

# **THE REGISTERED DISABILITY SAVINGS PLAN PROGRAM: WHY ISN'T IT HELPING MORE PEOPLE?**

**Report of the  
Standing Senate Committee on Banking,  
Trade and Commerce**

The Honourable Irving R. Gerstein,  
C.M., O.Ont., Chair  
The Honourable Céline Hervieux-Payette,  
P.C., Deputy Chair

**March 2014**

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## **MEMBERS**

The Honourable Irving R. Gerstein, C.M., O.Ont., Chair  
The Honourable Céline Hervieux-Payette, P.C., Deputy Chair

and

The Honourable Diane Bellemare  
The Honourable Douglas Black, Q.C.  
The Honourable Larry W. Campbell  
The Honourable Stephen Greene  
The Honourable Ghislain Maltais  
The Honourable Paul J. Massicotte  
The Honourable Thanh Hai Ngo  
The Honourable Pierrette Ringuette  
The Honourable Michel Rivard  
The Honourable David Tkachuk

*Ex-officio members of the Committee:*

The Honourable Senators Claude Carignan, P.C., (or Yonah Martin) and James S. Cowan (or Joan Fraser).

*Other Senators who have participated from time to time in the study:*

The Honourable Senators JoAnne L. Buth, Michael L. MacDonald, Thomas Johnson McInnis, Percy Mockler, Pierre Claude Nolin, Nancy Ruth and David M. Wells.

*Parliamentary Information and Research Service, Library of Parliament:*

Brett Stuckey and Adriane Yong, Analysts.

*Clerk of the Committee:*

Danielle Labonté

*Senate Committees Directorate:*

Brigitte Martineau, Administrative Assistant

## **ORDER OF REFERENCE**

Extract from the *Journals of the Senate* of Tuesday, December 3, 2013:

Resuming debate on the motion of the Honourable Senator Gerstein, seconded by the Honourable Senator LeBreton, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on the ability of individuals to establish a registered disability savings plan (RDSP), with particular emphasis on legal representation and the ability of individuals to enter into a contract; and

That the committee submit its final report to the Senate no later than March 31, 2014, and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

The question being put on the motion, it was adopted.

Gary W. O'Brien

*Clerk of the Senate*

## EXECUTIVE SUMMARY

Registered disability savings plans (RDSPs) were announced in the 2007 federal budget in response to recommendations by the Expert Panel on Financial Security for Children with Severe Disabilities. The objective of the RDSP program is to enable parents and others to save for the medium- and long-term financial security of a disabled individual. On average, about 12,000 RDSPs have been established each year since the RDSP program became effective in 2008. These 78,000 RDSPs represent an uptake rate of 15% among the approximately 500,000 disabled individuals in Canada who are eligible to establish a RDSP.

On 3 December 2013, the Standing Senate Committee on Banking, Trade and Commerce began its study on the ability of individuals to establish a RDSP. The Committee's witnesses suggested various reasons for the low uptake rate in relation to the RDSP program, and offered suggestions on ways in which this rate might be increased.

Chapter Two of this report describes the RDSP program, with a focus on eligibility criteria, contributions to and payments from a RDSP, and recent changes to the RDSP program. Chapter Three discusses provincial and territorial legislation regarding legal capacity and representation.

Chapter Four outlines four possible reasons for the low uptake rate in relation to the RDSP program that were proposed by the Committee's witnesses, and presents the Committee's recommendations in each area. According to the witnesses, one potential reason for the low uptake rate is that some disabled adults may not have the legal capacity to establish a RDSP or a legal representative to act on their behalf with respect to property. The Committee recommends that the provinces and territories ensure that disabled adults can access the RDSP program, and that the federal government continue to work with the provinces and territories to improve access to the program.

The Committee was also told that there is a lack of awareness and understanding of the RDSP program, which can affect the uptake rate. The Committee recommends that the federal government improve its communication efforts with respect to the RDSP program. This goal should be accomplished through such measures as ensuring that relevant information is provided to those who qualify for the Disability Tax Credit, developing partnerships with disability advocacy groups to facilitate the distribution of information about the program, and working with provincial and territorial disability support offices to promote RDSPs.

A third potential reason for the low uptake rate is the rules in relation to the withdrawal of funds from RDSPs, such as the 10-year waiting period and the assistance holdback period. The Committee recommends that the federal government lower the 10-year waiting period to 5 years, and reduce the amount to be repaid under the assistance holdback amount rules.

Lastly, the Committee's witnesses identified administrative issues in relation to the RDSP program as a possible reason for the low uptake rate. According to them, the forms are complex, and obtaining identification and opening a deposit account in order to establish a RDSP can be difficult. The Committee recommends that the federal government ensure that the needs of disabled individuals wishing to establish a RDSP are met, perhaps through the establishment of a federal initiative or the funding of federally recognized organizations that could provide

assistance. As well, the Committee recommends that the government strongly consider the possibility of having a RDSP automatically established when someone qualifies for the Disability Tax Credit.

