

ENSURING THE EFFECTIVENESS OF REGISTERED DISABILITY SAVINGS PLANS:

ISSUES AND RECOMMENDATIONS

Peterborough Poverty Reduction Network Income Security Work Group

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*"Too many people live in poverty in Peterborough
and it's time for that to change!"*

Table of Contents

Background on the Department of Finance Canada Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans	3
Background on the Peterborough Poverty Reduction Network	3
Peterborough’s Approach to the Review.....	4
INTRODUCTION.....	5
BASIC PARAMETERS.....	5
ESTABLISHING PLANS.....	8
Barriers Specific to People with Low Incomes.....	8
Qualifying for the Disability Tax Credit.....	10
Access to the Disability Tax Credit	10
Assessment Method	11
Form Design	13
Getting the DTC completed/ certified.....	13
Recommendations for improving the DTC	14
LEGAL REPRESENTATION.....	15
SAVINGS ACCUMULATION AND ACCESS	16
Rollovers	16
The 10-Year Rule.....	17
PLAN TERMINATION	18
Cessation of DTC Eligibility.....	18
IMPROVING ADMINISTRATION AND REDUCING RED TAPE.....	19
OTHER RELEVANT ISSUES	21
RDSP Promotion and Awareness.....	21
Additional Supports	22

BACKGROUND

Background on the Department of Finance Canada Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans

In 2006, the Minister of Finance appointed an Expert Panel to examine financial security for children with severe disabilities and received its report [A New Beginning](#) in December 2006. Subsequently, the Government acted on the recommendations of the Panel by introducing a new tax-assisted Registered Disability Savings Plan in Budget 2007, which became available in December 2008. In Budget 2011, the Government announced the undertaking of a review of the RDSP program as had been promised at the launch of the program.

The parameters of the review state

while there is broad agreement on the RDSP's overall structure and eligibility conditions, the review will provide an opportunity to seek input from individuals, families, groups representing Canadians with disabilities and financial institutions on specific features [of the RDSP].¹

The Government's consultation paper invites Canadians to comment on

...important elements of the program, including issues related to establishing plans, accessing plan savings, plan termination, and the administration of the RDSP program... and other relevant issues.

Background on the Peterborough Poverty Reduction Network (PPRN)

Poverty, including the disproportionate amount and depth of poverty among people living with disabilities in Peterborough City and County, has been a concern in our community for many years, leading to poverty alleviation and poverty reduction initiatives. The Peterborough Poverty Reduction Network (PPRN) is a community-based collaboration that has worked to bring together local poverty reduction efforts through various initiatives since December 2006. Six Work Groups, made up of community volunteers as well as representatives of a broad cross-section of community agencies, address a variety of poverty-reduction themes, for the abled and the disabled alike, including housing, food security, basic needs, employment and training, social inclusion and income security.

The purpose of the Income Security Work Group of the PPRN is to work

¹ 2011 Budget Plan, p. 127.

collaboratively locally, provincially and federally on initiatives to achieve income security for all people. We recognize that livable incomes are based on the real cost of life's necessities and provide critical pathways out of poverty. People living with disabilities are twice as likely as other Canadians to live in poverty and nearly one-third are dependent on social assistance benefits for their income.² Further, as discussed in *A New Beginning*, for many families who support and care for their family member with a disability, the family also lives with a reduced income.³

The launch of the Registered Disability Savings Plan in December 2008 was applauded by the PPRN and the Income Security Work Group. We recognized the RDSP as an innovative tool for poverty reduction over the long-term and welcomed its targeting of low- and moderate-income Canadians living with disabilities. A small group of dedicated volunteers began offering comprehensive information sessions on the RDSP within eight months of the launch achieving high turnouts at both public and private sessions. Over the last three years, we have been building alliances with a range of disability organizations, financial institutions/professionals and health care providers. We are currently developing a local matching grant initiative and a mentoring initiative to assist low-income people undertaking the steps to establish eligibility, open and manage an RDSP.

Our work on the RDSP benefits from the collective wisdom and experience of people living with disabilities and in poverty, as well as representatives from the Peterborough County-City Health Unit, Community Legal Centre, Social Planning Council, Canadian Mental Health Association, VON 360 Degree Clinic, Peterborough Health Coalition, Canadian Hearing Society, Community Opportunity and Innovation Network, Peterborough and District Labour Council, Royal Bank of Canada, City of Peterborough Social Services, Ontario Ministry of Community and Social Services, and other interested community members.

Peterborough's Approach to the Review

The Income Security Work Group held a Community Consultation on the Effectiveness of the RDSP on December 5, 2011. The consultation was open to people living with disabilities and their families, agencies providing services to people with disabilities, financial and legal service providers, health care professionals and interested citizens.

