



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. R., R. R. v. Minister of Employment and Social Development*, 2017 SSTGDIS 126

Tribunal File Numbers: GP-15-4442  
GP-16-1673

BETWEEN:

**S. R.**  
**R. R.**

Appellants

and

**Minister of Employment and Social Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

DECISION BY: Shane Parker

HEARD ON: August 18, 2017

DATE OF DECISION: September 8, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Appellants, S. R. and R. R.

Parbinder Bhangu, lawyer and authorized representative for both Appellants

Parminder Gill, Interpreter (Punjabi-English)

### **PROCEDURAL BACKGROUND**

[1] The Appellants applied for Old Age Security (OAS) benefits on January 17, 2002. S. R. applied for the Guaranteed Income Supplement (GIS) as well. S. R. was initially awarded the GIS and a partial OAS pension of 10/40ths effective May 2002. R. R. was awarded the OAS Allowance effective May 2002, which converted to a partial OAS pension in December 2003 at the rate of 11/40ths. She was also awarded the GIS.

[2] The Appellants were receiving the OAS and GIS when, in 2012, the Respondent began a review of their benefits.

[3] As a result of this review, the Respondent determined in its initial decision on May 6, 2014 that the Appellants ceased being resident in Canada on November 20, 2003. The Respondent decided that the Appellants were therefore no longer entitled to the OAS and GIS as of June 2004.

[4] The Respondent claimed an alleged overpayment of benefits from the Appellants. In S. R.'s case, the Respondent claimed an alleged overpayment of OAS pension benefits in the amount of \$15,238.98 for the period of June 2004 to April 2014; and \$79,986.83 in GIS benefits for the period of June 2004 to January 2013. In R. R.'s case, the Respondent claimed \$16,762.54 in OAS benefits paid from June 2004 to April 2014; and \$78,819.00 in GIS benefits paid from June 2004 to January 2013. The Respondent also recalculated the Allowance paid to her from May 2002 to November 2003 and GIS from December 2003 to May 2004 to account for her previously undeclared foreign income. As a result, the Respondent claimed an additional \$1,976.00 from S. R. and \$1,950.00 from R. R..

[5] On July 25, 2014 the Appellants requested a reconsideration of the initial decision discussed above. They submitted additional documentation in support of their reconsideration request.

[6] On September 24, 2015 the Respondent issued its reconsideration decision, which upheld its initial decision. The Respondent maintained its view that the Appellants were non-residents as of November 20, 2003.

[7] The Appellants appealed the reconsideration decision to the Tribunal on December 18, 2015. Their Notices of Appeal do not take issue with the amount of the GIS based on R. R.'s foreign income.

[8] After the appeals were filed, the Respondent reviewed the documentation on file, and additional documentation provided by the Appellants. Further to this review, the Respondent changed its position. In particular, the Respondent adopted the view that the Appellants resumed being resident in Canada on May 16, 2009, and therefore are entitled to receive their OAS and GIS benefits from May 2009 onward. As such, the Respondent claims from each Appellant a reduced overpayment of benefits in the amount of \$44,410.43 for the period of June 2004 to April 2009.

[9] The Tribunal sent its first Notice of Hearing to the parties on January 10, 2017. The Appellants' representative requested an adjournment on February 8, 2017, which the Tribunal received on February 15, 2017. The adjournment was granted and a second Notice of Hearing was sent on February 17, 2017, with a new hearing date of May 26, 2017. An interpreter was retained by the Tribunal at the Appellants' request.

[10] On April 4, 2017 the Tribunal Member requested whether S. R.'s representative was also prepared to proceed with R. R.'s appeal, for the purposes of joining the appeals and hearing them together, since both appeals appeared to have common facts and issues (GD7, file GP-15-4442). S. R.'s representative filed a Notice of Readiness with respect to appeal GP-16-1673 (R. R.'s appeal) on July 6, 2017 (GD8, file GP-16-1673).