In Chapter Five, the Committee provides its conclusions with respect to its study of individuals' ability to establish a RDSP.

## LIST OF RECOMMENDATIONS

1. The provinces and territories be urged to examine, on an expeditious basis, their legislation with respect to legal capacity and representation to ensure that disabled adults can access the registered disability savings plan (RDSP) program.

Moreover, the federal government should continue to work with the provinces and territories to improve access to the program.

2. The federal government enhance its communication efforts in relation to the registered disability savings plan (RDSP) program, including through:
  - ensuring that relevant information is provided, on an ongoing basis, to taxpayers who are eligible for the Disability Tax Credit;
  - developing formal partnerships with disability advocacy groups in order to ensure that all possible opportunities are taken to inform disabled individuals about the program; and
  - working with provincial and territorial disability support offices to promote the establishment of RDSPs.

3. The federal government reduce the 10-year waiting period to 5 years between the end of federal grant and bond contributions and the time at which the beneficiary of a registered disability savings plan (RDSP) can begin to make withdrawals from his or her plan without having to repay a portion of these federal contributions.

Moreover, the government should reduce the amounts repaid to it under the assistance holdback amount rules that occur in relation to withdrawals from a RDSP prior to the end of the waiting period.

4. The federal government ensure that the needs of disabled individuals wishing to establish a RDSP are met. This goal could be accomplished through the establishment of a federal initiative or the funding of federally recognized organizations that could provide assistance to such individuals. In particular, disabled individuals should be provided with any assistance they need in procuring identification, opening a deposit account, applying for the Disability Tax Credit and/or completing the administrative requirements to establish a RDSP.

Finally, the government should strongly consider the possibility of having a RDSP established automatically when an individual becomes eligible for the Disability Tax Credit and other RDSP qualification requirements are met.



## **CHAPTER ONE: Introduction**

At the request of the federal Minister of Finance, the Standing Senate Committee on Banking, Trade and Commerce began its examination of the ability of individuals to establish a registered disability savings plan (RDSP) on 3 December 2013, with particular emphasis on legal representation and the ability of individuals to enter into a contract. In addition to written briefs, the Committee heard from 16 witnesses, including Minister of State (Finance) Kevin Sorenson and other representatives from the Department of Finance, disability advocacy groups, the legal community, financial institutions and businesses that provide financial planning services. Witnesses proposed various reasons for the low uptake rate in relation to the RDSP program, and offered suggestions on ways in which this rate might be increased. Although the provincial and territorial governments were invited to participate in the study, they declined the Committee's invitation to appear. The Government of Newfoundland and Labrador provided written comments to the Committee, but these were received after the consideration of the report.

Chapter Two of this report provides some background information on the RDSP program. Chapter Three discusses provincial and territorial legislation regarding legal capacity and representation. Chapter Four outlines the witnesses' proposals and the Committee's recommendations on such issues as:

- legal capacity and representation;
- awareness of the RDSP program;
- withdrawal rules; and
- administrative issues in relation to the program.

The Committee's conclusions are presented in Chapter Five.

## **CHAPTER TWO: The Registered Disability Savings Plan Program**

### **A. Introduction of the Registered Disability Savings Plan Program**

Statistics Canada's *Canada Survey on Disability* indicated that, in 2012, 3.8 million people – or 13.7% of Canadians aged 15 and older – reported being limited in their daily activities due to a disability. Many of these individuals rely on provincial or territorial social assistance programs for financial support, and these programs often have limits on the amount of assets and income that a disabled individual can have while remaining eligible for assistance.

Pursuant to the recommendations in the 2006 report of the Expert Panel on Financial Security for Children with Severe Disabilities, RDSPs were announced in the 2007 federal budget. The objective of the RDSP program, administered by Employment and Social Development Canada, is to enable parents and others to save for the medium- and long-term financial stability of a disabled individual.

On average, about 12,000 RDSPs have been established each year since the program became effective in 2008. These 78,000 RDSPs represent an uptake rate of 15% among the approximately 500,000 disabled individuals in Canada who are eligible to establish a RDSP. Since 2008, the federal government has contributed \$564.5 million in grants and \$235.8 million in bonds to RDSPs.

### **B. Eligibility for a Registered Disability Savings Plan**

The “beneficiary” of a RDSP is the disabled individual for whom the plan is established. The beneficiary must be eligible for the federal Disability Tax Credit, be a resident of Canada, be under the age of 60 and have a social insurance number. A “plan holder” is a person who is eligible to establish a RDSP at a financial institution. A parent, guardian, legal representative, or public department or agency that is legally authorized to act on behalf of a beneficiary can establish a RDSP and be the plan holder for a beneficiary who is a child.

