



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *CD v Minister of Employment and Social Development*, 2019 SST 1727

Tribunal File Number: GP-19-983

BETWEEN:

**C. D.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: François Guérin

HEARD ON: September 3, 2019

DATE OF DECISION: September 20, 2019

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for an Old Age Security (OAS) pension on May 5, 2004.<sup>1</sup> The Respondent approved the application because the Appellant had been eligible for a 19/40ths partial pension since July 2005. The Appellant has also been receiving the Guaranteed Income Supplement (GIS) since July 2005.

[2] The Respondent investigated the Appellant's residence and determined that the Appellant had stopped residing in Canada in January 2010. Since the GIS is a monthly benefit available to OAS pensioners who reside in Canada, the Appellant was no longer eligible for it, and the Respondent asked him to pay back the overpayment.<sup>2</sup>

[3] The Appellant requested a reconsideration of the decision<sup>3</sup> on December 6, 2016, and the Respondent upheld its decision<sup>4</sup> on June 27, 2017. The Appellant appealed this decision to the Social Security Tribunal on August 31, 2017.

### ISSUE

[4] Was the Appellant a resident of Canada under the *Old Age Security Act* (OAS Act) from January 2010 to November 21, 2016?

### ANALYSIS

[5] The Appellant has Canadian citizenship following his immigration to Canada and has had French citizenship since birth. The Appellant indicated that he had been going to France regularly a few times a year since immigrating to Canada.

[6] The Appellant indicated that he returned to live in France on November 21, 2016, as confirmed by the [translation] "Certificate of change of residence" issued by the Consulate General of France in Montréal.<sup>5</sup>

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<sup>1</sup> GD2-500 to 503.

<sup>2</sup> GD2-58 to 60.

<sup>3</sup> GD2-50 and 52.

<sup>4</sup> GD2-3 to 6.

[7] The GIS provides a supplement to the base OAS pension and is paid to low-income seniors. Therefore, the GIS depends on income and is calculated based on the past year's income.

[8] Section 11(7)(c) of the OAS Act states that no GIS may be paid to a pensioner for 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.

[9] Section 11(7)(d) of the OAS Act also states that no GIS may be paid to a pensioner for 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 [*sic*].

[10] Section 21(1) of the *Old Age Security Regulations* (OAS Regulations) states that a person (a) resides in Canada if they make their home and ordinarily live in any part of Canada and (b) is present in Canada when they are physically present in any part of Canada.

[11] To be entitled to the GIS, a person must maintain their Canadian residence and must not leave Canada for long periods.

### **Criteria for Determining Residence in Canada**

[12] For OAS purposes, a person resides in Canada if they make their home and ordinarily live in any part of Canada. This is distinct from the concept of presence. A person is present in Canada when they are physically present in any part of Canada.<sup>6</sup> A person can be present in Canada without being a resident of Canada.

[13] Since residence is a question of fact to be determined on the particular facts of each case, the decision *Ding* sets out factors to be considered to guide the Tribunal in deciding whether the

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<sup>5</sup> GD1-12.

<sup>6</sup> Section 21(1) of the *Old Age Security Regulations*.

appellant made their home and ordinarily lived in Canada. A person's intentions are not decisive. The factors to be considered include the following:

- a. ties in the form of personal property
- b. social ties in Canada
- c. other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.)
- d. ties in another country
- e. regularity and length of stays in Canada compared with the frequency and length of absences from Canada
- f. the person's mode of living, or whether the person's life in Canada is substantially deep-rooted<sup>7</sup>

[14] I will now consider the Appellant's explanations and documents against the *Ding* factors to decide whether the Appellant made his home and ordinarily lived in Canada from January 2010 to November 21, 2016.

*1. Ties in the form of personal property*

[15] I find this factor supportive of Canadian residence.

[16] During the relevant period, the Appellant owned a residence in X.<sup>8</sup> In this house, he had all the real and personal property he needed to be able to live there permanently.

[17] The Appellant stated that he owned a car registered and insured in his name until around 2013 or 2014, when he sold it with his son's help.

[18] The Tribunal finds this factor supportive of Canadian residence given that the Appellant owned a house that he lived in when he was in Canada and that contained his real property and personal belongings, and given that he was solely responsible for paying taxes and utilities during the relevant period. He also had a car that he owned until 2013 or 2014.

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<sup>7</sup> *Canada (MHRD) v Ding*, 2005 FC 76.

<sup>8</sup> GD2-396 to 398; GD2-443 and 444.

