



**OBSI** OMBUDSMAN FOR BANKING  
SERVICES AND INVESTMENTS

**OSBI** OMBUDSMAN DES SERVICES  
BANCAIRES ET D'INVESTISSEMENT

# 2019 SENIORS REPORT



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**OBSI** is a national, independent and not-for-profit organization that helps resolve and reduce disputes between consumers and financial services firms from across Canada in both official languages.

OBSI is responsive to consumer inquiries, conducts fair and accessible investigations of unresolved disputes, and shares its knowledge and expertise with stakeholders and the public. If a consumer has a complaint against an OBSI participating firm that they are not able to resolve with the bank or firm, OBSI will investigate at no cost to the consumer.

OBSI believes that enhanced awareness of senior's issues among financial services providers and greater protections for senior consumers are positive steps that reinforce Canada's strong, stable financial services sector. As this report shows, seniors who are over 60 sometimes have different challenges with financial products and services. We hope stakeholders will find our observations useful and that this report will contribute to a better understanding of seniors' financial services experience in Canada.

# HOW WE COLLECTED OUR DATA

In this review, we present our case data collected for 2017 and 2018 as well the data we have collected as part of our 2017/2018 demographics and intake surveys.

In 2017 and 2018, we opened more than 1,480 cases. Of these, we have compiled a database of 816 opened cases in which consumers shared their demographic data. We connected data from all three types of complainants (Primary, Secondary and information provided by a third-party representative of a primary complainant). This allowed us to segment our case data by age and to compare and analyze that data as related to our senior complainants.

In the same way as some financial service providers and regulators, we used the age of 60 years to represent the threshold age of “senior.” We believe that this is appropriate considering that people in this age category can generally be differentiated from younger people based on their access to the workforce, relatively shorter investment and saving time horizons, increased focus on pension and retirement income related concerns, and diminished focus on other financial concerns, such as home purchase and funding the education of children.

We also considered the experience of older seniors, those 70 years or older. These seniors may experience vulnerabilities associated with aging, such as cognitive decline, lower levels of access to technology, impaired physical access to services through disability or limited access to transportation.

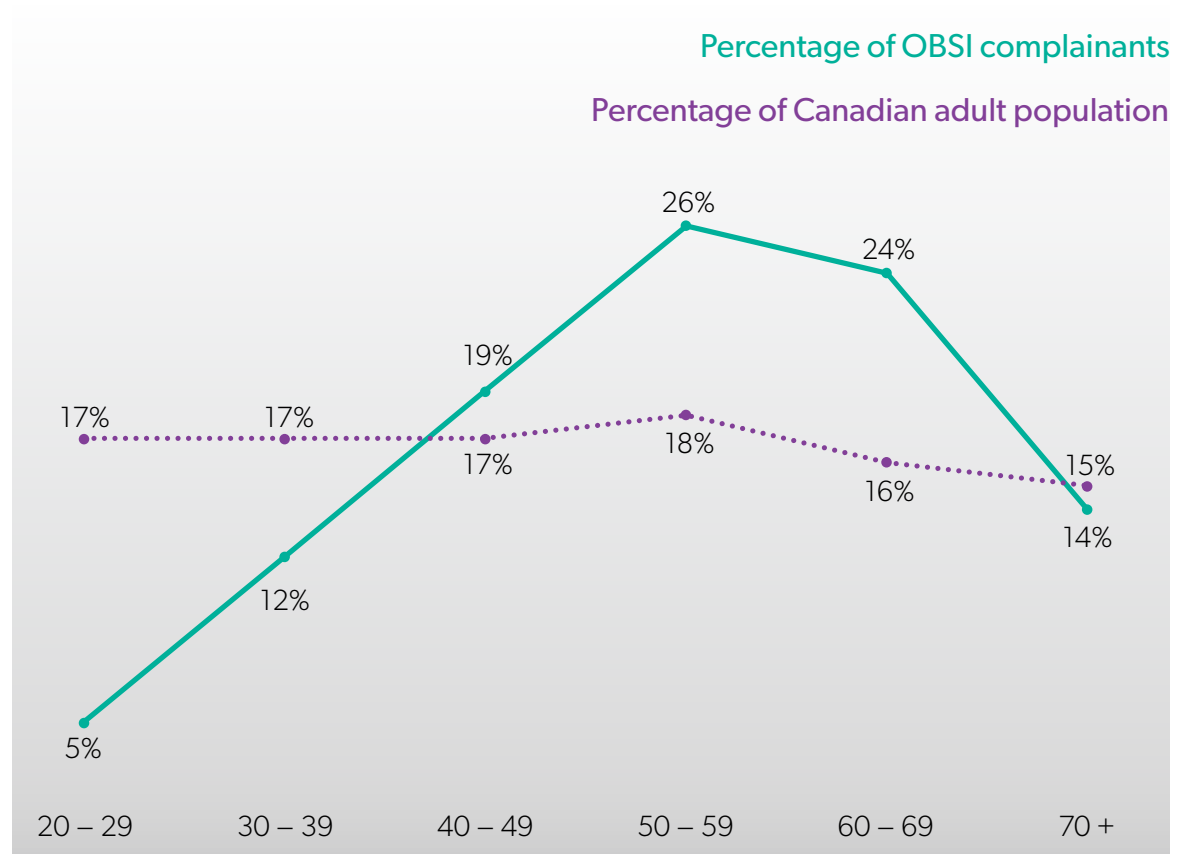


# DEMOGRAPHICS



# SENIORS USING OBSI'S SERVICES

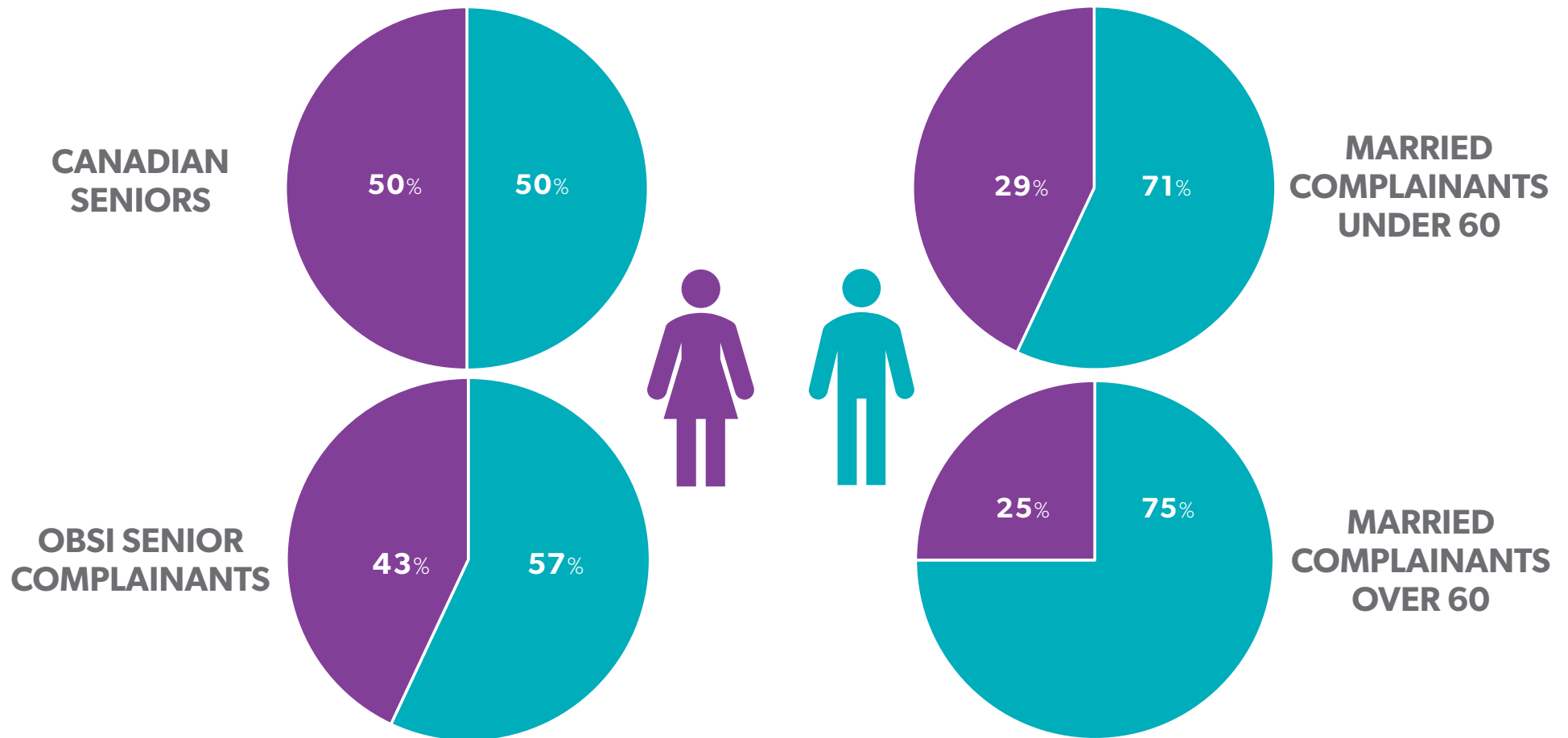
Canadians from coast to coast to coast and all walks of life come to OBSI looking for help to resolve their financial complaints. Our case data shows that about 38% of complaints to OBSI are made by consumers over the age of 60. This represents a higher proportion of complainants to OBSI than the Canadian seniors' population.<sup>1</sup>



# SENIOR MEN ARE MORE LIKELY TO MAKE A COMPLAINT THAN SENIOR WOMEN

Of complainants over 60 years of age, men represent 57% of all complainants. By comparison, the senior population in Canada is equally divided between men and women.<sup>2</sup>

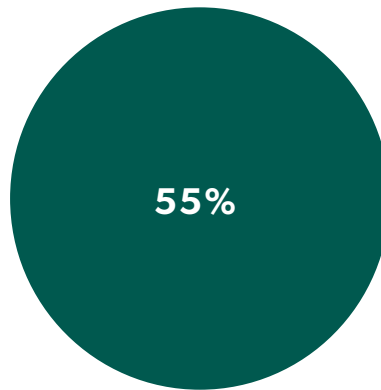
Among married complainants of all ages, most complaints are brought forward by men. This is significantly more likely for senior complainants. Men are the primary complainant in 71% of cases opened by married complainants under 60. This rises to 75% in complaints made by married complainants over 60.



