



DIRECT DEPOSIT MISTAKENLY MADE BY THE CANADA REVENUE AGENCY (CRA)

The use of direct deposits for government benefits has become standard practice, but it may lead to unpleasant consequences for those who do not pay close attention to the deposits they receive.

Indeed, the increasing types of deposits (parental benefits, employment insurance benefits, tax refunds, last resort assistance benefits, credits, etc.) at the provincial and federal levels means that deposits can be made mistakenly in a taxpayer's account, giving the taxpayer access to funds to which he is not entitled.

The consequences may be significant, if not dramatic, especially if these deposits are made mistakenly by the Canada Revenue Agency or another federal entity.

The Facts

A young man in his twenties, who has shared custody of his two children and receives last resort assistance, has a current account at a bank. The following amounts are deposited into his account on a regular basis by direct deposit: last resort assistance benefits, child assistance benefits (provincial and federal), and the solidarity tax credit.

One day, an amount of approximately \$3,000 is deposited into his bank account. The only information he has is that this amount was deposited by the Canada Revenue Agency. The young man therefore thinks it's a tax refund or a retroactive adjustment of the benefits he receives from the federal government. In the following days, he withdraws the entire amount in order to pay off some debts and have his vehicle repaired.

A few months later, while trying to pay for groceries with his debit card, he is unable to do so because no funds are available. He quickly contacts his bank, which informs him that not only has the Canada Revenue Agency seized his bank account, but all the money that was in the account, i.e. approximately \$1,500, was transferred to the Canada Revenue Agency. The money in his bank account consisted of his last resort assistance benefits and his child assistance benefits.

The Powers of the Canada Revenue Agency

The CRA had mistakenly deposited the amount of \$3,000 in the young man's bank account. Since the amount was paid mistakenly, the CRA had the power to recover it, because it was an unwarranted payment that constituted a debt due to Her Majesty.

Text prepared by
M^e Simon Delisle-Beaulieu
Lawyer at the Asbestos legal
aid office

Contact Us

Commission des
services juridiques
Communications Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Québec
H5B 1B3

Telephone: (514) 873-3562
Fax: (514) 864-2351

www.csj.qc.ca

* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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Legal Brief*

Vol. 11

Number 05

May – June 2019

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The CRA does not have to provide any justification, nor does it have to notify the tax debtor before taking action. No authorization is required and, unlike the garnishments we usually see, the *Income Tax Act* does not provide for a prior notice to the debtor.

In fact, section 224 of the *Income Tax Act* allows the CRA to require, in writing, that a financial institution pay all or part of the funds it holds to the Receiver General. This procedure, commonly referred to as a requirement to pay, does not require any court proceedings, and the CRA is not obliged to give a prior notice to the taxpayer before seizing his bank accounts.

Furthermore, property that is unseizable under provincial legislation is not protected from this type of garnishment. Therefore, although last resort assistance benefits are unseizable, the seizure of these amounts by means of a requirement to pay (seizure of a bank account) and their payment to the Receiver General for Canada cannot be opposed under the laws of Québec.

In short, it is the responsibility of those who receive funds in their bank account via direct deposit to ensure that these funds belong to them, especially when the funds are deposited by a federal entity.

To find the contact information for your legal aid office, please visit our website at www.csj.qc.ca.

Text prepared by
M^e Simon Delisle-Beaulieu
Lawyer at the Asbestos legal
aid office

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Commission des
services juridiques
Communications Department
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