

**SUPREME COURT OF NOVA SCOTIA**  
**IN BANKRUPTCY AND INSOLVENCY**

**Citation:** *Godbout (re)*, 2019 NSSC 315

**Date:** 20190920

**Docket:** No. 42870

**Registry:** Halifax

**Estate Number:** 51-2383387

**In the Matter of:** The bankruptcy of Lena May Godbout

**Judge:** Raffi A. Balmanoukian, Registrar

**Heard:** September 20, 2019, in Halifax, Nova Scotia

**Counsel:** Edward A. MacDonald, for Grant Thornton Limited, trustee  
Lena May Godbout, appearing personally

**Balmanoukian, Registrar:**

[1] When life's road takes a Nova Scotian to bankruptcy, does she get to keep her car?

[2] The answer, in this Province, is "it depends."

[3] Ms. Godbout is a resident of peninsular Halifax. One of her assets was a vehicle, owned outright, valued at a little over \$4,000. She paid the full value into the estate. All that remains of her duties is a small balance due under her voluntary payment agreement for the cost of administration - \$496 out of \$1800, in accordance with Section 156.1 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA") and Rule 58.1 of the *Bankruptcy and Insolvency Act General Rules*, CRC 1978, c. 368, as amended.

[4] At the hearing, I questioned the Trustee in this and another file, on the nature of the various ways vehicle exemptions are treated in this Province. I have found the Trustee's treatment and interpretation in both files to be correct and will issue the orders as drafted. However, I believe it appropriate to review the different situations in which a bankrupt or a trustee or a creditor may find themselves, depending on the circumstances.

[5] It goes without saying that a properly secured creditor may realize upon its asset; and that property that is exempt from execution under the applicable provincial law is not “property of the Bankrupt” distributable amongst creditors (BIA s. 67(1)(b)).

[6] What and how much is exempt in Nova Scotia, insofar as vehicles are concerned, depends on three factors: (1) where the debtor lives and what the vehicle is used for; (2) what the vehicle is worth; and (3) whether or not there was valid or invalid security on the vehicle, or no security at all.

[7] I will here consolidate my understanding, as I have seen various interpretations, including by various Trustees. They apply different exceptions and exemptions in different ways. Some situations will be quotidian; others will be unicorns.

[8] If a bankrupt owns a vehicle outright, of a value under \$3,000, it is exempt and the bankrupt’s to keep; that is, unless it is subject to security valid as between debtor and creditor but invalid as against the Trustee: *Judicature Act*, RSNS 1989 c. 240, s. 45(1)(f), and *VW Credit Canada Inc. v. Roberts et al.*, 2001 NSCA 42.

[9] If a bankrupt’s vehicle is worth less than \$3,000 and is subject to “duly filed” security, other than a floating charge, it is subject to that security:

*Judicature Act*, s. 45(2). This is not restricted to security that is a purchase money security interest (“PMSI”), but any kind of properly secured loan noted in s. 45(2). However, subject to that security, the exemption remains. A bankrupt with a \$3,000 vehicle and a \$1,000 “duly filed” security gets to keep it, subject to the rights of that \$1,000 secured creditor.

[10] There is no “equity exemption” to bring a vehicle within this provision. Thus, a bankrupt with a vehicle worth \$3,500 with a \$1,000 encumbrance (or a \$52,500 vehicle with a \$50,000 encumbrance) has a \$3,500 or \$52,500 vehicle, not a \$2,500 “net” vehicle. They are not covered by the *Judicature Act* s. 45(1)(f).

[11] If a bankrupt owns a vehicle with a “realizable value” of between \$3,000.01 and \$6,500 outright, s/he may set up an exemption against the Trustee pursuant to Section 59(3)(b) of the *Personal Property Security Act*, SNS 1995-96, c. 13 as amended (“PPSA”), IF “the motor vehicle is required by the debtor in the course of or to retain employment or in the course of and necessary to the debtor’s trade, profession or occupation” OR if it is needed for “transportation to a place of employment where public transportation facilities are not reasonably available.” The exemption is not available if the vehicle is not used for work, or to get to work in an area with reasonable public transport (I will sometimes refer to these for convenience, collectively, as the “work” or “work/location” condition). If the

exemption does not apply for any of these reasons, the entire vehicle is “property of the bankrupt” and its value distributable among creditors.

[12] If a bankrupt’s vehicle is worth between \$3,000.01 and \$6,500 and is subject to valid security other than a PMSI, such as collateral security for a non-PMSI loan, it is subject to the rights of the secured creditor. However, the s. 59(3)(b) PPSA exemption would otherwise apply, if the debtor found him/herself within the work/location preconditions of that section.

[13] If the bankrupt’s vehicle is worth between \$3,000.01 and \$6,500, is subject to properly perfected non-PMSI security, and is NOT “required by the debtor in the course of or to retain employment or in the course of and necessary to the debtor’s trade, profession or occupation” AND is NOT needed for “transportation to a place of employment where public transportation facilities are not reasonably available,” it is subject to the rights of the secured creditor, and any equity would need to be surrendered or repurchased by the bankrupt.

