

Genus Webinar

Financial Abuse of Older Adults: Recognition, Prevention and Assistance

April 18, 2024

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BRITISH COLUMBIA LAW INSTITUTE

Financial Abuse of Older Adults

Genus Capital Management Client Webinar

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Disclaimer: This material contains information to assist the public to understand financial abuse. The information is not legal advice. The law and services vary across the country and changes from time to time.

Outline



What is financial abuse? neglect? self-neglect?

Related laws: Undue influence; Criminal Code

Vulnerable situations: risk factors & red flags

What can you do to help?

Reporting

Case study

Resources

Questions

Definitions



- No single definition
- WHO “Abuse of Older People”:

“The abuse of older people, also known as elder abuse, is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person. This type of violence constitutes a violation of human rights and includes physical, sexual, psychological and emotional abuse; financial and material abuse; abandonment; neglect; and serious loss of dignity and respect.”¹
- Note: does not require mental in capacity, but some level of cognitive impairment is often present

Abuse & Neglect (Mistreatment) BC “*Adult Guardianship Act*”₂



BC legislation has a detailed set of definitions

- **Abuse:** means the deliberate mistreatment of an adult that causes the adult
 - physical, mental or emotional harm, or
 - damage or loss in respect of the adult's financial affairs,and includes:
 - intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors
- **Neglect:** means any failure to provide:
 - necessary care, assistance, guidance or attention to an adult
 - that causes, or is reasonably likely to cause the adult, within a short period of time,
 - serious physical, mental or emotional harm or
 - substantial damage or loss in respect of the adult's financial affairs,
- **Neglect** includes self-neglect
- **Again:** Definition does not require mental in capacity, but some level of cognitive impairment is often present. See later slides on reporting in BC.
- **NOTE:** This is a legislated definition and clearly applies to all adults (19+ in BC)

Self Neglect

BC Adult Guardianship Act



Self Neglect: means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult's financial affairs, and includes

- (a) living in grossly unsanitary conditions,
- (b) suffering from an untreated illness, disease or injury,
- (c) suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired,
- (d) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or loss of property, and
- (e) suffering from an illness, disease or injury that results in the adult dealing with his or her financial affairs in a manner that is likely to cause substantial damage or loss in respect of those financial affairs;

NOTE: In some jurisdictions, self-neglect is considered a mental health issue and is outside of the formal responses to elder/adult abuse and neglect.

“Mistreatment” & the Stats



- Many challenges to collecting data including:
 - Definitions vary by jurisdiction
 - Lack of & inconsistent reporting by victims & others
- 8-10% of older adults have experienced some form of abuse³
- 2015 NICE report noted perpetrators are:⁴
 - children & grandchildren (37%)
 - siblings (15%)
 - strangers (10%)
 - Friends (8%)
 - Service providers (4%)
- 63% of older adults have experienced “ageism”⁵

NOTE: This presentation does not address the many scams that also target older adults and others in vulnerable situations.

Undue Influence ⁶



- A related legal rule recognized in the law:
 - Pressure that causes a person (P) to perform a legally significant act. Examples:
 - P makes a gift, a will, or a power of attorney,
 - that does not reflect P's genuine wishes or intentions,
 - but rather, those of the influencer, so....
 - P is not acting freely. (p 5)
 - The rule goes beyond “mere persuasion”...
 - Direct or immediate benefit to influencer is not required (p 5)
- Often intertwined with diminished capacity,
 - BUT not always ...
 - It is a separate legal issue (p5)
 - One can be capable but subject to undue Influence

Undue Influence ₆



- Consequences of undue influence: (p6)
 - During lifetime: P can void the transaction/document
 - In a will: the will or a provision of will is void (WESA s.52)
- BC's Wills legislation codifies the rule with a “rebuttable presumption”:
 - once someone alleges and shows that P was in a relationship of potential dependence on, or domination by, the alleged influencer ...
 - the onus shifts to defender of the will to prove that undue influence was not exerted
- Important when a lawyer (or Notary in BC) takes instructions to prepare a will
 - Note: P may or may not have diminished capacity

