RESIDENCE OF INDIVIDUALS

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I. INTRODUCTION

The governments of Canada are facing increased scrutiny and criticism in respect of the growing deficits that have been accumulated at both the federal and provincial levels. Increasing taxation or cutting spending are the basic ways in which governments attempt to deal with budgetary shortfalls. While both options are unpopular with voters, it is suggested that the provincial governments will have no other option but to rely on increased taxation as the primary tool as they are responsible for funding increasingly expensive programs, such as health care, education and the administration of justice. Despite equalization payments amongst the provinces, it appears that the provinces are not able to provide equivalent services to their residents at similar levels of taxation; this has lead to significant variation amongst provincial taxation rates. Revenues from taxation can be increased by simply increasing the tax rate, or alternatively, increasing the scope of the tax base. Thus, it is likely that provinces with higher rates of personal income tax will be pressuring the Canada Revenue Agency (the "CRA") to closely examine the residency claims of individuals who have recently filed as residents of a province with a lower rate of personal income tax as to prevent leakage from their tax base.[2]

Traditionally tax planning focuses on reducing taxes payable by altering the timing of tax payments, altering the tax character of receipts or expenditures, and/or altering the jurisdiction of taxation so as to subject income to as low a rate of tax as possible.[3] Due to the increasing mobility of capital and labour in Canada and the varying tax rates amongst the provinces, there has been an increased focus in recent years on inter-provincial tax planning to lower an individual's overall rate of taxation.

This paper begins with an overview of the legislative framework under which provincial income taxes for individuals are levied. The definition of "residence" is then discussed and a number of current cases with respect to provincial residency are reviewed. Finally, dispute resolution mechanisms for individuals who wish to challenge an assessment related to provincial residency are canvassed.

II. LEGISLATIVE BASIS

1. The Constitution

The governments of Canada (including the provinces and territories (collectively referred to as the "provinces")) can impose taxes only on the authority of legislation pursuant to the *Constitution Act, 1867*[4] (the "Constitution"). The Constitution, pursuant to subsection 91(3), allows the federal government to raise money by any mode or system of taxation. The only jurisdictional limit on a province's right to impose taxation is found in subsection 92(2) of the Constitution which states that a province is limited to direct taxation imposed within the province to raise revenues for provincial purposes. In other words, the provinces have the power to tax individuals based on residence, domicile, employment, or carrying on business in the province as long as the connection to the province is substantial.[5]

The Supreme Court of Canada in *Dunne* c. *Quebec (Sous-ministre du Revenu)*[6] discusses what connection to the province is required for the province to be able to levy provincial income tax. The Court noted that subsection 92(2) of the Constitution is construed broadly and with flexibility to include the "power to tax residents of the province…[and also to] tax property, businesses and transactions within the province"[7]. Mr. Dunne was a chartered accountant and retired partner of Ernst & Young. Mr. Dunne was resident in Ontario and had never carried on business in Quebec, however he was assessed for provincial income tax under the *Taxation Act*[8] (the "Quebec Act"). The Court held that the partnership agreement established that Mr. Dunne received a share of the profits of the partnership which carried on business in Quebec and that the Quebec Act's deeming provisions operated to determine the proportion of the individual's income that could be allocated to Quebec activities and thus validly taxed under the Quebec Act. The Court held that the Quebec Act did not improperly expand the scope of the provincial taxing power.

2. The Income Tax Act

The Act,[9] and the regulations made thereunder, are the primary source of income tax law with respect to levying taxes. Canadian residents are liable for tax on their worldwide income pursuant to subsection 2(1) of the Act. The occurrence of residence in Canada provides the basis for jurisdiction to tax and thus creates the liability for taxation of a person.[10] Individuals, including trusts[11], are thus liable for both federal and provincial tax. The specifics of what constitutes "residence" will be discussed in a later section of this paper.

(a) Income of an Individual

The Act itself does not in fact impose a provincial tax. The phrase "income earned in the year in a province" is defined in subsection 120(4) of the Act to mean an amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister. Regulation 2601(1) states that if an individual resides in a particular province on the last day of the taxation year and has no income for the taxation year from a business with a permanent establishment outside the province, the individual's income earned in the taxation year in the particular province is the individual's income for the taxation year. Generally speaking an individual's taxation year will end on the last day of the calendar year. In other words, for purposes of simplicity, the provinces have agreed to tax individuals, excepting business income of an individual, on the basis of an arbitrary provision which assumes residence on the last day of the taxation year is indicative of residence throughout the taxation year.[12] By way of example, the CRA considered a situation in a recent technical interpretation[13] where an individual was a US citizen who earned employment income in Quebec in the year but resided in Alberta on the last day of the taxation year and was considered a part year resident of Canada. The CRA opined that the individual would be taxable under regulation 2601(1) and that all of theindividual's employment income from Quebec would be considered to be earned in Alberta.[14]

In a December 18, 2003 letter,[15] the Minister states that the provinces took the current approach to provincial taxation in an attempt to simplify the determination of tax payable and to avoid unnecessarily complex allocation calculations. The Minister went on to state that any possible increase in revenue from creating, implementing, monitoring and enforcing potential allocation calculations amongst provinces would be negligible.[16]

A simple, but not particularly practical, tax planning strategy exists if an individual wants to lower their overall rate of taxation – move to a province with a lower rate of taxation. This strategy may be attractive to individuals who expect to receive a large capital gain or dividend, as provincial residency for the taxation of all passive forms of income (interest, dividends and capital gains) is determined by the province of residence of the individual on the last day of the taxation year. For this strategy to be effective, it will be imperative for the individual to sever their residential ties with the old province and establish new residential ties in the lower rate province before the end of the taxation year. The meaning of residence and the relevant provincial residential ties are discussed later in the paper.

(b) Business Income

With respect to business income derived from a permanent establishment (a "PE") outside of the particular province (i.e. the province of residence as determined on the last day of the taxation year), a taxpayer's provincial income tax will be calculated in accordance with Regulation 2601(2) which states that the individual's income earned in the taxation year in the particular province is the amount by which the individual's income exceeds the amounts that can be attributed to carrying on business that is earned in a province other than the particular province. The phrase "PE" is defined in Regulation 2600(2) for purposes of this Part of the Act to mean a fixed place of business of the individual including an office, farm or warehouse; the place where an employee or agent is located if this person has the general authority to contract or if the person has a stock of merchandise owned by the principal or employer from which he regularly fills orders; or the place where substantial machinery or equipment is used.

