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RRSPs - ARE THEY SUBJECT TO SEIZURE?

In the recent case of Family Law - 2176, the Quebec Court of Appeal upheld the validity of a seizure of sums of money paid into a fixed-term registered retirement savings plan (RRSP) held by a trust company.

The person appointed to collect the support payments on behalf of the ex-wife, proceeded to seize the ex-husband's RRSP in the hands of the trust company. The trust company produced a negative declaration, stating that although it was holding an RRSP in the name of the account beneficiary, it was not indebted to him since no request for a refund had been made and, as well, since the RRSP had not yet matured. The spousal support debtor opposed the seizure, arguing that the RRSP was exempt from seizure.

The Court of Appeal observed that pursuant to the trust company's fixed-term contract, the latter could be obliged to respect different obligations. On the one hand, it may be required to pay a pension to the original account beneficiary or to his named beneficiary in the event of the former's death. On the other hand, it may be responsible for the obligations arising out of the exercise by the account beneficiary of his right to commute, transfer or be refunded the amount paid into the RRSP. Such obligations are subject to a suspensive condition since their existence depends on a future and uncertain event.

Under the circumstances, the Court of Appeal concluded that, even though amounts paid into an RRSP are not seizable pursuant to section 178 of An Act Respecting Trust Companies and Savings Companies, article 639 of the Code of Civil Procedure nonetheless applies to the benefit of creditors. This latter article provides that if the debt of the garnishee is payable at a future time, the clerk orders it to be paid at maturity, and, if it is subject to a condition, the clerk may declare the seizure binding until such condition is fulfilled.

The Court of Appeal clarified the issue further by stating that article 639 of the Code of Civil Procedure does not render immediately subject to seizure amounts of money that would otherwise be exempt, but rather that they become seizable only once the condition is fulfilled. Such amounts therefore become seizable once the account beneficiary has availed himself of his right to commute, transfer or be refunded.

In other words, the seizure will be valid upon the fulfilment of one of the three conditions stipulated in the contract, namely the account beneficiary availing himself of one of his rights to commute, transfer or be refunded the money. In the interval, the Court clerk may order the trust company to review its declaration as soon as the account beneficiary announces his intention to avail himself of one of these rights.

Consequently, it would be advisable for trust companies in such situations not to pay out the amounts held in an RRSP before first obtaining instructions from the Court, otherwise, it may eventually be held personally responsible for the debt of the seizing creditor. Once one of the abovementioned conditions has been fulfilled, the trust company must then produce in the Court file an affirmative declaration and, thereafter, await the Court's decision as to the manner in which it should distribute the sums that would otherwise be payable to the beneficiary.

We believe, however, that certain contractual provisions may be used to reduce the impact of this judgment.

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