

CLIENT UPDATE!



Collecting Money from a Debtor's RRSP

In 2008 the Legislative Assembly of British Columbia passed the Economic Incentive and Stabilization Statutes Amendment Act, a bill intended to protect registered savings plans of debtors from creditors. Such assets may not be completely inaccessible to creditors, however. In a section dealing with what the drafters entitled "Asset Protection" the bill altered the Court Order Enforcement Act. This amendment provided greater protection for debtors' registered savings—in particular, deferred profit sharing plans (DPSPs), registered retirement income funds (RRIFs) and registered retirement savings plans (RRSPs). Collectively, these are defined as "Registered Plans".

This amendment added to the protection already available for certain investments governed by the *Insurance Act*, which are known as segregated funds. Execution against such funds is restricted on the basis that they include a life insurance component. In such cases the individual policies need to be examined to determine whether the money invested will be exempted from collection measures by a creditor.

Section 71.3 of the *Court Order Enforcement Act* makes Registered Plans exempt from enforcement processes, such as garnishment and seizure. There are exceptions to the exemption, however, which should be kept in mind by any unsecured creditor seeking to execute a judgment against such assets. These include:

1. Any contributions to a Registered Plan within 12 months of the debt becoming due are exigible.
2. Any payments out of Registered Plans to the planholder are considered debts due to the holder for salary or wages and are therefore subject to enforcement as if they were wages.
3. An enforcement process which arises out of a maintenance order as defined under the *Family Maintenance Enforcement Act*, such as amounts due for maintenance, child support or alimony.
4. An enforcement process initiated against a Registered Plan prior to November 1, 2008.

A planholder's transfers from one Registered Plan to another or transfers following the death of a planholder's to a spouse or common-law partner are not considered payments out of the plan. Therefore they are not covered by the exceptions and not accessible by creditors.

The 2008 bill has ramifications in bankruptcy proceedings as well. Section 67 of Canada's *Bankruptcy and Insolvency Act* states that the property available to creditors of the bankrupt does not include "any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides; . . ." This would include a debtor's Registered Plan assets which are not subject to one of the exceptions described above.

The intention of the *Economic Incentive and Stabilization Statutes Amendment Act* was to protect the Registered Plans of individual British Columbians. However, from the perspective of a creditor, such as an unsecured judgment creditor, the Act seriously limits the availability of assets that were paid into the Registered Plan a year or more before the relevant debt became due.

One of the ways to avoid the effect of the Bill is to provide that all debt instruments are due and payable on demand, as opposed to becoming due on a fixed date. Many banks have already implemented this policy with regard to their mortgage securities in part to avoid limiting their ability to collect from Registered Plans.

For more information about debt collection or asset preservation, please contact

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