If a beneficiary is an adult and has the legal capacity to enter into contracts, he or she can be the plan holder. When a beneficiary is found to be legally incompetent, a guardian, legal representative, or a public department or agency that is legally authorized to act on behalf of that individual can establish a RDSP for a beneficiary and be the plan holder.

When establishing a RDSP, the financial institution decides whether a disabled adult has contractual competence. As discussed below, temporary federal measures exist to address situations in which a disabled adult may not have contractual competence and does not have a legal representative to act on his or her behalf with regard to property. However, these temporary measures do not assist disabled adults without a parent, spouse or common-law partner to act on their behalf.

### **C. Contributions to a Registered Disability Savings Plan**

Private contributions to a RDSP, which are contributions by the beneficiary or other people, can be made until the end of the year in which the beneficiary turns age 59, to a lifetime limit of \$200,000. Contributions by the federal government occur through the Canada Disability Savings

Grant and the Canada Disability Savings Bond programs. Federal contributions can be made until the end of the year in which the beneficiary turns age 49, and unused federal grant and bond entitlements can be carried forward for 10 years.

The amount of the federal grant provided to a beneficiary is based on family income and the amount of private contributions made to the RDSP. For 2014, with family income of \$87,907 or less, the maximum annual grant is \$3,500. For those with a family income that exceeds \$87,907 in 2014, the maximum annual grant is \$1,000. The maximum lifetime federal grant amount is \$70,000.

The amount of the federal bond provided to a beneficiary is based solely on family income. In 2014, with family income of \$25,584 or less, the maximum amount of the bond is \$1,000. If family income is greater than \$25,584 in 2014, the amount of the bond is proportionately less than \$1,000; no bond is contributed in cases where family income exceeds \$43,953. The maximum lifetime federal bond amount is \$20,000.

#### **D. Payments from a Registered Disability Savings Plan**

Although payments from a RDSP can be made at any time, there is a 10-year waiting period between the end of federal grant and bond contributions and the time at which the beneficiary can begin to make withdrawals from his or her RDSP without having to repay a portion of the federal contributions. The amount that the beneficiary has to repay if the waiting period is not met is the lesser of the total amount of federal contributions to the RDSP in the past 10 years, which is called the “assistance holdback amount,” or \$3 for every \$1 withdrawn from the RDSP.

Two main types of payments can be made from a RDSP: disability assistance payments and lifetime disability assistance payments. Disability assistance payments are withdrawals that can be made at any time. Lifetime disability assistance payments are annual payments that must begin by 60 years of age and that are determined by a formula in the *Income Tax Act*.

If the federal contributions to a RDSP exceed the contributions made by the beneficiary or other people, the maximum annual limit for both types of payments is the greater of the amount determined by the formula in the *Income Tax Act* and 10% of the fair market value of the RDSP’s assets at the beginning of the year. If the federal contributions are less than the contributions made by the beneficiary or other people, there is no maximum disability assistance payment limit, but lifetime disability assistance payment amounts are determined by the *Income Tax Act*’s formula. A more flexible withdrawal schedule is available if a beneficiary has a shortened life expectancy.

#### **E. Recent Changes to the Registered Disability Savings Plan Program**

In response to the October 2011 federal review of the RDSP program, the 2012 and 2013 federal budgets announced a number of changes designed to simplify the program. For example, the amounts that need to be repaid to the federal government are now proportional to the amount withdrawn from the RDSP, a registered education savings plan can be rolled over into a RDSP if the plans have the same beneficiary, and a RDSP can remain open for up to five years when a beneficiary becomes ineligible for the Disability Tax Credit.

According to temporary federal measures that are effective until the end of 2016, the definition of “qualifying person” is expanded to allow a spouse, common-law partner or parent to establish a RDSP for a beneficiary and be the plan holder. These measures assist an adult who may not have the legal capacity to enter into contracts and does not have a legal representative to act on his or her behalf with regard to property. According to these measures, a parent can continue to be the plan holder in the event that the minor child becomes an adult and may not be legally competent to enter into contracts.

## **CHAPTER THREE: Provincial and Territorial Legislation Regarding the Appointment of a Legal Representative**

According to the *Constitution Act*, “property and civil rights” are within the jurisdiction of the provinces and territories. Thus, rules governing the legal capacity of mentally disabled adults and the individuals who have the authority to manage the property of such adults fall within provincial and territorial jurisdiction. To give the provinces and territories time to make any needed legislative changes regarding legal representation for disabled adults who may not have the legal capacity to enter into contracts, the federal government enacted temporary measures in relation to the RDSP program.

In Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Nunavut, a disabled adult who may not have contractual capacity may only be able to establish a RDSP if he or she is declared legally incompetent and has someone named as his or her guardian or legal representative. This approach may be costly, require the services of a lawyer, take several months to complete and have unintended consequences for the liberty of the individual.

