

A lasting way to protect the vulnerable



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**By
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Merrick**

The true value of a person is not in the body or mind but in one's soul. There is a wonderful story of a great scholar who used to stand up out of respect when a person with developmental disabilities would enter the room. He felt that the soul of this person must be very great and special for coming into this world to fulfil his or her mission of perfection in this way.

Parents across Canada each day ask themselves, "What will happen to my child with special needs when I am gone?" These families save to ensure for the long-term financial security of a child with a severe disability.

The most critical consideration for parents and grandparents of a child with a severe disability is how to best ensure that child's financial security when they are no longer alive to provide support.

The recent federal budget has proposed the creation of a Regis-

tered Disability Saving Plan (RDSP) commencing in 2008. Contributions will not be tax deductible, but will have both modest and major matching contributions by the federal government.

It will only be available to families whose child qualifies for the disability tax credit or disability amount in the *Income Tax Act*.

The child must be approved by the Canada Revenue Agency (CRA) as being "markedly restricted" in the activities of daily living in one or more of several ways.

This plan, which is very similar to the already established RESP (Registered Education Savings Plan) will allow contributions to the RDSP by family and friends of a person with marked disabilities. Although these contributions will not be tax deductible by the contributor, the investment earnings in the plan will be tax deferred until withdrawal.

The lifetime RDSP contributions will have a limit of \$200,000.

The RDSP will allow a lump sum contribution.

However, the disadvantage of a lump sum contribution will be that it will not have the advantage of the government contribution associated with other dollar contributions except in the single year of settlement.

Capital contributions withdrawn from the RDSP will not be taxed, as the tax has already been

paid on these sums. Accumulated investment income will be taxable in the hands of the beneficiary, as it is withdrawn.

Properly planned, this will result in not just deferral of taxes but also non-taxation, due to the use of the personal exemption and disability tax credits available to the person with the disability.

A Canadian Disability Savings Grant (CDSG) will be paid until the end of the year in which the beneficiary turns 49.

There will be a maximum lifetime CDSG limit of \$70,000. The family income ranges and corresponding federal contributions will be indexed to 2008 when the RDSP begins.

Ottawa will also provide a modest Canada Disability Bond, much like the RESP Canada Learning Bond, for very low income households.

Monies can be contributed to the RDSP until the end of the year in which the beneficiary turns 59. Payments must begin when the beneficiary turns 60.

There will be limitations on how much can be removed each year, which will significantly hamper using the funds for larger necessary purchases, such as homes or wheelchair-accessible vans.

Present information is the annual maximum withdrawal limit will be based on the recipient's life expectancy, and the fair market

value of the RDSP, details to be determined.

To ensure that RDSP payments do not reduce federal income-tested benefits, amounts paid out of an RDSP will not be taken into account for the purpose of calculating income-tested benefits delivered through the income tax system, such as the Canada Child Tax benefit and the goods and services tax credit. In addition amounts paid out of RDSP will not reduce Old Age Security or Employment Insurance benefits.

The potential effect of this income on federal and provincial income supplements is not known at this time.

If the income is treated as other income it would result in a 50 per cent clawback for every dollar of RDSP income. This would of course be contrary to the intent of the plan.

The bigger question is whether provincial disability benefits, which also provide income supports for persons with disabilities between the age of 18 and 65, would be offset by RDSP income. Since the RDSP arrangements are federal there is no guarantee that withdrawals from the RDSP would not offset provincial benefits.

The proposal is that payments from the plan should supplement, not reduce, income support provided under these programs, at least until the level of

income support plus RDSP payments would exceed the low income cutoff for the province or territory in question.

Where the beneficiary dies, or ceases to qualify for the RDSP, any CDSG, or disability bond funded to the plan within the 10 years preceding the death, and the income earned on such amounts, must be repaid.

Amounts left in the RDSP after repayment of these amounts, must be included in the estate of the beneficiary.

This article was co-written with Kenneth C. Pope, LL.B. He is a lawyer in Ottawa who is a Henson Trust specialist, providing financial security for families with a family member with disabilities or special needs. He also co-authored The Essential Individual Pension Plan Handbook (LexisNexis Canada, 2007) with Peter Merrick. He can be contacted at 416-854-1776.

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