² John Stapleton, Open Policy Ontario, "Social Assistance Disability Income Expenditures: Why Costs Are Going Up," <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/income-security-reform/social-assistance-disability-income-expenditures>

³Expert Panel on Financial Security for Children with Severe Disabilities, *A New Beginning*, p. 6.

After a brief overview of the RDSP and the consultation guidelines, participants met in small groups of 8 to 10 people for a facilitated discussion on the parameters of the RDSP and issues related to establishing eligibility, opening and managing plans, legal representation, accessing savings, plan termination and other challenges. Forty people encompassing the groups noted above participated in the consultation.

This report summarizes the key issues and recommendations of the consultation and integrates additional input provided through local submissions and the broad range of experience of contributing members.

OUR RESPONSE

INTRODUCTION

Most people understand that the purpose of the RDSP is to build private long-term savings so that income will be higher in the future. Among low-income people with disabilities, particularly those on social assistance benefits mired in deep poverty, the RDSP offers hope – hope for a different future. For most people, that simply means a future where they can eat healthier food, rent a clean, safe apartment, obtain disability-related items or services and participate in community life.

For too many low-income people living with disabilities, the hope of the RDSP quickly fades. The overriding message of our community consultation was that the barriers to establishing eligibility, opening a plan, understanding the rules and managing the investment are too daunting. Still, the willingness of the community to share their experiences with the RDSP and contribute their ideas on what needs to change to make the RDSP more user-friendly and accessible, suggests that many believe that this program is essential for their well-being in the future.

BASIC PARAMETERS

“Are existing parameters effective in supporting the objectives of the RDSP? Are there aspects of these parameters that could be improved?”

Various parameters of the RDSP are discussed separately below, together with recommendations for improving those parameters.

Helping People Save:

In general, participants felt that the RDSP offered an extremely valuable opportunity for a particular group of qualified people to save. They also identified a wide variety of people who would benefit enormously from the program, but who have not enrolled because they face barriers under the current parameters, or who have

enrolled in the program but are not able to realize the intended benefits of the program because of existing restrictions.

It is recommended that the RDSP be modified to better meet the needs of these worthy, but currently excluded, under-served or underrepresented groups. They include:

- ▶ People who are over 49 (also refer to section on “Age Requirements” below)
- ▶ People with episodic illnesses, including episodic mental illnesses.
- ▶ People who find the RDSP too complicated to navigate.
- ▶ People who don’t enroll because they don’t want to be declared incompetent.
- ▶ People who are living on extremely low incomes and don’t have the ability to make any savings contributions.
- ▶ People who may need to access their saving before they are 60 years old.

Grants and Bonds:

Participants recognized that grants and bonds make a significant contribution to building savings for some people.

Many people living with disabilities who live on social assistance benefits also do not have families who are willing or able to contribute to their RDSP. Many potential beneficiaries have therefore not opened an RDSP. They do not realize that the bonds require no contribution. More education and support is needed about the availability of bonds. More education is needed to encourage those with the lowest incomes to deposit even the smallest amounts of money (eg., \$5 or \$10 per month) and for more financial institutions to accept smaller minimum contributions.

Participants recommended that special consideration should be given to people who would open an RDSP later in life (in their 40’s and 50’s), either because the program wasn’t set up until 2008, or because they became disabled later in life. It was recommended that the government continue to provide grants and bonds, particularly to low-income individuals, at least until the age of 60. These contributions could be smaller if necessary, or put on a sliding scale. This would provide added incentive for beneficiaries to enter the Plan when they are approaching 49 or are already older than 49. Otherwise, there is very little economic benefit for them, although their needs continue to be significant.

Participants also recommended that the opportunity to apply for grants and bonds retroactive to 2008 should be clarified and promoted, especially for people who are now close to the age of 49.

Further, as many people living with disabilities are not yet familiar with the availability and terms of the RDSP, and as many low-income people with disabilities have never applied for the DTC because they had no taxable income, it is

recommended that a grace period for receiving retroactive bonds and grants be extended to (potential) beneficiaries who are now in their 50's if their DTC eligibility is determined to be retroactive to 2008 and they were in their 40's at that time.

The amount of bonds and grants needs to be reviewed and revised regularly to ensure that the long-term savings objective of the RDSP is being fulfilled into the future. This is in keeping with the Government's Expert Panel whose specific plan definitions and details were designed so as to ensure that a disability savings plan would significantly reduce the depth of poverty of a person living on social assistance benefits with modest contributions.⁴

Age Requirements:

In addition to the fact that contributions of grants and bonds stop at 49 years of age (see comments in Grants and Bonds section above), the RDSP currently has other age requirements - personal contributions must stop at age 59, and withdrawals must start by age 60. Lifetime Disability Assistance Payments are also based on a life expectancy of 83 years.

Several recommendations were put forward related to these requirements:

Participants recommended that people should be able to contribute to the plan until they are 65.

