

Possible Responses to Financial Abuse of Older Adults

Private (Informal) Responses

Administrative (Agency) Responses

<p>Direct Deposit/ PAPs Direct Deposit Guide PAP Guide</p>	<ul style="list-style-type: none"> - set up direct deposit of all incoming pension + other \$ - set up pre-authorized payment for regular bills - consider prepaid cards with fixed limits for spending \$ 	<p>Designated Agencies Protecting Adults</p>	<ul style="list-style-type: none"> - health authorities are assigned legal responsibility for responding to reports of abuse, neglect and self-neglect of vulnerable adults – significant right of entry powers - those who report are protected/duty to report offence/ may refer to PGT - can result in support/assistance/restraining orders – see below
<p>Joint Bank Account* Joint Accounts Appropriate Use CBA</p>	<ul style="list-style-type: none"> - set up joint bank account – for monitoring or accessing \$ - will this include ‘right of survivorship’ or just to help out? - should review dangers of joint account - could have two accounts – transfer just enough each month to joint account meet daily needs - other \$ in a separate savings account 	<p>Public Guardian and Trustee Assessment and Investigation Services</p>	<ul style="list-style-type: none"> - The Assessment and Investigation Services (“AIS”) division of the PG&T takes referrals and reviews allegations of financial abuse of vulnerable adults – AIS Referral Form - Power to apply to court to ‘cancel’ a POA, freeze bank accounts, prevent property transfers during an investigation - authorized to collect personal information , demand accountings - can apply for Committee order
<p>Enduring Power of Attorney* Nidus – EPOA Info</p>	<ul style="list-style-type: none"> - appointing trusted person to manage finances + legal affairs - attorney needs to be clear about roles & responsibilities – see Nidus info sheet & statutory provisions - accounting to older adult + involve older adult in decisions - consider adding a ‘monitor’ – 2nd person to receive accountings and keep an eye on things 	<p>Federal Pension Trusteeship Pension on behalf of someone else</p>	<ul style="list-style-type: none"> - Agreement to Administer Benefits (CPP/OAS/GIS only) form (ISP3506OAS) and doctor’s ‘Certificate of Incapability OAS/ CPP’ form (ISP3505OAS) – for person or agency (agency or institution form (ISP3507OAS) - - can be voluntary or involuntary - agencies/institutions could include churches and seniors centres – main one in Vancouver is ‘The Bloom Group’ (formerly with St. James Anglican Church).
<p>Section 7 Representation Agreement* Nidus – s7 RA Info</p>	<ul style="list-style-type: none"> - s. 7 RA can include ‘routine financial management’ – basic finances- does not include credit cards, loans, mortgages - see Regulation to RA Act for routine financial management from A-Z - unless spouse or trust/authorized credit union (Vancity), monitor required (or 2 reps) - much more limited capacity test – useful last minute advance planning tool when OA is slipping 	<p>Statutory Property Guardianship Guide to COI Process under AGA</p>	<ul style="list-style-type: none"> - after a determination of financial incapacity (medical + functional assessment) a certificate of incapability (COI) is issued - PGT then becomes statutory property guardian - full authority for legal and financial affairs NOTE- other process is court application for private Committeeship – w/ 2 Dr’s affidavits.
<p>Revoking POA Or S7 RA Revoke EPOA Revoke RA</p>	<ul style="list-style-type: none"> - OA can revoke EPOA or s7 RA if attorney or rep acting wrongly, but OA must be capable (different statutory tests for creating/revoking s7 & s9 RAs) - can apply to court to have RA or POA revoked or terminated - might obtain authority as Committee or Statutory Property Guardian (COI) (see elsewhere on chart) 	<p>Income Security Programs Investigations Service Canada - Reporting</p>	<ul style="list-style-type: none"> - Income Security Programs can investigate any misappropriation of pension funds - little information is available on how these investigations are requested +/- or conducted - contact 1-800-277-9914 (for allegations of fraud, abuse misuse re. CPP or OAS)