[11] On August 1, 2017 these appeals were joined pursuant to section 13 of the *Social Security Tribunal Regulations* (GD13, file GP-15-4442).

[12] On August 3, 2017 the appeals were scheduled to be heard together on August 18, 2017. The hearing of the appeals was by personal appearance for the following reasons:

- The method of proceeding is most appropriate to allow for multiple participants;
- The issues under appeal are complex;
- There are gaps in the information in the file and/or a need for clarification; and,
- This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **APPEAL**

### **ISSUES**

[13] The main issue in this appeal is whether the Appellants were resident in Canada from November 20, 2003 to May 16, 2009 for the purposes of entitlement to the OAS and GIS. The Tribunal will consider how their absences from Canada during this period affect their entitlements to OAS and GIS benefits.

[14] The Tribunal will also address the limitation period and financial hardship issues raised in the materials.

### **RELEVANT LAW**

[15] As far as eligibility for an OAS pension and the GIS are concerned, the most relevant legislative provisions from the OAS Act and OAS Regulations are as follows.

[16] Subsection 3(2) of the OAS Act pertains to the partial OAS pension. It states:

3. (2) Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

(a) has attained sixty-five years of age; and

(b) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

[17] Section 21 of the OAS Regulations distinguishes between being resident and present in Canada:

21. (1) For the purposes of the Act and these Regulations,

(a) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and

(b) a person is present in Canada when he is physically present in any part of Canada.

[18] Paragraph 21(4)(a) of the OAS Regulations provides that any interval of absence from Canada of a person resident in Canada that is of a temporary nature and does not exceed one year shall be deemed not to have interrupted that person's residence or presence in Canada.

[19] Section 23 of the OAS Regulations empowers the Respondent to conduct investigations into benefit eligibility:

23 (1) The Minister, at any time before or after approval of an application or after the requirement for an application is waived, may require the applicant, the person who applied on the applicant's behalf, the beneficiary or the person who receives payment on the applicant's behalf, as the case may be, to make available or allow to be made available further information or evidence regarding the eligibility of the applicant or the beneficiary for a benefit.

[20] The following provisions of the OAS Act deal with the suspension or cessation of the OAS and GIS.

[21] First, a couple important definitions in section 2 of the OAS Act relate to "pension" and "pensioner". A pension means a monthly pension authorized to be paid under Part I of the OAS Act. In other words, pension refers to the OAS pension. A pensioner means a person whose application for a pension has been approved.

[22] Subsection 9(1) of the OAS Act stipulates when a pensioner's pension is suspended where the pensioner leaves Canada, and when payment may be resumed. It states:

Where a pensioner, having left Canada either before or after becoming a pensioner, has remained outside Canada after becoming a pensioner for six consecutive months, exclusive of the month in which the pensioner left Canada, payment of the pension for any period the pensioner continues to be absent from Canada after those six months shall be suspended, but payment may be resumed with the month in which the pensioner returns to Canada.

[23] Subsection 9(3) of the OAS Act discusses when the OAS pension is suspended where the pensioner ceases to reside in Canada, and when payment may be resumed. It provides:

Where a pensioner ceases to reside in Canada, whether before or after becoming a pensioner, payment of the pension shall be suspended six months after the end of the month in which the pensioner ceased to reside in Canada, but payment may be resumed with the month in which the pensioner resumes residence in Canada.

[24] Subsection 11(7) of the OAS Act deals with limitations on the payment of the GIS. In particular, the GIS is not payable to a pensioner for any month for which no pension may be paid to the pensioner (s. 11(7)(b)).

[25] Paragraph 11(7)(c) of the OAS Act applies when a pensioner is absent from Canada for six consecutive months. It states:

(7) No supplement may be paid to a pensioner for

(c) any month throughout which the pensioner is absent from Canada having commenced to be absent from Canada either before or after becoming a pensioner and having remained outside Canada before that month for six consecutive months, exclusive of the month in which the pensioner left Canada;

[26] The GIS is also not payable to a pensioner for any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month (s. 11(7)(d)).

