



InclusionNB

GUIDE FOR RDSP PLAN HOLDERS IN NEW BRUNSWICK

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ABOUT THIS GUIDE

This guide contains information about Registered Disability Savings Plans (RDSPs) and the role of plan “holders”. It will review who can be a plan holder and the legal requirements for becoming a holder.

The guide will also address what will happen if a parent holder is no longer able to fulfill this role.



BRIEF OVERVIEW OF REGISTERED DISABILITY SAVINGS PLANS (RDSPs)

RDSPs are tax-deferred savings plans for people with a disability who are eligible for the federal Disability Tax Credit. The RDSP scheme allows for private contributions of up to \$200,000 for each eligible beneficiary, plus up to \$70,000 of government matching grants (based on private contributions and a family's or individual's income level) and up to \$20,000 of bonds for lower income families or individuals (which do not require any contributions).

For the purpose of this guide, here are a few things that are important to know about RDSPs:

- An RDSP can be set up for anyone under the age of 60 who is eligible for the Disability Tax Credit. Government grants and bonds can be claimed up to age 49.
 - All RDSPs have a **beneficiary** (the person with a disability), a **holder** (described below) and an **issuer** (the financial institution that sets up the plan).
 - The **owner** of the assets in the RDSP is the **beneficiary**. The beneficiary's ownership of government grants and bonds is subject to repayment rules under certain circumstances (known as the 10-year rule).
 - The **holder** of the plan "is the person who opens the RDSP and makes or authorizes contributions on behalf of the beneficiary. As long as conditions are met, there can be more than one plan holder at any time."¹ The holder is also responsible for making investment decisions about the plan and making decisions about withdrawals (taking money out of the plan). **An RDSP must always have a least one holder.**
- The opening of an RDSP involves the holder of the plan signing an **agreement** (contract) with the financial institution that is issuing the plan. This requires that the holder understands that an agreement is being created as well as information about the basic nature and purpose of the agreement. This is sometimes referred to "contractual competence" or "**contractual capacity**". It is what makes a contract legally binding.
 - There are a number of rules around who can be a holder based on a mix of both federal and provincial laws. This guide will explain these rules for New Brunswick.



Other information about RDSPs is available from **Inclusion New Brunswick** or from the Government of Canada – [What is a Registered Disability Savings Plan?](#)

¹ [Opening an RDSP - Canada.ca](#)

ADULT DECISION-MAKING LAWS IN NEW BRUNSWICK

To understand who can be a plan holder for an RDSP in New Brunswick, it is helpful to have some understanding of the laws about decision-making by adults who have difficulty making decisions on their own.

The laws on adult decision-making have recently been modified in New Brunswick with a new law called the *Supported Decision-Making and Representation Act*. This law came into effect on January 1, 2024, and replaced the *Infirm Persons Act*. The new law does not affect the making of Enduring Powers of Attorney. These are dealt with under a separate law called the *Enduring Powers of Attorney Act*.

OPTIONS UNDER THE SUPPORTED DECISION-MAKING AND REPRESENTATION ACT

The *Supported Decision-Making and Representation Act* creates three options for assisting someone who has difficulty making decisions on their own. Two of the options fall under a fairly new legal concept called **supported decision-making**. This means that people are able to make valid decisions with assistance or support from other people. The third option (representative) is a more traditional substitute decision-making option:

1. **Decision-Making Assistants.** A person who wants assistance with decision-making can make a document called a “decision-making assistance authorization” with the help of a lawyer. The lawyer will need to be satisfied that the person has “capacity” to make the authorization (meaning they understand who to appoint as an assistant, what the assistant will help with, and the powers that the assistant will have).



The decision-making assistance authorization indicates the following:

- a. Who will act as an assistant
- b. What the assistant will help with (financial and/or personal care matters)
- c. The powers that the assistant will have (usually to obtain or assist in obtaining information and to communicate or assist in communicating decisions).

2. **Decision-Making Supporters.** If a person cannot make a decision-making assistance authorization, someone who is in a relationship of trust with them (such as a parent or sibling) can apply to a court to become a decision-making supporter. The law prohibits the Public Trustee from becoming a decision-making supporter. A court application will typically require the assistance of a lawyer to prepare the required documents and evidence. It also requires that a **capacity assessment report** is completed by a health care professional (medical doctor, nurse practitioner or psychologist). For a successful application, it must be shown that the person and the proposed supporter can make decisions through a “supported decision-making process”.

