

TAX COURT OF CANADA

BETWEEN:

BRIAN CORNELIUS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

*** * * * ***

ORAL REASONS
HEARD BEFORE THE HONOURABLE
JUSTICE EUGENE ROSSITER
in the Courts Administration Service,
200 Kent Street, Ottawa, Ontario
on Thursday, December 6, 2007 at 9:31 a.m.

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APPEARANCES:

Mr. Brian Cornelius

Appellant, self-represented

Ms Joanna Hill

for the Respondent

Also Present:

Ms Nathalie Trinque

Court Registrar

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1 Ottawa, Ontario
2 --- Upon commencing the excerpt on Thursday,
3 June 12th, 2008 at 10:43 a.m.

4 DECISION:

5 JUSTICE ROSSITER: The facts in
6 this particular case are not really in dispute, and
7 I refer to the reply of the respondent, in
8 particular paragraph 13. Basically, the situation
9 is this: The appellant was married; he and his
10 spouse separated. They had a separation agreement
11 which provided for child support and spousal
12 support, specifically. They had an adjustment to
13 the separation agreement later, the following year,
14 to alter the amounts somewhat, again in relation to
15 child support. The spirit and intent of the couple
16 is shown by their subsequent 2006 agreement, which
17 brings them in that year within the four corners of
18 the Income Tax Act, yet still they are outside of
19 the four corners of the Income Tax act in 2004 and
20 2005.

21 The appeal itself must fail,
22 regrettably, and I agree with the comments of
23 appellant to some extent. He and his spouse are to
24 be commended for putting their affairs in order,
25 and obviously putting their affairs in order in the

1 best interests of the children, given the
2 circumstances.

3 I am going to refer to the Irwin
4 case, which is a decision of Madam Justice Woods,
5 and review basically how that relates to this
6 particular case.

7 The appellant was a minister of
8 religion. He appeals his 2004 and 2005 taxation
9 years that were denied where he was denied the
10 dependent tax credit, sometimes known as the
11 equivalent-to-spouse tax credit, in respect of the
12 child Logan. The Minister of National Revenue
13 disallowed the credit pursuant to section 118(5) of
14 the Income Tax Act on the ground that Mr. Cornelius
15 was required to pay support payments in respect of
16 the children.

17 I have reviewed briefly the facts
18 previously with respect to the separation and
19 amendments to the agreements, and they were truly
20 trying to make an equitable situation between them
21 in terms of the caring for the children physically
22 and caring for the children in a financial sense.

23 In general, subsection 118(5)
24 prohibits a person from claiming the equivalent-to-
25 spouse tax credit in respect of children if the

1 person pays support payments for the child. Mr.
2 Cornelius does not deny that the subsection applies
3 in his case, but really argues the relief on the
4 grounds of fairness and equity.

5 Simply put, you suggest that
6 legislation does not properly deal with joint
7 custody situations, or there should be a
8 recognition of the situation that you are in.

9 The prohibition in section 118(5)
10 clearly applies to this particular case, and we
11 have no alternative but to apply it. This court
12 has no equitable jurisdiction, and is required to
13 apply the law as legislated by Parliament and you
14 must bring yourself in the confines of the four
15 corners of the Income Tax Act.

16 Regrettably, I find that section
17 118(5) does apply in this case. The appeal must be
18 dismissed.

19 However, I would commend the
20 appellant and spouse for the efforts that they
21 made, in particular in pursuing this appeal.
22 Obviously, the appellant feels that this is an
23 unfair tax result. Unfortunately, there are many
24 aspects of the Income Tax Act which many feel are
25 unfair, and this is but one example.

1 I regret my decision cannot be
2 more favourable. I would suggest that the
3 respondent take some steps to recommend to the
4 minister an amendment to the Income Tax Act so that
5 circumstances such as this do not occur, or, if the
6 minister does not want to do that, then give this
7 court jurisdiction necessary to ensure that it
8 doesn't occur, and by that I specifically mean
9 equitable jurisdiction. If this court had
10 equitable jurisdiction, we would be able to deal
11 with circumstances such as those which we have
12 before us, because we would make orders which would
13 be equitable in nature.

14 Unfortunately, and much to my
15 regret, I have no choice to dismiss the appeal, and
16 I so order.

17 Thank you very much, Mr.
18 Cornelius, for bringing this back to the court.
19 Thank you for you presentation, and thank you, Ms.
20 Hill, for your presentation. I ask the registrar
21 to adjourn the court.
22 --- Whereupon the hearing concluded at 10:47 a.m.

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

Catherine Keenan, Computer-Aided Transcription