Participants felt that people with disabilities often have shorter life spans and greater likelihood to require accommodations for their disabilities as they age (eg. to modify their homes as their physical health deteriorates). If they were not able to maximize the bond and grant contributions until they are 49, they will be unable to access the assets in their Plan before the age of 60 without heavy penalties. Participants recommended that more exceptions should be allowed. Another suggestion was that the 10-year rule on withdrawals could decline as a person gets older.

A life expectancy of 83 years is considered too high for people living with disabilities. The Lifetime Disability Assistance Payment calculations should use a lower life expectancy number to more accurately reflect the shorter life expectancy of people living with disabilities. Also, this new number could be the minimum life expectancy used to calculate LDAPs but a beneficiary could choose a longer life expectancy number at the time that the RDSP begins issuing LDAPs.

⁴ Expert Panel on Financial Security for Children with Severe Disabilities, *A New Beginning*, p. 27.

Many people strongly emphasized that there needs to be more support and education about the RDSP for individuals who are currently in their late 40's or early 50's who have been living with disabilities before 2008, and for people who become disabled later in life. This group tends not to see the value in the RDSP as they will not benefit greatly from the bonds and the grants or are not eligible for the bonds and grants. This is especially true for potential beneficiaries with low incomes.

Lifetime Contribution Limit:

The current lifetime contribution limit to an RDSP is \$200,000. Participants in the community consultation commented that if all the grant and bond incentives were taken advantage of over a lifetime, it could result in a significant amount of money. The results would not be the same if a person was not able to take advantage of these grants and bonds over time.

Some participants recommended that the contribution limit should be the same as for an RRSP. Others were concerned that this would even further restrict the ability of people with low and moderate incomes to achieve maximum value with the plan.

As with bonds and grants, the lifetime contribution limit needs to be reviewed and revised regularly to ensure that the long-term savings objective of the RDSP is being fulfilled into the future.

It should be made clear to RDSP holders if the contribution limit is in addition to or includes any grants and bonds (grant \$70,000, bonds \$20,000) contributed by the government.

ESTABLISHING PLANS

Are the general rules related to establishing RDSPs working well? Do beneficiaries and their families face obstacles in establishing RDSPs, and if so, how could these obstacles be overcome?

Barriers Specific to People with Low Incomes

People with disabilities and low incomes face additional obstacles to be overcome before opening (and successfully managing) an RDSP. These obstacles arise precisely because people live in poverty. Since the RDSP is intended to remediate poverty, targeted efforts *must* be made to address the additional challenges.

The single greatest obstacle to opening an RDSP that must be faced by many low-income people with disabilities are the challenges of applying for the Disability Tax

Credit. The details of these challenges are discussed fully below. Most have never applied for the DTC because they had no taxable income or they had no one to whom to transfer the credit or they did not know that the credit was transferable.

Based on numbers provided by the Department of Finance, the Expert Panel report *A New Beginning* identified that in 2001 an estimated 400,000 people had claimed the DTC and that an estimated 498,000 to 745,000 additional people likely met the qualifications of the DTC but did not have sufficient taxable income.⁵ In other words, fully one-half to two-thirds of the people who would be eligible to open an RDSP do not have the DTC certification required to open an RDSP. **The greatest flaw in the rollout of the RDSP is the near complete absence of education and support for obtaining the Disability Tax Credit for people with disabilities, supporting agencies and medical professionals.**

A second obstacle impeding people living with disabilities and on low incomes from opening an RDSP is the lack of financial literacy. Although people with low incomes want to save and value the opportunity to save, many lack experience, knowledge and confidence for saving, investing, withdrawing and planning. Transactional banking and small-scale credit/debt management are familiar to people with low incomes but these offer little insight for savings and investment. As a result, people either don't open an RDSP or don't take full advantage of their RDSP because they:

- ▶ have a difficult time assessing the potential value of the RDSP
- ▶ are intimidated or confused about how to plan and manage an investment
- ▶ are unsure how to evaluate the service, opportunities and limitations of the various financial institutions
- ▶ do not understand the various investment options
- ▶ make poor investment decisions – either taking too much risk or leaving money in a low interest savings account

We recommend that the government provide funding and participate in partnerships with financial service providers, financial literacy agencies, the disability community and other community partners to provide educational resources and support for the development of financial literacy among people living with disabilities on low and moderate incomes.

A third obstacle to opening an RDSP for many people with disabilities living on low incomes is the challenge of obtaining acceptable identification for the financial institution as well as ensuring that income taxes are up to date. The realities of living in poverty often mean that people do not have identification (usually lost during frequent moves) or have not kept up with filing income tax returns. The time and paperwork required is significant and the complexity of filing old tax returns is daunting.

⁵ Expert Panel on Financial Security for Children with Severe Disabilities, *A New Beginning*, p. 5.