Criminal Code Provisions



- No criminal offence of “elder abuse” in Canada, but:
- Offences against property including
 - Theft (s. 334)
 - Theft by personal holding Power of Attorney (s. 331)
 - Fraud (s. 380)
- Offences against the person including:
 - Duty of persons to provide necessaries of life (s. 215)
 - Assault (s. 219 - 212)
 - Intimidation (s. 423)
- Sentencing: Factors court considers include: (s. 718.2(a))
 - Offence motivated by bias, ... prejudice... age, mental or physical disability
 - Offender abused position of trust or authority
 - Offence had a significant impact on victim considering age & other personal circumstances including health & financial situation

Vulnerability: Risk factors & Red Flags



- Many lists: “risk factors”, “red flags”, “indicators”
- Most important is to be aware of:
 - Risk factors that can lead to an adult being in a vulnerable circumstance or situation
 - Red flags or signs that someone IS or MAY BE experiencing abuse or neglect
- AND
 - Taking care to not jump to conclusions or make assumptions
- It has been suggested that:⁷
 - Vulnerable circumstances are situations that cannot be changed or are difficult to change. E.g. advanced dementia; a physical disability
 - Vulnerable situations are those that can be changed. E.g. health care; community services; removing the abuser

A word on capacity/incapacity



- Language varies: Capable/incapable; capacity/incapacity; competent/incompetent
 - Often used interchangeably
 - Language of legislation, within a sector etc
- Many tests for legal capacity to make decisions/documents:
 - Examples:
 - Age of majority
 - Capacity to marry
 - Capacity to make a will
 - Capacity to make an enduring/continuing power of attorney
 - Some rules are in legislation; others in case law
 - Some legislative rules are interpreted by the courts
- There are different ways to screen for & assess capacity/incapacity
 - Screening tools include MiniMental (MMSE) & MOCA
 - Capacity assessments are carried out by qualified professionals

Risk Factors for Mistreatment



- Evidence based study identified strong risk factors for older adults (+ potential & contested factors) ⁸
- **Strong** environmental factors
 - Lack of social support
 - Shared living arrangements
 - Perpetrator characteristics
 - Mental health issues
 - Drug or alcohol addiction
 - Dependency on older adult
 - Stress or burden associated with caregiver role
- **Strong** Vulnerability factors
 - Functional incapacity
 - Cognitive impairment
 - Mental health issues
 - Solitude/isolation

Red Flags & Indicators: a compilation of lists₉



- Physical signs including:
 - unexplained/frequent injuries
 - changes in appearance
 - no longer using mobility aids, glasses, hearing aids
- Communication including:
 - someone else is speaking on P's behalf
 - access to P is restricted
 - P shows unusual anxiety when meeting/on phone
 - P has unusual difficulty with, or isn't responding to, communications
- Behaviour changes in P, including:
 - is passive or compliant
 - exhibits anxiety, fear, depression, or agitation
 - appears withdrawn/non-responsive or is unusually aggressive
 - exhibits confusion; has stopped making own decisions
 - behaving differently around specific family member or friend

Red Flags & Indicators (cont'd)



- Change in relationships & interactions with family & friends (e.g.):
 - No contact with family/friends, or increase in isolation
 - New or unknown caregivers, friends, or family members coming to client meetings
- Changes & confusion about financial & legal obligations including:
 - Gradual or sudden inability to meet financial obligations
 - Cancellation of critical services (e.g. internet or power)
 - Disappearance or sale of possessions
 - Unexplained changes in investment risk profile from low risk or capital preservation to high risk
 - Sudden or unusual requests to change ownership of assets (e.g. make an account or title joint or transferring assets to a joint account with family member, friend, or caregiver)

Red Flags & Indicators (cont'd)



- Changes & confusion about financial & legal matters – behaviours such as:
 - Confusion about future planning documents & will
 - New person supporting P with financial matters
 - Changes to living arrangements or conditions
 - Unexplained or sudden account withdrawals or closure
 - Attorney (acting under an enduring power of attorney) giving instructions inconsistent with P's past instructions
 - P has limited knowledge about investments/circumstances when P used to be well informed.
- NOTE: these red flags will be noticed by different people in the adult's life depending on the relationship. Sometimes each person has only part of the picture.

How can you help?



