

Court File No. 2006-934(IT) I

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN:

ELIZABETH TUCK

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

**HEARD BEFORE MR. JUSTICE ROSSITER
in the Courts Administration Service, Discovery Room
180 Queen Street West, 6th Floor,
Toronto, Ontario
on Wednesday, March 14, 2007 at 9:29 a.m.**

ORAL REASONS

APPEARANCES:

Mrs. Elizabeth Tuck
(via telephone)

on her own behalf

Mr. Laurent Bartleman
(via telephone)

for the Respondent

Also Present:

Mr. William O'Brien
Ms Linda O'Brien

Court Registrar
Court Reporter

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1 Toronto, Ontario
2 --- Upon commencing on Wednesday, March 14, 2007
3 at 9:29 a.m.

4 JUSTICE ROSSITER: Thank you very
5 much for attending this morning. We have with us
6 the court reporter and the registrar.

7 When we were here last, I took
8 this matter under advisement, and I said I would
9 render my decision today if matters were not
10 resolved between the parties. I understand they
11 weren't resolved between the parties, so I will
12 give you my oral judgment now.

13 I may have reviewed some the facts
14 when we were here last, I think I did, but I am
15 going to review them one more time so everything is
16 clearly on the record.

17 This matter comes before this
18 court on February 5th of 2007 by way of an appeal
19 by the appellant, Elizabeth Tuck, from a
20 determination by the Minister of National Revenue,
21 the Minister, that the amount paid by the appellant
22 to her husband, David Tuck, in 2001 is spousal
23 support in the amount of \$50,400 was not deductible
24 pursuant to section 60.1(3) of the Income Tax Act
25 notwithstanding the fact that the recipient of the

1 moneys, David Tuck, claimed \$18,000 as spousal
2 support income on line 156 of his T1 return for the
3 income tax year of 2002.

4 The facts in this matter are
5 straightforward and not in dispute.

6 On November the 11th, 2000, the
7 appellant and David Tuck became separated. In
8 2002, the appellant brought all the financial
9 obligations of her and David Tuck up to date and
10 gave David Tuck a cheque in the amount of \$10,000.

11 From January 1st, 2001 to December
12 31st, 2004, the appellant paid David Tuck the sum
13 of \$4,200, approximately, each month as spousal
14 support. The amount might be adjusted monthly on
15 an occasional basis when the appellant paid
16 Mr. Tuck's bills directly.

17 In 2001, the appellant made
18 payments to David Tuck totalling \$48,260
19 specifically in the following amounts. Each
20 payment was made by cheque under the signature of
21 the appellant and was drawn on her CIBC account.
22 Six of the cheques were dated the first day of the
23 month; December 1st, 2001, \$4,200; November the
24 1st, 2001, \$4,200; October the 1st, 2001, \$4,200;
25 August the 1st, 2001, \$4,140; July 1st, 2001,

1 \$4,120; April 1st, 2001, \$,4,000.

2 The other six cheques were dated
3 randomly but all towards the end of the month;
4 December 26, 2001, \$4,200; August 31st, 2001,
5 \$4,100; May 31st, 2001, \$4,200; August 30th, 2001,
6 \$4,200; February 25th, 2001, \$4,200; and finally,
7 January 21st, 2001, \$2,500.

8 All the cheques were made payable
9 to David R. Tuck or David Tuck. All cheques,
10 except three, in the memo portion of the cheque
11 referred to payments, i.e. April payment. Two of
12 the remaining three cheques made no reference to
13 payment in the memo portion of the cheque. The
14 cheque dated December 26, 2001 in the memo portion
15 stated "January payment for spousal support".

16 David Tuck filed a 2001 T1,
17 Exhibit A-1, tab 4, with a cover letter claiming
18 income of \$18,000 in line 156 as "support payments
19 received". This appeared initially to be
20 Mr. Tuck's total income for 2001, but his T1 also
21 showed a statement of business activities with
22 total taxes payable of \$374.38.