Finally, distrust of the government keeps people from opening RDSPs. Some people have chosen not to open an RDSP because their past experiences with government programs have not been positive. For people who rely on social assistance benefits for income support, they do not trust that the RDSP will not be assessed as an asset or as income when calculating eligibility for support. Others fear they will lose eligibility for other income-tested supports such as subsidized housing, daycare and assistive devices. Unfortunately, the 10-year rule, the age restrictions on bonds and grants and the handling of the termination of plans are seen by some as harbingers of another program that will fail to respect people's real needs, dignity and self-worth.

Although there will always be those who distrust the government, we recommend that the Government encourage their provincial and territorial counterparts to actively educate and disseminate among their staff and clients the details of the exempt status of the RDSP as an asset and as income for social assistance benefits eligibility. We also recommend that the Government advocate with their provincial and territorial counterparts for the exemption of the RDSP in all asset- and income-tested programs.

Qualifying for the Disability Tax Credit

The difficulty (and often inability) of some groups of people with severe disabilities to qualify for the Disability Tax Credit is the single greatest obstacle to opening an RDSP and ensuring the effectiveness of the program.

Participants thought this is due partly to a definition of 'severe disability' that is too narrow, poorly understood and unevenly applied. In addition, they identified problems with the assessment method and criteria, form design, and process of getting the DTC-form certified by a qualified practitioner. These key issues with recommendations are discussed below.

Access to the Disability Tax Credit

Some participants with severe disabilities cannot take advantage of the opportunity to save for the future because they did not qualify for the disability tax credit (DTC). Those who had been turned down did not want to appeal because they did not want to invest their time, energy and resources into fighting government bureaucracy on what they perceived as a lost cause. Others decided not apply in the first place, despite living with a severe disability, because they did not think they would meet the criteria of the DTC or they had been told by their family physician, without an objective evaluation or explanation, that they would not meet the criteria. One psychiatrist stated, "You practically have to be dying to qualify."

It was also noted by participants that there is an unpredictability regarding who will qualify for the DTC. Some adults with serious disabilities were denied while others who were functioning independently were approved. This observation was made by parents, persons with disabilities and qualified practitioners and raised serious concerns about the reliability of the tool to assess and determine eligibility.

In addition, participants noted that people with certain types of disabilities are often excluded from obtaining the DTC. One such group is people with mental health disabilities (e.g., schizophrenia, bi-polar disorder). Participants identified that without a co-morbid medical condition, people with mental illness tend not to qualify even though many are severely disabled because the assessment criteria are too narrow (see section below on Assessment Method). Similarly, participants reported that people with chronic illnesses are often left out because the cumulative effect of their disabilities is often not recognized or is dismissed.

Overall, a good assessment tool should be reliable in determining eligibility; the DTC tool fails to do this. Participants recommend that the DTC needs to be examined for its effectiveness in supporting the goals of the RDSP.

Assessment Method

The parts of the medical assessment based on evaluating the effects of the person's disability on the basic Activities of Daily Living (ADL) are too restrictive and exclude large groups of people with disabilities who are markedly or significantly restricted and whose life outcomes and financial security will be marginal at best. Participants agreed that the definition of severe disability is too narrow and focused on persons with physical disabilities.

Parents of adult children with severe disabilities who lived at home and spouses of adults with severe disabilities thought that the DTC application needs to give consideration to the crucial role of family assistance in enabling the person with the disability to function and manage their ADLs and community life. Parents and spouses in this situation were deeply worried about the financial security of their loved one when they are no longer alive, particularly with the added prospect of the deterioration of the functioning of the person with the disability when the family or spousal supports are lost. One mother wondered if she needed to allow a crisis to occur to provide enough evidence about the severity of her son's disability so that he would qualify.

Although enabling families to ensure the financial security of their family member with severe disabilities is a primary purpose of the RDSP, it is not achieving this goal for some families because the supports that a family provides to ensure the functioning of the person with the disability is disqualifying that person from DTC certification and therefore the RDSP.

Several qualified professionals and support workers identified that the basic ADL categories used in the DTC are not broadly accepted in operational definitions of ADL. Typically, Activities of Daily Living are broken down into two categories. The first category is defined as activities that are oriented toward taking care of one's own body (usually referred to as Activities of Daily Living) and include 11 activities: bathing/showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep/rest and toilet hygiene. The second category is defined as activities that are oriented toward interacting with the environment (usually referred to as Instrumental Activities of Daily Living) and include: communication, community mobility, financial management, meal preparation and clean-up, safety procedures and emergency responses, shopping, care of others. This second category is essential for "functional adaptation".⁶

The Disability Tax Credit certification selects some activities from both of these categories while excluding other activities in a seemingly arbitrary fashion. It also defines seeing, hearing and speaking as Activities of Daily Living, which is not consistent with accepted operational definitions of ADL. This narrow use of "basic ADL" categories is inconsistent with provincial and territorial definitions of ADL with which medical professionals are most familiar (e.g., see Ontario and B.C. social services ministries).^{7, 8} In addition, the definition of ADL in the application for CPP-D is also broader (and the CPP-D application has strengths for more accurately assessing the severity of disability).