- BE AWARE of the risk factors; DO NOT ignore red flags
- DON'T jump to conclusions OR ignore your “spiny senses”
 - Check the facts/probe your suspicions
 - Make notes!
- Check your own biases & values ¹⁰...
 - Be alert to unconscious ageism & ableism ... & the biases & values of P & others
 - “Ageism refers to the stereotypes (how we think), prejudice (how we feel) & discrimination (how we act) towards others or oneself based on age.” ¹¹
 - Ableism refers to how society treats people with disabilities¹²
- Be mindful of P’s right to make own decisions v. P’s need for assistance or protection if P can’t seek help on own
 - **It isn’t always easy! It can be a delicate balance**

Probing your concerns



- Learn strategies for probing concerns while keeping P safe & avoiding P shutting down
- Probe P's decisions & reasons
 - Do not pass judgment
- Probe relationships with others
 - Ask about family/friends/health care providers who may be able to help address concerns
 - Be mindful of privacy & confidentiality
- Again: how far one might go in probing concerns will depend on the relationship

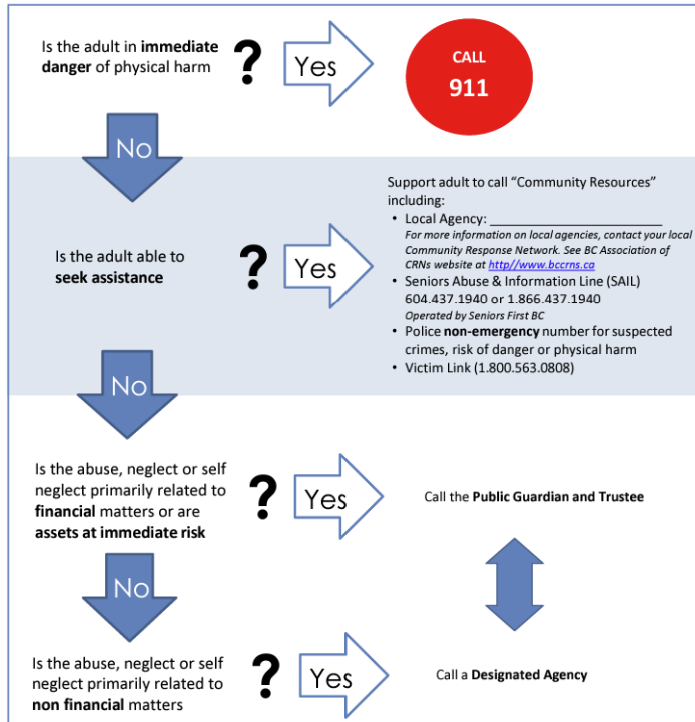
Reporting in BC



Flow chart + Why to call; Where to call; What to Expect; Possible actions

How to assist an adult who is abused, neglected or self neglecting
A Decision Tree for effective referrals of adults in B.C. who may be vulnerable and/or incapable

For introductory videos on how to use this Decision Tree and the roles of the police, designated agencies and the Public Guardian and Trustee (PGT), visit <https://www.youtube.com/@pgtbc>.