## *2. Social ties in Canada*

[19] I find this factor supportive of Canadian residence.

[20] The Appellant's immediate family, namely his three children, his grandchildren, and now his three great-grandchildren, still lives in Quebec, though the Appellant returned to live in France after the relevant period. The Appellant had limited family in France, and he stated on appeal that his real family was in Quebec during the relevant period and was still there.

[21] The Appellant said that he had many acquaintances (good friends) in Quebec but that his closest friends were the ones he had studied with in France and that he still saw.

[22] The Tribunal finds this factor supportive of residence in Canada during the relevant period. The Appellant has direct relatives in Canada, namely his sons, grandchildren, and great-grandchildren, who he sees often, in addition to staying with them when he was in Canada and renting out his house for short periods. He also has acquaintances that he saw on occasion during the relevant period, although his closest friends were still in France.

## *3. Other ties in Canada*

[23] I find this factor supportive of Canadian residence.

[24] The Appellant had a Canadian driver's licence that was valid until April 8, 2016. He did not renew it because he was not going to be a Canadian resident anymore and because he had a valid French driver's licence for life. The Appellant explained that the French driver's licence was valid for the driver's entire life and that it must not have been given to the Société de l'assurance automobile du Québec [Quebec's automobile insurance corporation] when his Quebec driver's licence was issued.

[25] The Appellant had a health insurance card from the Régie de l'assurance maladie du Québec [Quebec health insurance board] (RAMQ). It is valid until the end of March 2020. He also indicated that he had not contacted RAMQ to inform them of his change of residence, but he did not object to doing so given that he was no longer a resident of Canada.

[26] The Appellant had and still has a bank account in Canada. Until approximately two or three years ago, it was with the National Bank. He indicated that he had changed financial institutions to become a member of Desjardins Group. He used and still uses his Canadian bank account to receive his OAS payments, his payments from the Régie des rentes du Québec [Quebec pension board], and his tax refunds, and to pay his Canadian utilities during the relevant period.

[27] The Appellant filed his tax returns in Canada and reported his Canadian residence when doing so.<sup>9</sup>

[28] The Appellant had exclusive use of his a [*sic*] residence in X<sup>10</sup> during the relevant period as a result of the divorce settlement with his ex-wife. He lived in that house and rented it out for short stays using online platforms. He was solely responsible for paying municipal and school taxes and utility bills.

[29] When the house was rented for short stays, he would store his personal-use property in the basement, in a large room reserved for this purpose. A house cleaner was paid by cheque for their cleaning services during rental periods.

[30] The house rental was advertised on an online cottage rental platform. Invoices were issued to the Appellant in 2011, 2012, 2013, 2014, and 2015.<sup>11</sup> The billing address on all of these invoices is the Appellant's address in X. When asked why, the Appellant replied that he did not know or understand why, since all the other utilities used in Canada had Canadian billing addresses. In light of all the evidence and of the Appellant's testimony regarding this fact, the Tribunal does not give much weight to this situation given that the address information on these invoices had no impact on their delivery because they were sent by email and reached the recipient, who paid them from his Canadian bank account.

[31] When he testified, the Appellant stated that his house was registered with Quebec tourism authorities, who listed it so that he could rent it out for short tourist stays.

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<sup>9</sup> GD2-134 to 155; GD2-432 to 439.

<sup>10</sup> GD2-396 to 398; GD2-443 and 444.

<sup>11</sup> GD2-102 to 112.

[32] The Appellant indicated that, on the recommendation of his accountant, the income and operating losses were not reported on his tax returns, since he was operating at a loss. When asked about this on appeal, the Respondent indicated that, if the Applicant had reported these rental losses, they could have increased the amount of his GIS, though not by much.

[33] When he was in Canada, the Appellant lived in his house and looked after its upkeep. When renting it out, the Appellant would simply stay with friends or with his children who live in the Montréal area.

[34] The Appellant submitted to the Respondent a statement of operations for 2013<sup>12</sup> in relation to the occasional rental of his house. The sale of the house closed in November 2016, and the new owners took possession in January 2017.

[35] The Tribunal finds the Appellant's other ties to be supportive of Canadian residence during the relevant period. When he was in Canada, he was still covered by Quebec's health insurance plan, though he no longer used this service; had a Quebec driver's licence until April 8, 2016; had a personal bank account to make his financial transactions; and filed his tax returns in Canada. He still owned a house in X that he lived in and looked after when he was in Canada, and he was responsible for its tax and utility bills.