In other words, the GIS is not paid six months after the pensioner is no longer resident in Canada.

[27] Section 37 of the OAS Act governs the repayment of benefits to which individuals are not entitled:

**Return of benefit where recipient not entitled**

37. (1) A person who has received or obtained by cheque or otherwise a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, shall forthwith return the cheque or the amount of the benefit payment, or the excess amount, as the case may be.

**Recovery of amount of payment**

(2) If a person has received or obtained a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, the amount of the benefit payment or the excess amount, as the case may be, constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

[28] Subsection 37(4) of the OAS Act gives the Respondent discretionary authority to remit all or any portion of the amount or excess of the benefit payment in certain circumstances such as undue hardship to the debtor (paragraph 37(4)(c)). Subsection 37(4) is provided here:

**Remission of amount owing**

(4) Notwithstanding subsections (1), (2) and (3), where a person has received or obtained a benefit payment to which that person is not entitled or a benefit payment in excess of the amount of the benefit payment to which that person is entitled and the Minister is satisfied that

(a) the amount or excess of the benefit payment cannot be collected within the reasonably foreseeable future,

(b) the administrative costs of collecting the amount or excess of the benefit payment are likely to equal or exceed the amount to be collected,

(c) repayment of the amount or excess of the benefit payment would cause undue hardship to the debtor, or

(d) the amount or excess of the benefit payment is the result of erroneous advice or administrative error in the administration of this Act,

the Minister may, unless that person has been convicted of an offence under any provision of this Act or of the *Criminal Code* in connection with the obtaining of the benefit payment, remit all or any portion of the amount or excess of the benefit payment.

[29] Section 44.1 of the OAS Act pertains to administrative monetary penalties. The provision states that the Minister (the Respondent) may impose a penalty for certain acts or omissions committed by a person, such as making a statement or declaration that the person knew was false or misleading (subsection 44.1(b)), or knowingly failing to declare to the Minister all or some of the person's income (subsection 44.1(c)). Paragraph 44.1(3)(b) places a five-year limitation period on such penalties from the time the Minister became aware of the act or omission.

## **SUBMISSIONS**

### *The Appellants' position*

[30] The Appellants' counsel made final submissions in relation to the main issue at the close of the hearing, after all evidence was put before the Tribunal. In summary, the Appellants' position is that they were resident in Canada during the disputed time period. They were rooted in Canada but returned to India for specific and temporary purposes. They had no intention to permanently make India their home.

[31] The Appellants' counsel emphasized the following points in support of this position. The Appellants have been living in Canada since 1992. They made Canada their home. S. R. worked as a security guard until 2003. The Appellants were transparent about their absences during the disputed time period. Between 2003 and 2009, their primary reason for leaving Canada was to partake in R. R.'s father's memorial ritual every November. The absence in 2004 was important to protect her land from PUDA. Otherwise, their absences were in October/November for the memorial, to attend a religious temple June 2006 and in March 2007 for a niece's marriage.

[32] The Appellants pleaded in their reconsideration request that their benefits be reinstated and reimbursed so they may avoid starvation (GD2-7, file GP-15-4442).



[33] The Appellants also cited subsection 44.1(3) of the OAS Act in arguing that the Respondent acted beyond the five-year limitation period in investigating them (GD2-17, file GP-15-4442).

*The Respondent's position*

[34] The Respondent filed written submissions throughout these proceedings. Its most recent submission is dated March 15, 2017. This submission was admitted as part of the hearing file. It was shared with the Appellants who had a fair opportunity to review it prior to the close of the hearing on August 18, 2017.