The CRA recently stated[17] that they would be prepared to reconsider their view on the meaning of the word "agent" for purposes of regulation 2600(2). Previously, the CRA ascribed the ordinary meaning to the word "agent", being one who is authorized to act for or in the place of another. The Federal Court of Appeal looked to the common law in *Canada* v. *Merchant Law Group*[18] to define the word "agent" as a person who is "able to affect the principal's legal position with third parties by entering into contracts on the principal's behalf or by disposing of the principal's property"[19]. As a result of the slightly more narrow legal definition, that the agent is must not simply undertake acts for the principal but must be able to affect the principal's legal position, the CRA stated that "sufficient support exists for using the legal meaning of the word 'agent' in situations involving allocation for provincial income tax purposes".[20] The CRA's position is effective prospectively for taxation years ending in 2012.

For greater certainty, regulation 2603(1) states that where an individual had a PE in a particular province in the taxation year and had no PE outside of the province, then all income from carrying on business is deemed to be earned in the particular province. If apportionment between two or more PEs is necessary then regulation 2603 requires a taxpayer to first apportion the total business income in the ratio of gross revenue reasonably attributable to each PE, then to apportion the total business income in the ratio of salaries and wages paid to employees at each PE, and then finally to average the two amounts derived from the previous two calculations in respect of each PE.

(c) Non-Residents

If an individual is not resident in Canada, regulation 2602 will impute income from an office or employment, which is brought into tax liability pursuant to section 115 of the Act to the provinces in which the duties thereof were performed. In a recent technical interpretation,[21] the CRA was asked to consider the situation of a hockey player who is a US-resident (i.e. a non-resident of Canada) who plays for an National Hockey League team based in Ontario. The description of the facts indicated that the individual's T4 slip stated his place of employment as Ontario, however the individual performed his employment duties in several different provinces. The CRA opined that the individual would be required, pursuant to regulation 2602, to allocate his employment income to the provinces in which he played hockey on a reasonable basis.

(d) Dual Residency

Regulation 2607 of the Act is of particular importance as it addresses the issue of dual provincial residency meaning that it applies where individuals can said to be resident in more than one province on the last day of the taxation year. This provision will deem the individual to have resided on that day only in that province which may reasonably be regarded as his or her principal place of residence. Therefore, for provincial purposes an individual can only have one place of residence.

In a scenario not unfamiliar to many individuals employed in the Alberta oil patch, the CRA was asked to provide some guidance as to the place of an individual's residence where the individual's spouse and children live in British Columbia but the individual's permanent job and day-to-day activities were in Alberta. The individual had moved to Alberta three years prior and planned to stay indefinitely, however he and his spouse still considered themselves married. The CRA opined[22] that the individual was a resident of both British Columbia based on his family ties and a resident of Alberta based on the fact that he had a permanent full-time job, a house, and this was where his day-to-day activities occurred. The CRA noted that regulation 2607 applies in these situations and concluded that the individual likely had his principal place of residence in Alberta based on the strength and the number of ties with Alberta.

(e) Tax Policy Considerations

From the perspective of fairness, a key tax policy consideration, it is illogical that an individual is taxed on wages and salary in the particular province of which they are found to be resident on December 31st and not

the province in which the wages or salary was earned. The stated policy of using a common residence is simplicity of the tax system, also a key tax policy consideration. It is suggested that taxing wages and salary on a basis similar to business income would not require significant complications to the tax system as employers could easily be asked to provide a provincial allocation of the wages and salaries of their employees since this is already done for purposes of workers' compensation premiums and related coverage. Further, the provinces that are creating jobs, such as Alberta, should arguably benefit from this job creation (and analogous increases to infrastructure costs) by having wages and salaries from these jobs liable to taxation in the province. This change would be particularly significant to several provinces as many individuals live in another province (for example Newfoundland) and regularly commute to a job in a second province (Fort McMurray, Alberta) on a rotational basis.

It is further suggested that passive investment income, other than a capital gain from the sale of real property, continue to be taxed in the province of residency on the last day of the calendar year as it would be cumbersome, and perhaps impossible, given the mobility of capital to allocate it to the provinces in which it was derived. A capital gain or loss arising on the sale of real property should be taxed in the province in which the real property is situated as there is a direct connection between the income (or loss) amount and the province. This method of taxation would be consistent with many of Canada's bi-lateral treaties.

3. Provincial Legislation and the Federal-Provincial Fiscal Arrangements Act

(a) Provincial Legislation

Section 3 of the *Alberta Personal Income Tax Act*[23] (the "Alberta Act") gives the province of Alberta the legislative authority to levy the personal income tax. This provision states that an individual who was resident in Alberta on the last day of the calendar year[24] or who had business income in Alberta during the calendar year is liable for tax in Alberta. Section 5 of the Alberta Act equates an individual's taxable income for purposes of the Act with an individual's taxable income under Part I of the Act, thus creating an identical taxation basis. Section 4 of the Alberta Act specifies that personal tax will be levied at a flat rate of 10 percent. Sections 2, 4, and 4.1, respectively, of the *Income Tax Act* (British Columbia)[25] (the "BC Act") impose almost identical provisions to the Alberta Act except that the rate of taxation is progressive from 5.06 percent to 14.70 percent. Sections 2, and 4, respectively, of the *Income Tax Act* (Ontario)[26] (the "Ontario Act") also mirror the

Alberta Act with the exception of progressive rates of taxation ranging from 6.05 percent to 13.16 percent. See the following table for complete information on provincial income tax rates currently in effect:

Jurisdiction	Tax on income, top rate percent	Provincial surtax	2013 combined top marginal rates			
			Regular income	Eligible dividends[a]	Ineligible dividends[b]	Capital gains
Federal	29.00%	—	29.00%	19.29%	19.58%	14.50%
British Columbia	14.70%	—	43.70%	25.78%	33.71%	21.85%
Alberta	10.00%	—	39.00%	19.29%	27.71%	19.50%
Saskatchewan	15.00%	—	44.00%	24.81%	33.33%	22.00%
Manitoba	17.40%	—	46.40%	32.27%	39.15%	23.20%
Ontario	13.16%	20% / 36%	49.53%	33.85%	36.47%	24.77%
Quebec	25.75%	—	49.97%	35.22%	38.54%	24.99%
New Brunswick	16.07%	—	45.09%	24.91%	33.05%	22.54%
Nova Scotia	21.00%	—	50.00%	36.06%	36.20%	25.00%
Prince Edward Island	16.70%	10%	47.37%	28.70%	36.21%	23.69%
Newfoundland & Labrador	13.30%	—	42.30%	22.47%	29.96%	21.15%
Yukon	12.76%	5%	42.40%	15.93%	30.41%	21.20%
Northwest Territories	14.05%	—	43.05%	22.81%	29.65%	21.53%
Nunavut	11.50%	—	40.50%	27.56%	28.96%	20.25%

(b) Federal-Provincial Fiscal Arrangements Act

The federal and provincial income tax arrangements are governed by the *Federal-Provincial Fiscal Arrangements Act*[27] ("FPFAA"). Specifically, the federal government levies tax on behalf of the provinces through a series of tax collection agreements ("TCA")[28] which are provided for under the FPFAA. The federal government has TCA with all of the provinces, except Quebec,[29] for the collection of personal income taxes. For ease of administration, the TCA requires that provincial income taxes to be levied on the same basis as federal income taxes meaning that the provinces are required to use the federal definition of "taxable income". However, the provincial income tax may be calculated using a tax on income method which calculates provincial income tax payable by individuals as a percentage of their taxable income.[30] This method of calculating provincial taxes payable allows the provinces to set their own tax rates and determine which non-refundable tax credits they will offer.