Police	Designated Agency: Regional Health Authorities and Community Living BC (CLBC)	Public Guardian and Trustee (PGT)
For a video on role of the Police, visit https://youtu.be/9Euk0zVFew	For a video on the role of Designated Agencies, visit https://youtu.be/f1L8S28Lqk	For a video on role of the PGT, visit https://youtu.be/P2tCunZaEVM
Governing Legislation: Criminal Code, RSC 1985 c. C-46	Governing Legislation: Adult Guardianship Act R5BC 1996 c. 6	Governing Legislation: Public Guardian and Trustee Act R5BC 1996 c.383
Why would you call? You suspect a crime has occurred, might occur or someone is exhibiting behavior indicating a lack of wellbeing and unpredictability.	Why would you call? You are concerned that an adult is being abused, neglected or is self neglecting and is unable to seek support and assistance on their own due to: <ul style="list-style-type: none"> physical restraint, a physical handicap limiting ability to seek help, or an illness, disease, injury or other condition affecting ability to make decisions about the abuse or neglect The adult may live in their own home, the home of a relative, a care facility, or any other place except correctional centres.	Why would you call? You have reason to believe that an adult is not capable of managing their financial and legal affairs and there is imminent risk to their assets. Concerns may include: <ul style="list-style-type: none"> the adult appears to be under duress and going along with decisions they do not agree with there may be financial mismanagement of an adult's financial affairs the adult may not be able to look after their financial affairs and needs someone to make financial decisions someone with authority to manage the adult's financial affairs may not be fulfilling their duties and responsibilities
Where should you call? <ul style="list-style-type: none"> Emergency - Call 911 if you suspect <ul style="list-style-type: none"> Immediate risk to a person's physical safety, or A crime is occurring Local Police non-emergency Tel: _____ 	Where should you call? <p>View https://www.trustee.bc.ca/Documents/designated-agency-responders/Designated_Agencies_Contacts.pdf for links to all Designated Agencies, or visit your Health Authority website (search abuse and neglect)</p> <ul style="list-style-type: none"> Local Health Authority Tel: _____ Local Community Living BC (CLBC) Tel: _____ 	Where should you call? <p>Visit https://www.trustee.bc.ca/services/services-to-adults/assessment-and-investigation-services.aspx for PGT referral form. Contact Information:</p> <ul style="list-style-type: none"> Toll free Tel: 1.877.511.4111 Local Tel: 604.660.4507 Toll free Fax: 1.855.660.9479 Local Fax: 604.660.9479 Email: AIS-PDS@trustee.bc.ca
What can you expect? You will be asked to provide information about the nature of your concern, the adult you feel is a victim and any possible suspect(s). You can expect that some basic information about yourself will also be requested.	What can you expect? You will be asked to provide information about the adult and the nature of your concern.	What can you expect? You will be asked to provide information about the nature of your concern, personal information about the adult and any decision maker.
Actions may include: <ul style="list-style-type: none"> Attending the location Dispatching special units where available Visiting adult, gathering information and evidence which may indicate a criminal offence such as: <ul style="list-style-type: none"> assault, sexual assault, failure to provide necessities of life theft, theft by power of attorney fraud, forgery, extortion Liaising with Designated Agency and/or Public Guardian and Trustee as required Assessing for adult's wellbeing Considering peace bonds, no contact orders Referring to community resources Considering/recommending charges 	Actions may include: <ul style="list-style-type: none"> Interviewing adult and others Requesting information Offering support and assistance (includes referral to community resources) Liaising with Public Guardian and Trustee and/or police as required Reporting suspected crimes to police Exercising emergency powers to enter and remove adult to a safe place Obtaining a restraining order Obtaining a court order for support and assistance 	Actions may include: <ul style="list-style-type: none"> Gathering additional information Requesting account information from financial institutions and current decision makers (attorney, representative, trustee, committee) Liaising with Designated Agency, community services, or police, as appropriate If urgent risk to assets, exercising protective powers such as: <ul style="list-style-type: none"> stopping withdrawals or sale of assets redirecting income for the adult's health or safety Looking for an appropriate decision maker. If none, and a decision maker is needed, consider obtaining authority as Committee of Estate, or in exceptional circumstances, Committee of Person.

Developed in partnership by the Public Guardian and Trustee, RCMP BC "E" Division, Crime Prevention Services, and Fraser Health Authority © Public Guardian and Trustee. Licensed under CC BY-NC-ND 3.0 <https://creativecommons.org/licenses/by-nc-nd/3.0/>. It can be used without asking permission, but must not be used for commercial purposes or altered in any way. For inquiries contact the PGT at ais-pds@trustee.bc.ca. Readers are referred to their organization's accompanying training materials and organizational policies for making reports to the police, designated agencies, or the PGT.

Public Guardian & Trustee (PGT)