[35] The Respondent's position is that the Appellants were not resident in Canada from November 20, 2003 to May 16, 2009. This resulted in an overpayment of OAS and GIS benefits for the period of June 2004 to April 2009. The Integrity Services Branch review determined that the Appellants spent approximately 65% of their time in India. They were frequently in India. They returned to Canada for brief periods before returning to India for lengthier periods. Their evidence of medical care in Canada and cultural and social ties were insufficient or vague to establish residence. There was insufficient evidence to establish that Canada was their country of primary residence between November 20, 2003 and May 16, 2009.

**EVIDENCE – Testimony**

[36] The Appellants discussed their absences from Canada, and their ties to Canada and India between November 20, 2003 and May 16, 2009.

**Absences**

[37] The Appellants confirmed they were absent from Canada on multiple occasions between November 20, 2003 and May 16, 2009.

[38] They left Canada for India on November 18, 2003. They returned to Canada on May 5, 2004. The reason for going to India was mainly for a traditional religious ritual honouring R. R.'s father, who died in Egypt during the Second World War.

[39] R. R.'s younger sister called her around June 9 or 10, 2004 informing that their family property was being pursued by the Punjab Urban Development Authority (PUDA). The Appellants returned to India on June 18, 2004. S. R. clarified that PUDA notified them of their intention to acquire the land; and if they objected, to return to India to address the matter. Instead of using pre-booked tickets to the United States (US) to attend a family funeral, they bought tickets to go to India to protect their land. The land was given to R. R.'s father by the British Government as a Gallantry Award after the Second World War. It was important for her to safeguard it. After her father's death, her mother remarried and had four girls. Three of R. R.'s sisters were alive in June 2004. Her presence was required in India to dispute PUDA's land claim because she owned part of the land which was in her name as well. Had she not returned to India, she would have been unable to make representations to PUDA and risked losing the land.

[40] R. R. said she returned to Canada briefly in December 2004 for her granddaughter's birthday. Afterwards, she returned to India. S. R. remained in India as the PUDA case was ongoing.

[41] The Appellants said they returned to Canada on April 27, 2005, after the land matter in India was concluded. They added that the proceedings could have taken much longer.

[42] The Appellants went to the US on June 12, 2005 to use their existing tickets (for a family funeral) to pay their belated respects in person. They spent 14 days in the US. They returned to Canada on June 26, 2005.

[43] On October 29, 2005 the Appellants went to India for the annual memorial ritual honouring R. R.'s father. This ceremony occurs on November 27<sup>th</sup> annually. R. R. is the designated person to conduct the ritual. They returned to Canada on April 24, 2006.

[44] The Appellants went to India from June 14, 2006 to December 10, 2006. The reasons for this absence were to join R. R.'s sisters on a pilgrimage to honour the sick and to conduct her father's memorial ritual. The pilgrimage route was only open in June because it is located on a mountain, and is otherwise covered with snow.

[45] The Appellants next returned to India on February 7, 2007 to attend R. R.'s niece's marriage in March that year. This was the sole reason for going to India. They returned to Canada on August 4, 2007.

[46] The Appellants again visited India on November 16, 2007. Again, the reason was to preside over R. R.'s father's memorial ritual. They returned to Canada on May 17, 2008.

[47] On September 18, 2008 the Appellants returned to India. They came back to Canada on May 17, 2009. During this time in India, S. R. fell ill. S. R. explained his circumstances. He had swelling in his groin area around February 19, 2009. He was taking medication. He was unable to walk. As a result, he went to the hospital on February 21, 2009. He attended a second hospital for further consultation. He was diagnosed with Hepatitis. His friend, a doctor, advised him to attend a facility 70 kilometres from their home. He was admitted and hospitalized for five days and underwent tests. He received medical advice not to travel back to Canada, but to take bed rest and follow up every ten days. As a result, the Appellants extended their stay. On May 3, 2009 S. R.'s doctor medically cleared him to fly.