The federal government currently gives an abatement of 16.5 percentage points to allow room for the provinces to impose taxation.[31] Specifically, subsection 120(2) of the Act gives an abatement of 3 percentage points and section 27 of the FPFAA gives an abatement of 13.5 percentage points. Technically speaking, a tax abatement is deemed to be a payment of tax made on prescribed dates and such dates are prescribed in regulation 6401. The legality of the TCA was challenged in *Gendis Inc.* v. *Canada*[32] where the corporation, Gendis, undertook a corporate reorganization that allowed the corporate group to utilize the differences between section 85 of the Act and a parallel rollover provision in the Quebec Act to avoid provincial tax liability in respect of a sale of property which resulted in a capital gain (the "Quebec Shuffle"). Subsequent to the Quebec Shuffle, Gendis was assessed under the Manitoba provincial tax legislation that was passed retroactively to target such transactions. Gendis argued, not that the legislation was invalid, but that the application of the legislation to the transaction in question was invalid on the basis that the specific provision in the Manitoba legislation[33] could not be enforced as it was not a tax collected on the federal income basis as stipulated by the TCA. The Manitoba Court of Appeal held that the CRA's ability to collect and transmit taxes was not strictly limited to the terms of the TCA as there was an ongoing agency relationship of consensual administrative delegation, thus the Minister could validly levy an assessment under the Manitoba legislation in this circumstance against the corporation.

(c) Payment Mechanism

Section 228 of the Act is the mechanism under which the provincial income tax gets allocated to the provinces and this section states that Minister is to apply any payments made a taxpayer in accordance with the TCA notwithstanding that the taxpayer may have directed that the allocation of payments be made in some other manner.[34] Generally, TCA specify that an amount collected in respect of tax payable be allocated first to the provincial portion of tax payable and then to the federal portion of tax payable. Where two or more provinces are to share the provincial tax payable, an amount paid is to be allocated *pro rata* to each province under the TCA.

III. DEFINING RESIDENCE

1. Legislative Guidance

While the word "resident" is used over 400 times in the Act, there is no definition in the Act itself nor any of the provincial taxation acts. Subsection 250(4) of the Act deems individuals who meet certain criteria to be residents of Canada, but this does not provide any insight into the meaning of the word "resident". Further, subsection 250(3) of the Act extends the meaning of the word "resident" to include a person who is "ordinarily resident" in a particular place.

2. Common Law Principles

Given the lack of guidance in the Act, we must look to common law principles. The leading case on the meaning of residency is the *Thomson* v. *Minister of National Revenue*[35] where the Supreme Court of Canada looked to the commonage definition ascribed to the term "resident" which, as per Kerwin, J., means to "dwell permanently or for a considerable time, to have one's settled or usual abode, to live, in or at a particular place"[36]. The Court, per Rand, J., noted that for "purposes of income tax legislation, it must be assumed that every person has at all times a residence"[37]. Justice Rand continued to define "resident" and "ordinarily resident" as follows:

> It is important only to ascertain the spatial bounds within which [the individual] spends his life or to which is ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return.[38]

The Court in *Thomson* concluded that the individual was resident in Canada due to his family ties and the fact that his occupancy of a house in Canada and his activities in Canada comprised more than a mere temporary stay therein. However, the Court emphasized that a determination of residency depends on the facts of each particular case.

When looking at residency in context of whether an individual is resident in Canada, the Tax Court of Canada in *Wassick* v. *Minister of National Revenue*[39] developed a list of 32 factors which are indicative of Canadian residence and the following factors from this list are likely to be relevant to a determination of provincial residence:

1. past and present habits of life;
2. regularity and length of visits in the jurisdiction asserting residence;
3. ties with the jurisdiction;
4. ties elsewhere;
5. permanence or otherwise of purposes of stay; ownership of a dwelling in a province or rental of a dwelling on a long-term basis (for example, a lease of one or more years);
6. residence of spouse, children and other dependent family members in a dwelling maintained by the individual in the province;
7. memberships in churches or synagogues, recreational and social clubs, unions and professional organizations;
8. insurance coverage (general insurance and health care);
9. mailing address;
10. telephone listing; and
11. drivers' license.

3. Provincial Residency Guidance

A series of older decisions from the Tax Review Board ("TRB") have considered residency in a provincial context. In *Gray* v. *Minister of National Revenue,*[40] the individual, a former hockey player, indicated his province of residence as New Brunswick as this is where he was present on December 31st of the relevant taxation years. Mr. Gray lived in Quebec and only travelled to New Brunswick for the holidays to visit relatives, therefore it was clear to the TRB that Mr. Gray was resident in Quebec. In *Hoyt* v. *Minister of National Revenue*[41] the TRB considered a situation where a teacher advanced the argument that since he was on sabbatical leave for the year and thus not present in the province of New Brunswick on the last day of the calendar year, he was not subject to taxation by the province of New Brunswick. The TRB noted that an individual needs to be resident in a second location before it can be assumed that he is not resident in the

place where he was resident immediately prior. Further, the TRB held that Mr. Hoyt's ties with New Brunswick were not broken and more importantly that Mr. Hoyt was required to return to New Brunswick to teach pursuant to the terms of his employment contract. Similarly, in *Park* v. *Minister of National Revenue,*[42] the individual, a university professor, claimed he was resident in Canada but not resident in Newfoundland and elected to pay the surtax on federal tax rather than Newfoundland provincial income tax. Mr. Park was in England for the year doing research and thus was not present in Newfoundland on the last day of the calendar year. The TRB held that while it is "conceivable for a person to be resident in Canada but not resident in a particular province in Canada",[43] this was not Mr. Park's situation as his centre of vital interests remained in Newfoundland, thus Mr. Park was a resident of Newfoundland despite the fact that he was temporarily domiciled in England.