In order for a decision-making supporter to act as a holder of an RDSP, the court order would need to give them the authority to support the person with financial matters.

Decision-making supporters cannot make decisions on behalf of the supported person, but they can make decisions with the supported person through a supported decision-making process and they can “do anything necessary to give effect to a decision of the supported person”. This is broader than the authority that a decision-making assistant has.



3. **Representatives.** If the supported decision-making options described above are not available to a person or would not meet the needs of the person, then an application for an order appointing a representative can be made to a court. A representative is a **substitute decision-maker** who can make decisions on behalf of the person (but must in most cases follow the wishes and preferences of the person where these are known). Unlike the decision-making supporter option, the Public Trustee can be a representative, as can a trust company (in the case of financial matters). A court application for the appointment of a representative will typically require the assistance of a lawyer and will require a capacity assessment report.

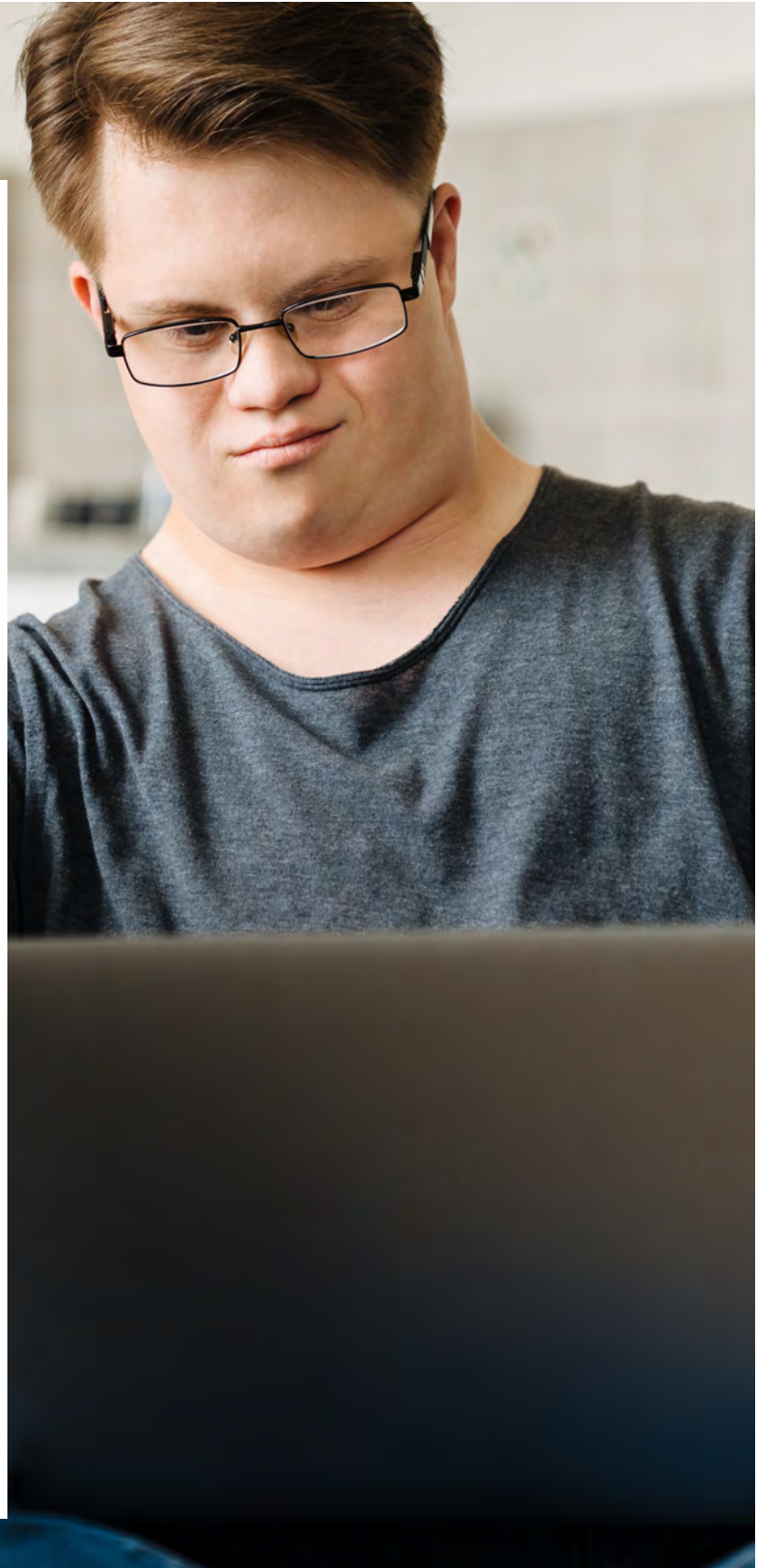
In order for a representative to act as a holder of an RDSP, the court order would need to give them the authority to make financial decisions on behalf of the represented person.

