



**Written Submission for FCAC Consultation on a  
Seniors Banking Voluntary Code of Conduct**

**Submitted By: CARP**

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Ms. Lucie Tedesco  
Commissioner of the Financial Consumer Agency of Canada (FCAC)  
Financial Consumer Agency of Canada  
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cc: Ms. Jane Rooney  
Financial Literacy Leader

cc: M. Richard Bilodeau  
Managing Director, Supervision and Promotion Branch

Dear Ms. Tedesco, Ms. Jane Rooney and M. Richard Bilodeau,

CARP is pleased to provide input and comment into the consultation on creating a Voluntary Seniors' Banking Code for Canada.

By way of background, CARP is Canada's largest advocacy association for older Canadians. As a non-partisan, not-for-profit association, CARP is committed to advocate for the rights and well-being of older Canadians. Formerly the Canadian Association for Retired Persons, today CARP has approximately 300,000 members aged 50 plus with 26 chapters across the country. CARP members are very politically engaged and active. Indeed, 98% of all CARP members vote in every election. Today CARP has members in every jurisdiction of the country and has engagement coast to coast to coast, with a regular media reach of 1.9 million audience footprint.

Our 2018-2020 Platform: the *FACES of Canadian Seniors* highlights 5 key areas of engagement: Financial Security, Abuse Prevention, Caregiving and Housing Supports, Exceptional Healthcare and Social Inclusion. Financial security and abuse prevention are critically important to CARP and we welcome the opportunity to provide comments to you in this important process.



## **CARP Recommendations**

### **Recommendation 1: Trusted Contact Person (“TCP”)**

FCAC should implement a rule that requires banks to make reasonable efforts to obtain the name and contact information of a trusted contact person for banking clients, regardless of the client’s age, at the time of opening a new account, or, in the case of existing accounts, the next earliest occasion. Banks should adopt a similar approach to the securities side - including an adapted banking “Know Your Client” profile. This should be reviewed at least annually with the client. If the client does not have a trusted contact person, or does not wish to provide one, then there is no obligation that they do so. Having conversations about a TCP de-stigmatizes aging and possible mental incapacity and helps to normalize thinking about these important issues.

### **Recommendation 2: Temporary Hold on Accounts**

Banks should implement a rule that authorizes qualified individuals within a bank to place a temporary hold on the account of a vulnerable client, where the qualified individual reasonably believes that financial exploitation or undue influence of the vulnerable client has occurred, is occurring, or will be attempted, or where the qualified individual reasonably believes that the vulnerable client has lost the capacity to provide instructions. Provision should be made for routine payments through the accounts, in accordance with the principles used by the provincial Public Guardians and Trustees or best practice, so long as these routine payments do not significantly deplete the assets.

### **Recommendation 3: Legal Safe Harbour**

FCAC or the Ministry of Finance should implement a legal safe harbour that banks and their representatives are free from regulatory liability for reporting elder financial abuse, undue influence or concerns about diminished mental capacity. This legal safe harbour should be granted only if the bank, or its representative, acts in good faith and exercise reasonable care in making a disclosure about a client to his or



her designated TCP, specified government agency, regulator (like FCAC) or other designated reporting body. In addition, a banking regulatory legal safe harbour should be extended to the bank and their representatives for placing a temporary hold on the account of a vulnerable client, provided the bank and its representatives act in accordance with the regulatory requirements, including the applicable provisions of an FCAC approved Conduct Protocol.

Canadian governments at provincial and federal levels should undertake legislative law reform to provide for a legal safe harbour from civil liability where the regulatory requirements are met including reform of the Personal Information Protection and Electronic Documents Act (PIPEDA) legislation to accomplish this. In the meantime, courts should give administrative deference to the banking regulatory regime when determining whether there is any civil liability (including breach of privacy laws) arising as a result of placing a temporary hold on accounts to third parties as set out above, to the bank and/or its representatives.

#### **Recommendation 4: Conduct Protocol**

FCAC should publish a 'Conduct Protocol' that defines key terms and sets out the steps banks and their representatives should take to identify and protect vulnerable clients, particularly older adults, persons with diminished mental capacity and those at risk of, or subject to, elder financial abuse. Establishing this Conduct Protocol will allow banks to design their own appropriate policies and procedures, while having the reassurance of the approved and required Conduct Protocol as the core of their response.

#### **Recommendation 5: Education and Training**

Banks should be required to ensure that their representatives and staff have competency-based training in the areas of elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism and have the required proficiencies. We recommend that FCAC take the lead in establishing the content and competencies required of representatives and legal and compliance



personnel at investment firms in the areas relevant to vulnerable bank users who may be subject to elder abuse, financial exploitation, undue influence, mental capacity issues, and ageism and also have education on enduring powers of attorney, and substituted and supported decision-making. The FCAC should provide a gatekeeper role of ensuring that minimum proficiency in this area is set and met.

