



## **MY PROPERTY HAS BEEN SEIZED**

**As a result of unpaid debts, can a creditor seize all the moveable property in a residence?**

### **THE FACTS**

The Ministère du Revenu seized the property located in the residence of a taxpayer who owed taxes. The items seized were a computer and its accessories, a piece of antique furniture, a four-drawer filing cabinet, a microwave oven and several tools, including a motor vehicle.

### **THE ISSUE**

The individual whose property had been seized alleged that the seizure was unlawful because he had availed himself of the voluntary deposit procedure after the seizure and because the items seized were unseizable because they were used for the household and were necessary for life or were work instruments necessary for the exercise of a professional activity.

### **THE DECISION**

The court concluded that availing oneself of the voluntary deposit procedure after a seizure does not have the effect of annulling the seizure. As regards the computer and its accessories, the microwave oven and the tools, the court declared them to be unseizable. The court upheld the seizure as regards the piece of antique furniture and the four-drawer filing cabinet.

### **THE GROUNDS**

A person who has debts can avail himself of the voluntary deposit procedure. In doing so, he undertakes to deposit the seizable portion of his wages which is then distributed to his various creditors in proportion to the amount of the debts. If he abides by his commitment, his creditors will not be able to seize his wages or the movable property which furnishes his main residence and is used by and necessary for the life of the household. However, in order to avail himself of this protection, the debtor must have filed his declaration of voluntary deposit before the seizure has been executed.

At the time of a seizure, the bailiff must allow the debtor to choose, from among the moveable property which furnishes his residence and is used by and necessary for the life of the household, the items he wishes to exclude from the seizure, up to a value of \$6,000. The court therefore had to determine whether the items seized satisfied this definition. The court considered that the computer and its accessories were items used by and necessary for the life of the household. The debtor had two children who were in university and used the computer for their studies. As for the microwave oven, the judge determined that, in our day and age, this was an item necessary for the life of the household and could not be seized.

The work instruments necessary for the debtor's exercise of his professional activity were also exempt from seizure. In this case, the debtor was a handyman who carried out various types of work requiring the use of the tools seized. These tools were therefore unseizable and had to be returned to the debtor. As for the piece of antique furniture and the four-drawer filing cabinet, these were not work instruments within the meaning of the law.

### **Reference**

*Sous-ministre du revenu du Québec v. Lelièvre*, Court of Québec (Civil Division) 200-02-031748-033, May 27, 2004, Judge François Godbout ([www.jugements.qc.ca](http://www.jugements.qc.ca))

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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