



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

## Appendix “A”

# 2015 MFDA Seniors Summit

## Key Learnings

## **Medico-legal Issues in Servicing Senior Clients**

Delivered by: **Dr. Carole Cohen, MDCM**, Psychiatrist – Sunnybrook Health Sciences Centre  
**Arthur Fish**, Partner – Borden Ladner Gervais LLP

**Watch:** [Medico-Legal Issues in Servicing Senior Clients](#)

**Summary:** Dr. Carole Cohen and Arthur Fish discuss the medical and legal implications of capacity when dealing with senior clients. Dr. Cohen provides red-flags and indicators that may identify a mental capacity issue, and Arthur Fish discusses how to deal with capacity issues from a legal context.

### **Key Learnings:**

#### ***Part A – Medical Issues***

##### **Diminished Capacity**

Diminished Capacity is a complex medical/legal construct. It is situation specific, meaning it is not an all or nothing concept and it is often related to the specific task or issue in question. For example, an individual may lack the capacity to make financial decisions but may still maintain capacity to make health decisions. Even a diagnosis of dementia does not in itself mean that a person lacks capacity to make decisions. The focus always has to be on the specific context and the facts.

Approved Persons cannot make a determination as to whether an individual lacks mental capacity, however, there are red-flags to be aware of that may indicate mental capacity issues.

##### **Diminished Capacity – Red Flags**

Consider the four “C”s

1. Context – Does the person understand their situation?
2. Choices – Does the person understand their choices?
3. Consequences – Does the person understand the ramifications of their choices?
4. Consistency – Does the person make a consistent choice?

##### Red Flag Examples

- Changes from previous behaviors, thinking, attitudes
- Inconsistent and unusual instructions
- Changes in decision-making (particularly if unusual for that person)
- “Head turning sign” – when client constantly turns head to prompt person they are with for reassurance or to provide response
- Not understanding technical terms despite explanations
- Vague responses; e.g. responds “yes” to complex questions, head nodding but little else
- Forgetfulness
- Difficulty keeping facts straight

## **Elder Financial Abuse**

There is an increased risk of financial abuse and exploitation among older clients. The abuse is more likely to be carried out by family members or caregivers than strangers.

### **Risk Factors for Financial Abuse**

- Social isolation
- Bereavement
- Dependence on another to provide care
- Financially responsible for adult child or spouse
- Alcohol or drug abuse
- Depression or mental illness
- Increased age

### **Observable Red Flags**

- Cognitive problems
- Fearful, emotionally unstable, or distressed
- Suspicious, delusional
- Change in appearance, poor hygiene
- Accompanied by caregiver who is overly protective; dominates client

### **Questions you can ask the client**

- Who manages your money day-to-day? How is that going?
- Do you run out of money at the end of the month?
- Do you regret or worry about financial decisions you have recently made?
- Have you given Power of Attorney (POA) to another person recently? (Could be a concern if there has been a recent change or appointment)
- Do you have a Will? Has anyone asked you to change it recently?

## ***Part B – Legal Issues***

When a POA is in place, it is important to remember that the appointed attorney has fiduciary responsibilities towards the client and that there could be legal exposure to knowingly participating in a breach of that fiduciary duty. For example, processing a large redemption requested by a POA that is clearly not for the benefit of the client.

First question you should ask when POA is presented is “why?”. It is also important to clarify who reporting should go to once a POA is in place and to set timelines for how long the POA will be in place. These may differ depending on the reason for the POA. (e.g. client away on vacation vs. client is losing capacity). If a POA is being put in place because of loss of capacity this would be a time to update KYC information.

## **Advising During Retirement**

Panel Discussion

Moderator: **Preet Banerjee**

Panelists: **Dan Hallett**, Vice-President & Principal – HighView Financial Group

**Martin Leclair**, Vice-President – Proteus

**Jim Otar** – RetirementOptimizer.com

**Watch:** [\*Advising During Depletion Phase\*](#)

**Summary:** Panel members discuss challenges associated with advising retirees and explore strategies for advising during the decumulation phase.