#### *4. Ties in France*

[36] The Tribunal finds that the ties in France are not supportive of Canadian residence.

[37] The Appellant has been retired in France since the age of 60 and has been receiving a French pension he has been entitled to since 2000.<sup>13</sup> He also received this pension when he lived in Canada given that he will be paid this pension for the rest of his life since turning 60.

[38] Getting this pension also gave the Appellant and his family French medical coverage.<sup>14</sup> The Appellant had been using this coverage since 2000 when he was staying in France and needed medical services, rather than RAMQ's outside-Quebec coverage. This French medical

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<sup>12</sup> GD2-369.

<sup>13</sup> GD2-417 to 425.

<sup>14</sup> GD1-10 and 11.

coverage is valid for the pensioner's entire life. The Appellant confirmed that, before receiving a French pension in 2000, he was not covered by French social security.

[39] The Appellant has had a French driver's licence since passing his driving tests in France.

[40] The Appellant started a volunteer position as a manager for a real estate company on April 28, 2013.<sup>15</sup> Knowing that he left for Canada very often, the Appellant testified that he had given a friend a power of attorney to sign on his behalf when he was not in France. The Appellant explained that, based on the company's legal status, his role was that of a figurehead given that real estate companies of this type in France need to register a manager. The Tribunal is satisfied with this explanation, since the minutes of the company's general meeting corroborate it.

[41] The Appellant started living in a house in X as a single tenant on June 22, 2014. The Appellant explained that the lease is valid until he decides to terminate it. The house is owned by close friends of his who do not live in X. Previously, it was owned by mutual friends of the Appellant and the owner. Because they were all friends, they let the Appellant use the house during his regular stays in France, since the occupants used it only as a second home. When they moved out permanently, the Appellant decided to formalize the situation by signing an annual lease with his friends.

[42] The Appellant also got an Internet and cell phone service agreement with the company Orange on December 31, 2010.<sup>16</sup> The home address on the agreement was the address in X.

[43] The Tribunal finds that the Appellant's ties in France are not supportive of Canadian residence given that the administrative ties between the Appellant and France are very strong. During the relevant period, he was covered by social security, had a French driver's licence, had a cell phone and a position there (albeit not a paid position), and rented a house there that he lived in when staying in France and for which he got an annual lease on June 22, 2014.

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<sup>15</sup> GD2-315.

<sup>16</sup> GD2-76; GD2-88 and GD2-91 to 101.



*5. Regularity and length of stays in Canada*

[44] The Tribunal finds the regularity and length of stays in Canada from January 2010 to November 21, 2016, to be supportive of Canadian residence.

[45] The Appellant indicated that he had been going to France regularly a few times a year since immigrating to Canada. The Appellant confirmed when he entered and left Canada between January 1, 2005, and early 2014<sup>17</sup> (when he responded to an enquiry from the Minister). The dates are consistent with the Canada Border Services Agency (CBSA) statement that the Minister submitted<sup>18</sup> and obtained from the Appellant. The Tribunal notes that the Canadian passport shows an entry stamp to France on March 12, 2015.<sup>19</sup> The Tribunal also notes that the French passport shows a Canadian entry stamp to Canada on November 6, 2016;<sup>20</sup> the Appellant's Canadian passport had expired on October 3, 2016, and he had not renewed it before entering Canada.

[46] The Appellant does not have the exact dates he left Canada on trips because Canada does not track exits. The exact exit dates were reported to the CBSA on the entry forms to Canada given to travellers, but the CBSA does not keep this information. As a result, the exit dates are approximate, but the Tribunal is satisfied with the Appellant's explanation and accepts his testimony.

[47] The Appellant provided the Respondent with his Canadian passport<sup>21</sup> issued in Montréal and valid from October 3, 2011, to October 3, 2016, which indicates an address in X (QC) as his permanent residence, and his French passport<sup>22</sup> issued in X (66) and valid from July 11, 2013, to July 10, 2023, which indicates a home address in X, France. The Appellant uses his French passport when he enters France and his Canadian passport when he enters Canada.

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<sup>17</sup> GD2-401 to 403.

<sup>18</sup> GD2-404.

<sup>19</sup> GD2-33.

<sup>20</sup> GD2-15.

<sup>21</sup> GD2-31 to 34.

<sup>22</sup> GD2-11 to 28.