The Tax Court of Canada had the opportunity, in the context of determining the validity of a deduction for moving expenses, to comment on provincial residency in *Fortin* v. *The Queen*[44]. Mr. and Ms. Fortin, moved from Ontario to Newfoundland during 1995 and thus lived in Newfoundland on December 31st. More specifically, the couple gave up their rented residential premises in Ontario and their Ontario business license, Ms. Fortin left her employment in Toronto (although it was suggested she could be recalled), and the couple opened new bank accounts in Newfoundland. The Tax Court had no difficulty finding that regulations 2600(1) and 2601(1) govern this situation, and with reference to the definition of residence in *Thomson*, held that Mr. and Mrs. Fortin were residents of Newfoundland for the taxation year in question.

The CRA applies the guidelines in Income Tax Folio S5-F1-C1[45] to determine provincial residency.[46] Where an individual can be considered to be resident in more than one province on the last day of the taxation year, the CRA will consider this person to only be resident in the province where they have the most significant residential ties.[47] A person can be resident in more than one province where they are working in a different province or attending an educational institution in another province. The residential ties the CRA considers mirrors those exposed by the courts but does not necessarily reflect the same weighting of the relevant factors. Specifically, the CRA considers, quite rationally, the availability of a dwelling place(s) and the location of an individual's spouse or common-law partner and their dependents to be the most significant residential ties.[48] The CRA then looks to an individual's social and economic ties.[49]

At the 2009 Alberta CAs Roundtable,[50] the CRA was asked to comment on the apparent recent increase in audit activity of transactions that allege to shift residency of individuals (including trusts) amongst provinces.

Specifically, the CRA was asked whether they would find transactions that shifted residency offensive. The CRA responded that whether a transaction that shifts residency amongst provinces is offensive is a question of fact that will be determined according to the circumstances of each case and the CRA will consider all the surrounding facts on a case-by-case basis in such situations. The CRA indicated that they will generally apply the criteria in then IT-221R3 to determine the residence of an individual. Further, in determining the residence of an individual, the CRA did state that they will, on behalf of the provinces that have TCA, seek to identify and challenge all abusive inter-provincial tax avoidance arrangements.[51] The CRA clarified that they will be reviewing inter-provincial tax planning because they have a responsibility to safeguard the interests of the provinces (and their tax bases) which have TCA with the CRA. Query whether the CRA can balance the competing interests of the provinces when all provinces, excepting Quebec, have TCA in respect of provincial income taxes?

Consider the situation, as noted above, where an individual resides in British Columbia but works in the Alberta oil patch. Let's assume that this individual filed their taxes asserting Alberta residency but was reassessed to be liable for provincial income tax in British Columbia. While this individual is filing a notice of objection to the notice of reassessment, query whether the individual could seek a determination on the issue of provincial residency from the Court of Queen's Bench of Alberta? Does this individual have standing to do so? Assuming that a determination of residency was made by the Court of Queen's Bench of Alberta, would the British Columbia Supreme Court be bound by this decision?

4. Recent Case Law on Provincial Residency

There are a handful of cases from various provincial superior courts[52] that address the issue of whether an individual is resident in a particular province. Interestingly, in all the cases below, the individual successfully argued either that they were not resident in the particular province, or that while they were resident in the particular province, it was not their principal place of residence. As an aside, the proper party to be named as the Respondent in such an appeal is "Her Majesty The Queen", not the provincial Minister as noted in *R.* v. *Smale*[53] because the TCA state that any legal proceedings instituted by or against the Crown in respect of any tax measure, administered by Canada pursuant to the TCA, will be conduct by Canada on behalf of the province.

In *Waring* v. *British Columbia,*[54] the individual and his wife moved from British Columbia to Alberta in October of the relevant taxation year. The individual and his wife had a spike in their income in the relevant taxation year, which likely lead the Minister to challenge their claim of residency. The individual and his wife asserted that the move to Alberta was motivated by family ties, as they wanted to be closer to their two sons, daughter-in-law and granddaughter. In March of 2003, the individual and his wife moved back to British Columbia as the wife's health condition was aggravated by the Alberta weather. With respect to residential ties in Alberta on the last day of the calendar year, the individual had purchased a home in Calgary, obtained an Alberta driver's license, and had initiated change of address with many (but not all) of the companies and financial institutions with whom he dealt. The individual also applied for Alberta health coverage, but was unable to obtain the same as it required residency in Alberta of at least three months. The individual still had ties to British Columbia, namely, the individual's prior residence in Victoria, their telephone number, license plates on their vehicle used in Alberta, another vehicle, relationship with some financial institutions, and the retention of the Victoria address for company records. The Superior Court of British Columbia noted that the individual never left the province of Alberta between October 2002 and March 2003 and that his wife only returned to Victoria for medical appointments during that same period. The testimony was that the individual retained the Victoria home to provide a residence for his daughter and to capitalize on a potential future subdivision of that property. The Court allowed the appeal holding that the evidence was more consistent with ordinary residence in Alberta for the taxation year in issue. The Court based its decision on the fact that much of the individual's business was conducted in Alberta, the intent of the move to Calgary at the time was to be permanent, the family and residential ties to Alberta noted above, and the fact that the individual was not certain about the windfall income at the time when the move to Calgary was initiated.

An individual, a Westjet pilot, was assessed by the Minister to be a resident of Nova Scotia, rather than Alberta in *R.* v. *Owens.*[55] Three years prior to the taxation years in question, the individual accepted a full-time job with Westjet in Calgary, which required him to be on duty for a minimum of 18 days per month. The individual's wife did not relocate from Nova Scotia to Calgary as she was not ready to retire from her teaching career and she only had a couple of years left until she would acquire full pension benefits. The individual's ties to Alberta during the relevant taxation years included leased accommodations, driver's license, health insurance, bank account, motor vehicle insurance, telephone number, and mailing address. The individual maintained a joint bank account in Nova Scotia with his wife and they consider themselves to be married. The children of the

marriage resided in Nova Scotia with the individual's wife. The Nova Scotia Supreme Court noted that the individual was not able to commute regularly to Nova Scotia as Westjet did not fly to eastern Canada during the relevant taxation years and that the individual had to spend considerable time and money to visit his family, and as such, these visits were infrequent. The Court also accepted the individual's testimony that he had a social life with families of the other pilots in Alberta during the relevant taxation years. Further, the Court noted that subsequent to the taxation years in question, the individual purchased a house in Alberta and that the individual's wife now resides with him in Alberta. The Court allowed the appeal holding that the individual was resident in Alberta during the relevant taxation years.

