



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *ML v Minister of Employment and Social Development*, 2019 SST 1714

Tribunal File Number: GP-18-2259

BETWEEN:

M. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: August 1, 2019

DATE OF DECISION: October 9, 2019

REASONS AND DECISION

DECISION

[1] Your appeal is dismissed. I have decided that you were not a resident of Canada on the day before the day your application was approved, that is, June 11, 2008, and that you have not accumulated the minimum 20 years of residence in Canada after turning 18 to receive the Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS).

OVERVIEW

[2] The Appellant was born in Haiti in 1943 and arrived in Canada in 1970. He became a permanent resident of Canada in 1971 and a Canadian citizen in 1976. He turned 65 on June 12, 2008, and applied for an OAS pension¹ and the GIS² on September 10, 2008.

[3] The Respondent acknowledges that, in total, the Appellant had accumulated 16 years and 149 days of Canadian residence (from February 2, 1971, to June 30, 1987) on the deemed date of approval of his OAS pension application, that is, the day before his 65th birthday, June 11, 2008.

[4] On July 4, 2014, the Respondent made a decision in which it informed the Appellant that his OAS application and, by extension, his GIS application were refused because he had not accumulated the minimum 20 years of residence in Canada after turning 18 and that he was not a resident of Canada on the day before the deemed date of approval of his application.

[5] The Appellant initially appeared before the General Division of the Social Security Tribunal (Tribunal) under file GP-15-961. The Tribunal's General Division made a decision on February 6, 2017, and it was appealed to the Tribunal's Appeal Division under file AD-17-343. The matter was then referred back to the General Division for a new hearing before a different member.

¹ GD2-189 to 192.

² GD2-190, Question 11.

ISSUE

[6] Were you a resident of Canada after July 1, 1987, and were you eligible for an OAS pension and the GIS under the OAS Act?

ANALYSIS

Eligibility Criteria for an OAS Pension

[7] 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.³ A person can be present in Canada without being a resident of Canada.

[8] Residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. The decision *Ding*⁴ sets out a non-exhaustive list of factors to consider to guide the Tribunal in deciding the issue of residence:

- 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-rooted⁵

³ Section 21(1) of the *Old Age Security Regulations*.

⁴ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

⁵ *Canada (MHRD) v Ding*, 2005 FC 76.

[9] You have to prove that it is more likely than not that you were living in Canada during the relevant period.⁶

[10] Section 3(2) of the OAS Act states that a partial pension may be paid to a pensioner aged 65 or older if they resided in Canada for at least 10 years after age 18, and if they were residing in Canada on the day before the day their application was approved. If the pensioner was not a resident of Canada on the day before the day their application was approved, they must have resided in Canada for at least 20 years after the age of 18.

[11] Section 5(2) of the OAS Regulations (Regulations) sets out when the approval of an OAS pension application takes effect when the applicant turned 65 before the day the OAS application was received.

[12] I will consider the *Ding* factors in my analysis to decide whether you were residing in Canada. To come to my conclusion, I will use your testimony and the documents filed by both parties.

Were you a resident of Canada under the OAS Act after July 1, 1987, and were you eligible for a pension under the OAS Act and for the GIS?

[13] When you testified, you indicated that you left Canada for the first time after entering it as a permanent resident around 1985 or 1986. You went to Haiti for about two or three weeks for your father's funeral. Around 1995 or 1996, you went back to Haiti for about two months to install a printing machine. You did not resume going to Haiti for real trips until 2000.

[14] You also indicated that you have been working in research for over 25 years. At the hearing, you admitted that your work from 1987 to 2008 was the same as the work you do now, which is dedicating yourself to creativity, intellectual work, and research.

[15] You also said that you did not have the exact dates of your trips, since you had lost the documents because of the earthquake in Haiti and the loss of the boxes you had stored from July 2000 to November 2011, when the loss was discovered while you were in Haiti.

⁶ *De Carolis v Canada (AG)*, 2013 FC 366.

[16] You stated that, beginning on July 1, 1987, you lived in a duplex owned by your common-law partner. You were living in a unit of that duplex, and the apartment on the top floor was rented. You set up an office in the basement and also used the garage. Your work was to do research in engineering technology. You confirmed that your then-partner was responsible for paying all utility bills and municipal and school taxes. All you did was your research and look after the care of your daughters.