# MOST SENIOR COMPLAINANTS ARE MARRIED, A REFLECTION OF THE CANADIAN SENIORS' POPULATION

Of senior complainants to OBSI, 55% are married and an additional 5% are living in common law relationships. This closely mirrors Canada's seniors' population, where 58% of Canadian seniors are married and 6% are in common law relationships.<sup>3</sup> Of complainants over 60, a greater proportion of the Canadian senior population are single, but fewer are widowed.

## OBSI SENIOR COMPLAINANTS



13%

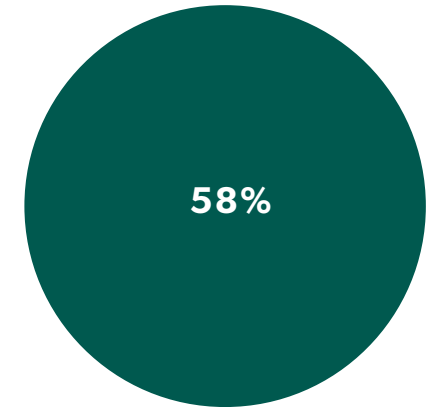
12%

11%

5%

3%

## CANADIAN SENIORS



18%

10%

6%

6%

2%

Married

Widowed

Divorced

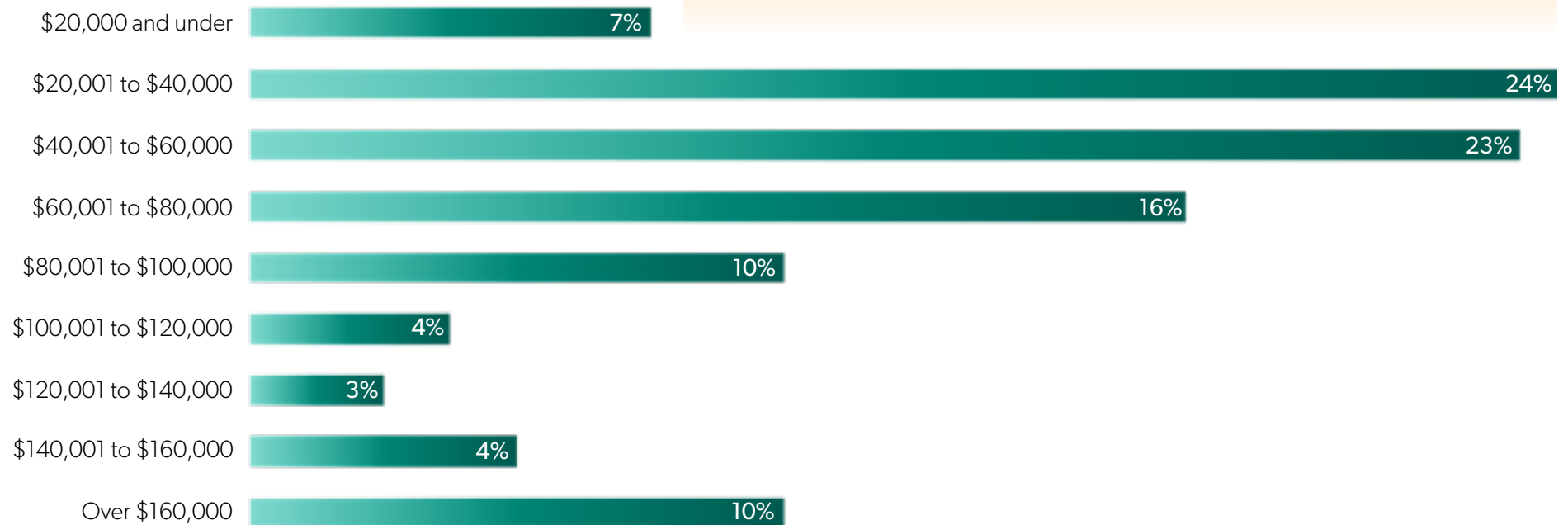
Single

Common law

Separated

# 54% OF SENIOR COMPLAINANTS REPORT THEIR HOUSEHOLD INCOME TO BE BELOW \$60,000

**MORE THAN 30% OF COMPLAINANTS OVER 60 REPORT THEIR HOUSEHOLD INCOMES TO BE BELOW \$40,000**

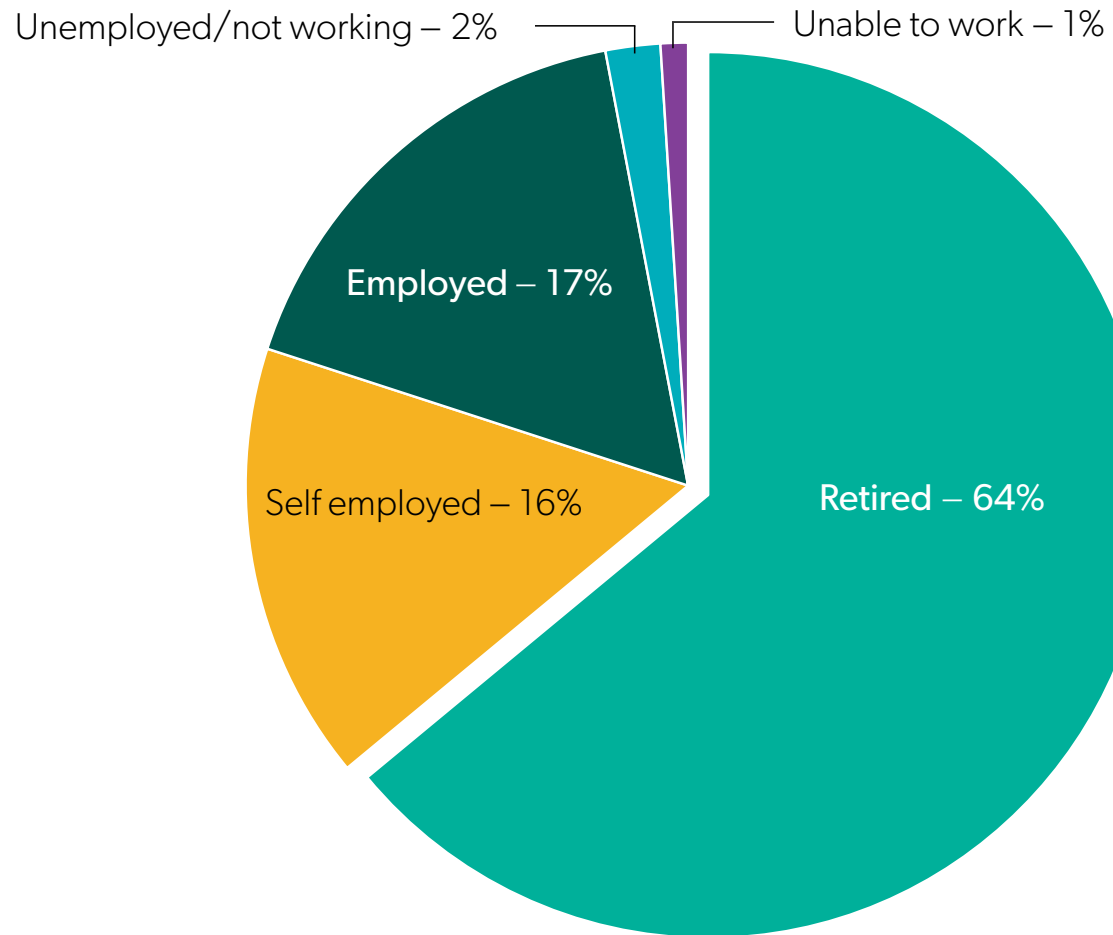




# ONE-THIRD OF SENIORS WHO MADE A COMPLAINT ARE ACTIVE IN THE WORKFORCE

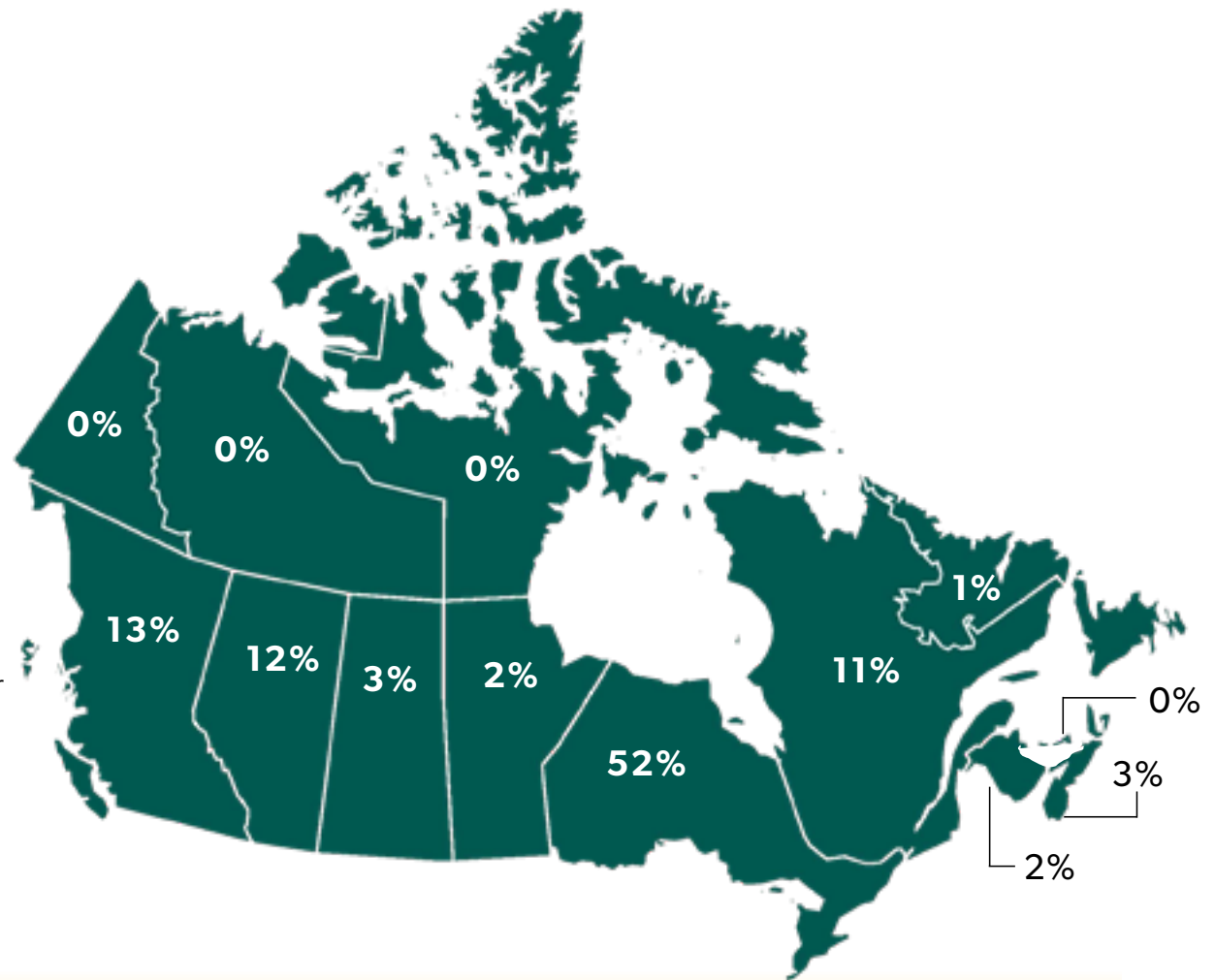
More than 30% of seniors who made a complaint to OBSI continue to be active in the workforce. Roughly half of those who are working reported being self employed.

Statistics Canada reports that 14% of Canadians aged 65 and older are employed, and nearly 20% of Canadian seniors report working at some point during the year.<sup>4</sup>



# WHERE DO SENIORS WHO USE OBSI'S SERVICES LIVE?

Over half of senior complainants are from Ontario. Ontario is proportionally over-represented in cases opened by those over the age of 60. Just over half of seniors' complaints to us come from the province, compared to a 38% share of Canada's 60+ population. British Columbia (13%) and Alberta (12%) are second and third in percentage of complaints – which is roughly comparable to their share of the senior population.<sup>5</sup> Quebec case volumes are generally lower as a share because the province provides other regulatory options for complaints handling. The population centres that OBSI complainants live in (e.g. urban) are proportional to that of the Canadian population.<sup>6</sup>