In *Mandrusiak* v. *British Columbia*,[56] the issue was whether the individual's principal place of residence was British Columbia or Alberta pursuant to regulation 2607 during the relevant taxation years. The individual, a chartered accountant, was born and raised in Alberta and worked there with the same corporation for over twenty-five years. The move to British Columbia was at the request of the individual's employer who was opening a new office in the province. The intent at the time of the move was found by the British Columbia Supreme Court to be that the individual and his wife would move to British Columbia where the individual would work for an additional couple of years; however, the work of the individual continued beyond the initial timeframe as the individual was a consultant for the corporation during the relevant taxation years. The individual's ties to British Columbia included his consulting employment, a residence in West Vancouver, access to a motor vehicle, and health insurance. Equally, the individual had residential ties to Alberta including a family farm and residence, access to a motor vehicle, a driver's license, vehicles registrations, burial plots, and stronger social contacts. It was also noted that the individual's RRSP, pension plan, family holding company and family trust were located in Alberta. The Court noted that the individual and his wife live in both houses, attend church in both cities, make charitable donations in both provinces and receive mail at both addresses. The Court appeared to place particular emphasis on the fact that the individual's children and extended family resided in Alberta. The Court used the individual's credit card evidence to determine that he spent approximately five months in Alberta and seven months in British Columbia during the relevant taxation years. The Court mentioned the fact that the Minister also assessed the individual as an unrestricted farmer during the relevant taxation years (meaning that Mr. Mandrusiak's chief source of income was farming (from his Alberta farm) or some combination of farming and other income) which appeared to be an apparent inconsistency with the British Columbia residency assertion by the Minister. The Court allowed the appeal

holding that the individual's principal place of residence was Alberta due his history and connection to the province and the context of the re-location to British Columbia.

The British Columbia Supreme Court considered another case of provincial residency involving a claim of Alberta residency in *Smolensky* v. *R.*[57] The individual was residing in British Columbia with his wife and children but moved to Calgary to open up or attend to the business of a branch office for his employer. The individual spent approximately 200 days in British Columbia and 150 days in Alberta during the relevant taxation year. The individual's residential ties to Alberta included a residence (which he purchased), extended family, driver's license, health insurance, vehicle registrations, telephone listing, membership in the Alberta Motor Association, and the fact that his pilot license showed his Alberta address. In contrast, the individual had family ties to British Columbia including that his wife and children lived there. The individual has bank accounts in both provinces and is on the tax roll of both provinces. The Court allowed the appeal holding that while Mr. Smolensky was resident in both British Columbia (due to the family ties) and Alberta (due to his work and other ties), his principal residence was in Alberta during the relevant taxation years.

In *R.* v. *Smale*,[58] the Saskatchewan Court of Queen's Bench considered whether the individual was resident in Saskatchewan or Alberta. The individual was a chartered accountant who moved to Alberta to commence new employment in November of the relevant taxation year. The plan was for the individual's spouse and younger child to relocate to Calgary shortly thereafter, however the parties encountered marriage difficulties and separated. The individual's residential ties to Alberta included permanent accommodations, Alberta drivers' license and vehicle registrations (both obtained in the second month of the following taxation year), application for health insurance (this was denied as Saskatchewan covers former residents for a one year period following their departure from the province), and a change in mailing address for all his credit cards, bank accounts and professional mail. The Court noted that while the individual owned a home jointly with his wife in Saskatchewan and visited her about every four to six weeks before the separation, it was clear that the individual "in mind and fact"[59] left Saskatchewan and resided in Alberta at the end of the taxation year.

The provincial residency determination by the superior courts of the province tend to put more weight on the individual's intent with respect to a change in residency than the Tax Court of Canada does when considering the question of Canadian residency. The provincial courts also appear to take a less structured approach to the determination of provincial residency by considering the evidence in its totality as opposed to focusing on a

specific checklist of factors that is often relied upon by the Tax Court of Canada. Further, the provincial courts appear to consider facts and circumstances that arise after the taxation year in issue as being relevant to the question of provincial residency during the taxation year in issue.

5. Practical Advice for Changing Residency

On a practical level, the following actions should be forefront in mind when an individual intends to change their province of residence:[60]

1. purchase residential property suitable for the individual and his or her family;
2. dispose of all residential property, excepting maybe perhaps vacation property in the old province;
3. ensure that family members relocate to the new province of residence;
4. obtain new employment, or if the business remains in the old province, ensure that the individual either has moved their portion of the operations to the new province or that they spend less time "on the ground" in the old province;
5. move personal property ;
6. change memberships in social, community, religious and professional organizations;
7. notify professional advisers of the change in residence;
8. obtain health insurance in the new province;
9. change driver's license and vehicle insurance and registrations;
10. advise banks, brokerages, credit cards, and other financial institutions of the change in address;
11. redirect all mail to the new address; and
12. change telephone listings.

IV. DISPUTE RESOLUTION MECHANISMS

1. Objections and Appeals

(a) Jurisdiction

Notwithstanding TCA and CRA's administration of the same, the objection and appeal process for amounts levied in respect of provincial income taxation is complicated by the fact that an individual must object to the

CRA in the normal course, but then launch their appeal, if necessary, to the superior court of the province, as opposed to the Tax Court of Canada.

In *Gardner* v. *R.*,[61] the Federal Court of Appeal upheld a decision of the Tax Court of Canada that dismissed the taxpayer's appeal on the grounds of lack of jurisdiction. The sole issue in the appeal was whether the individual, an employee of CRA (then known as Revenue Canada) who was on secondment in Tokyo, Japan, was resident in Ontario during the relevant taxation years. The individual argued that she was not a resident of Ontario and only a resident of Canada due to the deeming provision in subsection 250(1) of the Act. If the individual's argument was accepted, she would be liable, under section 120 of the Act, for a surtax of an additional 52 percent of the federal tax otherwise payable, however, this amount was a few thousand dollars less than the amount of tax that would be payable pursuant to the Ontario Act. The Federal Court of Appeal dismissed the individual's appeal stating that "there is no jurisdiction in the Tax Court to hear appeals from an assessment of Ontario income tax where the only issue is that the taxpayer is not a resident of Ontario [as] that jurisdiction belongs to the Ontario courts".[62]

Similarly, in *Sutcliffe* v. *R.,*[63] the Federal Court of Appeal overturned a decision of the Tax Court of Canada which allowed the appellant to amend his notice of appeal to raise the issue of provincial income allocation. The notices of reassessment under appeal assumed that the individual was resident in Canada and also made a determination with respect to the allocation of source income amongst specific provinces pursuant to subsection 120(4) of the Act. The Federal Court of Appeal stated that the "validity and correctness of the federal assessments in no way hinges on the allocation as between the provinces".[64] The Court went on to hold that the Tax Court of Canada erred in law in permitting the amendment as the amendment is only relevant "with respect to the provincial income taxes that have been assessed…[and thus] the Tax Court of Canada does not have jurisdiction to pronounce on the validity of an assessment of provincial income taxes".[65] The Federal Court of Appeal noted that the jurisdiction with respect to provincial income taxes lies with the superior court of the respective province.