According to the 2013 federal budget, the governments of British Columbia, Saskatchewan, Manitoba and Yukon have indicated that their legislation in relation to legal representation allows a disabled adult who may not have contractual capacity to establish a RDSP. Newfoundland and Labrador and Alberta have amended their legislation to permit named individuals to act on behalf of disabled adults with respect to the RDSP program. Table 1 outlines the procedures in selected provinces and Yukon for the appointment of a person to manage property on behalf of an adult with mental disabilities.

The 2014 federal budget indicated that the Northwest Territories will address the ability of a disabled adult who may lack contractual ability to establish a RDSP on a case-by-case basis. As well, in its 2013 provincial budget, the government of Ontario asked the Law Commission of Ontario to examine ways in which adults with mental disabilities who may not have contractual capacity could participate in the RDSP program.

**Table 1 – Selected Provincial and Territorial Procedures for  
the Management of Property on Behalf of Adults with Mental Disabilities,  
as of February 2014**

| Province or Territory     | Procedure for the Management of Property  |
|---------------------------|---|
| British Columbia          | The <i>Representation Agreement Act</i> allows a mentally disabled adult to appoint a person as his or her legal representative to handle financial decisions.  |
| Alberta                   | The <i>Adult Guardianship and Trustee Act</i> allows trustees to have authority over a specified financial matter, including a registered disability savings plan (RDSP).   |
| Saskatchewan              | The <i>Adult Guardianship and Co-decision-making Act</i> allows a mentally disabled adult to provide a parent or family member with a special limited power of attorney to set up and manage a RDSP.  |
| Manitoba                  | The <i>Vulnerable Persons with a Mental Disability Act</i> provides a streamlined administrative proceeding for the appointment of a substitute decision-maker for a person with a mental disability.   |
| Newfoundland and Labrador | Amendments to the <i>Enduring Powers of Attorney Act</i> allow a mentally disabled adult to designate a legally authorized representative to act as a plan holder for a RDSP.   |
| Yukon                     | The <i>Decision-making, Support and Protection to Adults Act</i> allows a mentally disabled adult to execute a “supported decision-making agreement” that appoints a friend or relative to assist him or her with financial matters. The <i>Adult Protection and Decision-making Act</i> allows a mentally disabled adult to execute a representation agreement that gives a representative the authority to make decisions in relation to financial matters. |

Source: Table prepared using information obtained from Law Commission of Ontario, [Capacity of Adults with Mental Disabilities and the Federal RDSP: Discussion Paper](#), December 2013.

## **CHAPTER FOUR: Issues Raised by the Committee’s Witnesses and the Committee’s Recommendations**

Witnesses provided the Committee with a variety of reasons that might explain the limited participation by disabled persons in RDSPs. These reasons include:

- the issue of legal capacity and representation;
- a lack of awareness and understanding of the RDSP program;
- issues related to the RDSP program’s withdrawal rules; and
- administrative issues that make the program overly complex for some qualifying individuals.

### **A. Issues of Legal Capacity and Representation**

#### **1. Proposals by the Witnesses**

Witnesses highlighted legal capacity and representation as a key barrier preventing some individuals from establishing a RDSP. The Committee was told about a national survey of people with disabilities conducted by the Planned Lifetime Advocacy Network in 2011. About 10% of the respondents identified issues with their capacity to enter into contracts as their primary reason for not establishing a RDSP.

Most of the disability advocacy groups that appeared before the Committee suggested that, as an alternative to a patchwork of legislative approaches to address legal capacity and representation in relation to RDSPs, the federal government should consider a solution that is common across the provinces and territories. In particular, according to these groups, the federal government could amend the *Income Tax Act* to introduce a RDSP-specific form, perhaps based on British Columbia’s representation agreements. The form could authorize the appointment of a person related to, or in a trusting relationship with, the beneficiary to be a joint plan holder of the RDSP. To guard against potential abuse, the trusting relationship would have to be confirmed by a third party.

Regarding constitutional concerns in relation to such a federal form, witnesses favouring a common solution argued that any intrusion into the provincial and territorial jurisdiction regarding property and civil rights would be very limited. They also indicated that the intrusion would be needed to remove any disparities across the country in the administration of the RDSP program. As well, according to them, such a form would not affect the authority of the provinces and territories to enact legislation regarding legal capacity and representation in relation to the RDSP program.

Some witnesses expressed reservations about a federal form of the nature described above. The Ottawa Branch of the Canadian Mental Health Association noted that some disabled individuals, particularly those with mental disabilities who are estranged from their family or who do not have close friends, would experience challenges in appointing a person to be a joint plan holder.

The Canadian Imperial Bank of Commerce was concerned that a common solution may not capture all of the disabled adults who do not have contractual capacity.