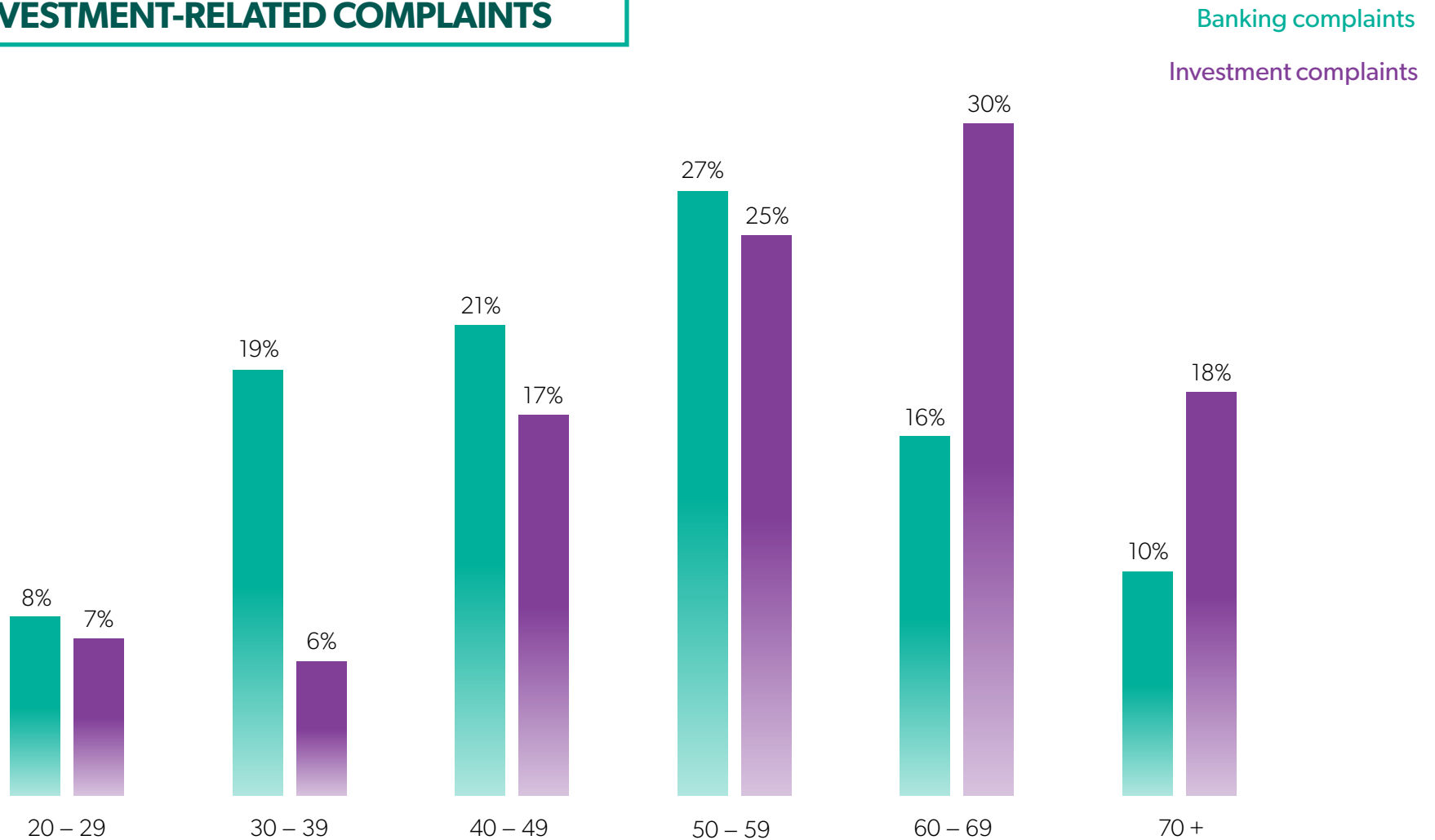


# COMPLAINTS WE RECEIVE FROM SENIORS



# SENIORS ARE MORE LIKELY TO BRING THEIR COMPLAINT TO OBSI THAN YOUNGER COMPLAINANTS

AS CANADIANS AGE, THEY'RE MORE LIKELY TO MAKE INVESTMENT-RELATED COMPLAINTS



The above chart may not total 100% due to rounding

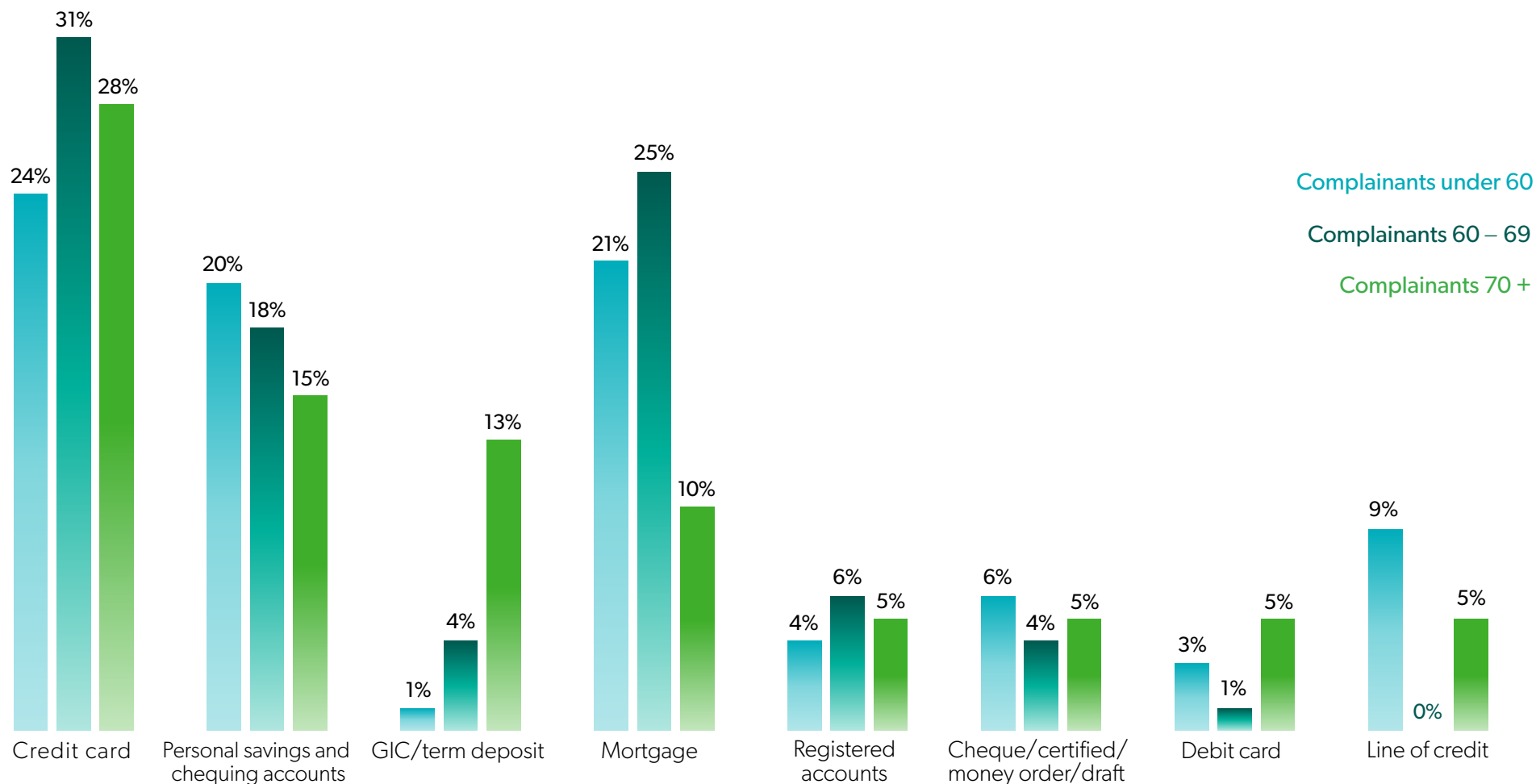
# BANKING PRODUCTS AND ISSUES

## BANKING PRODUCTS

Credit cards are the bank product we receive the most complaints from seniors about. Mortgage products represented a quarter of complaints for those between 60 and 69, dropping significantly to 10% for those over 70.

Complaints about GICs and term deposits increase significantly with age.

The chart below includes the leading products for each age group.



The above chart represents the top products and may not total 100%

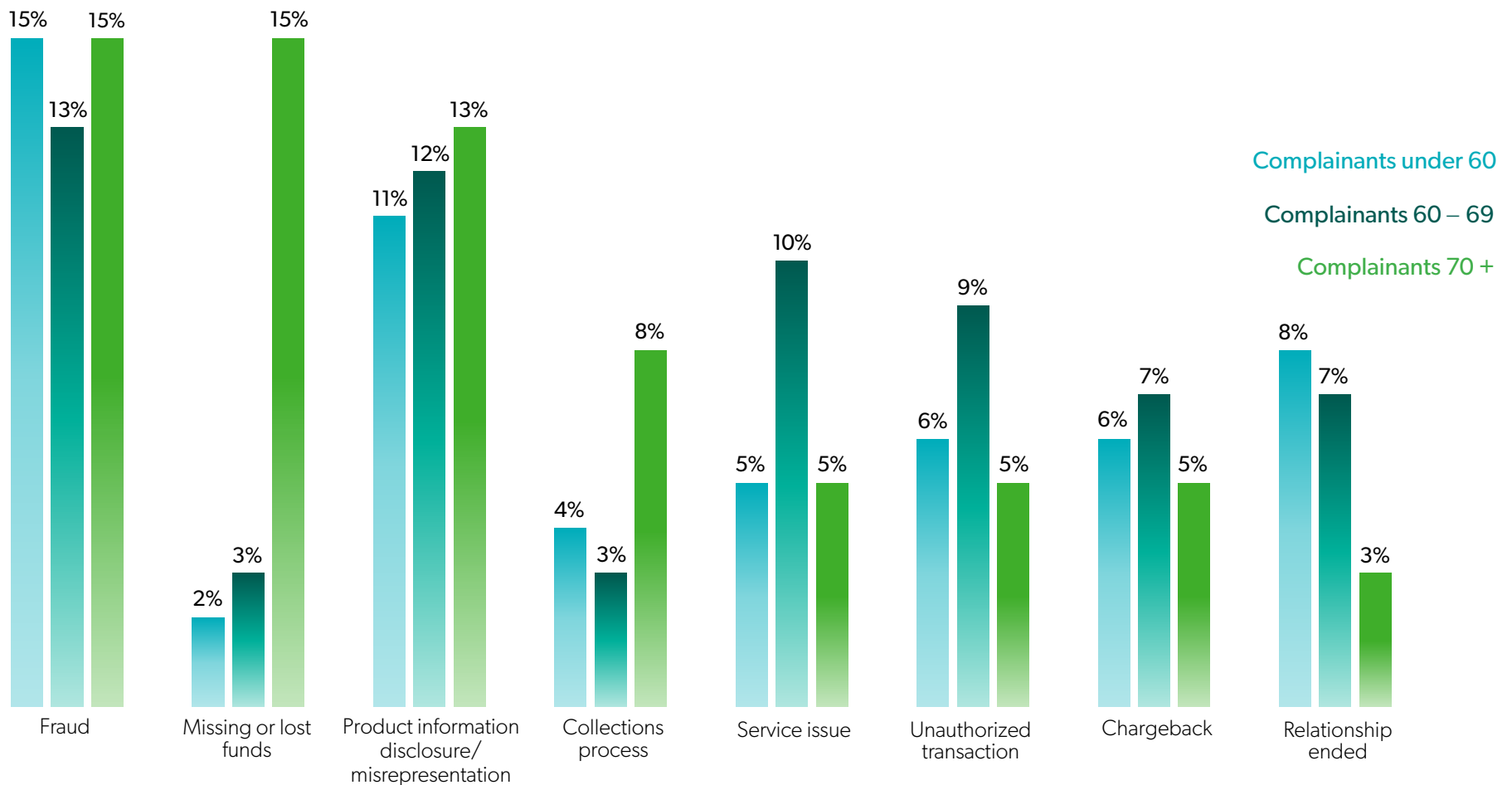


# BANKING ISSUES

Fraud is the most frequently reported banking issue across all age groups. Product information disclosure and/or misrepresentation are also issues shared by all age groups, rising slightly for older complainants.

Our case data also shows that seniors continue to encounter issues related to their day-to-day banking services. Cases opened involving service issues are most commonly reported by those aged 60 to 69 years.

The chart below includes the leading issues for each age group.



The above chart represents the top issues and may not total 100%



**CASES OPENED INVOLVING SERVICE, MISSING OR LOST FUNDS AND UNAUTHORIZED TRANSACTIONS MAKE UP 23% OF SENIORS' COMPLAINTS**

## TOP 3 COMBINED BANKING PRODUCTS AND ISSUES

### COMPLAINANTS UNDER 60

1. Mortgage – Pre-payment penalty
2. Credit Card – Chargeback
3. Personal Savings and Chequing Accounts – Relationship ended

### COMPLAINANTS 60 – 69

1. Credit Card – Chargeback
2. Mortgage – Product information disclosure/misrepresentation
3. Credit Card – Fraud

### COMPLAINANTS 70 +

1. Credit Card – Chargeback
2. Registered Accounts – Fraud
3. Personal Savings and Chequing Accounts – Missing or lost funds

