

Planning for major life transitions

Disability planning

Caring for a loved one with a disability involves proactive planning to ensure their well-being, financial security and legal protection.

If an individual qualifies for the Disability Tax Credit (DTC), they are often receiving social assistance benefits from the government. The DTC is a non-refundable tax credit designed to reduce the tax burden for individuals with severe and prolonged disabilities or their supporting family members.

Registered Disability Savings Plan (RDSP)

The RDSP is a long-term savings plan designed to help Canadians with disabilities save for their future. There is no annual contribution limit, but there is a lifetime limit of \$200,000.

Once qualified for DTC, the individual may be eligible to open an RDSP if they meet the additional requirements, as follows:

- Must be a Canadian resident.
- Have a valid Social Insurance Number.
- Be under the age of 60, as contributions must end after the year in which they turn 59.

RDSP holders can benefit from government assistance in the form of grants and bonds. Another benefit is that it does not affect most provincial disability benefits.

Estate planning

It is important to have a proper estate plan when leaving an inheritance to a loved one with a disability, because it can ensure their financial security while preserving access to essential provincial benefits and programs.

If a parent dies without a will, their assets are distributed according to the laws of intestacy in their jurisdiction. Without proper estate planning, such as establishing a Henson Trust, the child's inheritance may count as an asset, potentially disqualifying them from essential support programs, such as provincial disability benefits.

Qualifying for the Disability Tax Credit (DTC)

An individual must have severe and prolonged impairment (lasting at least 12 months) that affects one or more daily functions such as walking, hearing, vision, speaking, feeding, dressing, etc. A medical practitioner must complete Form T2201 to certify eligibility.



Henson Trust

A Henson Trust is a fully discretionary trust designed to benefit individuals with disabilities, particularly those who receive federal and provincial government assistance. If drafted correctly, the named trustee has absolute discretion over distribution of funds to the beneficiary, including timing and amounts.

It is structured to ensure assets held within it do not count as assets for the purpose of determining eligibility for social assistance. Since the beneficiary does not have a vested interest in the trust's assets, they are not considered the beneficiary's personal assets.

If the beneficiary has qualified for DTC, the trust, under certain circumstances, can be taxed as a "Qualified Disability Trust" (QDT). This allows for income generated to be taxed in the trust at the lower graduated marginal tax rates that the beneficiary would be subject to and not a flat top rate in each province and territory.

Although Henson Trusts originated as a common law concept, they have been recognized in Quebec as a valid tool to benefit beneficiaries of RDSPs, similar to other provinces.

In Newfoundland and Labrador, social assistance benefits will be reduced if the trust's assets exceed \$100,000. Henson Trusts are not recognized in the Northwest Territories or Nunavut.

Disability planning checklist

If a loved one could benefit from the Disability Tax Credit (DTC), work with a medical practitioner or complete and sign CRA Form T2201 to certify eligibility. Submit the completed form to CRA to apply for the DTC.

Apply for provincial social assistance benefits.

Ensure the beneficiary meets the following requirements for RDSP:

- Canadian resident.
- Has valid Social Insurance Number (SIN).
- Under the age of 60.

Make contributions to the RDSP. Remember there is a lifetime limit of \$200,000.

Estate planning

Ensure the will is up-to-date and includes provisions for loved one(s) with a disability.

Consider a Henson Trust to protect the inheritance and preserve access to provincial benefits and programs.

Choose a reliable and trustworthy trustee who will have the discretion to manage the trust funds for the beneficiary.

If the trust beneficiary has qualified for the DTC, the trust can benefit from being taxed as a "Qualified Disability Trust" (QDT) as long as the trust meets the other relevant criteria.

Regularly review and update the estate plan to reflect any changes in the loved one's circumstances.

Maintain detailed records of all financial transactions, legal documents and medical certifications related to disability planning.

By following these steps, an individual can ensure that their loved one with a disability is well-cared for and financially secure, while also preserving their access to essential government benefits and programs.



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