

## 6. OUR CONSULTATIONS: WHAT WE HEARD

### Case Study Examples

As part of the consultation process, a series of case studies were used to stimulate discussion and determine if the issues identified were the correct ones to consider. Consultations were conducted individually and in groups with key stakeholders. Canadian stakeholders included older adults, older adult advocates, key agencies in elder abuse and mental capacity issues, lawyers, financial professionals, public guardians and trustees, police, community based organizations, medical and social work professionals, caregivers, and regulators. Key external expert stakeholders were consulted from the US, UK and Australia. Stakeholders had the opportunity to meet in person individually or as part of a number of group presentations, by webinar, phone or electronically. Participants were enthusiastically engaged, and were very aligned in their recommendations, across sectors and across the country. Here is a sample of what we heard. The case studies used are included below.

*“I think this is a great project; you have identified a huge gap which is complex and is in the midst of a huge social problem. I’ve had every single one of those hypothetical case studies walk in my door. Industry has to play a better role, but unless we can get that legal safe harbour we’re just stuck.” Financial industry representative, Ontario.*

*“God, I have every one of these cases. Yes I truly do. And more and more of them.” Financial industry representative, Ontario.*

*“These case studies are really good – I work with an ethnic community and its true – some people really work themselves into certain groups or communities and can do terrible damage to investments.” Financial industry representative, British Columbia.*

*“Everybody at this table who has had these cases raise your hand! See – everyone’s hand is raised. Everyone. Things like this happen all the time.” Community member said to a group of police, financial industry representatives, advocates and lawyers.*

### 6.1 Case Studies Provided to Facilitate Discussions

#### #1 The New Best Friend

Mrs. Bernstein is an 86-year old woman, living in a suburban neighbourhood. Recent widow. Increasingly confused. Arthritis and a recent fall. New younger friend Brenda starts helping with tasks and chores. The investment reports have too small a print for her. Brenda takes Mrs. Bernstein to a lawyer and has a new POA drawn up allowing Brenda to make decisions right away, and continuing into incapacity. Brenda instructs Mr. Sanjay Singh, Mrs. Bernstein’s investment advisor, to start selling off significant investments and cashing them out. Mr. Singh wants to confirm the instructions with Mrs. Bernstein, but she doesn’t answer her phone or other correspondence. Brenda insists she has a valid Power of Attorney which is active right away, and that she is acting on Mrs. Bernstein’s instructions. Mr. Singh is worried that Mrs. Bernstein might be financially abused, but does not know what to do.

## **#2 The Unsuccessful Son in the Basement**

Mr. Song Li is 78 and his wife, Mrs. Patricia Li is 79 and they live in a rural community. Mr. Li is the caregiver for his wife, who has mild-to-moderate dementia. Their son Young Li, aged 47, has remained dependent on them for years. He lives in basement and has a history of substance abuse. Young Li starts a new business and needs seed money. He takes his mother to her new investment advisor, Ms. Clarke, and does most of the talking. He tells the advisor his mother wants to significantly invest in his company. Ms. Clarke talks to Mrs. Li who presents well and agrees with everything her son is saying, and keeps repeating “Young is such a good boy. Of course I believe in him”. Ms. Clarke is very worried. She does not know Mrs. Li well and there is nothing of note on her file to prevent the transaction. She advises Mrs. Li that start-up businesses have a high failure rate and are therefore high risk, but Ms. Li insists she wants to make the investment.

## **#3 The Snake Oil Salesman**

Mr. Alexei Davidoff is an enterprising financial planner who has developed a niche practice within newcomer communities. He starts making investments for Mr. Yuri Petrov, aged 88. Mr. Petrov immigrated to Canada from Russia 20 years ago, and has literacy challenges both in English and in his native Russian. Mr. Petrov lives frugally but has a modest nest-egg which he lives off, combined with his equally modest pension. Mr. Davidoff tells Mr. Petrov that he can get him much better returns and starts putting the funds in high risk, inappropriate investments, that have high commissions. Mr. Petrov’s son Ivan reads his father’s mail and sees what is going on and knows that not only is his father losing money in commissions, but also that the investments were utterly inappropriate given his father’s age and circumstances. The father however, does not listen to his son and fully trusts the advice provided.

## **#4 The Free Prize – Send Money Scammer**

Ms. Anu Fateh is an 81-year old woman who lives alone and is getting increasingly confused. She answers the phone and to her delight, is informed that she has won a lottery from her country of origin. She believes that her sister Ahlya must have bought her the ticket, and the male voice on the phone confirms this when she asks him. Anu starts sending money from her bank accounts by wire to the account number given. As the voices on the phone become increasingly threatening Anu goes into her investment advisor and withdraws \$30,000 in cash. She then wires that as well. Three days later, she comes in again and wants to withdraw another \$50,000 in cash. Ms Fateh has a daughter in Boston and a son living about 30 minutes away, who sometimes comes into the financial institution to help his mother and is somewhat known to the staff.

## **#5 The Off-Grid World Traveler**

M. Jean-Guy Beaulieu is a 72-year old adventurer who retired very well after a profitable career. Jean-Guy watches his investments closely and is in usual contact with his advisor, Ms. Manon Dompierre. He has taken off for an extended walking trek in Malaysia without phone or email coverage and hits his head. He’s in a coma. A sudden change in the market makes the sale of a particular investment very urgent, or the loss to M. Beaulieu is both likely and

severe. Ms. Dompierre has no one to seek instructions from, and there is no Power of Attorney on file.

### **#6 The Toothy Charmer Son**

Mrs. Maria Farris is a very proud 68-year old woman who uses two canes to help get around. She opened an account with online access to her investments as she figured it would save her having to attend meetings in person. Her investment dealer, Mr. Chung, met Maria's son Vincenzo on several occasions as he would drive her downtown to the firm's offices. Mr. Chung was always impressed by his sharp professionalism, charm and care for his mother. Mr. Chung started to notice some out of character and worrying trades happening. When he called Mrs. Farris, she seemed very confused and foggy. Mr. Chung is worried about privacy, but even more worried about Mrs. Farris' mental capacity. Mr. Chung decides to reach out and call her son Vincenzo about his worries about his mother's capacity and about the trades. The next day, Mrs. Farris comes into the office limping and bruised. She tells Mr. Chung to stay out of things and says she wants to cash out her accounts. Mr. Chung is bewildered.

### **6.2 Questions Posed in Relation to Case Studies**

A standardized list of questions were asked at each stakeholder consultation after presentation of the case studies. The questions were as follows:

- Do any of these case studies sounds familiar to you? Have you had versions of this happen in your experiences? What happened?
- Absent an exception, notification of concerns about a client to a third party without consent is a violation of privacy law, and financial firms can get into trouble for breaching privacy. What happens at your firm or in your industry in these kinds of cases?
- If any of these cases came to your firm or industry, what would the internal process be to resolve the issue(s)? If there is escalation, what are the steps? Who gets to make the final decision?
- If a firm reports suspected abuse or mental capacity issues to a third party such as a family member or friend, there is always the risk that the firm is actually just alerting the abuser, and is making the situation much worse. There may be increased abuse to the vulnerable adult, or the abuser may close up shop and take all the funds. Given these risks, should there be a third-party notification protocol? What do you think are good ideas for how to notify and to whom?
- Do you think your firm or industry has adequate education on recognizing elder abuse, mental capacity issues and issues of social vulnerability? If not, what types of issues should education and training cover?
- Do you think having a legal "Safe Harbour" is a good idea for firms? Why or why not? What provisions or rules would the safe harbour be applicable to and why?