23 On January 31st, 2002 the
24 appellant completed a financial statement, Exhibit
25 A-1, tab 5, in the course of dealing with the

1 matrimonial issues. The document was sworn by the
2 appellant and shows actual monthly support payments
3 of \$4,200. This document speaks as of the date of
4 July 31st, 2002.

5 On July 31st, 2002, the appellant
6 and David Tuck entered into an interim agreement,
7 Exhibit A-1, tab 1, schedule A. Clause number one
8 of this agreement states as follows:

9 "Beth shall pay to David for
10 his interim maintenance and
11 support the sum of \$4,200 per
12 month commencing on June 1st,
13 2002 and the first day of
14 each subsequent month
15 thereafter."

16 Clause number two of interim
17 agreement states as follows:

18 "The parties acknowledge and
19 agree that all support
20 payments made by Beth
21 pursuant to the terms of this
22 agreement shall be deductible
23 by Beth as periodic payments
24 includable by David in
25 calculation of their

1 respective incomes for tax
2 purposes and considered as
3 having been paid and received
4 pursuant to the provisions of
5 subsection 56.1(2), 56.1(3),
6 60.1(2) and 60.1(3) of the
7 Income Tax Act."

8 On July 31st, 2002 a letter was
9 forwarded from the appellant's counsel to the
10 counsel for her husband, David Tuck, Exhibit A-1,
11 tab 6, referring to an agreement between the
12 parties and to an offer of settlement. Enclosed
13 were executed copies of the interim agreement,
14 Exhibit A-1, tab 1, schedule A, dated July 31st,
15 2002, and the financial statement of the appellant
16 dated July 31st, 2002, Exhibit A-1, tab 5, plus
17 some cheques on a periodic basis for Mr. Tuck.
18 There was no reference in this agreement to payment
19 being made by the appellant to Mr. Tuck in 2001 but
20 there was reference to section 60.1(3) of the Act.

21 By October 1st, 2002, a formal
22 offer of settlement was sent by the appellant's
23 counsel to counsel for her husband, David Tuck,
24 Exhibit A-1, tab 8, and this offer had been
25 reviewed and approved by the appellant prior to it

1 being forwarded to Mr. Tuck's counsel, Exhibit A-1,
2 tab 7. This offer makes no reference to payments
3 in 2001 by the appellant to David Tuck.

4 Paragraph 2 of the offer states as
5 follows:

6 "The husband acknowledges
7 that he has received from the
8 wife the sum of \$10,000 in
9 December of 2000 and \$4,200
10 per month on the first day of
11 each month commencing the
12 first day of January 2001,
13 and continuing up to and
14 including the date of the
15 acceptance of this offer.
16 The husband and the wife
17 agree the support payments to
18 the husband shall be included
19 by the husband and deducted
20 by the wife in the
21 calculation of their
22 respective income tax returns
23 pursuant to the Income Tax
24 Act, sections 56.1(3) and
25 section 60.1(3), and both

1 shall cooperate in refileing
2 the tax returns for the years
3 2000 and 2001."

4 It should be noted that this
5 clause specifically referred to section 60.1(3) of
6 the Income Tax Act in terms of 2000, 2001. There
7 was in this particular offer of settlement what I
8 would term to be a sunset clause, that is the
9 maintenance stops on December 31st, 2004.
10 Reference should be made to paragraph 1 of the
11 agreement.

12 Also, this agreement provides for
13 a lump sum payment to David Tuck by the appellant
14 of \$50,000, plus Mr. Tuck was to receive the funds
15 held in trust for the sale of the matrimonial home
16 at 214 Cranbrooke Avenue, Toronto, Ontario.

17 On December 18th, 2002, a letter
18 was forwarded by Mr. Tuck's counsel to counsel for
19 the appellant, Exhibit A-1, tab 9, and this letter
20 stated as follows:

21 "Re Tuck v. Tuck.