There is a fine line between the jurisdiction of the superior courts of the province and the Tax Court of Canada. For instance, the Federal Court of Appeal overturned a decision of the Tax Court of Canada in *Hiscock* v. *R.*[66], where the Tax Court of Canada granted the Crown's motion to dismiss the individual's appeal which involved an underlying question of residency (whether the individual was resident in Nova Scotia or Nunavut) and thus

whether the individual was entitled to the Northern Residents Allowance. The Federal Court of Appeal held that since the determination of the Northern Residents Allowance effects federal taxes owing by the individual the Tax Court of Canada has jurisdiction to hear the appeal.

Contrast the above decision with *R.* v. *Quigley*[67] where the Federal Court of Appeal held that the Tax Court of Canada did not have jurisdiction to determine whether Mr. Quigley was a resident of Newfoundland or Alberta as the Minister had allowed the northern residents deduction claimed by the individual during the taxation years in question. Thus, the only issue left in the appeal was whether the individual was a resident of Newfoundland as per the Minister's reassessment for the purposes of provincial income tax. The Federal Court of Appeal held that the proper court to appeal such a matter was the Trial Division of the Supreme Court of Newfoundland and Labrador.

In short, the Tax Court of Canada has jurisdiction where the issue impacts the individual's liability for federal tax, even if the underlying question is a determination of provincial residency. Where the sole issue is the residency of the individual for provincial income tax purposes, the superior courts of the province have exclusive jurisdiction.

In *Fontana* v. *R.*,[68] the Tax Court of Canada held that it had jurisdiction to hear the individual's appeal. Initially, the issues in dispute were the amounts claimed for the Overseas Employment Tax Credit under the Ontario Act and the calculation of the Foreign Tax Credits under the Act. The Minister conceded that errors had been made in the calculation of the Foreign Tax Credit amount and brought a motion to dismiss the appeal on the basis that the determination of the Overseas Employment Tax Credit was only relevant to the computation of provincial tax for Ontario. The Court held that the case should be adjudicated in a full hearing on the merits. This decision is correct as the issue before the court initially was a determination which would effect the individual's federal and provincial tax liability, and the fact that the Minister is now prepared to make a concession should not allow the Minister to then argue that the case is brought before the wrong court. If the Minister was successful on the motion it would bring about an illogical result as individuals with federal and provincial income tax issues may have to bring suit against the Minister first in the Tax Court of Canada then possibly again in the superior court of the province if the Minister decides to concede on the federal tax liability in issue.

It is likely unarguable that the Tax Court of Canada should be the proper forum for provincial residency disputes as it would be logical to consolidate all taxation matters, whether federal or provincial in a single court that has the necessary specialized expertise and experience. While the Tax Court of Canada does not have jurisdiction to determine matters related solely to provincial residency, they do have jurisdiction to determine tax credits and other matters which have a provincial residency dispute underlying the entitlement to a tax credit. It would be efficient and provide greater consistency if the Tax Court of Canada had jurisdiction to deal with all matters related to provincial taxation.

(b) Notice of Objection – Alberta & British Columbia

If a taxpayer disagrees with a notice of assessment or notice of reassessment (collectively referred to as a "notice of assessment") which includes an amount for tax levied under the Alberta Act, section 55 of the Alberta Act states that section 165 of the Act applies for purposes of filing a notice of objection. Therefore, the taxpayer would object in the normal course by filing a notice of objection with the CRA. With respect to a request for an extension of time, section 56 of the Alberta Act defers to sections 166.1 and 166.2 of the Act, thus a taxpayer is entitled to a one year extension from the date of the filing deadline if they meet specified criteria. Similarly, the BC Act, pursuant to section 41, defers to sections 165, 166.1 and 166.2 of the Act with respect to notices of objection and an extension of time in respect of the same.

(c) Notice of Objection – Ontario

The Ontario Act differs, stating in section 22, that it will defer to section 165 of the Act except in respect of objections provided for in section 22.1 of the Ontario Act. Section 22.1 of the Ontario Act outlines the process for objecting to a determination made under section 8.5 (Ontario child care supplement for working families), section 8.7 (Ontario research employee stock option tax overpayment), section 8.9 (tax incentive, Ontario jobs and opportunity bonds) or subsection 10(4) (notice of entitlement in respect of the Ontario child care supplement for working families), all of the Ontario Act. The process outlined in subsection 22.1(1.1) of the Ontario Act specifies that a notice of objection is to be served within 90 days from the date on the notice of determination. It is possible to apply to the provincial Minister, under subsection 22.1(9) of the Ontario Act, for an extension of time as long as the application is made within 180 days from the date of the notice of entitlement. The requirements for the notice of objection itself are similar to the rules in respect of objections by large corporations which are found in subsection 165(1.1) of the Act. Specifically, pursuant to subsection

22.1(4) of the Ontario Act, the notice of objection shall clearly describe each issue raised and fully set out the facts and reasons relied on by the individual in respect of each issue. Pursuant to subsection 22.1(12), the decision of the provincial Minister with respect to a notice of objection under section 22.1 of the Ontario Act is final unless the issue involves solely a question of law.[69]

(d) Notice of Appeal

If the CRA has issued a notice of confirmation in respect of an individual's notice of objection or if 90 days have elapsed from the date the individual served their notice of objection, the individual may appeal to the Court of Queen's Bench of Alberta pursuant to section 57 of the Alberta Act. Subsections 57(3) and 57(4) of the Alberta Act state that an appeal to the Court of Queen's Bench of Alberta may only be instituted in respect of the following:

1. an individual's residence of purposes of the Alberta Act;
2. the amount of an individual's business income in Alberta;
3. the amount of an individual's business income outside Alberta;
4. the amount of the individual's income determined under subparagraphs 1(1)(j)(i) and (ii) of the Alberta Act (the definition of an individual's income for the year);
5. an amount of tax payable for a taxation year prior to 2001;
6. the amount of a tax credit, rebate or deduction under Part I, Division 3, for 2001 and subsequent taxation years; and
7. a determination of an overpayment under section 30 (family employment tax credit).

Therefore, an individual who alleges they are not a resident of Alberta,[70] would have 90 days from the date of the notice of confirmation (or anytime 90 days after having filed their notice of objection to which they have not received a response) to launch an appeal to the Court of Queen's Bench of Alberta under subsections 57(1) and (2) of the Alberta Act. A notice of appeal is to be filed with the clerk of the Court and served on the provincial Minister by registered mail pursuant to subsections 57(5) and (6) of the Alberta Act. The appeal will then proceed in the same manner as an ordinary civil dispute would proceed in the Court of Queen's Bench of Alberta as it is deemed to be an action under subsection 61(1) of the Alberta Act. If an individual wishes to appeal a determination of provincial residency under the BC Act or the Ontario Act, the process is similar to that outlined above pursuant to sections 42 to 46 of the BC Act and sections 23 to 26 of the Ontario Act.