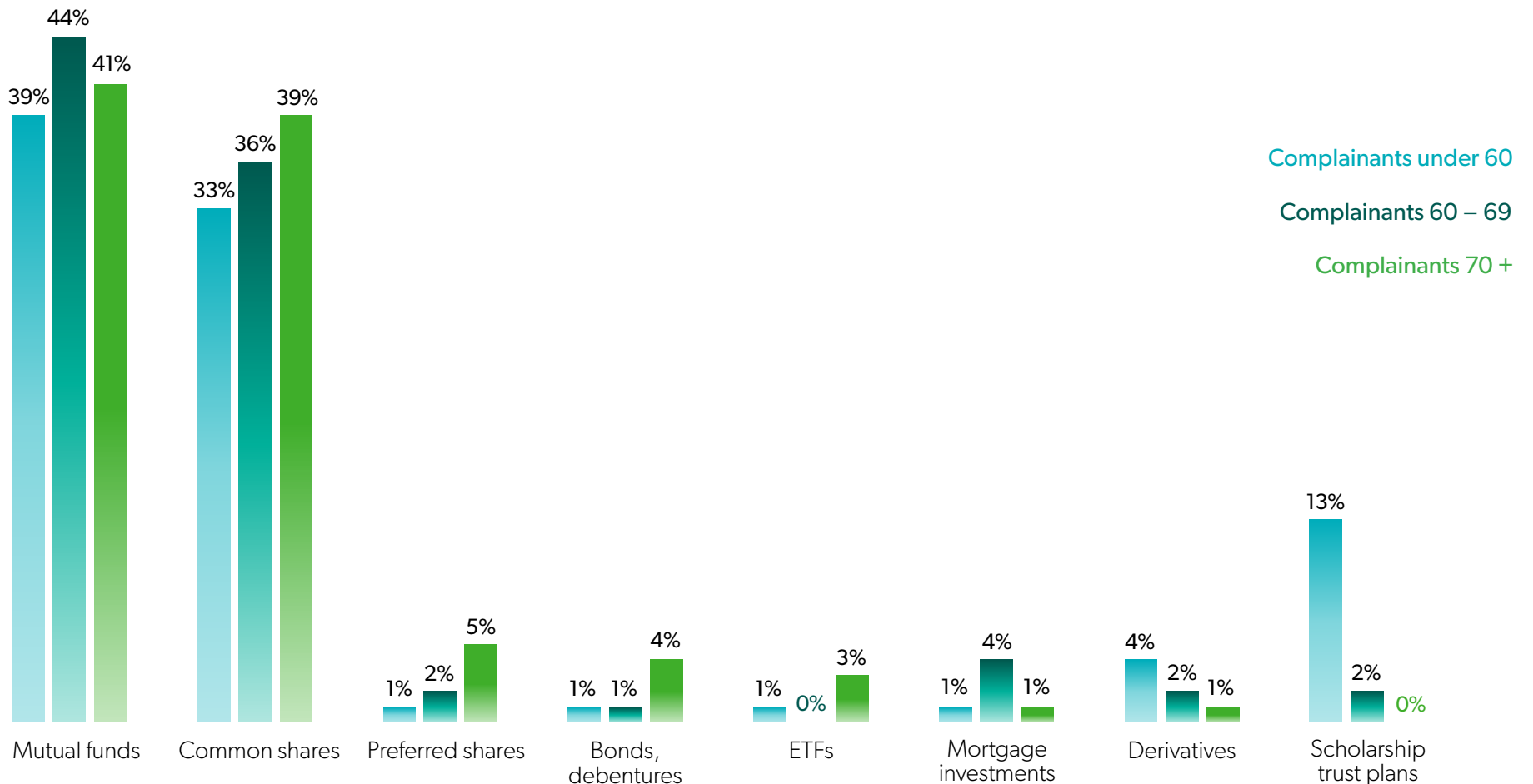
# INVESTMENTS PRODUCTS AND ISSUES

## INVESTMENT PRODUCTS

Overall, seniors are more likely than younger Canadians to complain about most kinds of investment products.

Mutual fund products and common shares are the most frequent types of complaints that seniors come to OBSI with.

The chart below includes the leading products for each age group.



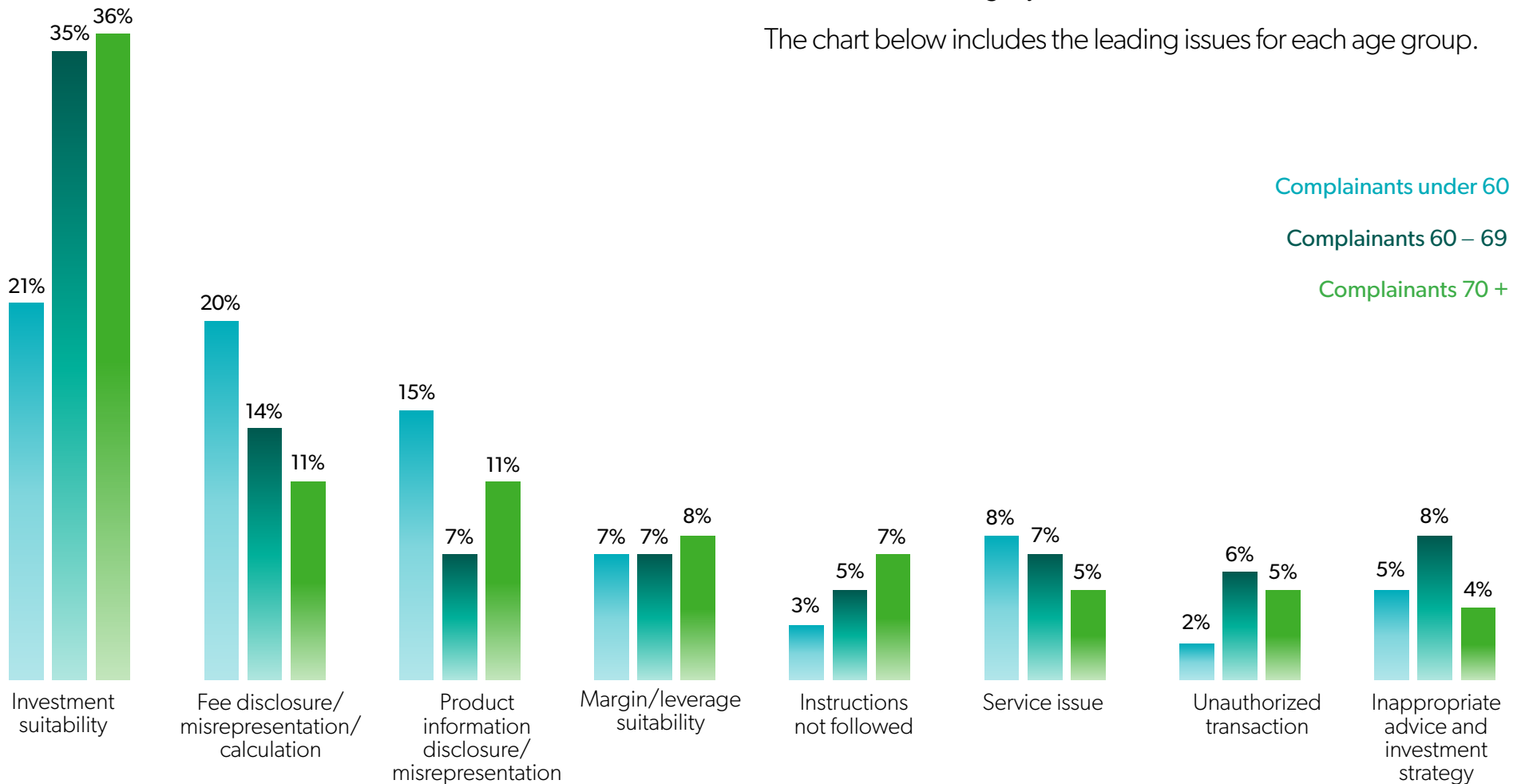
The above chart represents the top products and may not total 100%

# INVESTMENT ISSUES

More than a third of investment issues are related to suitability for complainants 60 to 69 and complainants over 70. For complainants under 60, a fifth of investment issues are related to suitability.

Complaints related to fee disclosure, misrepresentation or calculation, and complaints related to product information disclosure and/or misrepresentation, are both shared amongst all three age groups, although older Canadians report fewer issues in each category.

The chart below includes the leading issues for each age group.



The above chart represents the top issues and may not total 100%



**COMMON SHARES INVESTMENT SUITABILITY IS THE TOP COMBINED PRODUCT AND ISSUE AMONG SENIORS WHO COME TO OBSI**

## TOP 3 COMBINED INVESTMENT PRODUCTS AND ISSUES

### COMPLAINANTS UNDER 60

1. Common Shares – Investment suitability
2. Mutual Funds – Fee disclosure/misrepresentation/calculation
3. Mutual Funds – Margin or leverage suitability

### COMPLAINANTS 60 – 69

1. Common Shares – Investment suitability
2. Mutual Funds – Fee disclosure/misrepresentation/calculation
3. Mutual Funds – Investment suitability

### COMPLAINANTS 70 +

1. Mutual Funds – Investment suitability
2. Common Shares – Investment suitability
3. Mutual Funds – Product information disclosure/misrepresentation



# CASE STUDIES



# HIGH RISK INVESTMENTS SUITABLE FOR THIS SENIOR INVESTOR, BUT DSCs UNSUITABLE

## KEY LEARNINGS

- Seniors are not always low-risk investors – high risk investments can be suitable for some seniors, depending on their circumstances.
- Deferred sales charge (DSC) funds are generally not appropriate for senior investors due to their shorter investment timeframes.
- Investors should always confirm the accuracy of their Know-Your-Client (KYC) and read their disclosure documents carefully and ask questions to be sure they understand them.

Mr. H moved his investment portfolio to a new advisor in 2008. At the time, he was 71 and was still working full-time as a physician. He was an experienced investor with an investment portfolio of approximately \$1.4 million. He accepted his advisor's recommendations to buy gold and precious metals mutual funds with DSCs.

In 2016, a year after Mr. H had retired, he suffered a stroke. His son, who was a financial advisor in the United States, offered to help his father with his investments. When Mr. H's son became involved, he was surprised and concerned about his father's investments.