[17] You testified that, around 2000, you went to live with friends after your partner asked you to move out. You said that there was no legal separation agreement. However, you have no proof of this residence aside from your testimony; the affidavit from your two daughters,⁷ who were very young during that period; and three invoices indicating that address and all dated March 31, 1995.⁸

[18] You filed some documents with your appeal to the Tribunal to prove your residence in Canada during the relevant period, from July 1, 1987, until the filing of your OAS application. I will now take a closer look at them.

[19] First, you submitted a photograph from that time.⁹ However, a single photograph of a person with two children taken in a room in front of a curtain cannot establish proof of over 12 years of residence. This photo could have been taken anywhere, in Canada, in the United States, or in Haiti. I have no doubt that it is a photograph of you and your two daughters; however, this photo does not provide the Tribunal with any information that could help me find that you made your home and ordinarily lived in Canada during that period.

[20] Second, you submitted an affidavit from your two daughters dated February 20, 2015. I note some problems with it. To begin with, it is an affidavit from two very young girls, the eldest of whom was less than 11 years old, and the youngest less than 9 years old, when you separated around 2000. They provide no details about what they experienced with you and what you did for them during that period—from their birth to 2000—or about what you might have done with them after your separation. They simply state that you were responsible for their care in general

⁷ GD1-10.

⁸ GD1-22 to 24.

⁹ GD1-11.

and did your research. I find it difficult to imagine what children of those ages could understand about the nature of your residence status and your work at the time. In addition, in the first paragraph, the declaration clearly says that they were testifying based on [translation] “the account of our mother,” who herself refused to give you an affidavit or declaration, even though the two women also state a little further on [translation] “and to our knowledge.”

[21] In my analysis, I cannot give much weight to this affidavit from your two daughters, which is only the perception of very young children and does not provide information that complements other documentary evidence you might have filed in support of your residence in Canada from 1987 to 2000. This affidavit rather reports the words of a third person, their mother, who herself refused to provide you with an affidavit or declaration about your situation during that period. So, in my view, this evidence is unreliable.

[22] Third, again to support your residence in Canada, you submitted your research,¹⁰ three invoices all dated March 31, 1995,¹¹ and financial statements¹² that were never submitted to the Canada Revenue Agency (CRA) or Revenu Québec [Quebec’s taxation authority]. I also note that some of these financial statements correspond to years of operation for which your business was cancelled with the registry,¹³ specifically 2001 and later years. As for your research, it cannot help you in supporting residence in Canada, since it could have been written anywhere. So, I give little weight to these documents.

[23] According to the request for information from the CRA¹⁴ the Respondent submitted, you filed tax returns from 1978 to 1984 and in 1987. You therefore did not file any tax returns for the years of operation of your business, registered from 1994 until its cancellation ex officio in 2001.

[24] When asked why you had not reported your income when it could have qualified you for public assistance programs, you replied that you had stopped meeting your annual tax reporting obligations, for you and your business, because you were not making enough money, that you

¹⁰ GD1-15 to 21, GD1-25 to 29, and GD7-3 and 4.

¹¹ GD1-22 to 24.

¹² GD5-9 to 13.

¹³ GD5-16.

¹⁴ GD2-170.

did not want to be dependent on society, and that you did it in protest, adding that you did it knowingly.

[25] I can only conclude that you made a conscious decision not to file your tax returns.

[26] Regarding more specifically your three invoices all dated March 31, 1995,¹⁵ when I asked you about them, you indicated that the client company on those invoices operated in Ville d'Anjou even though you had provided an address in Haiti. You indicated that you had done this because the company wanted to possibly relocate to Haiti. Additionally, you gave vague explanations about the non-collection of GST and QST before admitting that you did not know why you acted as you did. You were also unable to explain why the registration number on the invoice is different from the one on your registration certificate. So, I find these invoices to be very unreliable.

[27] You mentioned having ties in Canada to support your residence in Canada during the period in dispute, from July 1, 1987, until the filing of your OAS application.

[28] I also note that you said you had rented a storage unit in July 2000 to keep your personal belongings, office supplies, and various objects while you were away from Canada during your trip to Haiti.¹⁶ During your absence, a friend was responsible for making the payments for that unit. On November 30, 2001,¹⁷ your friend discovered theft and notified you while you were still in Haiti. After returning to Canada, you went to the police station on June 14, 2002, to file a police report about your missing possessions.¹⁸ This report indicates that you put your personal items in storage in July 2000 and [translation] "then" left for Haiti, that is, around July 2000. You said that this is one of the reasons why you no longer have any documents proving your Canadian residence at the time.