### **Recommendation 6: Banks become Familiar with Outside Resources and Responders**

Banks need to learn how and when to appropriately refer a case of suspected elder financial abuse, undue influence or diminished mental capacity to local responders. As there is no single place for reporting these issues in Canada, banks will need to learn the provincial or territorial responders in each area, and make that information widely available to staff. In addition to these specific recommendations, banks need to be aware of the broad societal and sector-specific realities about how governments, banking regulators, and private organizations could better empower and support older Canadians, including the need for clarification of privacy legislation related to reporting suspected elder financial abuse, undue influence or diminished mental capacity.

### **Recommendation 7: Make OBSI a Single Binding Ombudsman for Banking in Canada (OBSI)**

Make the Ombudsman for Banking Services and Investments the single, binding dispute resolution body for banking. Right now, approximately 75% of all banking consumers can only access a private pay company, (paid for by the bank for which the vulnerable adult is in dispute with), as an ombudsman, known as ADR Chambers. OBSI has indicated that more 50–75% of their complainants are older adults (depending on the year). ADR Chambers provides no transparency or statistics but bank escalation information indicate that vulnerable older adults are key complainants within banks. When OBSI was created as a neutral, non-profit, independent Ombudsman, it was with the understanding that all banks would be members of this body. Under the previous Harper government, an exception was



created to allow for private pay competitors, which has undermined the system. In order to support clarity and access to justice, OBSI should be reinstated as the sole banking ombudsman, and with binding authority.

### **Recommendation 8: Ensure Clear Transition for Closing Branch Customers**

In the case of branches that are closing, especially in rural or remote areas, the bank must replace the bricks and mortar financial branch with, at a very minimum, an electronic ATM. Additionally, an electronic and hard copy mailed flyer should be sent to bank members in that area, indicating the 3 closest branches, the offer of a meeting in person at the closing branch to facilitate transition, and creation of an individual banking transition plan for each branch client. Pro-active outreach to older bank customers should be particularly required.

### **Recommendation 9: Creation of More Accessible Power of Attorney Accounts and Limited Banking Authority Accounts**

Banks should be required to offer accounts with withdrawal limitations or available restrictions for use by persons acting as Powers of Attorney, or to allow for products with limited banking authority which are not joint accounts. Powers of Attorney and Joint Accounts are the two most prevalent forms of financial elder abuse. These products already exist in the market, but need to be more commercially available for the average banking client.

### **Recommendation 10: Cessation of Banking Powers of Attorney Provided by Banks**

Banks should get out of the business of providing fill-in-the-blank forms of Powers of Attorney. The persistent problem of banks providing their banking customers with these fill-in-the-blank documents, often by consumer-facing staff (tellers), is well-documented and significantly leads to havoc in estate plans, and perpetration of elder financial abuse by third parties. Banks are not in the



business of providing legal advice, and this opens them to significant risk, as well as harm to their clients. In jurisdictions where there are free government provided Power of Attorney kits (such as Ontario or BC) then banks can provide those kits if necessary. In jurisdictions where a lawyer or notary must be involved in their creation, then banks should provide that information and appropriate referral to agencies or legal service providers to their banking customers.

### **Recommendation 11: Elder-Friendly Practices and Accessibility Standards**

Banks should immediately adopt elder-friendly practices and ensure accessibility standards. For details on some elder-friendly practices for financial institutions please see some joint tools created by CARP and IFIC at:

<https://www.ific.ca/en/pg/advisor-centre-vulnerable-investors-resource-centre/>.

As federally regulated institutions, Banks should be required, or strongly encouraged, to comply with accessibility standards pursuant to the Convention on the Rights of Persons with Disabilities, for which Canada has ratified. Additionally, banks should be required, or strongly encouraged, to comply with the Accessible Canada Act, and with the guidance from the Minister Public Services and Procurement and Accessibility.

In particular, elder-friendly font sizes should be increased to readable levels (14+ font) for all banking information. Banking information should also be provided in CNIB, Canadian Association of the Deaf, Canadian Association of Hard of Hearing-compliant formats.

To support diverse literacy, banking information should also be available in a wide variety of languages wherever possible to support older adults who do not speak English or French, and as newcomer seniors are at specific risk of exploitation. Additionally, information should be provided in plain language formats, at no more than a Grade 6 education level, and supported by icons for easy understanding by older adults. Alternative formats of very large font materials should be available as well to support older adults with vision loss such as macular degeneration or retinal diabetes. Use of “Easy English” or similar alternatives, should also be strongly explored, as it has been successfully adopted in Australia to significant benefit.