Goddard Gamage Stephens LLP raised questions about the federal form suggested by other witnesses. These questions were in relation to the entity that would evaluate the completed form, the nature and scope of the evaluation, and – in the event that a lawyer was required – the relative extents to which the beneficiary and the appointed representative would provide instructions to the lawyer. As well, it argued that, if a simpler method for appointing a representative were to be adopted by the federal, provincial or territorial governments, then there would be fewer safeguards in place and disabled individuals could be at a higher risk of abuse by those who would act as a plan holder.

The British Columbia Law Institute indicated that, while British Columbia’s representation agreement was a good idea in theory, the reality is that these agreements are used to a very limited extent because of uncertainty about whether RDSPs are included under British Columbia’s *Representation Agreement Act*; RDSPs are not listed in the regulations to the Act.

The Law Commission of Ontario shared with the Committee the nine options it is considering for the appointment of a legal representative for the purposes of establishing a RDSP. Four of the options would allow a disabled adult to name someone as his or her legal representative, with each option having a different definition for legal capacity. The other options, which would involve an external appointment process initiated by a family member or another adult, would require a streamlined application to a court, tribunal or government office in order to name someone as legal representative. The Law Commission indicated that it has not yet formulated the recommendations that it will make to the Government of Ontario.

Some witnesses representing the legal community and the financial sector supported a federal solution but did not specifically endorse the federal form proposed by other witnesses. The Bank of Montreal Global Asset Management asserted that, in order to ensure that the RDSP program is administered consistently across the country, a federal framework or template, along with provincial and territorial cooperation, would be required to address the issues with legal capacity and representation in relation to the RDSP program. Goddard Gamage Stephens LLP highlighted the increasingly mobile nature of Canada’s population as a reason for a common solution.

Regarding the temporary federal measures that are effective until 2016, Mackenzie Investments suggested that the definition of the terms “qualified family member,” “qualified person” and “contractually competent” in the *Income Tax Act* should be clarified, perhaps to include other family members, community groups or provincial government agencies as plan holders.

Finally, the Credit Union Central of Canada mentioned that the ability to appoint a secondary plan holder would be helpful if the parent, spouse or common-law partner passed away or were unable to manage the RDSP.

## **2. Recommendations by the Committee**

The Committee acknowledges that a common solution to the issue of legal capacity and representation in relation to the RDSP program would have benefits for both disabled individuals and the financial sector. However, as no information was received directly from any of the



provincial or territorial governments before the Committee adopted the report, it is unable to examine fully the effectiveness of the provincial and territorial procedures for the legal representation of disabled adults that are currently in place. Furthermore, differences among the legal frameworks of the provinces and territories in relation to legal capacity and representation exist in part because of the civil law system in Quebec and the common law system in the other jurisdictions. Consequently, the Committee is not certain that a federal form of the type described by some of the witnesses would resolve the problem with legal capacity and representation in relation to the RDSP program. Moreover, such a form could have the practical effect of introducing another source of complexity into a program that is already somewhat complex. Finally, the Committee is aware that even limited encroachment into provincial and territorial jurisdiction could result in a constitutional challenge.

The Committee notes that eight of Canada's provinces and territories already have a procedure in place, or are actively considering changes to their legislative frameworks, regarding legal capacity and representation. The Committee urges those provinces and territories that have yet to examine their legislation with respect to legal capacity and representation to do so quickly. If the temporary federal measures for legal capacity and representation in relation to the RDSP program expire before all provinces and territories have implemented changes to their legislative frameworks, the Committee is of the view that the federal government should study two options: the feasibility of other proposals to ensure access to the RDSP program, and the possibility of extending the existing temporary measures.

From that perspective, the Committee recommends that:

**The provinces and territories be urged to examine, on an expeditious basis, their legislation with respect to legal capacity and representation to ensure that disabled adults can access the registered disability savings plan (RDSP) program.**

**Moreover, the federal government should continue to work with the provinces and territories to improve access to the program.**

## **B. Issues of Awareness and Understanding**

### **1. Proposals by the Witnesses**

Several of the Committee's witnesses stated that one of the most significant reasons that the RDSP program is not being used to the fullest extent possible is that individuals are unaware of the program. Mackenzie Investments noted that many disabled individuals have not applied for the Disability Tax Credit, while other witnesses remarked that some of those who are eligible for the Disability Tax Credit are unaware of the RDSP program. The Desjardins Group pointed out that, given privacy issues in relation to health information, it is difficult for financial institutions to identify the individuals to whom information regarding RDSPs should be made available.

Some witnesses proposed that doctors who prepare the Disability Tax Credit form for disabled patients and others who have contact with disabled individuals, such as social workers and community living centre representatives, should inform the disabled individual about the RDSP

program. Also, Assante Capital Management Ltd. suggested that Canadian tax preparation software could play a role; in particular, if a taxpayer indicates that he or she is claiming the Disability Tax Credit, information could be provided regarding the establishment of a RDSP.

Representatives of financial institutions stated that the banking sector is promoting the RDSP program through various online and social media outlets, outreach to community organizations, and the preparation of educational materials and seminars, including a RDSP backgrounder.

