

Order of Council

alone and, as is normally the case with such powers, expressed to be exercisable by order. (44 Halsbury's Laws (4th edn) para 982)

ORDINANCE

Canada 'The exercise of the power conferred on the Governor in Council to amend Sched J of the Food and Drugs Act [1952-53 (Can) c 38; see now RSC 1970, c F-27] is legislative in nature and equivalent to an Act of Parliament or an Act of a provincial legislature. The fact that it is made by an authority less than the sovereign enacting power distinguishes it from a statute and in my opinion brings it within the class of instrument properly termed an "ordinance".' *R v Whalen* (1971) 15 CRNS 187 at 191, NB, per Hughes JA

ORDINARILY RESIDENT *See also*
RESIDE

[The Education Act 1962, s 1(1), as substituted by the Education Act 1980, s 19, Sch 5, imposes a duty on local education authorities to bestow awards for designated courses to students who were 'ordinarily resident' within their areas.] 'There are two, and no more than two, respects in which the mind of the propositus is important in determining ordinary residence. The residence must be voluntarily adopted. Enforced presence by reason of kidnapping or imprisonment, or a Robinson Crusoe existence on a desert island with no opportunity of escape, may be so overwhelming a factor as to negative the will to be where one is. And there must be a degree of settled purpose. The purpose may be one or there may be several. It may be specific or general. All the law requires is that there is a settled purpose. This is not to say that the propositus intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled. Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has

adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.' *Shah v Barnet London Borough Council* [1983] 1 All ER 226 at 235, HL, per Lord Scarman

[See also *Eastleigh Borough Council v Betts* [1983] 2 All ER 1111, HL, in which the phrase under consideration was 'normally resident' within the Housing (Homeless Persons) Act 1977.]

Canada 'The appellant contends that he is not ordinarily resident in Canada under s 9(a) [of the Income War Tax Act, RSC 1927, c 97 (see now Income Tax Act, RSC 1970, c I-5, s 203)], but that he merely sojourns in Canada for a period less than 183 days in each year and is therefore not taxable under s 9(b). A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally or customarily lives. One "sojourns" at a place where he unusually, casually or intermittently visits or stays. In the former the element of permanence, in the latter that of the temporary predominates. The difference cannot be stated in precise and definite terms, but each case must be determined after all of the relevant factors are taken into consideration, but the foregoing indicates in a general way the essential difference. It is not the length of the visit or stay that determines the question. Even in this statute under s 9(b) the time of 183 days does not determine whether the party sojourns or not but merely determines whether the tax shall be payable or not by one who sojourns.' *Thomson v Minister of National Revenue* [1946] SCR 209 at 231, SCC, per Estey J

Canada [The Social Services Tax Act, RSBC 1960, s 3(3); see now RSBC 1979, c 388, s 2(4), imposes a tax on persons residing or 'ordinarily resident' or carrying on business in British Columbia.] 'It is my view that . . . the word 'ordinarily' used in sub-s (3) does not qualify the phrase "carrying on business". It is in my opinion used to designate two types of residents, the one those residing in the province, the other those ordinarily residing in the province. I think its function is then exhausted leaving as the third class of persons who come under the section those "carrying on business in the Province".' *Re Social Services Tax Act* (1961) 35 WWR 264 at 270, 271, BCSC, per Hutcheson J