

< **Date** >

Re: Urgent problems with Registered Disability Savings Plans in Ontario

Dear MPP < **last name** > ,

I am writing you today as a family member and someone who cares about a person who has an intellectual/developmental disability. This letter brings to your attention an urgent issue that is creating a barrier for people with disabilities who require support to make decisions which jeopardizes their ability to open or access a Registered Disability Savings Plan (RDSP).

RDSPs were created by the federal government in 2008 to provide a mechanism for people with disabilities who are eligible for the Disability Tax Credit (DTC) to save towards their long-term financial security. People with disabilities, who would be seen as being unable to sign a contract, are prevented from being RDSP plan holders (they are unable to open or manage their own RDSP) therefore someone else must act as plan holder (a legal representative/guardian, a parent or biological sibling). People who do not have a guardian, parent or sibling cannot open an RDSP. Although the issue of who can be the plan holder was identified in 2008, the Ontario government has been unable or unwilling to bring forth a model of supported decision making which would not require guardianship. Guardianship, which effectively removes a person's social, economic and civil rights, and gives them no say over who is in control of their life or finances, is NOT the answer. Placing people under guardianship is against the person's human rights; the Charter of Rights and Freedom as well as the UN Convention on the Rights of Persons with Disabilities. No one makes decisions in isolation but relies on those who care about them for help. Why should people with disabilities be any different, losing their right to be involved in decision making about their own lives?

There is a better solution to this problem that has already been implemented in other provinces, including British Columbia and more recently New Brunswick. This solution will safeguard people's investments, protect their rights, and reduce the burden on the Public Guardian and Trustee. Over the years, the federal government has provided extensions to the provinces and territories to create a model that works and has expanded who can be the plan holder however, those extensions will be coming to an end in 2024. The result is that people with disabilities will be forced under guardianship to open or access their plan. In addition, many of those parents who are the plan holder for their son/ daughter are now in their seventies and eighties with no one following them who is legally able to take on that role. Many more people have not been able to open an RDSP because they have no family. People with disabilities and their families and friends have financially contributed to these RDSPs as has the federal government through bonds and grants (which could be up to \$90,000). They are running out of time for a solution to be found.

We are asking this government to act now. We need your help to ensure that people with disabilities do not lose their rights. We are asking the government:

1. Work with people with disabilities, their families, and friends to develop a formula of supported decision making which does not impinge on people's human rights and protections under the Charter of Rights and Freedoms and is cost effective.
2. The capacity-related criteria used to grant or revoke the personal appointment of an RDSP legal representative should be based on the provisions of section 8(2) of the British Columbia Representation Agreement Act, which consists of several factors including the communication of a desire to have a representative, the expression of approval, and the existence of a relationship with the representative that is characterized by trust.
3. The relationship between the RDSP beneficiary and the legal representative would draw on protections offered through existing provincial legislation related to decision-making, e.g., the ability to appoint more than one legal representative, and requiring RDSP legal representatives to maintain accounts of transactions.
4. The RDSP legal representative would have authority to open and manage funds in an RDSP, including (in partnership with the beneficiary) consenting to contributions, deciding investments, applying for grants and bonds, and requesting that payments be made to the beneficiary.
5. The RDSP legal representative would have the duties of an attorney for property and be held to the same standard of care. These duties include encouraging an adult to participate in decisions, to the best of their abilities; consulting from time to time with an adult's family and friends; and making decisions in a manner that is consistent with an adult's personal care decisions. This standard of care would require RDSP legal representatives to exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in the conduct of their own affairs.

For further context, I am providing links to two recent documents that provide the stories of five Ontario families who are currently facing this serious and resolvable issue:

[Red Tape, Human Rights and RDSPs in Ontario – Part 1](#)

[Red Tape, Human Rights and RDSPs in Ontario – Part 2](#)

Sincerely, < ***your name*** >

Cc. Betty Daley, President, Family Alliance Ontario betty.daley@hotmail.com, Doug Downey, Attorney General of Ontario Doug.Downey@ontario.ca Brian Saunderson, Parliamentary Assistant to the Attorney General Brian.Saunderson@ontario.ca