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Bankruptcy, Equalization, and Rule of Law

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The Supreme Court of Canada's recent decision in *Schreyer v. Schreyer* has made an important point on the interaction of bankruptcy claims and equalization payments.

The court's decision, based on an appeal from the Manitoba Court of Appeal is important for all of the provinces which have an equalization system in their family law legislation. This includes Ontario, Manitoba, P.E.I., the Northwest Territories, and Nunavut.

The Court's Decision

In this case, a husband and wife had started their divorce proceedings shortly before the husband declared bankruptcy. The trial court awarded the wife an equalization payment of more than \$40,000. The husband's primary asset was a piece of farmland, which under the *Bankruptcy and Insolvency Act* is exempt from bankruptcy proceedings.

The *Family Property Act* in Manitoba mandates that in a divorce or separation, a couple must calculate the value of their property and make a payment to the spouse with the smaller amount. This is the same sort of system Ontario has—there is no transfer of title or property under the division of property in the *Family Law Act*—it is just a payment.

The husband argued that his bankruptcy claim extinguished the equalization payment. The wife argued that since the farmland was exempt, and he would be retaining it, and it formed the majority of his property, her claim should survive the bankruptcy.

The most important question for the court to decide was whether an equalization payment was a personal debt or whether it was an interest in property.

This issue formed the crux of the argument, and had the furthest reaching consequences for the other equalization jurisdictions.

The court determined that under the *Family Property Act* (and the *Family Law Act*) there is no transfer of title or an interest created in property. This means that an equalization payment is not tied to any property.



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Under the legislation, it could only be a personal debt owed by the husband to the wife. As a result, the husband's bankruptcy prevented the wife from enforcing the debt against him and the husband did not have to pay the equalization payment. And he was able to keep the farm property.

The wife, unfortunately, was left with virtually nothing from the litigation.

The Court did point out, however, that had she been seeking an order for spousal support, the *Bankruptcy and Insolvency Act* does not apply to support payments.

The Rule of Law

The Supreme Court acknowledged that this result seemed inequitable. It did point out, however, that the wife had failed to exercise several possible remedies under the *Bankruptcy and Insolvency Act*, which made her situation worse.

While the decision seems unfair, it was the only correct decision possible. One must remember that although the Supreme Court of Canada is the top court in the land, it is still bound by statutes. To do otherwise would be to violate the Rule of Law, in other words, violate current Canadian law.

The Supreme Court recognized that this could be an issue and called on parliament to make the necessary amendments to the *Bankruptcy and Insolvency Act*. Those who worry that the Supreme Court of Canada has created a loophole with this decision are likely concerned over nothing.

The massive financial consequences of bankruptcy and the immunity of support claims will deter the vast majority of individuals. Further, it was simply outside of the Supreme Court's power to correct this situation.