[48] Here are the dates of the Appellant's trips to France between January 2010 and early 2014, as the Appellant reported to the Respondent:<sup>23</sup>

- from January 2010 to March 15, 2010
- from July 2010 to September 13, 2010
- from February 2011 to April 29, 2011
- from late June 2011 to September 29, 2011
- from mid-December 2011 to January 13, 2012
- from early July 2012 to September 19, 2012
- from mid-January 2013 to March 6, 2013
- from late June 2013 to September 6, 2013
- from mid-December 2013 to January 17, 2014
- from February 7, 2014, to February 14, 2014, the date of the questionnaire completed when in France

[49] The Appellant testified that his stays in France generally lasted two or three months until February 14, 2014. He said that his stays in France after that were a little longer but never exceeded six months.

[50] The Tribunal is satisfied with the information provided to the Respondent and with the testimony heard on appeal. It notes that the Appellant's stays in France during the relevant period were only medium-term and that, when the Appellant returned to Canada, which he did often, he stayed in Canada for longer periods than when he was in France. The Tribunal is therefore satisfied that the frequency and length of stays in Canada between January 2010 and November 21, 2016, are supportive of Canadian residence.

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<sup>23</sup> GD2-401 to 403.

*6. The Appellant's mode of living*

[51] The Tribunal finds this factor supportive of Canadian residence.

[52] The Appellant was born in France and immigrated to Canada with his wife and children in 1986. Despite his involvement in Canada, he maintained very strong ties to France. So much so that he travelled to France regularly. He divorced in 2010, and his children, grandchildren, and great-grandchildren are in Canada. In accordance with the divorce settlement with his ex-wife, the Appellant kept their residence for his exclusive use until its sale; in return, he was responsible for all the bills related to its use, whether taxes or utility bills. The sale closed in January 2017.

[53] The Appellant's intention was to sell the house and then move to France. However, selling the house took longer than he thought it would.

[54] The Appellant continued to travel between France and Canada and regularly visited friends from his studies in X. He would stay with them when in France until June 22, 2014, when he officially rented the house after his friends moved out. He also lived in the house he owned in X when in Canada.

[55] The Appellant has the advantage of being from a country that offers excellent utilities and, in particular, excellent health services. When he was in France, he used French health services, which are paid for by the French government. He therefore did not use RAMQ's services, even though he was still covered by it.

[56] The Appellant had a bank account in France to deal with his French transactions. He also had a bank account in Canada to deal with his Canadian transactions.

[57] The Appellant filed his tax returns in Canada for his Canadian income and in France for his French income.

[58] Appellant indicated that he returned to live in France on November 21, 2016, as confirmed by the [translation] "Certificate of change of residence" issued by the Consulate

General of France in Montréal.<sup>24</sup> The Appellant explained to the Tribunal the circumstances that led him to inform the Consulate of his departure. First, the Appellant thought that financial repatriation assistance was still available for French nationals abroad. It no longer exists. Second, being a French national living abroad, he could not exercise his democratic right to vote when he was in France and could exercise that right only at the Consulate General of France in Montréal, where he was registered.

[59] In its analysis of the Appellant's residence, the Tribunal gives a lot of weight to this registration with the Consulate General of France in Montréal and to its end date. This event, combined with the sale of his house and his final departure for France, tips the balance regarding the end of his Canadian residence. Until that date, November 21, 2016, he needed to be in Canada to exercise his democratic right as a French citizen, which supports Canadian residence.

[60] The Tribunal finds the Appellant's mode of living to be supportive of Canadian residence from January 2010 to November 21, 2016, as confirmed by the [translation] "Certificate of change of residence" issued by the Consulate General of France in Montréal.

## **CONCLUSION**

[61] After considering the six *Ding* factors, the Tribunal finds five of the six factors to be supportive of Canadian residence. The "ties in France" factor is the only factor not supportive of Canadian residence. Since the Appellant has dual nationality, the Tribunal understands how he can also have ties in that country. In addition, the Tribunal gives a lot of weight to the end of the Appellant's registration with the Consulate General of France in Montréal, which confirmed that he stopped residing in Canada on November 21, 2016, to settle in France.

[62] The Tribunal must make its decision based on the evidence received and the testimony heard on appeal. After considering the *Ding* factors, the Tribunal finds, on a balance of probabilities, that the Appellant met the definition of residence in Canada under the OAS Act from January 2010 to November 21, 2016.

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<sup>24</sup> GD1-12.

[63] The appeal is allowed.

François Guérin  
Member, General Division – Income Security