[29] When you testified, you confirmed having dealt with a single financial institution, namely Desjardins.¹⁹ This institution confirmed that you did, in fact, open an account with them on

¹⁵ GD1-22 to 24.

¹⁶ GD2-171 to 181.

¹⁷ GD2-180.

¹⁸ GD2-175.

¹⁹ GD2-46.

November 13, 1981. The letter is dated January 31, 2014, and was sent to your sister's residence. You testified that you did not have a debit card and that you had not obtained a credit card until around 2018. During the relevant period, you made your transactions at the counter to deposit money into your accounts or to withdraw money from them. You mentioned primarily making cash transactions. I can only conclude that you did, in fact, have a bank account in Canada, but I cannot draw any conclusions about its use.

[30] According to the statement of participation from the Régie des rentes du Québec [Quebec pension board] (RRQ),²⁰ you did not contribute to the plan throughout the relevant period. However, you have been receiving benefits from the RRQ since 2005.²¹

[31] In a questionnaire²² you sent to the Respondent, you stated that you were registered with the utility companies Telecom.ca, Transport.ca, and Hydro-Québec from 1988 to 1996. However, this contradicts your testimony that your then-partner was responsible for paying all utilities and that they were registered in her name. So, I find this information you provided in the questionnaire to be unreliable.

[32] On September 15, 2011, you confirmed to the Respondent that you still had a Quebec driver's licence.²³ When you testified, you clarified that you got it soon after arriving in Canada around 1976. You said that you had not renewed it because of vision problems. You mentioned not having a Haitian driver's licence. I accept this information; however, I also note that the validity period of your driver's licence overlaps with periods when you were not living in Quebec because you were working in Haiti. So, I find this information unreliable.

[33] You confirmed that you had operated, and were still operating, a business under the names on the certificate from the Registraire des entreprises du Québec [Quebec's enterprise registrar], that the business was registered on November 30, 1994, and that annual declarations had been filed from 1995 to 1999. The Registraire sent a notice of default on October 6, 2000, and the business's registration was cancelled ex officio on September 21, 2001. When I asked

²⁰ GD2-208.

²¹ GD2-210 to 217.

²² GD2-110.

²³ GD2-150.

you why you had stopped filing your annual declarations, you indicated that it was because you were not making any money.

[34] I also note that a business can be registered in Quebec and that financial statements can be written without the person operating that business necessarily being in Canada. In addition, I note that the business has almost no revenue and has equipment purchases and travel, borrowing, and rental expenses for which you chose not to submit documentary evidence. Moreover, I note that you did not file tax returns for 1992 to 2001²⁴ even though you had prepared financial statements for your business and they were never submitted to the CRA.²⁵ So, I find the information about your business and its financial statements to be unreliable.

[35] You submitted to the Respondent a confirmation letter dated October 8, 2013,²⁶ from the Ministère de l'Emploi et de la Solidarité sociale du Québec [Quebec ministry of employment and social solidarity] (MESSQ) indicating the period you received last-resort financial assistance benefits during the period from January 28, 2003, to June 30, 2003. I give a lot of weight to your relationship with the MESSQ and to its follow-up in your file to support your residence in Canada.

[36] However, I cannot help but note that you provided your sister's address²⁷ during that period of last-resort financial assistance benefits. You also reported that, from 2004 to 2006, from September 2007 to November 2007, and from October 2008 to 2014, you lived in X and in X and that, at the same time, you were in Haiti and working at the Université Caraïbe [Caribbean university].²⁸ So, I find the addresses you gave in your forms to the Respondent to be unreliable.

[37] Your address on the Registre des entreprises [enterprise register] is X. It matches your family address as reported in the affidavit your daughters provided,²⁹ as well as the address reported in your statement to the respondent,³⁰ the address on the invoices you submitted,³¹ and

²⁴ GD2-170.

²⁵ GD5-9 to 13.

²⁶ GD2-31.

²⁷ GD2-41.

²⁸ GD1-12.

²⁹ GD1-10.

³⁰ GD2-41.

³¹ GD1-22 to 24.

the address shown in the financial statements that you submitted to the Tribunal for that period³² but that you did not submit to the CRA.

