

Eldon Foote's Domicile on May 17, 2004

Those interested in lengthy discussions of the law of domicile might enjoy the Alberta Court of Queen's Bench's odyssey undertaken to determine where the late Eldon Foote died domiciled (available here). The decision is over 100 pages long. Spoiler alert - the answer is Norfolk Island, an external territory of Australia located in the south Pacific Ocean. Other options considered but rejected were Alberta and British Columbia. The court sets out the applicable legal principles over some 23 pages, providing a useful summary of the law of domicile in common law Canada. The reasons then contain extended discussion of whether, at various points in his life, Mr. Foote had changed his domicile.

One point of note on the law is that the court rejects the old notion that a domicile of origin should be considered particularly difficult to change. Instead, the ordinary standard of proof on the balance of probabilities is all that is required (paras. 71-74).

Another interesting point is the court's view that if a revival of the domicile of origin would produce an "absurd" result, the court has "residual authority to instead conclude that a person has retained their last domicile of choice" (para. 97). There is little authority to support this view, and if it is correct it represents an important development in the Canadian law of domicile.

At the time of his death Mr. Foote was worth over US\$130 million. He was a civil litigation lawyer who made his money after leaving the law, ultimately having his business bought out by the Dutch conglomerate Sara Lee. He was apparently drawn to Norfolk Island because it was a tax haven.