While these assessments serve different purposes, the contradictory definitions of ADL contribute to the difficulties and confusion experienced by qualified professionals attempting to complete assessments and fill out the range of forms. It also helps to explain why so many qualified professionals are reluctant to certify the DTC for their patients with disabilities.

Further, this narrower definition of ADL prevents many people with mental illness and chronic illnesses from qualifying for the DTC. When the more broadly accepted definitions of ADL are applied, the severity of these disabilities becomes more evident.

⁶ Blesedell Crepeau E, Cohn ES, Boyt Schell BA: **Willard Spackman's Occupational Therapy 11th edition.** *Wolters Kluwe*; 2009, p. 539.

⁷ Ontario Ministry of Community and Social Services: **Ontario Disability Support Program Income Support Directives.** <http://www.mcscs.gov.on.ca/en/mcscs/programs/social/directives/directives/ODSP Directives/income support/1 2 ODSP ISDirectives.aspx>

⁸ Ministry of Social Development, British Columbia: **Persons with Disabilities Designation Application.** <http://www.mhr.gov.bc.ca/forms/pdf/HR2883.pdf>

Again, several qualified professionals noted the DTC is not a good tool for measuring the severity of disability with children. Reliable and valid instruments for assessing ADL for children, such as the Wee FIM II sm and the Pediatric Evaluation of Disability Inventory, use different measures than the DTC. While it is recognised that the DTC form must be an easy tool to use, it needs to be modified to more accurately assess children to determine eligibility. Some professionals thought it would be necessary to develop separate pediatric and adult DTC assessment tools.

Participants and qualified practitioners alike identified that the DTC assessment tool needs to be revised, at minimum, to consider the amount of support/supervision a person has and/or needs for adaptive functioning in the community i.e. the role of family and caregivers in providing and supporting the activities of daily living, community functioning, school/education, employment, and socialization.

Highly relevant medical information also needs to have a more important role in the assessment of the severity of a disability. For example, a diagnosis provides insight into the limitations or restrictions on physical and/or mental functioning. The course of a condition, whether episodic, chronic or deteriorating as well as the prognosis and life expectancy informs the assessment of the severity of a disability at a given point in time. Currently, the objective assessment plays a secondary role and is not incorporated until the last page of the DTC form.

Form Design

Participants – parents, adults with disabilities, support workers and qualified professionals alike - describe the DTC-form as complex, confusing, contradictory, and time consuming to complete. The importance of the criterion of marked and significantly restricted along with the cumulative effects of the disability is especially difficult to comprehend with the design of the form.

Getting the DTC completed/ certified

Participants describe the process of getting the DTC completed as difficult, time consuming and overwhelming. They report difficulties understanding the form and communicating the impact of their disability on activities of daily living. The self-assessment questionnaire is so difficult to understand that it discourages people from proceeding to the next step. Many participants thought they needed an advocate to guide them through the process.

Many participants do not think family physicians and other practitioners have enough information about the DTC or time to complete the forms. Some report they do not think family physicians want to complete the form. Many feel that their physician cannot fully appreciate the impact of their disability on the activities of daily living when they only see their patients for 10 or 20 minutes one to three

times a year. People go to their doctor to discuss their medical problems or for acute care, not to discuss their activities of daily living.

Family doctors and other qualified practitioners report difficulty using the DTC form for assessing the complexity of the disability on their patient's activities of daily living. They find it restrictive and report it is almost impossible for most people with disabilities to qualify. A number of practitioners have not realized that the description of the impact of the disability on the activities of daily living is more important than the diagnosis.

Physicians may not complete the form because they do not think their patients will qualify. There is some evidence that physicians interpret severity using a more stringent definition than the Government intends – possibly due to confusion about the definition of ADL. There is also evidence that many qualified practitioners do not understand the cumulative effect option. Others do not believe that mental illnesses or chronic illnesses will qualify as severe disabilities under the DTC.

Finally, whereas the DTC guidelines advises doctors not to complete the form if they do not believe the person meets the severity requirements, many people are shut out without due consideration and without recourse.⁹ Lack of knowledge and understanding by physicians and other qualified practitioners is a roadblock for applying.

Recommendations for improving the DTC

Conduct a comprehensive review of the DTC to ensure that the criteria, assessment methods and form design are effective for determining the eligibility of children and adults with severe physical, mental and intellectual disabilities.

Simplify the format, design and language of the DTC certificate.

Provide more support and advocacy services for families of children with severe disabilities and adults with disabilities to access and apply for the DTC

Improve the information on the DTC that is provided for qualified practitioners. Provide education and training options to enable qualified practitioners to more effectively complete the DTC (or equivalent form) for assessing eligibility. This could include e-learning modules.