### **Key Learnings:**

- Market performance, particularly in the early years of retirement has a significant effect during the decumulation phase. This is particularly true of withdrawal rates between 3% and 6%
- Typical withdrawal rates are often not realistic when matched against client retirement lifestyle needs
- Clients may need to realize that changes in lifestyle may be required to achieve financial goals
- Documenting discussions is of the utmost importance during client retirement, and reviews and updates to plans should be done more frequently in retirement

## Facing Elder Financial Abuse – Effective Compliance Programs for Seniors

Delivered by: **Ron Long**, Director of Regulatory and Elder Client Initiatives – Wells Fargo Advisors, LLC

**Watch:** [Facing Elder Financial Abuse](#)

**Summary:** Mr. Long provides an overview of his firm’s compliance practices related to detecting and preventing elder financial abuse.

### Key Learnings:

- Best practices include training for all employees on seniors issues and a centralized compliance unit to deal with seniors issues
- Do not be afraid to have candid conversations about memory and dementia-like symptoms with the appropriate clients
- Challenging areas for firms and advisors:
  - Familial disputes
  - POA abuse
  - 3<sup>rd</sup> party investment scams
  - Dementia / Diminished capacity
- Observe and report concerns related to senior clients. The “OWN IT” program implemented at the speaker’s firm sets out actions and steps that can be taken to help protect seniors

What to do	Additional Detail
Observe	<ul style="list-style-type: none"><li>• Any physical changes?</li><li>• Patterns and habits different?</li><li>• Does behavior change in front of 3<sup>rd</sup> parties?</li></ul>
Wonder why	<ul style="list-style-type: none"><li>• Why are withdrawal multiples larger than before?</li><li>• Why is money moving to a new country?</li></ul>
Negotiate	<ul style="list-style-type: none"><li>• Can the transaction go later?</li><li>• Can the cheque go in two names (elder &amp; trusted 3<sup>rd</sup> party)?</li><li>• Can we only give a fraction of the money today and move more later?</li></ul>
Isolate	<ul style="list-style-type: none"><li>• Get the elder alone.</li><li>• “Ms. Smith please step out with me to confirm some account information.”</li><li>• “Please come with me to discuss some confidential information.”</li></ul>
Tattle	<ul style="list-style-type: none"><li>• Bring concerns to manager immediately.</li><li>• Report to relevant authorities.</li><li>• See something, say something.</li></ul>

## **The Aging Canadian Demographic**

Delivered by: **Goshka Folda**, President and CEO – Investor Economics

**Watch:** [\*The Aging Canadian Demographic\*](#)

**Summary:** Ms. Folda presents how Canadian demographics are shifting, the impact that these shifts are going to have on dealer business and the new risks and realities of senior clients and their finances.

### **Key Learnings:**

- The senior demographic is growing quickly. By 2025, 1 out of 3 households in Canada will be a retiree household
- Median retirement age hasn't really changed, but life expectancy has gone up significantly
- The pace of investment growth may not be enough for each Canadian to retire with the lifestyle they expect
- Household debt levels are increasing and will be a challenge for the boomer generation as they retire
- People are retiring later, not because they want to, but because they believe they need to in order to meet their retirement goals
- **Conclusion:** Given the demographic and economic shifts, what seniors may need going forward is more than investment advice but fully integrated wealth management to assist retirees with a broader spectrum of issues such as debt management, and estate and legacy planning.

## **FINRA and Seniors Issues**

Delivered by: **Dan Sibears**, Executive Vice-President, Regulatory Operations/Shared Services – FINRA

**Watch:** [\*FINRA and Seniors' Issues\*](#)

**Summary:** Mr. Sibears discusses best practices for seniors seen at FINRA member firms as well as FINRA's seniors initiatives including their Securities Helpline for Seniors, and their proposed rules on trusted contact person and a safe harbour for temporary holds on disbursements.

### **Key Learnings:**

Best practices regarding seniors issues seen at FINRA regulated firms:

- Policies and procedures regarding suitability specifically for seniors, including strict product concentration guidelines
- Development of seniors department within member firms – business processing, issue handling, trade review, etc.
- Requiring seniors continuing education courses
- Pre-approval for seniors designation usage
- Pre-approval for advisors to participate in unscripted seminars

Future FINRA Policy Initiatives (in place as of 2018):

- **Trusted Contact Person:** Firms to take reasonable efforts to obtain from clients the name and contact information of a trusted contact person who may be contacted if there are concerns regarding the financial exploitation of the client.
- **Temporary Holds:** If financial exploitation is expected and there is a request from a client to disburse funds from an account, a firm would have the ability to put a hold on disbursements for up to 15 days (with the ability to extend for another 15 days) while they conduct a reasonable inquiry into the concern.

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