

## **Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**

### **Answers to pressing questions on Family Law.**

#### **Writing their Own Laws**

**Question:** The CRA (Canada Revenue Agency) write that I can't deduct the spousal support payments I paid to my wife last year, notwithstanding the court order and separation agreement I sent to it. I even sent the CRA the cancelled cheques. Why? Only because my ex-wife will not give me receipts for those payments. I lost \$6,000 in tax deductions and heard this is happening to others. Is this fair? What can I do?

**Answer:** You are absolutely correct. Certain officials in the CRA have made it a policy to improperly discriminate against spouses who pay spousal support, by refusing perfectly legitimate documents to prove their ability for spousal support deductions. Under Canada's Income Tax Act, all that is required is that a payer of spousal support demonstrate that he is paying periodic, such as monthly, spousal support pursuant to a legally binding separation agreement of Court order and, if necessary for proof, the CRA can legitimately demand a copy of that agreement / Court order and a copy of those cheques. However, the CRA has decided that it, and not Parliament, can now create its own laws! So, on its own, many CRA official shave imposed their own ludicrous requirements by adding conditions for deducting spousal support payments, completely without any authority in law whatsoever; namely that in addition to producing the agreement/ court order and the cancelled cheques, the payer must also provide a signed receipt for these payments from the recipient of support! Needless to say, the recipient, who must pay tax on the receipt of such funds, often refuses to produce a receipt once it is requested from her estranged husband. The payer must then file a Notice of Objection with the CRA the later of one year after the taxpayer's filing due date, or 90 days after the mailing date of the Notice Assessment. He then has to wait several months until getting an answer. If he loses he must file a further appeal to the Tax Court of Canada where he will undoubtedly succeed, but at further legal cost and time. When he wins, the CRA does not have to pay him any interest that he lost. Unfair, isn't it? If the law is so clear, why is the CRA doing this? Because the CRA figures it can get away with it. So, write your MP. Moral? Make sure your lawyer inserts a provision in you separation agreement that the recipient of support must provide a receipt for all spousal support payments each year or her support ends.

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