⁹ Canada Revenue Agency. Practitioners responsibilities – Completion of Form T2201

<http://www.cra-arc.gc.ca/tx/ndvdl/sgmnts/dsblts/qlfd-prcts/rspnsblts>

LEGAL REPRESENTATION

What is the appropriate approach to addressing legal representation issues? What elements would need to be part of a solution that would meet the needs of beneficiaries and their families, as well as the needs of RDSP providers?

The unifying principle in all the discussions about legal representation was that the person with the disability (the beneficiary) should have as much decision-making control of the money in an RDSP as possible. Several participants shared troubling stories of other financial arrangements where the wishes of the person with the disability were not respected or their interests not protected. Many were relieved that the RDSP had protection against such abuse.

Participants thought that requiring a person who cannot enter into a contract to be declared legally incompetent so that a legal guardian can open an RDSP for them strips people of dignity and autonomy. Some people haven't opened an RDSP because they do not want to be declared legally incompetent or their families do not want to do this to their loved one. Several participants recommended using a power of attorney to cover situations where a beneficiary's disabilities prevent them from entering into a contract. Others found the power of attorney process bizarre or were concerned that it could be abused.

Some participants thought that the issue of legal representation should be left for the provinces to sort out. Most participants thought that the federal Government should develop a solution specific to the RDSP to level the playing field for all DTC qualified Canadians with disabilities.

The first fundamental principle of any solution for legal representation is that people with disabilities should have the right to make decisions about their RDSP to the extent that they are able. People's abilities need to be recognized and facilitated in any solution. The second principle identified by participants is a solution that offers flexibility because every family is different, and every situation and disability is unique. The B.C. Representation Agreement was seen as a good solution.

Most participants supported a solution that would allow for shared decision-making. This solution would meet the needs of a wide variety of beneficiaries such as:

- ▶ people with intellectual disabilities who can make certain kinds of decisions about their financial resources but need assistance with complex decision-making or decisions with long-term consequences
- ▶ people with mental illness who may make bad decisions during certain cycles or phases of their illness (eg., cashing out their RDSP while manic)

- ▶ people who choose to share decision-making because they prefer to have the support. This option would be particularly beneficial for people who are not confident about their financial literacy.

Participants also suggested that consent forms could be designed enabling a beneficiary to appoint alternative or shared decision-makers for particular functions. Some examples would be a person designated only to share decision-making on investment decisions or the requirement of a joint signature for withdrawals.

One participant identified that for some people with disabilities who may be competent to enter a contract, it would be beneficial nonetheless if withdrawals required two or two out of three signatures to protect the interests of the beneficiary from others who may try to manipulate them.

There should be safeguards in place to ensure that the beneficiary's interests are not defeated and that their wishes are put into effect. This would have to include independent legal advice and some limited services, which should be free particularly given the poverty of most people living with disabilities. This legal advice could be done either directly through a government office or, perhaps more practically, through a federal government-funded legal aid certificate for this purpose. For example, beneficiaries could receive up to 4 hours of legal advice with services at a set rate per hour. In the case of Ontario, we have a legal clinic system in place but it is under huge financial pressure right now. If clinics provided this additional service they should receive federal funding. Either clinics could apply for funding to provide the service, or better yet, beneficiaries could qualify for legal aid certificate funding for this purpose.

SAVINGS ACCUMULATION AND ACCESS

Rollovers

Would it be appropriate to accommodate rollovers from RESPs to RDSPs? If so, how could a rollover be consistent with the objectives of both plans, while still being responsive to changes in individual circumstances?

Participants recommended that rollovers be allowed from RESPs to RDSPs particularly since it is not always clear as to the nature and extent of a child's disability and their future needs.

However, the issue of rollovers needs to be examined more broadly. The RDSP is designed to build private savings in order to generate substantial contributions to

long-term financial security.¹⁰ Expanding the ability to transfer funds from other registered plans to an RDSP on a tax-free basis would markedly improve and support the goal of the RDSP.

Participants identified that rollovers from RRSPs, RIFs and certain RPPs also be allowed from a deceased spouse, sibling and caregiver as identified by the Income Tax Act into the RDSP of a financially dependent beneficiary with contribution room. The proceeds would reduce the contribution room in an RDSP and would not attract grants.

Participants also strongly recommended that rollovers be allowed from the RRSP of a person with a disability into their own RDSP. For many people who become disabled later in life, they are no longer able to generate sufficient income from work and/or savings and must turn to social assistance benefits. However, before they can receive benefits, they must exhaust all savings, including cashing out and paying taxes on RRSPs. Since RRSPs are also intended to provide long-term financial security on a tax-assisted basis, the ability to continue to preserve assets that were intended for the same purpose as an RDSP on a tax-free basis makes eminently good sense. Becoming disabled should not cost people the future income security of their RRSP. Allowing rollovers from a beneficiary's RRSP into their RDSP provides a way to prevent poverty for people with disabilities who must turn to social assistance benefits.