In its written submission to the Committee, Employment and Social Development Canada noted that its Office for Disability Issues has undertaken a number of initiatives designed to create awareness and understanding of the RDSP program. These initiatives include: establishing contracts with non-governmental organizations to provide group information sessions; setting up information booths at national and regional conferences and events held by disability organizations, professional associations and medical associations; collaborating with provincial and territorial governments to promote the RDSP program in their jurisdictions; and mailing information about the RDSP program to individuals who have recently qualified for the Disability Tax Credit.

## **2. Recommendations by the Committee**

The Committee recognizes that the uptake rate in relation to the RDSP program might be improved if more individuals who are eligible for the Disability Tax Credit are aware of the program's existence and benefits.

Believing that a variety of actions could be taken to increase awareness and understanding of the program, as well as of its requirements, the Committee recommends that:

**The federal government enhance its communication efforts in relation to the registered disability savings plan (RDSP) program, including through:**

- **ensuring that relevant information is provided, on an ongoing basis, to taxpayers who are eligible for the Disability Tax Credit;**
- **developing formal partnerships with disability advocacy groups in order to ensure that all possible opportunities are taken to inform disabled individuals about the program; and**
- **working with provincial and territorial disability support offices to promote the establishment of RDSPs.**

## **C. Issues in Relation to the Withdrawal Rules**

### **1. Proposals by the Witnesses**

Some of the Committee's witnesses stated that the rules in relation to the withdrawal of funds from a RDSP result in some disabled individuals choosing not to establish a plan. According to them, the 10-year waiting period decreases the usefulness of a RDSP if the individual has a

reduced life expectancy or is already close to the age of 60. In their view, the waiting period should be reduced. That said, other witnesses stated that, as the intent of the RDSP program is to save for a disabled individual's later years, reducing the 10-year waiting period could potentially violate the intent of the program. A number of witnesses noted that exceptions to the 10-year waiting period are possible in cases where a medical practitioner deems life expectancy to be short.

Although witnesses discussed the possibility of different waiting periods for different disabilities, they noted that the RDSP program is already administratively complex; adding to the existing complexity may not be desirable.

Finally, the Desjardins Group suggested that amounts that are required to be repaid because of the assistance holdback rules should be reduced.

## **2. Recommendations by the Committee**

The Committee understands the difficulties that a disabled individual – and his or her family and friends, among others – may encounter in planning to meet future financial needs. The withdrawal rules in relation to the RDSP program, such as the 10-year waiting period and the assistance holdback amount rules, may reduce the usefulness of the program in cases where the disability may potentially decrease the individual's life expectancy or where the disabled individual is already close to the age of 60. Despite the changes made by the federal government in the 2012 federal budget to lower the amounts required to be repaid when withdrawals occur before the end of the waiting period, the Committee is of the view that the federal government should consider amendments to the withdrawal rules in order to make the RDSP program more attractive for these disabled individuals. Therefore, the Committee recommends that:

**The federal government reduce the 10-year waiting period to 5 years between the end of federal grant and bond contributions and the time at which the beneficiary of a registered disability savings plan (RDSP) can begin to make withdrawals from his or her plan without having to repay a portion of these federal contributions.**

**Moreover, the government should reduce the amounts repaid to it under the assistance holdback amount rules that occur in relation to withdrawals from a RDSP prior to the end of the waiting period.**

## **D. Issues Relating to Administrative Requirements**

### **1. Proposals by the Witnesses**

According to some of the Committee's witnesses, certain administrative issues in relation to the RDSP program result in some disabled individuals being unable to establish a RDSP. For example, the Ottawa Branch of the Canadian Mental Health Association commented on the requirement that a disabled individual must be eligible for the Disability Tax Credit in order to establish a RDSP. It highlighted the complexity of the Disability Tax Credit forms that must be completed by the disabled individual and the medical practitioner. According to it, forms are

often not completed properly, especially in the case of mental illness, which results in eligibility for the Disability Tax Credit being denied, and – consequently – an inability to establish a RDSP.

Witnesses representing financial institutions also commented on the forms that must be filed with Employment and Social Development Canada. They indicated that although tax preparers may act on behalf of a client when dealing with the Canada Revenue Agency, the same is not true with respect to financial advisors and Employment and Social Development Canada. According to them, when a RDSP application is denied due to errors in filling out the forms, such as an incorrect social insurance number, the financial advisor cannot resolve the issue. Furthermore, the disabled individual, who may have a disability that makes such administrative tasks difficult to carry out, must deal directly with Employment and Social Development Canada.

As well, the Committee was told that the steps involved in establishing a RDSP, such as obtaining identification and opening a deposit account, are often challenging for disabled individuals. The Ottawa Branch of the Canadian Mental Health Association said that such administrative tasks are difficult for individuals with mental disabilities. The British Columbia Law Institute suggested that it might be easiest for disabled individuals to access the RDSP program if a plan was automatically established for these individuals when they qualify for the Disability Tax Credit.