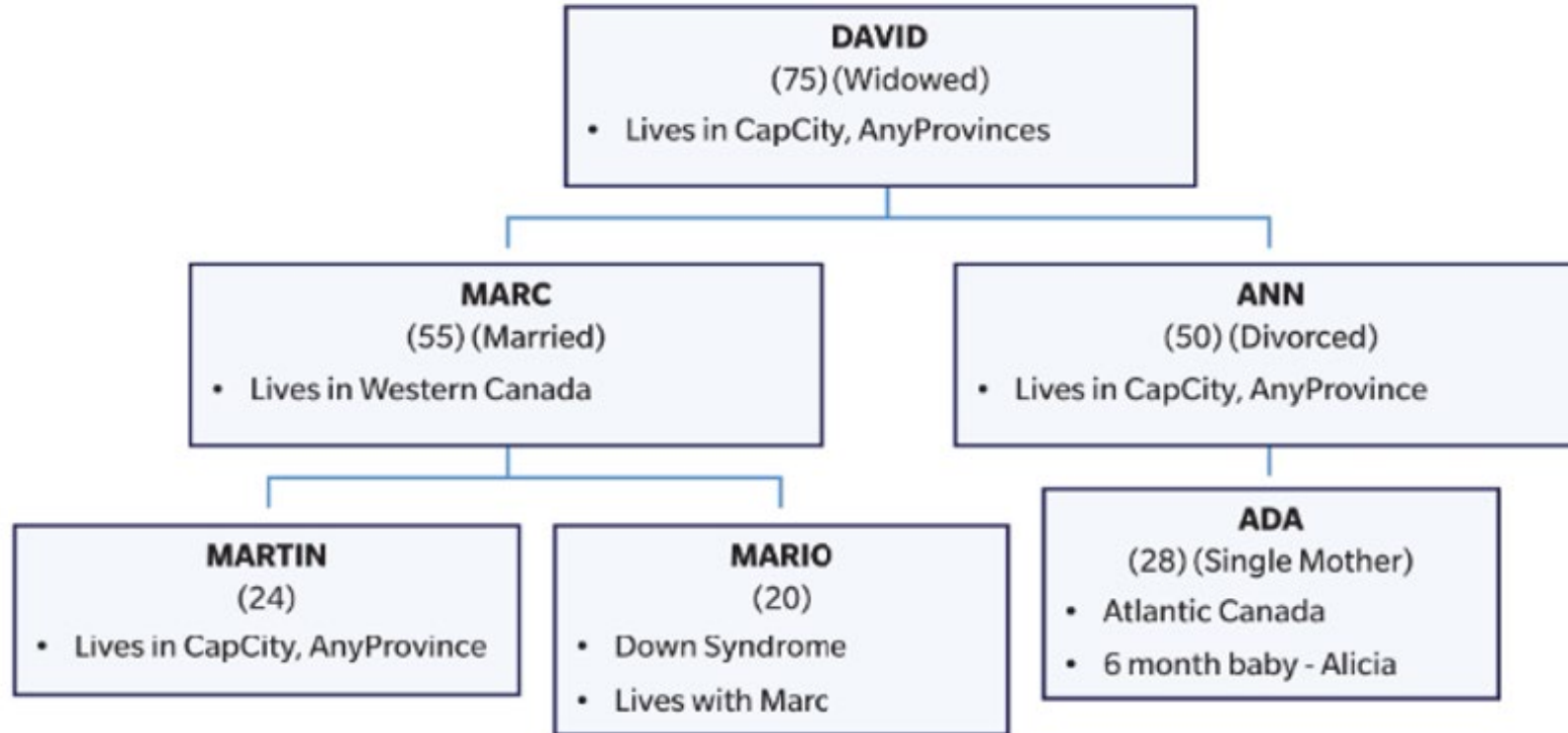
- PGT – Reports & Publications page – Adult Guardianship (resources for the public) includes:
<https://www.trustee.bc.ca/reports-and-publications/Pages/default.aspx>
 - info on planning options & health care decision making
 - brochure: *Protecting Adults from Abuse, Neglect & Self Neglect* (includes list of Designated Agencies & contact information for reporting to PGT or DA)
- Services to Adults/Assessment & Investigation Services
<https://www.trustee.bc.ca/services/services-to-adults/Pages/assessment-and-investigation-services.aspx>
 - Power to investigate if PGT has reason to believe person's interest in a trust, or assets, may be at risk, or a representative, attorney, committee has failed to comply with duties (s.17)
 - Power to conduct audit & request information (incl banks) (s.18)
 - Power to protect assets: stop withdrawals from FIs; halt sales; other reasonable steps for up to 120 days (30 days & up to three 30-day renewals) (s.19)
 - Identity of party who makes a referral is protected

BC's Designated Agencies



- 5 health authorities & Community Living BC (CLBC)
- Part 3 AGA: Support & assistance for adults who are abused or neglected AND unable to seek assistance because of
 - a) physical restraint,
 - b) a physical handicap that limits ability to seek help, or
 - c) an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.
- Anyone may report (s. 46)
 - Identity is protected & protection from “consequences” for reporting unless report is false or malicious (s. 46)
- Investigation powers; duty to report offences; outcomes (s. 51)
 - Referrals to PGT
 - Support & Assistance, & more