The 10-Year Rule

Under what circumstances should exemptions from the 10-year rule be allowed? What alternatives to the 10-year rule could be considered that would improve access to savings, while still supporting the long-term savings objective of the RDSP?

Concerns were raised about some aspects of the way grants and bonds are awarded and clawed back under certain circumstances. Participants recognize that the 10-year rule is intended to promote long-term savings and prevent tax slippage. However, there are instances when beneficiaries should be able to access the RDSP on an exemption basis. These include:

- ▶ death
- ▶ life-threatening emergencies
- ▶ imminent shortened life expectancy
- ▶ financial hardship
- ▶ disability-related items and services
- ▶ modifications to a home to make it more accessible

¹⁰ Department of Finance Canada, "Ensuring the Effectiveness of Registered Disability Savings Plans, p. 6.

- ▶ health, safety or environmental maintenance or improvements to a home, such as a new furnace, replacement of windows and doors
- ▶ purchase of a car
- ▶ education, training or school
- ▶ purchase of a home

These exemptions should apply whether or not the beneficiary has contributed more money than the Government to the RDSP.

Several suggestions were also made as alternatives to the 10-Year rule. Participants recommended that the length of time grants and bonds must remain in the RDSP be reduced from 10 years. It was suggested that 5 years would be sufficient to meet the objectives of the Plan without unduly preventing access to savings. Alternatively, it was suggested that the 10-year rule decline as the beneficiary ages.

Another suggestion was that beneficiaries be able to withdraw a certain percentage of the assets limited to a certain number of times. That percentage could increase over the 10 year period or could be based on personal contributions.

PLAN TERMINATION

Cessation of DTC Eligibility

What should happen to an RDSP when a beneficiary ceases to be eligible for the DTC (particularly if there is a medical likelihood that the beneficiary would be eligible for the DTC in the foreseeable future)? Are changes needed to provide greater flexibility in these circumstances?

Participants were in unanimous agreement that beneficiaries who lose their Disability Tax Credit eligibility should *not* have to pay back their bonds and grants under the 10 year rule. This applied *regardless* of whether or not there was a medical likelihood that a beneficiary would become eligible again in the foreseeable future. Participants thought that the application of the 10-year rule to the loss of DTC eligibility was penalizing people for becoming healthier! If a person was eligible for the DTC when the bonds and grants were paid, the bonds and grants should remain vested to that person. The savings opportunity of those periods of severe disability are irretrievably lost but the need for financial security in the future still remains. And, in most cases, while the impact of people's disabilities may become less severe over time, most people will remain disabled and disadvantaged for savings opportunities.

When a beneficiary ceases to be eligible for the Disability Tax Credit and is likely to become eligible again in the foreseeable future, participants recommended that the

RDSP remain open and that all contributions, bonds and grants remain in the plan but no further contributions, bonds or grants be accepted until DTC eligibility is re-established. All other terms would remain the same. The same should apply during a review or appeal of DTC eligibility.

Similarly, when a beneficiary ceases to be eligible for the Disability Tax Credit and is unlikely to become eligible again in the foreseeable future, participants recommended that the RDSP remain open and that all contributions, bonds and grants remain in the plan but no further contributions, bonds or grants be accepted. All other terms would remain the same. Alternatively, all contributions, bonds and grants could be rolled over into a locked-in account or LIRA. Or once the 10-year rule has expired on all bonds and grants, beneficiaries could elect (but not be required) to roll over the asset into an RRSP.

What happens to an RDSP when a beneficiary loses their eligibility for the DTC is critical because of the sudden and high tax burden of the withdrawal of the asset. This would be onerous on any beneficiary and defeats the purpose of helping people to save for their long-term financial security - a need that applies to all people, abled and disabled.

However, what happens in these circumstances is especially critical for people who are receiving social assistance benefits. While some people's disability may improve to the point where they are no longer eligible for the DTC, most people will still be substantially disabled and dependent on social assistance benefits. A former beneficiary will suddenly have an asset that will disallow their entitlement to social assistance benefits. They will have to exhaust the asset before being restored to benefits leaving them once again in poverty (and possibly eligible once again for the DTC as a result of the impact of the process). *This consequence is the antithesis of the purpose of the RDSP and must be taken into account* when determining what happens when a beneficiary loses DTC eligibility. The current prospect of this situation already keeps some people from opening an RDSP.

Another justification for not clawing back bond and grant money from the RDSP of someone who loses their DTC eligibility, is that any RRSPs that person may have had prior to becoming disabled would have been cashed out before the person became eligible for provincial social assistance benefits. Allowing the beneficiary to keep the bonds and grants also helps to offset lost contribution room and lost future income from the lost RRSP.