22 "Thank you for your letter of
23 October 1st, 2002. My client
24 is prepared to accept the
25 terms set out in the offer

1 attached to the letter save
2 and except for the time limit
3 on the spousal support
4 payments. There are numerous
5 factors that make
6 time-limited support
7 unacceptable, including the
8 length of the marriage, the
9 length of time my client was
10 out of the workforce, the
11 wide disparity in the
12 parties' incomes, my client's
13 age and his limited
14 retirement savings. I do not
15 believe a court would impose
16 a time limit on his spousal
17 support and my client will
18 not accept one. Mr. Tuck is
19 prepared to agree to a review
20 of spousal support at the end
21 of 2004. I understand that
22 he has discussed this with
23 your client and that is
24 agreeable to her. Please
25 advise if this is correct.

1 "I look forward to hearing
2 from you."

3 On December 19th, 2002, a letter
4 was forwarded by the appellant's counsel to
5 Mr. Tuck's counsel in which he stated as follows,
6 Exhibit A-1, tab 10:

7 "I am unable to meet with my
8 client until the second week
9 of January. However, I will
10 review your letter and will
11 get back to you shortly
12 thereafter."

13 On October 17, 2003 an interim
14 separation agreement, which I call interim
15 separation agreement number 2, was completed by the
16 parties, Exhibit A-1, tab 2. In this interim
17 agreement there is no mention nor reference to
18 2001. There is no reference to section 60.1(3) but
19 there is reference to section 56.1(2) and 60.1(2)
20 of the Act. There were provisions for payment of
21 the \$4,200 per month for the months January to May
22 2002 by the appellant to Tuck.

23 On February 10th, 2005, there was
24 a separation agreement executed between the
25 appellant and Mr. Tuck, Exhibit A-1, tab 1.

1 Specific reference should be made to paragraph 4.1
2 which states as follows:

3 "The parties acknowledge that
4 the wife has paid to the
5 husband as periodic spousal
6 support the sum of \$4,200 per
7 month commencing January 1st,
8 2002 to and including
9 December 1st, 2004."

10 Paragraph 4.2 states as follows:

11 "The parties agree that the
12 payment of spousal support
13 are taxable to the husband
14 and tax deductible for the
15 wife."

16 Paragraph 4.6 states as follows:

17 " -- all of these payments
18 from January 1st, 2001 to and
19 including December 31st, 2004
20 have been paid and received
21 pursuant to two interim
22 agreements, that within the
23 agreement, in subsections
24 56.1(2), 56.1(3), 60.1(2) and
25 60.1(3) of the Income Tax

1 Act."

2 The appellant testified at the
3 hearing that in the interim agreement of July 31st,
4 2002 previous payments had not been acknowledged
5 because Mr. Tuck was not very agreeable. She
6 testified that Mr. Tuck would agree verbally and
7 then say later he did not want to sign an agreement
8 to acknowledge something that he actually agreed to
9 initially verbally.

10 The appellant also acknowledged
11 there was no specific acknowledgement by David Tuck
12 of payments for 2001 in the interim agreement of
13 October 17, 2003, but he did so in the February
14 10th, 2005 separation agreement.

15 The issue in this particular
16 matter is whether the appellant is entitled to
17 claim spousal support payments of \$50,400 as a
18 deduction in computing her income for the 2001
19 taxation year.

20 The position of the appellant on
21 the issue is as follows:

22 (1) the appellant is not asking
23 for deductions on moneys paid to third parties,
24 only for the moneys paid to David Tuck for the year
25 2001.

1 is relying upon the separation agreement of
2 February 10th, 2005 as the written agreement to
3 bring the appellant within the terms of the Act.

4 (2) the appellant cannot rely upon
5 the July 31st, 2002 interim agreement or the
6 October 31st, 2003 interim agreement because there
7 is no reference in either agreement to the 2001
8 payments or the deductibility for income tax
9 purposes.

10 (3) the inclusion of the \$18,000
11 of spousal support income by David Tuck in 2001
12 does not bind the Crown on the deduction claimed by
13 the appellant.

14 (4) the cheques paid by the
15 appellant to David Tuck and endorsed by David Tuck,
16 cashed and deposited by David Tuck in his own
17 account do not constitute a written agreement under
18 60.1(3) of the Act.