## **2. Recommendations by the Committee**

The Committee recognizes that the administrative tasks involved in establishing a RDSP may sometimes be difficult, especially for disabled individuals. Therefore, the Committee is of the view that federal efforts should be directed to reducing the administrative burden imposed on disabled individuals who wish to establish a RDSP. The Committee is convinced that ensuring that disabled individuals receive the help that they require to establish and contribute to a RDSP, as well as automatic establishment of a RDSP when eligibility requirements in relation to the Disability Tax Credit are met, would be beneficial for disabled individuals. For these reasons, the Committee recommends that:

**The federal government ensure that the needs of disabled individuals wishing to establish a RDSP are met. This goal could be accomplished through the establishment of a federal initiative or the funding of federally recognized organizations that could provide assistance to such individuals. In particular, disabled individuals should be provided with any assistance they need in procuring identification, opening a deposit account, applying for the Disability Tax Credit and/or completing the administrative requirements to establish a RDSP.**

**Finally, the government should strongly consider the possibility of having a RDSP established automatically when an individual becomes eligible for the Disability Tax Credit and other RDSP qualification requirements are met.**

## **CHAPTER FIVE: Conclusion**

Having completed the study of the ability of individuals to establish a registered disability savings plan (RDSP), the Committee has concluded that the low uptake rate may be partly due to the issue of legal capacity and representation and the inability of disabled adults who may not have legal capacity to enter into contracts to establish a RDSP. Another possible explanation for the low uptake rate is a lack of awareness and understanding of the RDSP program among disabled individuals and those who assist them in their financial decision making.

The Committee also recognizes that the rules in relation to the ability of RDSP beneficiaries to withdraw funds without the requirement to repay a portion of the grants and bonds may discourage some individuals from opening a RDSP. Finally, the Committee appreciates that there may be a number of administrative issues in relation to the RDSP program that are preventing some disabled individuals from establishing a plan.

It is within this context that the Committee has made recommendations that, once implemented, would likely increase the program's uptake rate. Such an increase would have benefits for disabled individuals, and also for the rest of society as these individuals and others are able to improve their long-term financial stability.

The Committee looks forward to any proposed changes that the provincial, territorial or federal governments may make with respect to the RDSP program in the future.

## APPENDIX A: LETTER TO THE COMMITTEE FROM THE MINISTER OF FINANCE

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

APR 22 2013

Senator Irving Gerstein,  
Chair  
Senator Céline Hervieux-Payette,  
Deputy Chair  
Standing Senate Committee on Banking, Trade and Commerce  
The Senate of Canada,  
Ottawa, ON K1A 0A4

Dear Senators,

I write to you in your capacities as Chair and Vice-Chair of the Standing Senate Committee on Banking, Trade and Commerce.

As you know, the Registered Disability Savings Plan (RDSP), which I am proud to have introduced in the 2007 federal budget, provides tax-assisted savings to Canadians with severe disabilities.

To date, more than 65,500 RDSPs have been opened. These accounts provide financial empowerment and long-term security for Canadians with severe disabilities.

This important tool should be available to all who are eligible. Unfortunately, that is not the case today.

Canadians with severe disabilities in over half the provinces and territories face a significant barrier to opening an RDSP.

This barrier must be eliminated as soon as possible.

As mentioned in length in the 2013 federal budget (pages 220 to pages 222, attached for your review), a number of adults with disabilities have experienced problems in establishing a plan because their capacity to enter into a contract is in doubt.

In many provinces and territories, the only way that an RDSP can be opened is for the individual to be declared “legally incompetent”, and for someone to be named as their legal guardian – a process that can require considerable time and expense on the part of

Canada

concerned family members, and which may result in significant repercussions for the individual. Needless to say, this process is frequently accompanied by considerable emotional distress.

While a temporary measure included in the 2012 federal budget provided a short term fix, a permanent solution at the provincial and territorial level is required.

To that end, our Government has worked extensively with provinces and territories to develop a standardized process which could be adopted to correct this problem.

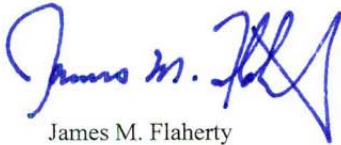
I am pleased that governments in certain provinces and territories have shown great leadership and moved to address this problem (i.e. British Columbia, Saskatchewan, Manitoba, Newfoundland and Labrador, and the Yukon). However, governments in the majority of provinces and territories (i.e. Alberta, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, the Northwest Territories and Nunavut) have failed to take concrete action.

As this is a pressing concern for Canadians with severe disabilities, their families, and me, I write to ask your Committee to highlight this issue in the weeks ahead and continue our Government's efforts to advance a solution that removes this barrier to accessing RDSPs.