IMPROVING ADMINISTRATION AND REDUCING RED TAPE

Can existing administrative rules be easily understood by beneficiaries and their families? If not, what steps can be taken to reduce red tape for beneficiaries and simplify the rules?

By and large, the financial institutions were not prepared for the rollout of the RDSP. As a result, people have struggled with numerous administrative challenges:

- ▶ long processing times
- ▶ repeat visits to complete missed paperwork
- ▶ lack of explanations as to the reasons for certain paperwork
- ▶ confusion as to who applies for the bonds and grants, how frequently and when to expect deposits. This appears to be handled differently by different financial institutions.
- ▶ inability to transfer between financial institutions. Some people are still having difficulties.
- ▶ some financial institutions require that a beneficiary first deposit RDSP contributions into their regular bank account then transfer it out. This causes worry and sometimes problems with social assistance benefits due to strict rules on asset levels, gift amounts and what is considered income.
- ▶ one beneficiary was denied bonds and grants because the name on her RDSP (married name) did not match the name on her social insurance card (maiden name). Although her tax returns had been accepted for 18 years under her married name, the Government refused to process her grants and bonds until she either changed the name on her SIN card or changed her name at the bank. It took the bank nine months to do their part of the paperwork to resolve.

Participants thought that the financial institutions and the Government were improving in their administration of the RDSP. However, participants recommended that more training take place with the staff that has responsibility for the RDSP so that questions can be fully and reliably answered. Finally, participants recommended that transfers between financial institutions be streamlined and made known to all financial institutions and that bond and grant processing be handled uniformly by all financial institutions.

A final concern is that the financial institutions have generally set up processes and products for the RDSP that are not accessible or appropriate for many (potential) beneficiaries – or for the financial institution. The income level and financial literacy of many people is a poor match with financial planners, investment retirement planners, discount brokerage accounts and mutual funds. Similarly, many types of disabilities do not work well with telephone services or fast-paced decision-making environments. Although this problem does not fall under the Government's control, it is suggested that the Government might host consultations of stakeholders to determine if there is an interest in developing more appropriate and accessible processes and products.

OTHER RELEVANT ISSUES

RDSP Promotion and Awareness

Consultation participants discussed the current RDSP advertisement strategies. In general there was an opinion that the RDSP is not well advertised by the government and that a lot more promotion and awareness is needed. Overall, the RDSP is not well understood by individuals and community partners.

Participants also thought that most of the Government's messaging on the RDSP, whether advertising the RDSP or making announcements or discussing it in the media, makes it sound like the RDSP is meant for children. Parents of adult children with disabilities and adults with disabilities initially did not think adults were eligible to open an RDSP. The perpetuation of this messaging keeps people from opening an RDSP.

Information materials are not accessible to everyone. Suggested remedies included:

- ▶ Writing information materials in plain language, preferably at grade 2 to 5 literacy level to accommodate both intellectual disabilities and lower levels of literacy.
- ▶ Providing alternate formats such as large print or captioning for video
- ▶ Offering audio and video options
- ▶ Using larger font on the Government's web pages with information about the RDSP

Participants also recommended making use of community newspapers and websites to get the word out. Asking provincial counterparts to include a mail out with social assistance payments was recommended.

Much of the Government's information materials omit important details about the RDSP. Participants suggested that materials include important details and rules about the RDSP but explain them in plain language. People would rather have a longer document than not have the information they need to make good decisions. Similarly, the contractors who provide local information sessions need to be able to provide more details on the RDSP and offer more support with the DTC.

There is a lack of referral information for more information or for information on related topics such as the Hensen Trust, power of attorney and wills. Participants suggested the development of a central database with links to local agencies that can give information or support.

Additional Supports

The complexities of the RDSP and the challenges of establishing eligibility and opening an RDSP are in themselves a barrier to opening an RDSP. In this consultation and in our considerable collective experience, we have learned that people need additional supports in order to participate in the RDSP. Consultation participants identified that anyone applying for an RDSP may need help going through the process. In particular, persons living on low and very low incomes need additional supports as they are coming to it disadvantaged. This is especially true if they do not have a strong family support system. Where there is a strong family support system, it is crucial that those who are able to give the support are well educated about the processes and details of the RDSP and the DTC, especially if literacy and language barriers exist.

Suggestions were given for improving and providing additional supports. Participants identified the importance of clearly identifying in a community who can help with what aspects of the application and set up processes. Whether a community volunteer, an agency supporting people with disabilities or a vocational service, support people need to understand the details of the RDSP and the DTC, the steps of applying for both as well as understanding the basic options of the various financial institutions and how to deal with them. Mentors or advocates available on a one-to-one basis are the best way to help potential beneficiaries through the steps.

It is strongly recommended that the Government establish funding opportunities for the development of community support services as well as training opportunities for volunteers, professionals and agencies.

All of which is respectfully submitted,

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