19 (5) the offer of settlement
20 presented by the appellant's counsel to Mr. Tuck's
21 counsel was never accepted by Mr. Tuck and the
22 appellant until the separation agreement of
23 February 10th, 2005.

24 Finally:

25 (6) there was no consent in

1 writing between the Appellant and Tuck on the issue
2 of the duration of the support from the appellant
3 to the respondent until the separation agreement of
4 February 10th, 2005.

5 In terms of the law, I have
6 reviewed in detail all the authorities submitted
7 and referred to by both parties, including the
8 relevant provisions of the Act.

9 On the question of whether the
10 February 10th, 2005 separation agreement can be
11 interpreted as a written agreement within the
12 meaning section 60.1(3) of the Act so as to allow a
13 deduction for the support payment paid by the
14 appellant to Mr. Tuck in 2001, the answer to this
15 question is no. Section 60.1(3) of the Act makes
16 certain specific statements and I won't review it
17 in particular.

18 The Federal Court of Appeal in
19 *Anstead v. R*, 2005 D.T.C. 5616 stated at paragraph
20 11 as follows:

21 "As to the third argument,
22 the appellant admits it was
23 not raised before the Tax
24 Court Judge. In any event,
25 we do not agree that section

1 60.1(3) can be construed as
2 argued by the appellant.
3 That subsection clearly means
4 that with reference to the
5 2002 order, deductions can
6 only be claimed in the year
7 of the preceding taxation
8 year from the date of the
9 2002 order."

10 Applying Anstead in the case at
11 bar, section 60.1(3) and relying upon the February
12 10th, 2005 separation agreement means deductions
13 can only be claimed in the year of the preceding
14 taxation year from the date of the 2005 agreement,
15 that is 2005 or 2004.

16 This situation falls outside the
17 time line deductibility for the 2001 payments by
18 the appellant to Mr. Tuck, given the date of the
19 written separation agreement of February 10th,
20 2005.

21 As for the question of whether or
22 not there is a written agreement covering the
23 deductions of 2001, this certainly causes me some
24 difficulty.

25 The October 17th, 2003 interim

1 agreement, Exhibit A-1, tab 1, schedule B, is not
2 applicable due to the ruling in Anstead referred to
3 earlier, that is in order to be deductible under
4 the October 17, 2003 interim agreement, the
5 deduction can only relate to the year 2002 and
6 2003.

7 The July 31st, 2002 interim
8 agreement, Exhibit A-1, tab 1, schedule A, makes no
9 reference to payments in 2001 by the appellant to
10 David Tuck.

11 The matter, however, does not end
12 there. Section 60.1(3) was referred to, and it
13 should be noted that for the purpose of section 60,
14 there must be a written agreement or order of a
15 competent tribunal. In the case at bar, there is
16 no order of a competent tribunal so the only
17 remaining issue is whether or not there is a
18 written agreement.

19 In *Foley v. R*, [2004] C.T.C. 2016,
20 a decision of Associate Chief Justice Bowman, as he
21 then was, Mr. Justice Bowman dealt in detail with
22 what was meant by the phrase "written agreement".
23 The issue was whether or not section 60.1(3)(b) of
24 the Act could be interpreted to mean an agreement
25 signed by both parties or could it be an exchange

1 of correspondence between the parties?

2 Mr. Justice Bowman referred to
3 Hodson v. MNR (1987) 88 D.T.C 6001 which held that
4 there has to be a written agreement or a Court
5 order in support of the deductions under paragraph
6 60(b).

7 He also referred to Kapel,
8 K-A-P-E-L, v. MNR [1979] C.T.C. 2187, again dealing
9 with section 60(b). Unfortunately, neither of
10 these cases are applicable because they are dealing
11 with section 60(b) of the Act which references a
12 written separation agreement.

