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Supreme Court Endorses Central Management and Control Test for Trust Residency

The Supreme Court of Canada has confirmed that a trust is resident where central management and control is exercised and not where the trustee resides in [Fundy Settlement v. Canada](#), 2012 SCC 14 (also known as the *Garron* case). Noting the many similarities between trusts and corporations, the court agreed with the Tax Court that adopting a similar test for both promotes "the important principles of consistency, predictability and fairness in the application of tax law." (paras.14-16) Having made their decision on common law principles the judges declined to consider the application of s.94 and s.245 (GAAR) of the *Income Tax Act* and noted that they did not endorse the reasons of the Federal Court of Appeal on those issues. These articles discuss the decision:

- [Supreme Court of Canada Upholds New Test for Residency of Trusts](#), Blakes;
- [Tax Litigation](#), Fraser Milner Casgrain LLP;
- [Supreme Court of Canada Decides on Trust Tax Residency](#), Osler;
- [Offshore trusts can still fall within Canada's tax net](#), *Globe and Mail*.

Order to Sell Upheld: MBCA

The Court of Appeal upheld an order obligating a majority shareholder to sell his shares to the minority shareholder at a price to be determined by an independent valuator in [Zhang v. Chik et al.](#), 2012 MBCA 28. The s.207 *Corporations Act* remedy, although unusual, was within the wide discretion of the application judge to fashion an equitable remedy in circumstances where there were irreconcilable differences that would prevent the parties from continuing as co-owners of the business said the court. The court went on to vary the order, however, by adding a requirement that the covenant by the majority shareholder on the lease of the business's premises be dealt with in a manner satisfactory to the parties or by the application judge.

Update on the Federal Budget and Legislation

The federal government introduced [Bill C-38](#), the *Jobs, Growth and Long-term Prosperity Act*, on April 26, 2012. The lengthy omnibus bill implements provisions of the March 2012 federal budget dealing with income tax and other financial matters, but also introduces many other amendments not traditionally dealt with in the budget, as noted in this [National Post article](#). Notable changes include the [revamping of the environmental assessment system](#), the [elimination of the skilled worker program backlog](#), and revisions to the [CMHC and the law respecting Canadian covered bonds](#). The bill also introduces [changes to the Investment Canada Act](#) to increase transparency in the foreign investment review process. For further information on the bill see the [legislative summary](#), [departmental information](#), and the [party press releases](#). These articles summarize the many proposed tax changes and discuss their significance:

- [Federal Budget - 2012 Tax highlights](#), Soberman Accountants;
- [Federal Budget 2012: Significant Business Income Tax Measures](#), Blakes;
- [Budget 2012 - Canada](#), Fasken Martineau.

In Force Federal Legislation

[Sections](#) of the *Keeping Canada's Economy and Jobs Growing Act* came into force March 15, 2012 and sections of the *Jobs and Economic Growth Act* ([Bill C-9](#)) came [into force](#) March 16, 2012.

Anti-Spam Update

The CRTC registered its final [Electronic Commerce Protection Regulations](#) (under CASL, the new [Anti-spam legislation](#)) on March 5, 2012. Industry Canada has yet to publish its revised regulations, however, so it is still unclear when the new regime will come into force. These articles identify and critique the changes to the draft regulations: [CRTC tweaks anti-spam regulations](#), Stikeman Elliott and [Update Regarding Canadian Anti-Spam Regulations](#), Fasken Martineau.

In Force and Proposed Manitoba Legislation

- [The Consumer Protection Amendment Act \(Cell Phone Contracts\)](#) was proclaimed in April and will come into force September 15, 2012. It applies to contracts for cell phone services (voice and data) with consumers (not businesses) in Manitoba and aims to promote greater transparency in cell phone contracts and fairer practices. This government [notice](#) describes the changes in more detail.
- [The Franchises Act](#), S.M. 2010, c.13, will come into force October 1, 2012, making Manitoba the fifth province to enact franchise legislation. The new act imposes disclosure obligations which may require franchisors operating in Manitoba to revise their franchise disclosure documents.
- -The government [announced](#) further proposed changes to *The Consumer Protection Act* which will strengthen requirements for payday lender licences and enhance enforcement of the act. They are contained in [Bill 16](#), introduced April 27, 2012.
- [Bill 10](#), *The Securities Amendment Act*, introduced April 24, 2012, proposes amendments to *The Securities Act* to allow for the regulation of over-the-counter derivatives and the clearing agencies through which they are traded. This government [notice](#) describes the proposed changes in more detail.

Immigration Funding Changes

As described on the Manitoba government's [Immigration and Multiculturalism home page](#) and in this [Pitblawg post](#), the federal government has terminated its settlement services agreement with the province and changed the provincial nominee program requirements. The changes will affect the delivery of immigration programming in Manitoba.

Recommended Reading

Business lawyers may be interested in these recent articles:

- [BC ruling may affect Corporate Tax Planning](#) - this Pitblawg post discusses the B.C. Court of Appeal ruling in [Abakhan & Associates Inc. v. Braydon Investments Ltd.](#), 2009 BCCA 521, a decision that may have devastating consequences for businesses engaged in corporate tax planning and asset protection according to the author of the post.
- [Copyright lawyers prepare for new rules](#) - this *Financial Post* article discusses Bill 11, the *Copyright Modernization Act*, which, when passed, will significantly change Canadian copyright law.

Upcoming Bar Association Programs

RSVP to the Manitoba Bar Association to ensure a spot at either of these upcoming programs:

- [Case Law Update - Taxation of Income - Canada v. Robertson and Ballantyne v. Canada](#) - This is a joint program of the Taxation and Aboriginal Law sections. Counsel in two important Federal Court of Appeal cases concerning the taxation of income of status Indians ([Ballantyne v. Canada](#), 2012 FCA 95 and [Canada v. Robertson](#), 2012 FCA 94) will discuss the impact of the decisions and the role of experts at this lunch program to be held May 23, 2012 at the TDS boardroom.
- [Non-Disclosure Agreements, and Non-Competition & Non-Solicitation Clauses](#) - Join presenters Silvia de Sousa and Linda Troup as they discuss how businesses can protect confidential information and trade secrets. The program takes place between 12:00 noon and 1:30 p.m. on June 14, 2012 at the TDS boardroom.

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