A Case Study ¹³



A Case Study



NEIGHBOUR: ALI

- Walks have stopped
- Not allowed to visit
- David refuses to see doctor and says Marc is too far away to help

BANKCORP BANK: CSR

- Accepted EPOA
- Changed 2 bank accounts to JWROS (equal ownership in Quebec)

BANKCORP INVESTMENTS ADVISOR: KAI

- Accepted EPOA
- Liquidated \$50,000 & sent funds to Ann

DOCTOR:

- Diagnosed early dementia 2 years ago
- Ann told him David did not want to come in

DAVID'S LAWYER:

- Instructed to hold original EPOA until Marc asks for it
- Ann tells him David has a new lawyer

NEIGHBOURHOOD LAWYER:

- Accepted instructions to register David's home JWROS (transfer to Ann in Quebec)

Comments on Case Study



- Scenario is recognized by many in this field:
 - Child (Ann) moves in to live with father (David) to “help”
 - David is in vulnerable circumstances
 - Not mobile during recovery post accident
 - Needs help with meals, around the house
 - Ann is single, has no job; daughter in NS has new baby
- Red flags:
 - Neighbour & family members denied access
 - Ann arranges for an EPOA & joint tenancies
 - Ann “talks” at meetings; David only answers yes/no type questions
 - Financial institutions & lawyers accept instructions
 - Changes to legal title/authority over accounts take place
 - Follow up with Dr did not occur

Comments on Case Study



- MANY in this scenario could have taken steps to help David and/or raised concerns with son, Marc, or David.
 - Lawyer, banker, investment advisor could have asked more questions about the transactions and talked to David alone
 - Neighbour could have contacted Marc
- Once concerned, Marc could have considered:
 - Share concerns with Dr, Bank, investment advisor, lawyer
 - While privacy and confidentiality rules apply, these professionals can receive information.
 - In BC: Refer concerns to PGT or Designated Agency
- David's lawyer & advisors had opportunities to ensure planning "built in" some safeguards, including:
 - encouraging David to have more open conversations with Ann & Marc so they both knew the plans & Ann would have been aware of original planning
 - Putting a TCP in place at investment firm. Query: What choices would David had made at that time?

Resources:



- Canadian Centre for Elder Law:
 - Practical Guide to Elder Abuse Law in Canada <https://ccelderlaw.ca/>
 - Other elder abuse resources: <https://www.bcli.org/sectors/elder-abuse/>
- Canadian Network for Prevention of Elder Abuse (CNPEA)
 - Curated list of resources <https://cnpea.ca/en/>
- Seniors First BC <https://seniorsfirstbc.ca/>
 - Seniors Abuse & Information Line (SAIL)
 - Victim Services (abuse, family, and/or sexual violence)
 - Public Education & Outreach
 - For eligible seniors: Elder Law Clinic, Advance Planning clinics, Legal Advocacy
- Ontario Securities Commission – Working with older and vulnerable Clients (white label materials)
<https://www.osc.ca/en/industry/registration-and-compliance/working-older-and-vulnerable-clients>

CCEL recent report & resources



- **Dementia + Decision-Making**

<https://www.bcli.org/ccel-projects/dementia-decision-making-project/>

- Includes videos, practical guides, decision-making pathways & public informational brochures including:
 - “Things to know about the law & decision-making”
 - “Words you may hear from a Health Care or Legal Professional”
- For professionals/supporters – a one page handout
 - “Supported decision making strategies”

Resources: BC CRNS



- BC Association of Community Response Networks <https://bccrns.ca/>
- Resources & programs
- Join a local CRN (80+) to learn about your community resources
 - CRNs facilitate prevention & education activities with local stakeholders
- Sign up for online Provincial Learning Events e.g.
 - (Apr 2, 2024: Speaker on the program “*See something, Say something! Reducing Risk for Older Adults*” designed to help identify high-risk adults, particularly those who live alone and who may be isolated.
 - Events are recorded and often available after the event
- Attend the workshop: *It’s Not Right!*
 - Learn how to recognize the warning signs of abuse among older adults and determine how to respond safely and supportively.
- Watch for World Elder Abuse Awareness Day events: (June 15)

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Please submit your questions in the chat

Thank You!



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