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## Allegations of unsuitable investments and lost opportunity

When Mr. H's son reviewed his father's portfolio, he calculated that his father had lost close to \$40,000 because of what he felt were unsuitable investments, unsuitable DSC fees and lost opportunity. He brought these concerns to the advisor's investment firm.

After discussing the DSC funds with Mr. H's son, the firm acknowledged that, while Mr. H's investments themselves were suitable, the DSC fee option was not suitable for him because the time horizon of the redemption schedule was too long given his age. The firm offered to reimburse the DSC fees Mr. H incurred when his investments were sold in 2017.

Mr. H's son did not agree with the firm that the investments were suitable. He felt they did not match his father's risk tolerance. He brought the complaint to OBSI.

## What did OBSI do?

We first investigated Mr. H's financial circumstances and risk tolerance. From 2008 to 2010, Mr. H signed numerous Know-Your-Client (KYC) forms as well as an acknowledgement letter that showed he accepted the risks and volatility of his investments. Upon review, we found that the firm's KYC information about Mr. H was accurate. We saw that Mr. H's advisor had made changes to the KYC documents over time to match the investments Mr. H was making, which can indicate a problem. However, we concluded that Mr. H was an experienced investor who could afford to withstand any potential losses. He also had the knowledge and capacity to understand or question the KYC documents that he signed.

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## What is investment suitability?

Investment advisors are required under securities laws to ensure that the investments they recommend are suitable for the person they are advising.

The suitability of an investment is a complex determination that is based on the advisor's detailed understanding at the time that investments are made or recommended of their client's:

- Investment needs and objectives, including things like the need for income and time horizon
- Financial circumstances, including things like the ability to afford potential losses
- Risk tolerance, including things like personal views and understanding about investment losses, gains and volatility

Advisors are required to fully understand the products that they recommend to their clients in order to make sure that each investment is suitable.

**TIP → Always answer your advisor's questions about your financial situation as fully and truthfully as you can. They aren't being nosy – they need to fully understand your situation to make the best recommendations for you.**

## Aggressive growth strategy and higher risk accepted by senior investor

Although he was in his seventies, a time when most investors are concerned about preserving their assets and maintaining their investment income, Mr. H wanted to grow his investments. He accepted his advisor's recommendation to buy gold and precious metals funds with DSCs. He was comfortable with having a lack of diversity in his portfolio. He spoke to his advisor each month and regularly communicated this. As an experienced investor, Mr. H also knew about the volatility of his investment portfolio.

## Some investments not suitable

Next, we investigated the complaint regarding the suitability of the investments. Based on Mr. H's KYC information, we performed an annual suitability analysis of his accounts from 2008 to 2016. We compared the risk level of his investments in each time period with his KYC parameters at the time. We found that even though some high-risk investments were suitable for Mr. H, during certain periods the risk composition of his accounts exceeded his documented KYC parameters and was therefore unsuitable.

To determine if Mr. H experienced any financial harm as a result, we compared the actual performance of the unsuitable portfolio to how a suitable portfolio would have performed during the times in question. Based on our calculations, we found that he incurred total financial harm of \$3,000 because of the unsuitable investments.

## Our recommendation

We recommended that the firm increase its previous offer of \$9,000 to \$12,000 to account for the losses on the unsuitable investments, as well as the unsuitable DSC fees. Mr. H and the firm accepted our recommendation.



### What is a Deferred Sales Charge?

A deferred sales charge (DSC) is a kind of fee that mutual fund investors pay to the fund company and the advisor that sells them the fund.

DSCs are paid in a lump sum if the fund is sold before a certain amount of time has passed – they are sometimes called “back-end load” fees for this reason. This differs from funds that charge sales fees upfront or those that have no sales fees.

In addition, all mutual funds charge management fees that are paid in smaller amounts during the whole time an investor owns a fund.

DSC fees are typically around 5% of the amount invested and go down the longer the fund is held. These fees are usually not charged if the money is being reinvested in another fund from the same company.

Usually, the time period during which DSC fees will be paid is five to seven years, and after that, there is usually no fee for selling the fund, but each fund is different.

**TIP →** *When looking at investment options, make sure your advisor has clearly explained all of the costs and fees for the investments they recommend. Only invest in a fund with a DSC fee if you are sure that you will not want or need to sell it for a long period of time.*



# UNSUITABLE INVESTMENT IN HIGH-RISK PRODUCTS AND OVER CONCENTRATION LEAD TO FINANCIAL HARM

## KEY LEARNINGS

- High-risk investments may not be suitable at all for some investors. For a medium risk investor, significant concentration in high-risk investments is not “balanced” by an allocation to low-risk investments.
- If an investor knows that an investment is unsuitable or risky but chooses to make the investment anyway, they can be partially responsible for their losses.

Ms. T was a retired book editor, living on her own. Her government retirement benefits were supplemented by a small employment pension. Her only financial assets were approximately \$30,000 invested in Government of Canada bonds. She had very little knowledge about investing. In 2007, her mother passed away and she inherited half of her parents’ estate – around \$420,000. She turned to her late mother’s investment dealer for help deciding what to do with the money.

The dealer had had an investment relationship with Ms. T’s parents since 1990. The dealer was only licensed (or “registered”) to sell exempt market investments, which are usually considered high-risk investments.

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### What is an exempt market investment?

Exempt market investments are usually high-risk investments that are not traded on stock markets and do not have to follow the same rules for information disclosure that apply to companies that have shares traded on stock markets (known as “public companies”). They are usually investments in smaller private companies or one-time projects. Key differences from public company investments include:

- Exempt market securities usually can’t be sold very easily once an investment is made and sometimes can’t be sold at all
- It is very hard to find out the accurate value of an exempt investment because information that prices are based on is not disclosed regularly
- Exempt investments are usually made in small companies in a fairly early stage or for a single project. They give access to a broader range of investments than are available on stock markets. This means that they could grow very fast or that they could fail and lose everything

**TIP → Exempt market investments are usually high risk. This means that you could make a lot, but you could also lose your whole investment. You also usually won’t be able to sell your investment once you own it. Only buy exempt market investments if you are comfortable with these risks.**

For more information about the exempt market, please see page 5 of the [OSC Staff Notice 45-716 2018 Ontario Exempt Market Report](#).



## Inheritance invested to generate extra retirement income

Ms. T planned to use the money she inherited to supplement her retirement income. On the recommendation of her dealer, she agreed to invest the money in a balanced manner that would provide her with both growth and income throughout her retirement. The dealer helped Ms. T open two investment accounts, and she signed a new account form for each. Ms. T's risk tolerance was listed as mostly low risk and her investment objectives were 60% income-producing investments and 40% growth-oriented investments.

## Increasing risk and concentration

Ms. T's dealer explained to her that lower-risk investments would not provide enough monthly income to meet her income requirements and recommended a mix of investments in low-risk GICs, high-risk exempt market products, and some medium-risk mutual funds that could be sold through a different dealer. Over the next three years, Ms. T's accounts mostly held medium and high-risk investments that exceeded her stated risk tolerance. Ms. T's accounts had also become concentrated in two specific securities.

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### What is my advisor licensed to sell?

Not all professionals who people turn to for investment advice are allowed to sell the same kinds of investments. For example, some can only sell mutual funds, some can only sell exempt market investments, and some can only sell insurance investments. Some can sell any kind of investments.

What an investment professional is allowed to sell depends on the kind of license (or "registration") they have. If you're curious about what license your investment professional has, you should ask them to explain that to you.

**TIP** → You can also find out about your advisor's license (and a lot more) by searching for them on the Canadian Securities Administrator's online search tool: [aretheyregistered.ca](https://www.aretheyregistered.ca)

## Dealer’s departure sheds light on the accounts

In 2015, Ms. T’s dealer left the firm, and her accounts were transferred to a new dealer at the same firm. When this happened, Ms. T reviewed her accounts and was alarmed to learn that the value of her investments was much lower than she expected. She contacted the firm to find out what had happened, and also complained about the concentration in the two securities in her accounts.

Ms. T did not receive a response from the firm right away. However, she signed an updated account form with her new dealer. Although exempt securities usually can’t be sold once an investor buys them, in this case, there was a resale option. Ms. T sold one of the concentrated investments but accepted her new dealer’s recommendation to continue holding the other.

## The firm responds

When the firm responded to Ms. T’s complaint, they told her that they believed that her investments had been suitable based on her investment objectives and risk tolerance. They also told her that the dividends from her two concentrated investments were necessary to fund her monthly income requirements. However, they offered her \$40,000 as a goodwill gesture. Ms. T. did not agree with the firm that her investments were suitable. She contacted OBSI.

## What did OBSI do?

We investigated and found that Ms. T’s KYC information with the firm accurately reflected her investment objectives and risk tolerance but that her dealer had failed to ensure that his investment recommendations were suitable for her based on her KYC information. Even after 2015 when a new dealer was assigned, her portfolio continued to be invested unsuitably for another two years until Ms. T withdrew her investments from the firm.

We found that Ms. T had raised her concerns about losses and concentration in her accounts appropriately. Her accounts were both unsuitably invested in higher risk equities and did not need to be concentrated in two securities. As a result, she incurred significant losses. However, in 2015 she chose to continue holding one of the unsuitable investments based on her new dealer’s recommendation. For these reasons, we found she shared some responsibility for her losses after 2015 and apportioned 30% of the financial harm she incurred after that to her.

