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# RDSPs and Adults With Mental Disabilities



DUNNING PLACE

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Saskatchewan  
Ministry of  
Justice and  
Attorney General



# **RDSPs and Adults with Mental Disabilities**

The purpose of this booklet is to outline briefly the rules and practice around Registered Disability Savings Plans (RDSPs) and adults with mental disabilities.

This booklet is a summary and a guide based on the law. It is not as comprehensive as the law itself. It is not legal advice. If, after reading this booklet, you have questions or are uncertain about how to interpret the information, you should consult with a lawyer.

## **What are RDSPs?**

RDSPs provide a mechanism by which a person with a disability can create a savings account for future years. The federal government determines whether you are eligible, and if so, how you would apply for and close out an RDSP.

An adult with a disability, or his or her legal representative, can hold an RDSP account. The holder is responsible to manage the account.

The person with the disability is the beneficiary of the contributions to the RDSP. The beneficiary or his or her legal representative has the authority to withdraw funds.

A beneficiary can hold only one RDSP at a time.

## **Who can contribute?**

Anyone can contribute to the RDSP with the permission of the holder:

- The federal government will contribute \$3,500 per year on the first \$1,500, depending upon the beneficiary's family income, to a lifetime maximum of \$70,000.
- The federal government may also contribute an additional \$1,000 per year to a maximum of \$20,000, where the adult has a low or modest income.
- The maximum amount that can be contributed to an RDSP is \$200,000.

- If a parent dies, proceeds of the parent's Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RIFF) or Registered Pension Plan (RPP) can be transferred to the RDSP of a child or grandchild who was financially dependent on the deceased.

## **How is money paid out of RDSPs?**

A payment from an RDSP is called a Disability Assistance Payment (DAP).

- DAPs on behalf of the beneficiary can be made to the beneficiary or the beneficiary's legal representative;
- DAPs can start any time. If they begin within 10 years after a federal government grant or bond is received, a partial repayment of the grant or bond may be required;
- A Lifetime Disability Assistance Payment (LDAP) is a type of DAP.
- LDAPs must start before the beneficiary turns 60; and
- Once started, they must continue until the plan runs out of funds or the beneficiary dies.

## **Money can also be taken from an RDSP to:**

- Reimburse the federal government for grants and bonds where the plan was primarily government assisted in a particular year; and
- Transfer from an existing RDSP to a new RDSP.

## **When must a plan close?**

An RDSP must be closed and all funds must be paid out of the plan where the beneficiary no longer qualifies for disability payments or the beneficiary dies. Any funds remaining will be paid to the beneficiary or the beneficiary's estate. If any repayment to the federal government is required, it will be paid first.

## **Why is mental capacity important?**

To set up an RDSP and manage it, a person must enter a contract with a financial institution. For contracts to be binding, the person signing the contract must have the capacity to understand the nature of the document and the consequences of signing the contract. Many persons with physical or mental disabilities have that capacity. However, some persons with extreme mental disabilities do not have the capacity to enter a contract. In this case, the person requires a legal representative appointed to sign the contract to set up an RDSP.

## **When a child has a mental disability**

The parent of a child who has a mental or physical disability can set up an RDSP for the child. The parent becomes the holder of the plan. On their website, at [www.cra-arc.gc.ca/tx/ndvdl/tpcs/rdsp-reei/pln-eng.html](http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/rdsp-reei/pln-eng.html), the federal government states:

When a plan is opened by a beneficiary's legal parent(s), the legal parent(s) may continue as holder(s) of the plan after the beneficiary reaches the age of majority. When the beneficiary becomes an adult and is legally able to enter into a contract, the beneficiary may be added to the RDSP as a joint holder if he or she so wishes. In all other cases, the beneficiary is the only one who can be a holder of the plan once he or she has reached the age of majority and is legally able to enter into contract. If a plan is opened by somebody other than the beneficiary or the beneficiary's legal parent(s), the person or body must be removed as a holder of the plan when the beneficiary reaches the age of majority.

## **When an adult has a mental disability – federal rules**

When a child with a mental disability becomes an adult, the question of capacity arises.

Where an adult is not able to open an RDSP on his or her own, the federal government has established the following rules, which are published at [www.cra-arc.gc.ca/tx/ndvdl/tpcs/rdsp-reei/pln-eng.html](http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/rdsp-reei/pln-eng.html):

An individual who is eligible to be a beneficiary of an RDSP (but for whom a plan has not yet been established) may have reached the age of majority but may not be legally able to enter into a contract due to a mental impairment. If so, another qualified person may open an RDSP for the individual and become a holder. These qualified persons are:

- a guardian, ... of the beneficiary, or an individual who is legally authorized to act for the beneficiary; or
- a public department, agency, or institution that is legally authorized to act for the beneficiary.

A legal parent may open a plan for a beneficiary who has reached the age of majority and is not legally able to enter into a contract due to a mental impairment when the plan is opened as a result of a transfer from another RDSP under which the parent is named as a holder. Also a legal parent of a beneficiary, who has reached the age of majority and is not legally able to enter into a contract due to a mental impairment, can open a plan for the beneficiary provided the legal parent is legally authorized to act on behalf of the beneficiary.

