



THERE'S A BAILIFF AT MY DOOR!

Jérôme Blais, a former musician, is 66 years old and is still working. He lives in an apartment in a village and has a car that he uses to get to work, since there is no public transport where he lives. His furniture is old and the only thing of value in his possession, in addition to his car, is an acoustic guitar that is still worth approximately \$2,000. Apart from his \$1,200 gross monthly salary, he receives his federal old age security pension and a monthly retirement pension from Retraite Québec.

Four years ago, he had some financial difficulties and did not pay a balance of \$1,800 he owed his dentist. The Court of Québec, Small Claims Division, subsequently rendered a judgment against him ordering him to pay the dentist the amount of \$1,800 plus the legal costs and the interest provided for by law.

To his great surprise, a bailiff recently visited him and seized his car and his guitar. The following day, Jérôme's employer informed him that he had received a notice seizing Jérôme's salary (often referred to as a garnishment). Jérôme is in a panic! Are these seizures valid?

- 1- **The car:** NO, because the car is necessary in order for Jérôme to maintain his work income, given that he does not have access to public transport to get to work. The same would be true if his car had been required in order to meet his basic needs, to ensure that he received the care required by his state of health or to ensure that he could pursue his education. However, the presence of accessible public transport could have made his car seizable. Jérôme must retain the services of a lawyer in order to institute proceedings to oppose the seizure.
- 2- **The guitar:** YES, because it is not used for his work or for a professional activity. Jérôme has the right to keep in his dwelling movable property that is for his use, that he needs in order to live and that has a total value of up to \$7,000, but the guitar is unlikely to be considered movable property that furnishes his residence within the meaning of the law. Therefore, it can be seized and, if it has a market value, can be sold to repay part of the debt.
- 3- **His salary:** YES, in part, i.e., the seizable portion of his salary.

The *Code of Civil Procedure* determines the portion of a debtor's salary that can be seized by a creditor. To determine the seizable portion of a debtor's salary, the calculation takes into account all employment income as well as benefits paid to the debtor, such as Québec pension benefits and federal old age security benefits. Benefits that are unseizable under the statute that creates them remain unseizable, even if these amounts are taken into account when computing total income and are used to determine the percentage of the salary that is seizable and that will subsequently be remitted to the creditor.

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

The masculine gender has been used to designate persons solely in order to simplify the text.



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(Continued)**

As an example, let's assume Jérôme has a monthly income of \$2,200, which represents weekly income of \$508.08 ($\$2,200 \div 4.33$ weeks per month).

The Code of Civil Procedure determines the exemptions to which a debtor is entitled for his basic needs and those of his dependants. As of June 1, 2016, the basic weekly exemption for a single person was \$273.17.

Therefore, the calculation will be as follows:

Jerôme's gross weekly Income:	\$508.08
Minus: The exemption to which he is entitled:	<u>\$273.17</u>
Equals: The seizable portion of his salary:	\$234.91

Of that amount, 30% can be seized, or \$70.47

Jerôme's employer will therefore have to remit to the court clerk an amount of \$70.47 per week (or \$305.13 per month) deducted from his salary. The amounts seized will have to be remitted to the dentist at least every three months, until the debt has been paid in full.

For how long is a judgment valid?

A right resulting from a judgment expires after 10 years if the creditor does not take any enforcement measures (a seizure).

It is also important to note that the legal costs, the interest accrued over the past 4 years and the enforcement costs will be added to Jérôme's initial debt and will therefore increase the amount he has to pay.

Thus, it is in Jérôme's interest to quickly come to an agreement acceptable to his creditor in order to reimburse the amounts owed.

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*The exemption amount, determined pursuant to section 156 of the *Individual and Family Assistance Regulation*, is indexed on April 1st of each year. This regulation was enacted under the *Individual and Family Assistance Act*.

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