## Our recommendation

We found the investment firm responsible for 100% of Ms. T’s financial harm incurred before September 2015 and 70% of the financial harm she incurred after September 2015. We recommended that the investment firm compensate Ms. T \$265,000 and take back the unsuitable exempt investments she still held but couldn’t sell.

# ESTATE PLANNING IN A TIME OF CRISIS LEADS TO MISCOMMUNICATION AND WISHES NOT BEING FOLLOWED

## KEY LEARNINGS

- Ensure that your estate plan is up to date before misfortune strikes. Estate planning at a time of personal crisis is difficult and prone to error.
- Review your will and estate plan with your executor, lawyer and investment advisor to ensure your instructions are clear and can be acted on. Estate planning is most effective when all parties know and understand their roles and responsibilities.

In 2014, Mr. M was gravely ill. At the time, most of his assets were held in a sizeable RRIF account, with his three sons designated as beneficiaries. His existing will provided that each of his three adult sons would receive an equal share of his estate outright, but this no longer matched his wishes because he felt that two of his sons were not capable of responsibly managing a sizeable inheritance.

To get his affairs in order, he met with his investment advisor and discussed how he would like his estate to be divided after he passed. Mr. M told his advisor that he still wished to give each son an equal share of his RRIF account but didn't want the payment to be made in a lump sum, especially to his two less responsible sons.



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## Estate plan is developed with investment advisor and lawyer

Mr. M and his advisor discussed that it was possible to create a trust in his will that would pay each son his inheritance gradually over time. To accomplish this, Mr. M's advisor recommended that Mr. M speak to a lawyer and update his will so his wishes were clear and could be easily carried out.

Mr. M's investment advisor then wrote a letter to Mr. M's lawyer. In the letter, he informed the lawyer that Mr. M wanted to create a trust in his will and explained the terms of the trust that he and Mr. M had discussed. The investment advisor also said in his letter that he had not revoked the RRIF beneficiary designations. Mr. M then met with the lawyer and signed his new will, which included the trust for his sons.

## The executor attempts to act on the will

In early 2015, Mr. M passed away. One of his sons, who was the executor of his will, notified Mr. M's investment advisor. The executor instructed the firm to close Mr. M's accounts and send the assets to him so that he could hold them in trust in accordance with the terms of Mr. M's will.

However, the firm's records showed that the beneficiaries of Mr. M's RRIF account were still his three sons. According to the beneficiary designation, the RRIF was supposed to be paid out in equal shares to each of the sons, and so would not be included in the assets that went to the executor under Mr. M's will. The executor feared that his two brothers would squander their inheritance.

Unfortunately, the new will had not included a provision that would override the beneficiary designation of the RRIF and Mr. M did not revoke the beneficiary designation during his lifetime. This meant that the firm was required to act according to the designation, and so the firm sold all the investments in the RRIF and dispersed the proceeds equally among Mr. M's sons.

The executor believed that Mr. M had taken the correct measures to revoke the beneficiaries on his RRSP and brought his complaint to OBSI.

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### What is a beneficiary designation?

For certain kinds of financial products, including registered investment accounts and insurance policies, you can "designate" one or more people to be paid the funds in the account if you die.

In most provinces, when you die the firm will cash in your account and pay the amount out directly to the people you have designated, so the money never goes to your executor and never becomes part of your estate.

It is important to know that the rules for beneficiary designations are different in each province, especially Quebec. Be sure to understand the rules that apply in your province. If you change provinces, make sure you check the rules there to find out if you need to update your estate plans.

**TIP →** *Make sure your beneficiary designations are up to date and reflect your current wishes. Beneficiary designations are very effective ways to distribute assets after you die, but it is easy to forget them or let them get out of date as things change in your life.*

## What did OBSI do?

When we investigated, we did not find any evidence that anyone had taken the steps necessary for Mr. M to revoke the designation. There was a record that the investment advisor had informed the lawyer that Mr. M had not revoked the beneficiaries. The implication was that the advisor thought that Mr. M's lawyer would draft the will to override the beneficiary designations. It made sense that the advisor would not revoke the designation before a new will was actually signed by Mr. M. The lawyer recalled that he was under the impression that the firm would change the beneficiary designation from the three sons to Mr. M's estate. It is possible that the lawyer told Mr. M that he should give this instruction to the firm. There was no record that Mr. M ever gave instructions to the firm to change the designation prior to his death. Unfortunately, Mr. M's will and beneficiary designations did not work together due to miscommunication between him, his advisor and his lawyer.



## Our recommendation

While Mr. M's wish that his assets be distributed to his sons over time was not complied with, we did not have a basis to recommend that the firm give the assets to the executor because they were legally required to follow the designation that was in place when Mr. M died. No compensation was recommended.

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# SENIOR FALLS PREY TO ANTIVIRUS SCAM

## KEY LEARNINGS

- Fraudsters often begin a relationship with a victim, appear to send them too much money, and then ask the victim to send money back. The money that the scammer sends is fake, but the money that the victim sends back is real.
- Even when they are innocent victims of fraud, consumers are responsible for losses resulting from their own actions.

One day in 2017, Mr. R's computer froze. A warning appeared on the screen and a message from what appeared to be a reputable company was displayed. It warned Mr. R that a virus had infected his computer and provided him with a number to call. He called and spoke to a representative who recommended an antivirus software to correct the issues. Mr. R agreed to buy the software for \$400.

### **Scammer requests access to the consumer's computer**

The agent said he would remove the virus and install the antivirus system but first, he would need remote access to Mr. R's computer. Mr. R agreed to provide access to his computer.

A month later, the company called Mr. R and said that there had been a problem with the antivirus system installed so they needed to remove the software. They said that they would refund his purchase. Once again, he provided remote access to an agent so that they could remove the supposedly faulty

software. To give him his refund, the agent told Mr. R that he would need to make a direct deposit into his bank account and requested Mr. R's bank information.

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## Scammer puts too much money into consumer's account and requests payback in gift cards

On his online banking screen, Mr. R could see the deposit that the agent made into his account. However, instead of just refunding the \$400, the agent made a deposit of \$4,000. The agent told Mr. R that he had made a mistake. He asked Mr. R to refund the difference. He instructed Mr. R to buy \$3,600 in gift cards. Mr. R complied with this request.

After Mr. R had given the agent the numbers on the back of the cards, he was told that the agent could not access the gift cards. The agent said he would return the \$3,600 to Mr. R's account. Following the agent's directions, Mr. R tried several times to help correct the error. Each time Mr. R would purchase new cards, each time the cards would be faulty, and then the funds would be again returned to his account.

## The fraud is discovered

Eventually, Mr. R discovered that all of the refunds had been made with funds taken from his own accounts and personal line of credit. He realized he had been scammed. He reported the events to his bank's fraud department and to the credit card company.

Mr. R believed the bank should reimburse him for the losses he sustained due to the actions of the fraudsters. He believed the bank's protection systems or their representatives should have noticed irregularities in his accounts. However, the bank disagreed. They told him that they did not offer these types of protection services. They also showed him that their account agreement clearly says that the customer is responsible for all transactions they complete.

## Our recommendation

Mr. R was the victim of a crime and suffered significant losses. However, we were unable to recommend compensation in his case. Unfortunately, he participated in the loss through his purchase of the gift cards, and he also provided the fraudsters access to his computer and online banking accounts that allowed them to complete the fraudulent transactions. The bank was not at fault because the losses resulted from legitimate purchases Mr. R made and then gave to the fraudsters. No compensation was recommended.



### Will my bank protect me from fraud?

Frauds involving credit cards and bank accounts are unfortunately common. Banks do use some techniques to try to detect fraudulent activity and protect their customers, but usually, banks are not responsible for frauds when they occur because there is no way for them to know whether a transaction by their customer is being done for legitimate reasons or fraudulent reasons.

Everyone should take steps to make sure that they and their loved ones are fraud-aware so they can protect themselves from becoming a victim.

**TIP →** *Once money is transferred out of a bank, it is usually not possible for the bank to get it back even if there is a very good reason. Never send money unless you are 100% sure about the person you are sending it to.*

# SENIOR FALLS VICTIM TO THE GRANDPARENT SCAM

## KEY LEARNINGS

- Bank staff are aware of the tactics commonly used by scammers and will do their best to warn customers when they suspect fraud is taking place. If your bank warns you about a transaction you are trying to complete, have an open mind and take their warnings seriously.
- Consumers are ultimately responsible for losses that result from their own actions, even when they are innocent victims.

### **Calls for help from a grandson in need**

Ms. W had a grandson she loved dearly who was living overseas teaching English in South Korea. One evening, she received a phone call from him. He told her that he wanted to move to China to continue teaching but he didn't have the money for the move. Ms. W wanted to help him, so she arranged a wire transfer to him for \$35,000.

One month later, the grandson phoned again. He told Ms. W he had been in an accident and arrested for drunk driving. He needed money to get out of jail. Concerned for his safety and well-being, Ms. W wired an additional \$87,000 to her grandson in a number of separate transfers.

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## The fraud is discovered

At Christmas, Ms. W's grandson came to visit her. When she asked about his troubles, he was surprised. He had not moved to China, nor had he been in an accident. He had never called his grandmother to ask for money. Ms. W realized she had been the victim of a scam. She immediately notified her bank, but her bank was unable to retrieve any of the money.