## **Currently in Saskatchewan – when an adult has a mental disability**

In Saskatchewan under *The Adult Guardianship and Co-decision-making Act*, adults are presumed to have capacity unless the contrary is shown.

*The Powers of Attorney Act, 2002* provides in section 4:

### **Who may grant an enduring power of attorney**

4 Any adult who has the capacity to understand the nature and effect of an enduring power of attorney may grant an enduring power of attorney.

A person with a mental disability having the understanding set out in section 4 above, could sign a power of attorney appointing a parent or family member to act on his or her behalf. If the mental disability is extreme and the person does not have the capacity to appoint an attorney, that person may not meet the test in section 4.

The section 4 capacity test sets a low threshold. In other words, if a person understands that he or she is signing a paper that appoints a parent as attorney to create a savings account, there would be sufficient understanding to give capacity to sign the power of attorney.

If it is determined that the person could not meet this capacity test, the next alternative would be to apply for property guardianship under *The Adult Guardianship and Co-decision-making Act*.

- Under this Act, a family member can apply to the Saskatchewan Court of Queen's Bench to be appointed a property guardian or a co-decision-maker. A property guardian would have sole authority to deal with an RDSP. A co-decision-maker, along with the person who has the mental disability, would have the right to manage and deal with the RDSP.
- This Act allows for appointments for limited or specific purposes only. Therefore, any application could be limited to appointment as a guardian for the purpose of opening and managing the RDSP only, and not all of the adult's property. An individual can make this application, but most people use a lawyer. A lawyer may charge \$2,000 to \$3,000 to make such an application.

Currently in Saskatchewan, there are some protections for a person with a mental disability who has a property guardian. For example, the property guardian must file a bond, if required by the court, and must file an annual accounting with the court and the Public Guardian and Trustee (PGT). A property guardian who is dishonest or improperly carries out his or her duties can be removed.

## **Special Limited Power of Attorney**

Before going ahead with guardianship, a special limited power of attorney should be considered. If the adult with a mental disability understands that this document will allow a parent or family member to set up and deal with a savings account, the parties should consider making such a power of attorney. This can be discussed with a lawyer.

It is suggested that the special limited power of attorney would give a parent the power to set up an RDSP, contribute funds, consent to someone else's contributing funds, or transfer the RDSP to another financial institution, but not the power to withdraw funds or close the RDSP. For someone to have the ability to withdraw funds, he or she would have to apply for full property guardianship. Full guardianship has the protection of annual accountings, bonds and the ability for removal.

## Is there a form I can use?

There is a standard form for a general power of attorney, but there is no standard form for a specific limited power of attorney authorizing set-up of RDSPs. Samples of forms can be obtained from your lawyer, or from the Internet. We have attached sample forms at the back of this booklet that you can use as a guide. These forms are available at [www.justice.gov.sk.ca/pgt](http://www.justice.gov.sk.ca/pgt).

## Contact Information

Public Guardian and Trustee of Saskatchewan  
100 - 1871 Smith Street  
REGINA, Saskatchewan S4P 4W4

Telephone: (306) 787-5424  
Toll Free: 1-877-787-5424  
Fax: (306) 787-5065

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Office Hours:  
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(Closed for the noon hour and holidays)

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# Sample Forms

## Enduring Power of Attorney Appointing a Property Attorney

*This form is to be used as a guide to the appointment of a property attorney for the limited purpose of setting up a Registered Disability Savings Plan (RDSP) for the grantor.*

This Power of Attorney is given on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (Name of grantor)

of \_\_\_\_\_  
(Street address) (City) (Province) (Postal code)

I appoint \_\_\_\_\_  
(Name of property attorney)

of \_\_\_\_\_  
(Street address) (City) (Province) (Postal code)

to be my property attorney with authority to set up a savings account (RDSP) for me with power to make payments, consent to payments by others and to transfer the account to another bank but with no power to take out money or close the account. My property attorney's authority shall not stop because of my lack of capacity occurring after signing this document.

\_\_\_\_\_  
(Signature of grantor)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of second witness)

\_\_\_\_\_  
(Date)

## Witness Certificate

*This form is to be completed by two witnesses.*

I, \_\_\_\_\_,  
(Name)

of \_\_\_\_\_  
(Street address) (City) (Province) (Postal code)

and I \_\_\_\_\_,  
(Name)

of \_\_\_\_\_  
(Street address) (City) (Province) (Postal code)

certify:

(a) That I witnessed the signing of the Power of Attorney of \_\_\_\_\_  
(Name of grantor)  
dated \_\_\_\_\_;

(b) That I am an adult with capacity and that I am not the attorney named in the above-mentioned Power of Attorney and that I am not a family member of either the grantor or the attorney;

(c) That in my opinion the grantor was an adult who could understand the nature and effect of the Power of Attorney at the time that he or she signed the above-mentioned Power of Attorney.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of second witness)

\_\_\_\_\_  
(Date)