(e) The General Anti-Avoidance Rule

The provincial acts[71] also contain a provision that closely resembles the general anti-avoidance rule (the "GAAR") in section 245 of the Act.[72] It may be possible for the Minister to raise an assessment on this basis in a situation where a person incurs a large capital gain and then allegedly takes up residence in a province with a lower rate of taxation before the end of the taxation year, thus allowing them to be taxed at the lower rate on their capital gain as it forms part of their taxable income for the year. It is unlikely that a provincial GAAR assessment would be successful, as it would be difficult to argue that the act of moving constituted a "tax benefit" especially in light of the Canadian Charter of Rights and Freedoms[73] which gives citizens of Canada mobility rights that allows individuals to take up residence in any province.[74] If an individual doesn't actually take up residence in the lower tax rate province then it is more likely that the Minister will argue sham or bring forward charges of tax evasion (discussed below).

2. Tax Evasion

The provinces are able to levy a charge of tax evasion in situations where an individual allegedly evaded taxes by claiming to be a resident of another province which assesses personal income tax at a lower rate. Subsection 83(1) of the Alberta Act defers to sections 238 and 239 of the Act which (the tax evasion provisions). Similarly, sections 61 and 62 of the BC Act apply to defer to sections 238 and 239 of the Act. The Ontario Act outlines what constitute an offence in sections 42 and 43 of the Ontario Act and these provisions are substantially similar to sections 238 and 239 of the Act.

Tax evasion cases are brought before the provincial court of the province. Interestingly, a criminal case may be brought before the provincial court of the province in which the taxpayer is currently resident even if all facts and circumstances relating to the offenses alleged were located in another province. In *R.* v. *Graham*[75], the British Columbia Supreme Court upheld the individual's tax evasion conviction noting that the information alleged the individual was a resident of a town in British Columbia, thus giving jurisdiction to the Provincial Court of British Columbia even though many of the facts and circumstances of the offenses related to the alleged offenses were located in Ontario.

In *R.* v. *Charleston*,[76] the Alberta Provincial Court dealt with whether the accused individual was resident in Canada during the relevant taxation years. The Court had no trouble concluding that Mr. Charleston, a

Canadian citizen, was resident in Canada, specifically Calgary, Alberta, as he spent significant time in the city and carried on business in the city after a brief attempt at business in Hawaii during the relevant taxation years. The accused was a real estate agent/broker who appeared incapable of keeping any orderly record of his affairs. The Court noted that the individual was not sophisticated in accounting or tax matters. The individual was acquitted as the Court held there was no *mens rea* element; in other words, there was no evidence that the accused was attempting to evade the actual payment of income tax.

In *Quebec* v. *Paquette-Gervias*[77], the Quebec Minister brought charges against an individual who refused to file a Quebec taxation return despite a formal demand to do so. Ms. Paquette-Gervais was transferred by her employer, Air Canada, to Ontario but she retained her Quebec driver's license, health insurance, and joint ownership of a property in the province. The Court held the Quebec Minister could not succeed as he failed to prove that the individual's mode of living was still centered in Quebec during the relevant taxation year.
The Quebec Minister attempted to assess personal income tax in *Cote* v. *Quebec*[78] even though Ms. Cote separated from her husband and took up living and working in Ontario. The individual did not sell her Quebec home but allowed her son to reside in the property. The Court held that the individual was resident in Ontario as she paid rent, had health insurance, and a bank account in the province.

In *R.* v. *Stubbs*,[79] a husband and wife were charged with tax evasion as they claimed to be resident of Alberta, and not British Columbia, for the taxation year in question. Both individuals received a significant taxable dividend of approximately $2 million dollars related to the sale of an Ontario property during the relevant taxation year. Both taxpayers claimed to be residents of Alberta and used the mailing address of their daughter, an accountant. Ms. Stubbs testified that she decided to try living in Calgary in November of the taxation year and as such she sold her Vancouver residence and put her personal belongings in storage and rented a furnished apartment in Calgary. She further changed her address with Canada Post, the bank and credit card companies. Ms. Stubbs retained her resident status membership in a private Vancouver club. In February of the following taxation year, Ms. Stubbs moved back to Vancouver because of the Calgary climate. The Crown argued that Ms. Stubbs residency in Alberta was a sham. The Court noted that while Ms. Stubbs admitted the tax advantages were one reason she moved to Alberta, she genuinely resided in Alberta as she took a number of steps to change her residency; thus she was acquitted. With respect to Mr. Stubbs, he testified that he was considering moving to Calgary during the relevant taxation year to manage a hotel that he was an investor in however, Mr. Stubbs did not physically relocate to Alberta and instead the hotel was sold.

Mr. Stubbs was found to be resident in British Columbia as he owned a home, had bank accounts and had health insurance in the province. Mr. Stubbs' only tie to Alberta was the fact that his daughter lived there and he was considering relocating. The Court noted that Mr. Stubbs was careless in not taking steps to determine his provincial residency. Interestingly, however, the Court acquitted Mr. Stubbs on the basis that he did not have any fraudulent intent as there was no concealment and records were kept.

In contrast, the Crown successfully brought charges of tax evasion in *R*. v. *Parnell*[80]. Mr. Parnell was an Air Canada pilot who would only spend a few days in Alberta each year but claimed residence in the province of Alberta using his friend's Calgary address. The individual had previously lived in Alberta and still maintained an Alberta drivers' license and health care card; however, he and his wife were actually residents of Manitoba. Mr. Parnell plead guilt to the charge of tax evasion and was fined $24,750.

It is understood that many individuals live in another province but have an Alberta mailing address using a post office box and use this as their address for correspondence with the CRA and to support a claim of residency in Alberta. In light of the cases noted above, it would be wise for individuals in this situation to re-consider whether they are properly residents of Alberta.

V. CONCLUSION

Individuals are liable for provincial income tax on their worldwide income based on their residency on the last day of the taxation year. The question of provincial residency is similar to that of Canadian residency as it is a factual determination to be made on a case-by-case basis after a review of the ties an individual has to the particular province. The provincial courts appear to give more weight to the individual's intent whebn considering the question of provincial residency.

If an individual has a residency dispute that arises on reassessment, they are to object to the matter in the normal course but then appeal to either the Tax Court of Canada (if the reassessment also effects federal tax liability even if a determination of provincial residency underlies the matter) or the superior court of the province (if the matter only deals with a determination of provincial residency). It is possible for individuals to be charged with tax evasion if they falsely declare their province of residence, however, the Crown will need to prove fraudulent intent in order to get a conviction from the provincial court of the province.