#### **Testimony regarding ties to Canada from 2003 to 2009**

[48] The Appellants moved to Canada on April 7, 1992, with two of their children. Their eldest daughter was already residing in Calgary, Canada (since 1983) and sponsored them. The Appellants have two daughters and one son. Between 2003 and 2009 their eldest daughter and son lived in Calgary. Their other daughter lived in the US from 2003 to 2009. Their four grandchildren lived in Calgary and were in school. Their son drove a taxi in Calgary between 2003 and 2009. He owned his own taxi plate.

[49] The Appellants' youngest daughter began living in the US in 1997. Her husband was a veterinary doctor in the US.

[50] The Appellants resided with their eldest daughter (who sponsored them). They owned no property. There was no formal landlord-tenant agreement but as a courtesy they would provide their daughter gifts from India. This living arrangement was in keeping with cultural tradition.

[51] The Appellants held a bank account with the X bank since around 1992.

[52] S. R. has a Canadian driver's licence. The Appellants did not own a vehicle. S. R. worked as a security guard in Canada from 1996 to 2003. The Appellants did not work in Canada between 2003 and 2009. S. R. has been receiving a Canada Pension Plan (CPP) retirement pension since 2003.

[53] S. R. volunteered with different organizations. He began writing in Canada. He is a member of three literature societies including the X. He belongs to the X; and an Immigrant Seniors' Association. He said he was active in these various organizations where he would do things such as recite poems.

[54] R. R. said she volunteered with a group of senior women weekly. The work involves resolving miscellaneous issues. She helps women who are illiterate. For example she advises where bus routes are located, or assists them obtain new health cards when necessary. She is still active in this organization.

[55] R. R. performs her Sikh rituals at home, and attends temple weekly.

[56] Both Appellants filed income taxes in Canada, not in India.

[57] The Appellants voted in Canadian elections. They did not vote in India because they were Canadian citizens.

### **Testimony regarding ties to India from 2003 to 2009**

[58] R. R. has a bank in account in India, which is used only to receive a pension from the Punjabi government. S. R. held no bank accounts. The only property owned was the portion of the family land in R. R.'s name. They leased her share of the property and earned rental income.

[59] S. R. said he was involved in one literary association when in India during this time period. S. R. was not regularly religiously active in either country.

[60] R. R. performed her Sikh rituals in her nephew's home.

### **Documentary evidence**

[61] What follows is an overview of the documentary evidence found to be most relevant in determining the outcome of these appeals.

[62] The parties agree that S. R. was born in India on October 17, 1934 (1937 was a typographical error in the application; see passport at GD2-235).

[63] The Records of Landing confirm the Appellants obtained landed immigrant status in Canada on April 7, 1992 (GD2-277, file GP-15-4442; GD2-213, file GP-16-1673).

[64] The Appellants filed a detailed explanation of their absences, in particular the absence from June 18, 2004 to April 27, 2005 pertaining to the PUDA land dispute. The explanation reflects their testimony discussed above, but provides some further detail (GD2-16 to GD2-17, file GP-15-4442).

[65] The Appellants filed supporting documentation regarding the PUDA land dispute (GD2-18 to 26, file GP-15-4442) and S. R.'s medical treatment in India from February to April 2009 (GD2-32 to 56, file GP-15-4442).

[66] S. R.'s Indian passport was stamped by Indian Immigration on April 26, 2005 (GD2-192, file GP-15-4442).

[67] R. R. specified in a questionnaire that she was not in India between December 13 and 23, 2004 (GD2-66, file GP-16-1673). According to a Government of Alberta Health Care Insurance Plan statement, R. R. received medical care on December 15, 2004 (GD2-74, file GP-16-1673). A Canada Border Services Agency (CBSA) Traveler Passage Report confirms her arrival at Pearson International Airport in Toronto on December 13, 2004, and again on June 1, 2005 (GD2-85, file GP-16-1673). Her Indian passport was stamped by the Indian Immigration department on December 12 and 23, 2004; and on May 31, 2005 (GD2-100, file GP-16-1673).