13 Mr. Justice Bowman also made
14 reference to Kapel in Knapp, K-N-A-P-P, v. MNR
15 [1985] 2 C.T.C. 2046, and made these following
16 comments:

17 "In that case there was
18 nothing that could be called
19 a written agreement signed by
20 either party. The appellant
21 argued that the cheques
22 signed by the husband and the
23 receipts signed by the wife
24 were a written agreement.
25 Such an argument was

1 obviously doomed. The word
2 "agreement" denotes at least
3 a binding obligation."

4 Mr. Justice Bowman after referring
5 to a variety of other cases pointed out that
6 counsel concluded a written agreement must be
7 signed by both parties and must be in one document.

8 Mr. Justice Bowman then went on to point out a
9 number of situations which came to mind and
10 concluded that he did not think that a contract in
11 writing or a written agreement requires the
12 physical affixing of the signature of the parties.

13 Again, he was referring to section 60(b) of the
14 Act. He goes on to quote the definition of writing
15 in subsection 35(1) of the Interpretation Act as
16 follows.

17 Excuse me, for a moment.

18 MR. BARTLEMAN: Sorry, Your
19 Honour, I was wondering if I could ask you just to
20 maybe slow down a little bit.

21 JUSTICE ROSSITER: Okay, we will
22 slow down.

23 MR. BARTLEMAN: Thank you.

24 JUSTICE ROSSITER: I figured I was
25 going too fast. You have to tell me that,

1 Mr. Bartleman. I get wrapped here and we're on our
2 way. Okay.

3 MR. BARTLEMAN: Thank you, Your
4 Honour.

5 JUSTICE ROSSITER: It is fairly
6 simple. This is not complicated. He was
7 describing the word "writing" in the Interpretation
8 Act.

9 "Writing, or any term of like
10 import, includes words
11 printed, typewritten,
12 painted, engraved,
13 lithographed, photographed or
14 represented or reproduced by
15 any mode of representing or
16 reproducing words in visible
17 forms."

18 Mr. Justice Bowman suggested that
19 suppose one spouse prepares an agreement and sends
20 it to the other saying, "I offer to settle our
21 matrimonial differences on the basis of this
22 agreement," then the other spouse writes back: "I
23 accept," that in his case view is a binding
24 agreement and it is in writing. He found that an
25 exchange of correspondence was a written agreement

1 within the meaning of section 60(b).

2 Here, in the case at bar, there
3 was an acknowledgment of the payment of the sum of
4 \$4,200 per month. There is an acceptance of these
5 funds. The funds were paid by the appellant to
6 Mr. Tuck on a monthly basis by cheques, signed by
7 the appellant, drawn upon her personal bank
8 account. The cheques were made out to Mr. Tuck.
9 He obviously endorsed these cheques and deposited
10 them in his account.

11 He acknowledges the payments for
12 2002 and onward by interim agreement of July 31st,
13 2002 and October 17th, 2003 and separation
14 agreement of February 10th, 2005. He acknowledged
15 the 2001 payments by separation agreement of
16 February 10th, 2005 and even included \$18,000 from
17 the moneys he received from the appellant in his
18 2001 tax return.

19 Here we have no specific exchange
20 of correspondence between counsel for the parties.
21 What we have is an offer of settlement from the
22 appellant's counsel to Mr. Tuck's counsel, a
23 response from Mr. Tuck's counsel saying basically,
24 yes, the amount of maintenance is satisfactory, but
25 we do not want to terminate on December 31st, 2004

1 for a variety of reasons. However, we understand
2 that your client is agreeable with renegotiating
3 the quantum at the end of December 2004 and please
4 let me know if this is the case.

5 Unfortunately, the appellant's
6 counsel did not confirm this agreement,
7 notwithstanding that the appellant testified that
8 she was in agreement with it for December 31st,
9 2002. It was eventually agreed to by a separation
10 agreement of February the 10th, 2005, indeed there
11 was another interim agreement executed on October
12 17, 2003 after the presentation of the offer of
13 settlement.