<p>Protective Trusts & Life Interests Practice Note - Protective Trusts</p>	<ul style="list-style-type: none"> - a ‘protective’ or ‘discretionary’ trust may be a last resort solution for an older adult who just can’t say no to others - child or other relatives may be gambling or drug addict, or have overdeveloped sense of entitlement - putting a home in a trust with a life interest or life estate to the older adult also a possibility 	<p>Mental Health Committal Guide to the Mental Health Act</p>	<ul style="list-style-type: none"> - one certificate for admittance; two for committal to psych facility - Director of facility makes treatment and placement decisions re psych diagnosis - involuntary committal for psychiatric treatment – time limited
Civil Law Responses		Criminal Law Responses	
<p>Small Claims Court Small Claims BC</p>	<ul style="list-style-type: none"> - sue for return of funds (up to \$25,000) - can include restitution order for unjust enrichment - can include order for return of personal property 	<p>Police Lay Charges Justice BC - Criminal Charges</p>	<ul style="list-style-type: none"> - theft, conversion, embezzlement - fraud, forgery, larceny - criminal exploitation
<p>BC Supreme Court Self Represented Litigants</p>	<ul style="list-style-type: none"> - all of SCC remedies for over \$25,000 - including restitution for unjust enrichment - order for accounting by attorney, rescission of transactions by attorney/conversion of funds - partition and sale of jointly held property – <i>Partition Property Act</i> 	<p>Specific Offences POA Criminal Code Provisions - POAs</p>	<p>specific provisions in the Criminal Code of Canada regarding abuses by attorneys under a POA (also abuse by trustees under a trust agreement)</p> <ul style="list-style-type: none"> - asset freezes?
<p>Civil Resolution Tribunal Civil Resolution Tribunal</p>	<ul style="list-style-type: none"> - online mediation of disputes - - where mediation doesn’t work – can go to tribunal - tribunal’s orders have same legal force and effect as a court order - site includes legal information 	<p>Private Prosecution Private Prosecutions - BC</p>	<ul style="list-style-type: none"> - when police say this is a ‘civil matter’ or too little \$ involved - older adult or agent can ‘lay an information’ before a JP (s 504 + 507.1 of Criminal Code) - will have to conduct own prosecution if summary
<p>Committeeship - Patient Property Act Committeeship</p>	<ul style="list-style-type: none"> - application for declaration older adult incapable + Committee appointed (also Committee of person) - Committee then has full authority over legal and financial affairs – terminates any POA/RA unless court order otherwise - a gift, conveyance or transfer to 3rd party is ‘voidable’ 	<p>Restitution Restitution Brochure-BC</p>	<ul style="list-style-type: none"> - criminal court judge orders financial compensation to victim from convicted offender - must be requested in Victim Impact Statement or in letter to Crown + copies of docs - can be condition of probation , or stand-alone order enforceable in civil court
<p>Power of Attorney Act POA Act</p>	<ul style="list-style-type: none"> - court can order anyone to release info to the PGT to aid in an investigation - court can void a POA and all actions done under it - similar provisions in <i>Representation Agreement Act</i> for RAs 	<p>Victim Services Victim Services - BC</p>	<ul style="list-style-type: none"> - connect people to community, social, health, justice and government resources, including counselling resources. - info on the justice system, relevant federal and provincial legislation and programs, resources as needed.
<p>Support and Assistance Order AGA</p>	<ul style="list-style-type: none"> - a DA can apply to court for a ‘support and assistance’ order based on a support and assistance plan - court can make a support order under Part 7 of the <i>Family Law Act</i> - order not contact or association with the adult or the adult’s financial affairs – Family Protection Orders under the <i>Family Law Act</i> also possible - a support order might require PGT to provide services to ensure OA’s financial affairs are protected 	<p>Enhanced Sentencing Criminal Sentencing – Elder Abuse</p>	<ul style="list-style-type: none"> - when determining sentence, one of the ‘aggravating circumstances’ a Judge can take into account is “evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation” - while this was called the “elder abuse” amendment, there is no particular age specified

* - Powers of Attorney, s7 RAs and Joint Bank Accounts can be part of the solution, but also part of the problem.