[1] The author would like to thank Lisa Handfield for her significant contributions to this paper. Gregory J. Gartner is a partner at Moodys Gartner Tax Law LLP which is affiliated with Moodys LLP and Moodys US Tax Advisors.

[2] With respect to the provincial corporate tax base, an 18 month pilot project known as the Provincial Income Allocation Audit Plan was announced in 2005 by the CRA. The focus of the plan was said to be the identification of permanent establishments and corporate reorganizations that affect the provincial tax base.

[3] For more information on inter-provincial tax planning see Sian M. Matthews, "Water Runs Downhill: Interprovincial Tax Planning," in Report of Proceedings of the Fifty-Sixth Tax Conference, 2004 Conference Report (Toronto: Canadian Tax Foundation, 2005), 25:1-45.

[4] 30 & 31 Vict., c. 3.

[5] Supra, note 3 at 25:10.

[6] 2007 SCC 19.

[7] Ibid., at para. 12.

[8] R.S.Q., c. I-3.

[9] All references are to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended, unless otherwise stated.

[10] Subsection 248(1) defines a person to include an individual.

[11] See Provincial Residency – Trusts by H. Michael Dolson which was co-presented with this paper.

[12] Interestingly, there is no mechanism in the Act to allocate tax credits amongst the provinces. In *Coffey* v. *Minister of National Revenue*, [1977] C.T.C. 2283, the taxpayer resided in Quebec on the last day of the taxation year but had business income from eight provinces. The taxpayer allocated his deduction for alimony payments and pension plan contributions amongst the eight provinces. The Court held that the deduction should be fully borne by Quebec as regulation 2601(2) specifies that an individual's "income for the taxation year" is determined, after deductions for income allocated to permanent establishments outside the province.

[13] CRA document no. 2011-0407601E5.

[14] Section 114 governs the taxation of individuals who are resident in Canada for only part of the year and specifies that taxable income otherwise calculated under subsection 2(2) of the Act includes income earned while a resident in Canada plus income and losses included under paragraphs 115(1)(a) through (c) of the Act for the part of year that the individual was a non-resident of Canada.

[15] CRA document no. 2003-0049244.

[16] Ibid.

[17] CRA document no. 2011-0426561C6(E).

[18] 2010 FCA 206.

[19] Ibid., at para. 17.

[20] Supra, note 17 at page 2.

[21] CRA document no. 2012-0440381E5.

[22] CRA document no. 2004-005468l7.

[23] R.S.A. 2000, c. A-30, as amended.

[24] "Calendar year" is to be read as "taxation year" where a person died or became bankrupt during the calendar year pursuant to subsection 3(3) of the Alberta Act.

[25] R.S.B.C. 1996, c. 215, as amended.

[26] R.S.O. 1990, c. I.2, as amended.

[27] R.S.C. 1985, c. F-8.

[28] The TCA were implemented in 1962. The federal government assumes the cost of bad debts as well as the cost of administering the TCA and in exchange the federal government is allowed to retain interest and most penalties levied on taxpayers.

[29] Residents of Quebec receive an abatement of 16.5 percent of their basic federal tax but are subject to tax at the prevailing rates set by the Quebec government. Quebec taxes its residents under the Quebec Act (see note 8).

[30] Prior to 2000, the TCA required the provinces to levy income taxes through a tax on tax method of calculation where provincial income taxes payable were calculated as a percentage of federal income tax payable.

[31] In 1977 the federal government lowered its tax rates to create more room for the provinces to levy their tax, thus there was minimal effect on the total amount of income tax payable by an individual.

[32] 2006 MBCA 58 affirming 2004 MBQB 180.

[33] Section 53.2 of *The Income Tax Act*, CCSM c I10.

[34] Section 228 also assists the Minister with collecting taxes as it will confine the process to a single court where an amount received is sufficient to discharge fully the taxpayer's provincial tax liability.

[35] [1946] C.T.C. 51.

[36] Ibid., at para. 2.

[37] Supra, note 35 at para. 49.

[38] Supra, note 35 at para. 49.

[39] [1994] 2 C.T.C. 2235.

[40] [1978] C.T.C. 3101.

[41] [1977] C.T.C. 2401.

[42] [1979] C.T.C. 2817.

[43] Ibid., at para. 6.

[44] [1998] 4 C.T.C. 2547.

[45] CRA Income Tax Folio S5-F1-C1: Determining an Individual's Residence Status, March 28, 2013, which replaced IT-221R3 effective as of this date.

[46] Ibid., at para. 1.2.

[47] Supra, note 45 at para. 1.3.

[48] Supra, note 45 at para. 1.11.

[49] Supra, note 45 at para. 1.14.

[50] As noted in the Alberta Institute of Chartered Accountant's Member Advisory, December 2009, www.icaa.ab.ca.

[51] See the discussion of *R.* v. *Stubbs* in section IV-2 of this paper.

[52] See the discussion of jurisdiction in section IV-1-(c) of this paper.

[53] 2009 SKQB 114.

[54] 2006 BCSC 2046.

[55] 2007 NSSC 341.

[56] 2007 BCSC 1418.

[57] 2008 BCSC 1509.

[58] Supra, note 53.

[59] Ibid., at para. 50.

[60] Paul K. Grower, "Current Interprovincial Issues" in Report of Proceedings of the Fifty-Eighth Tax Conference, 2006 Conference Report (Toronto: Canadian Tax Foundation, 2007), 24:1-16.

[61] 2001 FCA 401 affirming [2000] 4 C.T.C. 2531.

[62] Ibid., at para. 17.

[63] 2004 FCA 376 reversing [2005] 1 C.T.C. 2650.

[64] Ibid., at para. 13.

[65] Supra, note 63 at paras. 13 and 14.

[66] 2007 FCA 382 reversing 2006 TCC 560.

[67] 2009 FCA 287.

[68] 2007 TCC 450.

[69] If the question solely involves a question of law then subsection 22.1(13) of the Ontario Act will allow for an appeal of the same to the Ontario Superior Court of Justice.

[70] The writer cannot envision a situation where anyone would not want to assert Alberta residency. The writer notes that at lower levels of income (i.e. $30,000 per year) the rate of provincial tax is actually higher in Alberta than British Columbia or Ontario, however, Albertans at just about any income level have a lower overall tax burden when considering the absence of sales tax.

[71] Section 85.1 of the Alberta Act, section 68.1 of the BC Act, and section 5.2 of the Ontario Act.

[72] Familiarity with the federal GAAR is presumed.

[73] Part I of the Constitution.

[74] Ibid., at 6(2).

[75] [1998] 2 C.T.C. 282.

[76] 30 Alta. L.R. (2d) 21.

[77] 2007 PTC-QC-42.

[78] 2008 PTC-QC-52.

[79] 2009 BCPC 247.

[80] Unreported decision.