[14] If a bankrupt’s vehicle is worth between \$3,000.01 and \$6,500 and subject to a properly perfected *purchase money security interest* (but not other types of secured indebtedness), there is no exemption and the vehicle is subject to the rights

of the secured creditor, and any equity must be repurchased or surrendered by the bankrupt.

[15] If a bankrupt's vehicle, *of any value*, is subject to a security which is valid *as between debtor and creditor, but invalid as against the trustee* (for example, due to defective or non-perfection), there is no exemption: *VW Credit Canada Inc. v. Roberts et al.*, 2001 NSCA 42. See also *Re Doran*, 2006 NSSC 123. The bankrupt must surrender or pay for the vehicle's entire value. For clarity, when I refer to vehicles "owned outright" in this decision, I do not mean situations in which there is such security, valid as between lender and borrower, but invalid as against the Trustee.

[16] If a bankrupt's vehicle, worth \$6,500.01 or more, is owned outright and is (a) needed for work or (b) needed to get to work in an area without reasonable public transport as contemplated by Section 59(3)(b) of the PPSA, the bankrupt is entitled to a \$6,500 payment if the asset is surrendered to or seized by the Trustee: PPSA s. 59(6). It would be the Trustee's duty to realize the asset as "property of the bankrupt."

[17] If the vehicle, worth \$6500.01 or more, is owned outright and the PPSA 59(3)(b) “work/location” exemptions do not apply, the entire value is divisible amongst creditors.

[18] If a vehicle is worth \$6,500.01 or more and is subject to perfected PMSI security, the secured creditor has its rights and any equity must be paid or surrendered, whether or not within the PPSA 59(3)(b) exception, as 59(3)(b) does not apply to perfected PMSI security: PPSA 59(7).

[19] If a vehicle is worth \$6,500.01 or more and is subject to perfected non-PMSI security, the secured creditor has its rights; if the “work/location” exemption in PPSA 59(3)(b) applies, the bankrupt is entitled to a \$6,500 exemption if the vehicle is seized or surrendered; the bankrupt is not entitled to that exemption if it is not seized or surrendered, or if the “work/location” exemption does not apply.

[20] It will be seen that this leads to a rather complicated flow chart, which I will attempt to compile here.

1. Vehicle under \$3,000
  - a. Valid security?
    - i. Yes – vehicle exempt subject to rights of secured creditor
    - ii. No security – Exempt

- b. Invalid security? If yes, no exemption
- 2. Vehicle \$3,000.01 - \$6,500
  - a. Valid security?
    - i. Yes
      - a. PMSI?
        - i. Yes – no exemption
        - ii. Not PMSI - 59(3)(b) “work” condition met?
          - 1. Yes – exempt
          - 2. No – not exempt
      - ii. Invalid security – no exemption
    - b. No security
      - i. 59(3)(b) “work” condition met?
        - a. Yes – exempt
        - b. No – no exemption
- 3. Vehicle \$6,500.01+
  - a. Valid security



- i. Yes
  - a. PMSI?
    - i. Yes – no exemption
    - ii. No – no exemption but \$6,500 payable to debtor if vehicle seized
  - b. Invalid security – no exemption
  - c. No security
    - i. PPSA 59(3)(b) “work” exemption?
      - a. Yes - \$6,500 payable to bankrupt if seized or surrendered – Trustee has obligation to realize on the asset
      - b. No – No exemption

[21] Here, Ms. Godbout lives in an area of reasonable public transportation; her vehicle was owned outright. The Trustee reached the right conclusion that the owned vehicle, worth more than \$3,000, was not exempt in whole or in part, as it came within neither the *Judicature Act* exemption, nor the PPSA exemption. It is the situation covered in paragraph 11, above.

[22] That can lead to incongruous results. The bankrupt debtor who has a vehicle “free and clear” worth \$2,999 can keep it in full but one with a vehicle worth \$3,001 might not, or may have to pay all \$3,001 (depending on where s/he lived and the vehicle’s use). A debtor subject to valid security of \$10,000 on an \$11,000 car would only need to pay \$1,000 to his estate (and of course the \$10,000 loan); but if the security is invalid, s/he would have to surrender the vehicle or pay \$11,000 because a creditor (for example) omitted a middle name or got a serial number transposed in the filing. And the rural, working debtor with a \$40,000 vehicle owned outright, and used for the purposes noted in s. 59(3)(b) PPSA, gets \$6,500 to do with as s/he pleases, presumably with the object of obtaining more modest transportation.

[23] Nevertheless, those anomalies are for the Court neither to make reply nor reason why. Any reconciliation of these consequences, unintended or otherwise, is for the Legislature.

[24] The Court will issue the order as drafted by the Trustee.

Balmanoukian, R.