14 I have also reviewed Kerry Donald
15 Grant v. Her Majesty the Queen, 2000-2702 (IT)I,
16 which is a case similar to the case at bar. This
17 was a decision of Mr. Justice Mogan of the Tax
18 Court of Canada. In it, the facts are very similar
19 but there are a couple of quotes which I think are
20 very relevant to the case at hand. Paragraph No. 9
21 of the decision, fourth line, he states in part as
22 follows:

23 "Therefore, if the appellant
24 is to succeed, a written
25 agreement must be inferred

1 from other documents. I
2 would not infer a written
3 agreement from the monthly
4 cheques (each in the amount
5 of \$1,000) which the
6 appellant issued to Kathleen
7 in 1997 and which she cashed.
8 Her acceptance and cashing
9 of these cheques does not by
10 itself mean that the
11 appellant and Kathleen had
12 agreed that \$1,000 per month
13 was an appropriate
14 maintenance amount. She may
15 have cashed the cheques as a
16 convenient method of
17 receiving maintenance for
18 herself and the two younger
19 children without agreeing
20 that the amount was adequate
21 and consistently claiming
22 that amount should be higher.
23 She did not testify however
24 and there is no evidence that
25 she disputed the quantum of

1 the monthly amount."
2 "In fact the evidence runs in
3 the other direction. Exhibit
4 A-1, a letter dated April
5 1996 from Kathleen's lawyer
6 to the appellant's lawyer,
7 refers to the appellant's
8 undertaking to maintain the
9 support obligations at the
10 level of \$1,000 per month,
11 and Exhibit A-2, a letter of
12 May 21st, 1997 from
13 Kathleen's lawyer to the
14 appellant's lawyer, ends with
15 the following paragraph:
16 "'My client is also, of
17 course, looking for an
18 increase in the child support
19 especially given that the
20 agreement to receive \$1,000
21 per month was made at a time
22 when only two of the three
23 children were residing at
24 home, the third having come
25 to reside there shortly

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thereafter."

And finally in paragraph 13, fifth line down:

"In the circumstances of this case I hold that the payments of \$1,000 per month made by the appellant through 1997 were paid 'under a written agreement' comprising the cheques (each in the amount of \$1,000) delivered to Kathleen each month from September 1995 through to the end of 1997, plus the letter (Exhibit A-2) from Kathleen's lawyer dated May 21st, 1996 confirming the 'agreement' and the appeal was allowed."

Now, I also want to refer to David O'Connor v. Her Majesty the Queen, 2002-4586 (IT)I, a decision of Mr. Justice E.A. Bowie of the Tax Court, and the comments that he made in the Grant case as follows. Mr. Justice Bowie in the O'Connor case stated in paragraph 9 as follows:

"The identical question arose

1 in Grant v. Canada. Cheques
2 for \$1,000 were given by
3 Mr. Grant to his estranged
4 wife for support of their
5 children each month following
6 their separation and before
7 any written agreement or
8 court order was made. Mogan
9 J. rejected the proposition
10 that by cashing these cheques
11 Ms. Grant entered into a
12 written agreement fixing
13 \$1,000 per month as the child
14 support amount to be paid by
15 him. I agree with his view
16 that cashing the cheques does
17 not imply agreement. A
18 mother supporting children in
19 these circumstances would be
20 likely to need the funds and
21 could be expected to
22 negotiate the cheques even if
23 she felt they were
24 inadequate. In Grant, there
25 was a subsequent letter from

1 Ms. Grant's lawyer to
2 Mr. Grant's lawyer that
3 referred to 'the agreement to
4 receive \$1,000 per month',
5 from which Mogan J. inferred
6 a written agreement when it
7 was read with the cheques.
8 Here we have no such letter
9 or anything like it and no
10 written agreement can be
11 inferred."

12 The issue in this case in my mind
13 is whether or not the cheques themselves coupled
14 with the other documentation and facts of this case
15 constitute a written agreement for periodic
16 payments on a monthly basis. Each individual
17 cheque is in writing. Each individual cheque is
18 signed by the appellant and duly endorsed by David
19 Tuck. Each cheque is in a particular amount paid
20 on a monthly basis. Each cheque was accepted by
21 Mr. Tuck and used by him for his own personal
22 reasons over a term of years.

