

November 19, 2015

Via Fax: 416-326-4007 and e-mail attorneygeneral@ontario.ca

The Honourable Madeleine Meilleur
Attorney General and Minister Responsible for Francophone Affairs
Ministry of the Attorney General
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Execution Act, Amendments to Regulation 657/05

Dear Minister Meilleur:

Culminating with changes made to the *Open for Business Act*, 2010, on December 1, 2015 a number of technical amendments will be proclaimed to clarify the execution and exemptions process in the *Execution Act*. There are two areas where the amendments are unclear or inconsistent, and therefore I am asking for your insight into the intent of this legislation.

Personal Property Exemption

Subsection 2 (1) of the *Act* will be repealed, and a new Subsection 2 (1) 5 will exempt from seizure “Personal property prescribed by the regulations that is of a value not exceeding the prescribed amount.” The Regulations do not contain a prescribed amount for personal property, and therefore we conclude that personal property will not be exempt from seizure once the new regulations come into force.

We are a bankruptcy trustee and consumer proposal firm in Ontario, and the exemptions listed in the *Execution Act* specify the personal property a debtor is permitted to retain when they file bankruptcy.

Pre December 1, 2015:

- “necessary and ordinary apparel” were exempt from seizure. The new regulations narrow this definition to “necessary clothing”;
- “household furniture, utensils, equipment, food and fuel” were exempt; the revised regulations narrow this definition to “household furnishings and appliances”.

Our concern is that various personal property that is currently exempt from seizure will no longer be exempt from seizure after December 1, 2015. For example, a moderately valued wedding ring, earrings, necklace, or other common jewelry items were previously considered “ordinary apparel” and therefore exempt from seizure, within prescribed limits. If after December 1 the prescribed limit is zero, the “honest but unfortunate” debtor who avails themselves of the protection afforded by the *Bankruptcy & Insolvency Act* may find their daily jewelry seized for the benefit of the creditors.

Similarly, children's toys, which previously could be categorized as "household equipment", will no longer fall under the more narrow definition of "household furnishings".

On the assumption that you agree with this interpretation, we request that the *Execution Act*, Ontario Regulation 675/05, Exemptions be amended to include an exemption for personal property as per section 2 (1) 5 of the *Execution Act*. We further submit that a prescribed amount of \$6,600, comparable to the prescribed amount for a motor vehicle, would be sufficient to protect the personal property of the vast majority of debtors.

Principal Residence

Section 2(1) of the *Execution Act*, as noted above, will contain, as amended after December 1, 2015, five sub categories of personal property that will be exempt from seizure (clothing, furnishings, tools, motor vehicle and personal property).

The new Section 2(2) states that the debtor's principal residence is exempt from seizure if the debtor's equity does not exceed the prescribed amount (\$10,000), however 2(3) states that if the value exceeds \$10,000 the principal residence is subject to seizure.

It would appear that the amended Section 3 contains different treatment for personal property (section 2(1)) and a principal residence (Section 2(2)). Specifically, the new Section 3 (1 and 2) provides that if a debtor claims an exemption(s) under paragraph 2 (household furnishings and appliances) or paragraph 4 (motor vehicle), and the total property claimed under the exemption has a value over the prescribed amount (\$13,150 for household furnishings and appliances, \$6,600 for motor vehicles), then the creditor can seize and sell the property. However, the creditor must pay the debtor the full exemption value from the proceeds.

Section 3(3) provides a similar "pay back" mechanism for the tools exemption in paragraph 3, but provides the debtor with the additional option of receiving the proceeds from the sale of the tools instead of claiming an exemption even when the value of the tools are less than the prescribed amount.

The new Section 3 makes no mention of a principal residence exemption. The new Section 3 explicitly provides that the debtor is to be paid the full value of the exemption when they have property in excess of the exemption that is seized by the creditor in all categories except for a principal residence. It would therefore appear that the principal residence exemption in Section 2(2) merely restricts a creditor from seizing and selling a debtor's principal residence if the equity in that real property is less than \$10,000, and does not confer an exemption for that amount. Furthermore, if the equity in the principal residence is greater than \$10,000 a creditor can force the seizure and sale of the property and they are not required to pay the debtor any of the proceeds.

Is this interpretation correct?

Did the drafters of this legislation intend to create an exemption for personal property, but not for a principal residence?

While I acknowledge that the *Execution Act* is not intended to serve as the framework for the exemption regime under the federal *Bankruptcy & Insolvency Act*, it does have that effect. The changes to the *Execution Act* will therefore have the following impacts on December 1, 2015:

First, jewelry and other personal property not specifically defined by the *Act* will not be exempt from seizure, unless the Regulations are amended to provide for a prescribed amount higher than nil.

Second, the principal residence exemption of Section 2(2) does not confer an actual exemption in bankruptcy proceedings, because Section 3 does not, unlike it does for personal property, stipulate that the debtor must be paid the exemption amount from the proceeds in the event of a forced sale.


Your comments on the intent of these amendments would be appreciated.

We would be pleased to provide further information or comments on these issues if required.

Thank you in advance for your consideration of this matter.

Yours truly,

Hoyes, Michalos & Associates Inc.


Per: J. Douglas Hoyes, BA, CA, CPA, CBV, CIRP, Trustee
Co-Founder, Vice President