

DISABILITY ALERT



DISABILITY ALERT is a commentary on topics of current interest – usually topics relating to planning for individuals with disabilities and changes to current tax and social assistance legislation. Professional advice should be obtained before acting on any of this information.

RDSPs AND INTELLECTUAL DISABILITY

On paper, RDSPs are an amazing invention. They provide generous bonds and grants to boost the savings of a person with a disability. No tax is paid on the RDSP income while it accumulates because tax is deferred until RDSP funds are paid out to the beneficiary. In most provinces, the RDSP plan and its distributed income are both exempt under social assistance rules. All in all, RDSPs are a great deal.

OPENING A PLAN

There can be only one beneficiary of a RDSP who of course is the individual with a disability. This creates problems if the disability is cognitive because it causes some significant issues with the RDSP rules for a beneficiary who lacks legal capacity.

To begin with, an adult who lacks intellectual capacity cannot open an RDSP unless our guardianship laws are changed. However, current transitional rules allow certain family members to open an RDSP for a person over age 18 until the end of 2018. This is being allowed in order to give the provinces the chance to amend their guardianship laws to in some way exempt ODSPs from stringent guardianship rules.

WITHDRAWALS AND THE OFFICIAL GUARDIAN

The Office of the Official Guardian will administer the assets of a cognitively disabled person unless application is made to transfer administration to a family guardian. In many cases, this simply is not done because of the high cost and the complexity of doing it. For most people, it is a daunting exercise.

What is not being said about RDSPs, despite their many fine attributes, is that the Official Guardian may take control of the RDSP plan once payouts begin. At that time, a disabled person who is not legally competent will start receiving funds as the beneficiary of the plan.

Already the Official Guardian and Trustee in Ontario is administering several million dollars of money.

RDSP AND OTHER INVESTMENT CHOICES

Given long term investments in a RDSP with even minimal annual contributions, there can easily be a few hundred thousand dollars or more at maturity. The Official Guardian may take over the administration of the plan and family control is gone.

This should cause parents setting up RDSPs for their child with intellectual disabilities to think again. Not only could they lose control of the plan but their disabled child will not be able to pass on the plan at death because he or she does not have the competency to have a will. At death, the plan proceeds will go to family under provincial succession law distribution rules.

This is not to discourage RDSPs but the drawbacks mentioned above for intellectually challenged people should cause concern about the choice of investment options. In some cases, other investment choices will lead to fewer complications.

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