23 It appears clear that certainly
24 the amount of the payment was intended by the
25 parties, that is the appellant and Mr. Tuck, to be

1 maintenance. The only outstanding item in late
2 December of 2002 was the duration of the payments.

3 In the case at bar there was, as I
4 said, the regular monthly cheques individually
5 drawn by the appellant on her account payable to
6 Mr. Tuck, endorsed by him and used by him for his
7 personal reasons, both of which obviously intended
8 these amounts to be regular periodic monthly
9 maintenance payments.

10 In this particular case, there was
11 a letter from Mr. Tuck's lawyer to the appellant's
12 lawyer after the appellant's lawyers presented an
13 offer basically confirming the monthly periodic
14 amounts and basically confirmed Mr. Tuck was in
15 agreement with the periodic amounts, the only issue
16 being whether or not there was a sunset clause.

17 In Mr. Tuck's counsel's letter to
18 the appellant's counsel, the amount of \$4,200 was
19 specifically referred to, and the only question was
20 the duration, and then there was a suggestion that
21 the appellant had agreed to the request of Mr. Tuck
22 that the duration of the payments be left open.

23 Is it fair for the respondent to
24 receive tax from Mr. Tuck in the nature of tax on
25 the \$18,000 Mr. Tuck declared as income in his 2001

1 T1 tax return when it was declared as spousal
2 support and yet not allow the appellant at least an
3 equivalent deduction for the 2001 period?

4 Initially, I could understand why
5 the respondent would disallow the amount of the
6 deduction, but after investigation and after
7 production of the variety of documents referred to
8 in evidence herein, and after an explanation
9 provided by the appellant, in my view it is grossly
10 unfair for the respondent not to allow the
11 appellant an \$18,000 deduction.

12 The respondent should have done
13 one of two things. The respondent should have
14 either allowed the deduction of \$18,000 for the
15 appellant or, number two, allowed the appellant a
16 complete deduction for the full maintenance paid by
17 her in 2001 and reassessed Mr. Tuck for 2001. To
18 do otherwise would mean the respondent has not
19 treated the taxpayer fairly.

20 Here, the respondent did neither,
21 but instead collected tax from Mr. Tuck on the
22 amount he declared as maintenance and completely
23 disallowed Mrs. Tuck, the appellant, any deduction
24 for any payment by her to Mr. Tuck at all for 2001.

25 Surely, the Income Tax Act is not

1 such that it was intended that the respondent is to
2 benefit from the mistakes of the taxpayer, which is
3 exactly what happened here.

4 Surely, Parliament did not intend
5 the Income Tax Act to be interpreted in such a way
6 as to benefit the respondent unfairly at the
7 expense of the taxpayer.

8 Unfortunately, and I do say
9 unfortunately, the interpretation that has been
10 given to the relevant provisions of the Income Tax
11 Act in the past by the courts is such that it
12 allows the Minister to take what I call unfair
13 advantage of the taxpayers when the settled
14 intention of the taxpayer is otherwise.

15 Regretfully in the facts of this
16 case, I cannot find a written agreement to be in
17 existence so as to allow the deductions sought by
18 the appellant. I find the Minister on some
19 occasions to be narrow of view and unbending at
20 times and this is one of those times.

21 Unfortunately, I have no choice in
22 this particular case based upon the facts and the
23 evidence presented and the interpretation given and
24 the case law that I have considered that the appeal
25 has to be dismissed without costs.

CITATION: 2007TCC259
COURT FILE NO.: 2006-934(IT)I
STYLE OF CAUSE: ELIZABETH TUCK AND
HER MAJESTY THE
QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: March 14, 2007
REASONS FOR JUDGMENT: The Honourable
Justice E. P. Rossiter
DATE OF JUDGMENT: March 14, 2007
APPEARANCES:
For the Appellant: The Appellant herself
Counsel for the Respondent: Laurent Bartleman
COUNSEL OF RECORD:

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I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom, the
foregoing proceeding.

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Canad


Linda O'Brien, Computer-Aided Transcription

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