I would encourage you, during the course of this study, to hear from: officials at the federal Department of Finance, groups advocating on behalf of Canadians with disabilities, and directly from provincial and territorial governments – either to speak to positive steps they have taken to rectify this problem, or to explain their lack of action to date.

Should the Committee respond favourably to this request, I ask that your deliberations commence as soon as possible in the current Parliamentary session.

Sincerely,



James M. Flaherty

## APPENDIX B: WITNESSES

| Organization  | Name, Title  | Date of Appearance | Committee Issue No. |
|---|--|--------------------|---------------------|
| Department of Finance   | The Honourable Kevin Sorenson, P.C., M.P.,<br>Minister of State (Finance)                        | 2013-12-04         | 3                   |
| Department of Finance   | Miodrag Jovanovic, Director,<br>Personal Income Tax, Tax<br>Policy Branch                        | 2013-12-04         | 3                   |
| Department of Finance   | Lesley Taylor, Chief, Social<br>Tax Policy, Tax Policy<br>Branch                                 | 2013-12-04         | 3                   |
| Planned Lifetime<br>Advocacy Network  | Tim Ames, Executive<br>Director  | 2013-12-11         | 3                   |
| Planned Lifetime<br>Advocacy Network  | Joel Crocker, Director, Policy<br>and Planning   | 2013-12-11         | 3                   |
| Council of Canadians<br>with Disabilities   | Vangelis Nikias, Project<br>Manager, Convention on the<br>Rights of Persons with<br>Disabilities | 2013-12-11         | 3                   |
| Council of Canadians<br>with Disabilities and<br>Canadian Association for<br>Community Living | Brendon D. Pooran, Lawyer,<br>PooranLaw Professional<br>Corporation                              | 2013-12-11         | 3                   |
| Canadian Bankers<br>Association   | Darren Hannah, Director  | 2013-12-12         | 3                   |
| Canadian Bankers<br>Association   | Randy Hopkins, Advisor   | 2013-12-12         | 3                   |
| Canadian Imperial Bank<br>of Commerce (CIBC)  | Ann Elise Alexander, Senior<br>Counsel   | 2013-12-12         | 3                   |
| BMO Global Asset<br>Management  | Trevor Philp, Manager,<br>Registered Products and<br>Managed Solutions                           | 2013-12-12         | 3                   |
| Canadian Mental Health<br>Association, Ottawa<br>Branch                                       | Karen Nelson, President  | 2014-01-29         | 4                   |
| Canadian Mental Health<br>Association, Ottawa<br>Branch                                       | Tim Simboli, Executive<br>Director   | 2014-01-29         | 4                   |
| Canadian National<br>Institute for the Blind  | Marc Workman, National<br>Manager of Advocacy  | 2014-01-29         | 4                   |



| <b>Organization</b>             | <b>Name, Title</b>   | <b>Date of Appearance</b> | <b>Committee Issue No.</b> |
|---------------------------------|--|---------------------------|----------------------------|
| Mackenzie Investments           | Carol Bezaire, Vice-President, Tax and Estates Advisory Services                               | 2014-01-30                | 4                          |
| Mackenzie Investments           | Sophie Dagneau, Manager, Operations Services   | 2014-01-30                | 4                          |
| Assante Capital Management Ltd. | Trevor Marsh, Financial Advisor  | 2014-01-30                | 4                          |
| Desjardins Group                | Jean Sylvain, Chief of Product Line, Specialized Investment Product Line Management Department | 2014-02-05                | 5                          |
| Credit Union Central of Canada  | Ryan Fontaine, Senior Wealth Consultant, Assiniboine Credit Union                              | 2014-02-06                | 5                          |
| Credit Union Central of Canada  | Anna Hardy, Regulatory Affairs Regional Director, Central 1 Credit Union                       | 2014-02-06                | 5                          |
| As an individual                | Sébastien G. Desmarais, Lawyer, Tierney Stauffer LLP   | 2014-02-12                | 5                          |
| Goddard Gamage Stephens LLP     | Nimali Gamage, Partner   | 2014-02-12                | 5                          |
| Law Commission of Ontario       | Adam Dodek, Member, Board of Governors   | 2014-02-12                | 5                          |
| Law Commission of Ontario       | Sarah Mason-Case, Research Lawyer  | 2014-02-12                | 5                          |
| British Columbia Law Institute  | Laura Tamblyn Watts, Senior Fellow, Canadian Centre for Elder Law                              | 2014-02-12                | 5                          |

## **APPENDIX C: BRIEFS SUBMITTED TO THE COMMITTEE**

Employment and Social Development Canada  
(2014-01-17)

Association de planification fiscale et financière (APFF)  
(2014-02-03)

Planned Lifetime Advocacy Networks (PLAN)  
(2013-12-11)

Government of Newfoundland and Labrador, Department of Advanced Education and Skills  
(letter dated 2014-03-04 and received 2014-03-17)