ENDURING POWERS OF ATTORNEY

Enduring Powers of Attorney (EPAs) provide an option for appointing a **substitute decision-maker**. In order for someone to grant an EPA, they must meet a test of capacity – meaning that they understand what the EPA is about (including who they want to appoint as their attorney and the things that the EPA will cover – such as property/finances or personal care). An EPA that appoints an attorney for property/finances must be completed by a lawyer who must verify that the person making the EPA has the capacity to do so.

Depending on the EPA, an attorney for property/finances can exercise their authority either immediately, on a specified date, or when it has been determined that the grantor (the person who appointed them) lacks capacity with respect to property and financial matters. If an attorney for property/finances is acting and the grantor has the capacity to make decisions, the attorney must follow the instructions given to them. In this respect, they are acting only as an agent. If the grantor lacks capacity, the attorney must discuss the matter with the grantor, if it is reasonable to do so.

For more information about Enduring Powers of Attorney see the public legal information guide – [PLEIS-NB Public Legal Education and Information Service of New Brunswick: Enduring Powers of Attorney](#)



HOLDERS OF RDSPs

This section of the guide explains the rules about who can be a holder of an RDSP in New Brunswick. The rules depend on whether the beneficiary is a minor or an adult when the RDSP is opened and on other circumstances.

RDSPs for Minors (18 and under)

If the beneficiary of the RDSP is a minor (**18 and under in New Brunswick**), the following persons can open an RDSP for the beneficiary and become a holder:

- a legal parent of the beneficiary
- a guardian or another individual who is legally authorized to act on behalf of the beneficiary
- a public department, agency, or institution that is legally authorized to act on behalf of the beneficiary

RDSPs for Adults (19 and over)

This is where things get a bit complicated when determining who can be a holder of an RDSP. There are a few situations to consider and both federal and provincial laws may come into play.

1. **BENEFICIARY AS PLAN HOLDER**

If a person with a disability is an adult when the RDSP is being opened they can become the holder of their own plan if they have the capacity to enter into the RDSP agreement with the financial institution. They should also be able to make the other decisions that a holder has to make – such as decisions about making contributions to the plan, applying for grants and bonds and making withdrawals.



If a person has appointed a decision-making assistant under the *Supported Decision-Making and Representation Act*, it may be possible for the person to open their own RDSP with the help of their assistant (if the assistant is authorized to provide help with all financial matters or specifically with RDSPs). Since the decision-making assistant role is a new legal development, financial institutions may not be familiar with it. They should be encouraged to accept that an assistant can help with decision-making, including a decision to enter into an RDSP agreement. But the financial institution may also have their own rules for determining if someone has capacity to enter into an RDSP agreement and may require that the person is able to demonstrate their capacity without assistance.

It is important to remember that a decision-making assistant can help with doing things such as gathering information or communicating decisions of the assisted person. But they cannot make decisions for the person and cannot exercise any authority they have been granted if they are of the opinion that the person does not have the capacity to make a decision – even with their assistance.

If an RDSP is **opened by a parent for a beneficiary who is a minor**, the beneficiary can be added as a joint holder when they reach 19 if they are considered to have capacity to enter into the RDSP agreement. **Even if the adult beneficiary is not added as a holder, the parent can still continue to be the plan holder.**

2. QUALIFYING FAMILY MEMBERS

A “qualifying family member” (QFM) can open an RDSP for an adult beneficiary if the adult beneficiary’s contractual capacity to open an RDSP **is in doubt**. The issue of doubt about a person’s contractual capacity is left up to the opinion of the plan issuer (financial institution) after they have made a “reasonable inquiry” about capacity.

The QFM provisions were first introduced in 2012 to allow provincial governments to change their laws to ensure that people with intellectual or cognitive disabilities could have an RDSP without the need to be declared “incompetent” and have to go through expensive legal processes to appoint a legal representative. The QFM provisions were supposed to be a temporary measure, but they have been extended many times and are now scheduled to end on December 31, 2026.

