this with IFIC that we're taking to address this critically important issue can make a huge difference in the lives of everyday people.

Finally, who do you report to? It's important to make sure that education and training like this are done in our firms and that we have a clear reporting system within our own agencies and organizations. But you will note that there's a different organization to report to in each jurisdiction. And so our accompanying materials will allow you to make sure that you know you're reporting to the right person. You're always allowed to report to the police. And in some cases, the public body may be the right person to report to. But you can see in our accompanying materials who's the right person to report to in each of your jurisdictions.

I hope this information around elder abuse and neglect, undue influence, powers of attorney and consent capacity are helpful to you as you move forward. Thank you.