[68] S. R. stated in a letter dated September 3, 2013 that all the Appellants' household possessions remained in Canada during their absences to India (GD2-121, file GP-15-4442).

[69] S. R. stated in questionnaire that he has had an Alberta driver's licence since 1996 and has no other driver's licence. He has only filed income tax returns in Canada since

immigrating to Canada. He has had involvement in social and cultural organizations in Canada and not in India (GD2-126 to 127, file GP-15-4442). R. R. made identical statements regarding income tax returns and involvement in social and cultural organizations (GD2-68 to 69, file GP-16-1673). A copy of S. R.'s Alberta driver's licence is found at page GD2-164 of file GP-15-4442.

[70] A letter from the President of the X in Calgary dated August 27, 2013 states that S. R. had been an active and regular member of the Society since 2004 (GD2-165, file GP-15-4442). A letter from the President of the X dated August 26, 2013 states that S. R. had been volunteering with this organization since 2008. A similar letter dated August 26, 2013 from the X confirmed his volunteer work with the organization for "about six years" (GD2-166 to 167, file GP-15-4442).

[71] The Appellants filed Statements of Account from an account with the X for the period of June 30, 2007 to February 2013 (GD2-137 to 144, file GP-16-1673).

[72] R. R. detailed her income from India for the years 2003 to 2009. She specified the income received from pensions and leasing the ancestral land. She stated that she handed this income to her nephew who would in turn cover the Appellants' expenses and boarding while they were in India (GD2-159 to 160, file GP-16-1673).

## **ANALYSIS**

### **Did the Appellants remain resident in Canada between November 20, 2003 and May 16, 2009?**

[73] The Appellants were pensioners receiving partial OAS benefits at a rate less than 20/40ths and the GIS during the above-noted time period. R. R.'s Allowance was converted to an OAS pension in December 2003. The main dispute in these appeals relates to their residence status, and particularly whether they retained Canadian resident status between November 20, 2003 and May 16, 2009.

[74] The leading case relating to the determination of residence is *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76. In *Ding*, the Federal Court set out

factors to be taken in account in determining whether a person makes his or her home in and ordinarily lives in Canada. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport records, federal and provincial income tax records);
- d) ties in another country;
- e) regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- f) the lifestyle of the person or his establishment in Canada.

[75] The Federal Court of Appeal held that the list of factors enumerated in *Ding* is not exhaustive. There may well be other factors which become relevant according to the particular circumstances of the case. The test is a fluid one (*Singer v. Canada (Attorney General)*, 2010 FC 607, affirmed 2011 FCA 178).

[76] Here, the Appellants, R. R. in particular, did not deny their ties to India: the ancestral land, and leasing it; the annual memorial ceremony; the bank account and R. R.'s pension; and R. R.'s family ties (her sisters and nephew). However, on balance, the Tribunal finds that the Appellants' ties to Canada were stronger, and that their absences did not disrupt their residence in Canada, from November 20, 2003 to May 20, 2009. Regular and lengthy absences from Canada are not determinative of whether a person makes his or her home and ordinarily lives in Canada (*Perera v. MNHW*, [1994] F.C.J. No. 351 (T.D.)).

[77] The Appellants were spouses. Their lives did not mirror each other's, like many spouses, but the main factual circumstances relating to their mode of living were essentially the same which, on balance, based them in Canada. They each had different volunteer activities in Canada. S. R.'s source of income was the CPP while R. R. received a pension from India. R. R. also inherited some land from her father which carried much

importance with her side of the family. Her father died in World War II and was awarded this land for his efforts. She presided over a ceremony commemorating him in her native country. The Appellants were also required to be in India to oppose a claim to the land by PUDA. The evidence also indicates R. R. leased her share of the ancestral land (GD2-159 to 160, file GP-16-1673).