A QFM can open an RDSP on behalf of an adult beneficiary and become the holder of the plan. Under the current rules, a spouse, common-law partner, parent, brother, or sister can be a QFM (a spouse or common-law partner cannot do this if they are living apart from the beneficiary due to a breakdown of their marriage or partnership).

Here are some additional rules about the QFM:

- A QFM cannot be used if the beneficiary already has an existing RDSP.
- A QFM cannot be used if a legal representative is authorized to act on behalf of the beneficiary. In New Brunswick, this would usually mean that an appointment of an attorney for property/finances has been made in an Enduring Power of Attorney or an appointment of a representative or decision-making supporter has been made under the *Supported Decision-Making and Representation Act* (or an appointment of a committee of the estate has been made under the previous *Infirm Persons Act*).
- A QFM can be disqualified from being a holder if:
 - ◇ the plan issuer (financial institution) is of the opinion that the beneficiary’s contractual capacity is no longer in doubt and the beneficiary has requested to become the plan holder
 - ◇ the beneficiary has been determined to be contractually competent under provincial law (usually by a court) and has requested to become the plan holder
 - ◇ a legal representative has been appointed for the beneficiary (the legal representative must replace the QFM as the plan holder)





Since the decision-making supporter role is a new legal development, financial institutions may not be familiar with it. They should be encouraged to accept that a decision-making supporter is “legally authorized to act on behalf of the beneficiary” because the *Supported Decision-Making and Representation Act* says that a supporter can make decisions with the person and “do anything necessary to give effect” to those decisions.

There are a few other things about legal representatives that are important to note:

- In some circumstances, a legal representative can open an RDSP and be a holder even if the beneficiary has contractual capacity. For example, an Enduring Power of Attorney that has a date setting out when the attorney for property/finances can start acting will mean that the attorney is legally authorized to act as of that date.
- When a legal representative is appointed for a beneficiary, a person who is the plan holder as a qualifying family member will be replaced by the legal representative (unless they are the same person).



3. **LEGAL REPRESENTATIVE**

If the adult beneficiary does not have the capacity to enter an RDSP agreement, a legal representative can open an RDSP and become the holder of the plan. A legal representative is either (a) a person who is “legally authorized to act on behalf of the beneficiary” or (b) a public department, agency or institution that is “legally authorized to act on behalf of the beneficiary”.

In New Brunswick, this would mean that the following people would be considered legal representatives under RDSP rules:

- A person who has been appointed as an **attorney for property/finances** under an Enduring Power of Attorney (where the EPA is in effect).
- A person who is a court-appointed **representative** under the *Supported Decision-Making and Representation Act* and has authority over the beneficiary’s financial matters. (This would include someone who was appointed by a court as a committee of the estate under the old *Infirm Persons Act* if the order was still in effect as of December 31, 2023.) The representative (or committee of the estate) could be an individual, the Public Trustee or a trust company.
- A person who is a court-appointed **decision-making supporter** under the *Supported Decision-Making and Representation Act* and has authority over the beneficiary’s financial matters.

WHAT HAPPENS IF A PARENT CAN NO LONGER BE THE RDSP PLAN HOLDER?

There are various ways in which a parent can be named an RDSP holder:

- If they open the plan for a child who is a minor. They can continue to be the holder after their child becomes an adult.
- If they open a plan for an adult child as a Qualifying Family Member.
- If they are appointed as a legal representative of their adult child.



Parents will ask what will happen to the RDSP if they are no longer able to act as the holder of the plan. This may be the result of the parent's illness or incapacity or their death. What can a parent do to ensure that the RDSP will continue to have a qualified holder?

There are a number of possibilities:

- If both parents were named holders of the plan (in any of the situations described above), one of the parents can continue as the holder if the other one is not able to fulfill this role. This may help buy some time to figure out a longer-term solution.
- If the beneficiary is considered to have contractual capacity, they can be added as a holder (if the parent was the holder when they were a minor) or they can replace the parent as the holder. In this case, a decision-making assistant appointed by the beneficiary may be able to assist with decisions regarding the management of the RDSP.
- A new legal representative could be appointed. This would be someone who is a legally authorized to act on behalf of the person as discussed above. If the parent is the holder as a Qualifying Family Member, a newly appointed legal representative would replace the parent as holder. A parent can choose to remove themselves as a holder as long as there is another person to assign their rights to as a holder.

It is important to note that the current rules do **not** allow for a different Qualifying Family Member (for example, a brother or sister) to take over as a holder on an **existing RDSP**. They can only become a holder if they are opening the RDSP on behalf of the beneficiary.

NOTES

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