Ms. W was upset and complained to her bank. She said that they did not properly inform her of the risks associated with the wire transfers and sought compensation for her losses. The bank declined. It explained that bank staff had cautioned Ms. W about the possibility of fraud and had even offered ways to mitigate the risks on numerous occasions. Unsatisfied, Ms. W brought her complaint to OBSI.

## What did OBSI do?

During our investigation, we interviewed the bank staff who had assisted Ms. W with the wire transfers. They showed us evidence that they had raised their concerns with Ms. W because she had instructed them to prepare wire transfers to people other than her grandson. She had told bank staff that her grandson could not travel to a bank so the money would instead be delivered by a friend. Bank employees were wary of this story and explained to Ms. W that fraudsters often employed such tactics. They suggested that Ms. W, at a minimum, include her grandson's name in the payment order or send the funds to him "in trust". Ms. W declined to take these precautions.

Each time Ms. W went to her bank to make another transfer, branch staff asked if Ms. W had confirmed that her grandson received the money. They also repeatedly warned of the possibility of fraud. Each time, Ms. W indicated her grandson had received the money.

## Our recommendation

We found that the bank acted appropriately. It had warned Ms. W multiple times that sending the money via wire transfer as she had instructed would leave her vulnerable to fraud. The bank also provided Ms. W advice on how she could reduce the risk, but unfortunately she did not take this advice. OBSI did not recommend the bank compensate Ms. W for her losses.



# JOINT ACCOUNTS AND POWER OF ATTORNEY CAUSES FAMILY STRIFE

## KEY LEARNINGS

- Decisions made by the Attorney must be in the best interest of the grantor.
- To avoid future conflicts, the intention of the account holders must be made clear when using a joint account, even when it is subject to right of survivorship.

Mr. T had recently converted his personal chequing account to a joint account with his girlfriend, subject to a right of survivorship. At the time, the account had a \$15,000 balance. Mr. T's health was deteriorating, he asked his children to withdraw funds from the now joint account in order to pay some of his debts. He also signed a general power of attorney (POA) to his son and daughter authorizing them to act on his behalf.

Once the POA was in force at the bank, the children requested that the funds, then about \$21,000, all coming from Mr. T's own money, be transferred to a new bank account. The branch could not open a new account while they were in the branch because the person in charge was not available, so a draft for the funds was issued in Mr. T's children's names. The next day, a bank account was opened under their names and the \$21,000 bank draft was deposited.

Mr. T passed away shortly after. His children used \$2,500 from their new account to pay for his funeral expenses. Sometime later, the bank received a claim from Mr. T's girlfriend and transferred the remaining funds back to the original joint account and froze it, informing the children that the co-account holder (Mr. T's girlfriend) was claiming ownership to half of the account balance on the basis that Mr. T had intended this to be a gift for her. Faced with this family dispute, the bank refused to take any further action until it was instructed by a court justice as to how the funds were to be allocated. Mr. T's estate, represented by his children, brought their complaint to OBSI.

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## Our recommendation

OBSI investigated the circumstances surrounding the events. We determined that Mr. T's children had the right, with the POA, to withdraw the funds. However, the bank made an error because the funds should have remained in an account in Mr. T's name.

We discussed the matter at length with the bank and the estate representatives to assess each party's interests. Because everyone involved agreed to make compromises, we were able to reach a settlement. The bank agreed to unfreeze the funds. A portion of the amount was used as full and final payment of Mr. T's debts held at the bank, with the bank agreeing to erase part of the debt. The balance in the account remained in the co-account holder's name. This settlement prevented legal claims among all parties involved.



### What is a “right of survivorship”?

Most joint bank accounts are owned by two people with a “right of survivorship.” This means that when one of them dies, the other one automatically owns everything that is in the account. While both people are alive, they are both considered owners of all the money in the account, and each one can deal with the money as their own.

**TIP** → *Making someone a joint account holder is like giving them a gift of the whole balance of the account. If that is not what you want to do, get advice about alternative strategies you could make instead.*

# OBSERVATIONS

OBSI has been helping Canadian consumers and financial services firms resolve disputes for over 23 years, and we are well-positioned to observe the difficulties faced by senior consumers when they have a problem with the financial services they use. Whenever possible, we provide feedback to regulators and policy makers on the observations that we have made, including some of the areas highlighted below.

## BARRIERS

In our experience, seniors often experience difficulties with financial services due to:

- information barriers, as seniors may not know the right questions to ask. This may leave them ill equipped to assess the risks and benefits of any given product or situation. Some seniors may incorrectly assume that they have all of the information that they need and do not need to make further inquiries.
- physical barriers, like disability or limited access to transportation
- emotional and social barriers, such as trust in authority or the desire not to be seen as rude or unknowledgeable
- economic barriers, because consumers with lower assets may be less profitable for an institution but need extra services that are expensive to provide

## COMMUNICATION

Some seniors encounter difficulties because they have not read printed information that is provided to them or do not read the details of such documents, which limits their understanding and can lead to confusion and conflict. Seniors have reported to us being overwhelmed by lengthy disclosure documents that contain too much information and require extended periods of attention and focus.

## TECHNOLOGY

Technology offers some innovative solutions for the challenges faced by seniors, but in general they are less likely to seek out and take advantage of new technologies. Even seniors who are comfortable with technologies, such as online banking, are nevertheless more vulnerable than younger consumers because they may not be as aware of the security measures that they need to take to protect themselves. For a variety of reasons, they are also more vulnerable to electronic frauds and security breaches because they are aware of the technological tool but not its associated risk.



# POSSIBLE SOLUTIONS

The unique challenges faced by senior consumers are the subject of increasing public comment and discussion in recent years. Based on our experience, here are some potential solutions to these challenges that we believe would have the greatest impact.

- Firms should develop protocols for asking senior consumers, especially older seniors, to identify a “trusted person” for their accounts, who can be contacted if the firm has concerns. The establishment of such relationships and associated agreements would benefit seniors in all areas of financial services and should be supported by appropriate policies and regulations.
- Firms and their employees should be able to act reasonably on their concerns for a senior consumer without fear of legal or regulatory consequences. “Safe harbour” protections in regulations act to relieve firms and their employees of liability if they breach regulations when they believe they are acting in a senior’s best interests.
- Financial institutions could improve in their communications with seniors by reducing the onus on seniors to ask the right questions and providing key information proactively instead, presenting information when it is relevant to the senior consumer (i.e. at the time of a decision).



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- Shorter, simpler documents would alleviate some of the challenges faced by seniors, especially materials that the senior can take away and share with trusted family members or advisors before making decisions.
- Financial institutions should consider increasing the number of specific warnings to senior clients at key junctures or moments of risk. These warnings or information items should be delivered by personal outreach wherever possible. When they are delivered in writing, they should be as concise as possible, with fine print replaced with FAQs or similar smaller information items where feasible.
- When dealing with senior clients and consumers, employees and advisors should be encouraged to ask seniors carefully about what they want to achieve with a given product or service and inquire about their concerns. In verbal interactions, if questions are being asked of the senior, the reasons for the questions should be provided so that the senior does not rely on their own assumptions when giving their answers.
- When responding to a senior's question, providing a clear description of all relevant benefits and risks should be prioritized, without assuming the senior has the needed background knowledge. Written confirmations of the advice given should also be provided to help the senior to recall the discussion and for later consideration.
- Training for employees who deal with senior consumers and clients should encourage them to recognize vulnerabilities, perform basic assessments of capacity, and adjust the delivery of information to the needs of the individual. Employees should be encouraged to ask additional questions on account opening or product sale to seniors to help identify cognitive difficulties, to exercise patience, and bring sensitivity to the issues.
- Employees should be incentivized to take the appropriate amount of time serving senior consumers. Sales-driven modes of interaction can present unique difficulties for seniors, because they often need time, while salespeople need sales, creating an inherent tension that can reduce employees' incentives to take the care and time some seniors may need.
- For those seniors who may be able to access online banking services, education about risks and fraud is essential, and personal walk-through support, either in-branch, in-home or over the telephone should be considered as means to assist such seniors to use online services safely and effectively.



## HELPFUL RESOURCES

Many of the observations and ideas presented in this report are shared by organizations in the financial services and senior's community. We would like to take this opportunity to recognize the efforts of those working towards greater protections for senior consumers and enhanced awareness of the financial services issues Canadian seniors may face.

- FAIR Canada and the Canadian Centre of Elder Law – [Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity](#)
- Ontario Securities Commission – [Seniors Strategy](#) (2018)
- Ontario Securities Commission Research Publication – [Investing As We Age](#)
- Canadian Bankers' Association – [Your Money Seniors](#) program
- Mutual Fund Dealers' Association – [For Seniors](#)
- British Columbia Securities Commission – [Seniors and Adults Over 50: Check Before You Invest](#)

## ENDNOTES

1. Statistics Canada. [Table 17-10-0005-01. Population estimates on July 1st, by age and sex](#), April 4, 2019.
2. Ibid.
3. Statistics Canada. [Table 17-10-0060-01. Estimates of population as of July 1st, by marital status or legal marital status, age and sex](#), April 10, 2019.
4. Statistics Canada, "[Working seniors in Canada](#)," 2017.
5. Statistics Canada, [2016 Census of Population](#), March 22, 2019.
6. Statistics Canada, [Table 1.7. Distribution of Population by size of population centre, 2011 and 2016 censuses](#), March 25, 2019.