[78] The Appellants' absences from Canada were not always identical either. Based on R. R.'s testimony, her questionnaire on file (GD2-66), a review of the CBSA document (GD2-85), R. R.'s Indian passport (GD2-100) and Alberta medical care record (GD2-74), the Tribunal finds that she returned to Canada between December 13 and 23, 2004. The Tribunal also finds that she returned to Canada on June 1, 2005, after S. R., who returned on April 27, 2005 according to his passport (GD2-192, file GP-15-4442). As such, R. R. was not absent over six months between June 18, 2004 and June 1, 2005. S. R. was absent over six months between June 18, 2004 and April 27, 2005.

[79] The Appellants came to Canada in April 1992 and rooted themselves in Canada. The Tribunal was persuaded that they remained rooted in Canada between November 20, 2003 and May 20, 2009. As per their culture, they resided with their eldest daughter. Their household possessions remained in Canada. They were regularly active in the community through their involvement in various volunteer organizations. They filed income taxes in Canada. They voted in Canada. Two of their three adult children and all four of their grandchildren were rooted in Calgary. S. R. held a driver's licence. R. R. attended Temple. The reasons for their absences to India were event-specific and temporary. These absences never exceeded one year. Their regular day-to-day lives were based in Calgary.

### **Absences over 6 months**

[80] Although the Appellants were found to be resident in Canada between November 20, 2003 and May 16, 2009, they were partial pensioners at this time. S. R. was receiving a partial pension at the rate of 10/40ths and R. R.'s partial pension rate was 11/40ths. They each did not meet the 20 year residence threshold under paragraph 3(2)(b) of the OAS Act to export their OAS pensions abroad regardless of the duration of absence from Canada. There is no provision like this for the GIS. As such, the Appellants are subject to



OAS and GIS benefit suspensions for absences over six months. The suspension provisions are to be applied strictly, without exception.

[81] The Tribunal finds, and the Appellants do not dispute, the following extended absences from Canada:

S. R.: June 18, 2004 to April 27, 2005

Both Appellants: September 18, 2008 to May 17, 2009

[82] Their OAS and GIS benefits should have been suspended according to these absences. S. R.'s medical issues and the PUDA land dispute in India are not valid reasons to exempt the Appellants from the applicable suspension provisions.

*S. R.*

[83] Any OAS pension and GIS benefits paid to S. R. from January to March 2005, and in April 2009, are an overpayment recoverable by the Respondent pursuant to sections 9(1), 11(7)(c) and 37 of the OAS Act.

*R. R.*

[84] Any OAS pension and GIS benefits paid to R. R. in April 2009 are an overpayment recoverable by the Respondent pursuant to sections 9(1), 11(7)(c) and 37 of the OAS Act.

### **The limitation period issue**

[85] Contrary to the Appellants' submission, there is no administrative monetary penalty being imposed on them pursuant to section 44.1 of the OAS Act (see: Respondent reconsideration decision at GD2-4, file GP-15-4442; and GD2-13, file GP-16-1673). As such, the five-year limitation period under subsection 44.1(3) is inapplicable.

[86] There is no statute of limitations applicable to an investigation into the Appellants' eligibility for benefits. Subsections 23(1) and (2) of the OAS Regulations make it clear that this can occur "at any time."

[87] There is also no statute of limitations applicable to the recovery of excessive OAS and GIS benefits. Subsection 37(2) of the OAS Act states that these are "recoverable at any time."

**The financial hardship issue**

[88] Finally, the Appellants plead for benefit reinstatement and reimbursement so they may avoid starvation. In other words, not reinstating or reimbursing their benefits would cause financial hardship such that they could not afford to eat. They plead for remission, which may be done pursuant to paragraph 37(4)(c) of the OAS Act. However, the Tribunal cannot order remission as this is done at the Respondent's discretion.

**CONCLUSION**

[89] The appeals are allowed, in part.

Shane Parker  
Member, General Division - Income Security