### **Recommendation 12: Expert Advisory Committee Should Be Established**

FCAC should, in coordination with the CEOs or Boards of the federally regulated banks, create a standing expert Advisory Committee on Seniors and Banking. This panel should include individual experts on aging, accessibility, financial issues, mental capacity, elder abuse and elder law. This committee could be modelled after the Canada Post Expert Committee on Accessibility.

### **Recommendation 13: Expand the National Anti-Fraud Centre Line Mandate or Create a New Phone Line System**

Canadians, including bank employees and bank users, need a place to call when they suspect elder financial abuse, or loss of mental capacity. As Canada currently has no one place to call, it is critically important that there be a resource line with a person answering it. One easy option would be to expand the mandate of the National Anti-Fraud Centre (NAFC) to answer the calls of bank representatives and the public, which would guide them to provincial and territorial resources. This line would also allow for better tracking of types of abuse (as data is critically necessary to understand the scope and trends of this exponentially expanding abuse crisis). This budget item could be supported through federal funds; or could be supported in conjunction with the Banks as a joint funding initiative or grant. Details on the National Anti-Fraud Centre Line can be found here - <http://www.antifraudcentre-centreantifraude.ca/reportincident-signalerincident/index-eng.htm>.

Alternatively, a new phone line could be created with this mandate, and have its mandate inclusive of all forms of elder abuse, noting that elder financial abuse is the single most reported form of abuse.





#### **Recommendation 14: Create a No-Wrong-Door Approach to Elder Financial Abuse and Seniors' Banking Concerns**

Older adults and their supporters are extremely vulnerable in times of elder abuse, including elder financial abuse. However, the systems in Canada for elder abuse repose are complex and intimidating. Banks have a unique role, as well as a legal obligation, to respond, and where possible to prevent such abuse.

It is thus recommended that the “No-Wrong-Door” approach be taken by the banks, modelled on the Maine investment and banking model summarized here: <http://serveourseniors.org/about/industry/seniorsafe-training/>.

In short, established competency-based training includes education on resources, with a “back-end” support and referral amongst those key organizations. This successful US program ensures that vulnerable older adults do not have to start at the very beginning at each entry point for resources and would be easily tailored to the Canadian banking system.

#### **Recommendation 15: Safe and Accessible Space in Banks**

Banks often have no place for older adults to sit, let alone to have a private difficult conversation about elder financial abuse or accessibility needs. As such, banks should ensure that they have sensitively trained staff combined with safe and accessible space where older bank customers can discuss issues in private. Designated quiet, private and “sit-down” office spaces should be provided for this purpose.

#### **Recommendation 16: Voluntary Code Reporting to Bank Board / CEOs**

To allow for appropriate traction and transparency, ensure that each federally regulated Bank must report on the Seniors Voluntary Banking Code to the CEOs and the Boards of the included banks. Further, actively consider ways in which that information might be gathered and acted upon in association with key stakeholders, rather than the FCAC meeting exclusively with the Banks in a non-transparent process.



### **Recommendation 17: Ensure that ATMs, Online Banking and Phone Banking are Elder-Friendly and Accessible**

With the increased use of technology, it is critically important that innovations in banking be designed for inclusive use, including for older adults and persons with accessibility needs. This includes: adaptive technologies, the built spaces, the telephone or online tools and customer care practices.

### **Recommendation 18: Create Easily Used Client Verification Practices**

Currently, the requirement for client verification practices are inhibiting at best and abusive at worst. The banking requirements that no PIN number be replicated, or that the client verification uses obscure and difficult to remember / reset practices actually makes elder financial abuse more likely. As older people find the requirements so onerous, it is often the case that they violate their agreements by using the same PIN over and over, or by handing their debit card (especially using the Tap function) or credit card to another person, also violating their agreement and providing access to their finances by a potential abuser. Innovations in banking security technology should be done with the older banking consumer in mind – indeed the overwhelming majority of banking consumers are over 50 years old so this is in line with customer demographics regardless.

### **Recommendation 19: Invest in Continuous Improvement**

Banks should be encouraged to invest in continuous improvement in the area of seniors' banking practices.

### **Recommendation 20: Connect Banks with Local Resources**

Banks have significant power to be part of the solution when it comes to elder financial abuse, detecting diminished capacity or undue influence. Banks should be encouraged to connect with local networks on aging and elder abuse issues.



**Recommendation 21: Hold Annual “Elder-Friendly” Audits Including Measuring Ageism**

As part of the ongoing goal to provide more inclusive, responsive and engaged banking practices suitable for seniors’ positive banking, the Code should include recommendations that banks conduct “elder-friendly” audits of their organizations, including challenging embedded ageism and ensuring that anti-ageist messaging is adopted both internally and externally. Banks should add “ageism” and “age” into their internal Diversity categories.

**Respectfully submitted.**