[38] While these addresses match, I also note that you use addresses in Canada to get your mail without necessarily being a resident of Canada. For example, you arranged to receive correspondence at your sister's address in X from November 19, 2003, to 2014 when you were not a resident of Canada and were working in Haiti, as confirmed in the employment certificate you provided from the Université Caraïbe.³³ So, I find the addresses you provided to establish your residence in Canada to be unreliable.

[39] The Régie de l'assurance maladie du Québec [Quebec health insurance board] (RAMQ) also confirmed in a letter dated December 5, 2013,³⁴ that you stopped being eligible for the public medical insurance plan on November 19, 2003, because you were no longer living in Quebec.

[40] The Respondent also submitted a report from RAMQ indicating that you made only one medical visit during the relevant period, in September 1990.³⁵ This is not significant in itself, since you may have been in excellent health or simply visiting Montréal. However, I also note that, during the period from 1983 to 1987, you made a total of 12 medical visits.

[41] When I asked you to tell me about your social life in Canada, you said that you had been an Adventist but that you broke away from the Church during your time in university. You mentioned no other social life in Canada since then. When answering questions, you were evasive and did not answer them directly. For example, when I asked you to tell me about your regular activities in Canada during the relevant period, you talked about your religious beliefs when you were going to university in the seventies.

[42] You also talked about your ties in Haiti. I will now address them.

³² GD5-9 to 13.

³³ GD1-12.

³⁴ GD2-29.

³⁵ GD2-107.

[43] You are still a Haitian citizen. You still have family and friends in Haiti. You also have a family home, and you mentioned living in it when you are in Haiti.³⁶ This house was originally your grandfather's.

[44] You submitted a confirmation of employment³⁷ in Haiti for the period from 2004 to 2012. At the hearing, you confirmed that this employment was during the normal school year, from September to June each year from 2004 to 2012. You also confirmed that you arrived in Haiti about a year before September 2004, which is consistent with the entry stamp into Haiti dated November 19, 2003.³⁸ So, for that entire period, that is, from November 19, 2003, to June 2012, I have no choice but to find that you were not a resident of Canada under the OAS Act.

[45] In addition, when you testified, you mentioned having started a project to open a technological educational institute with your brother, who is in Haiti as well. This also coincides with your time teaching at the Université Caraïbe from 2004 to 2012. And this tells me that your life and life plans were in Haiti.

[46] Around 2007, when you were in Haiti, you said that you met a woman who became your common-law partner, as you reported in your GIS applications,³⁹ your 2011⁴⁰ and 2012⁴¹ tax returns, and your Statutory Declaration of Common-law Union,⁴² which is undated but was received by the Respondent on April 3, 2014. You completed and signed this declaration, but your common-law partner did not sign it. At the hearing, you testified that two children were born of this relationship, a boy born in X but who lived only three months, and a girl born in X.

[47] On these same 2011 and 2012 tax returns, you yourself indicated that you were living in Haiti. So, I can only conclude that you were not a resident of Canada from January 1, 2011, to December 31, 2012, even though this is not part of the relevant period.

³⁶ GD2-44.

³⁷ GD1-12.

³⁸ GD2-186.

³⁹ GD2-193 and 194.

⁴⁰ GD2-195 to 200.

⁴¹ GD2-201 to 206.

⁴² GD2-39 and 40.

[48] Regarding your Statutory Declaration of Common-law Union, which is undated but was received on April 3, 2014, you reported having lived with your partner for five years since January 3, 2008. When you testified, you also indicated that she had never come to Canada. So, I can only conclude that you lived with your common-law partner in Haiti from January 3, 2008, to September 2, 2013, as shown in your declaration, and that you were therefore not a resident of Canada during that period.

[49] You provided information about the frequency and length of your absences from Canada.

[50] You stated that you had gone to the United States twice since arriving in Canada in 1970 for short stays by bus and exclusively to Haiti on international trips. You said that you did not remember the dates or lengths of these trips. I believe your testimony about your travels to the United States.

[51] You testified that, when travelling to Haiti, you would get there either with Air Canada or with Air Transat. You testified that you were not part of a frequent flyer program and that when [*sic*] you would buy plane tickets through your friends, whom you paid in cash given that you did not have any credit or debit cards. I believe your testimony about how you went about paying for your plane tickets to get to Haiti.

[52] I asked you how many times you had left Canada to go to Haiti between 1987 and 2000. You stated that you had left Canada only twice between those years, the first time for your father's funeral in 1985 or 1986, and the second time for two or three months around 1995 to install a printing machine for a client. You say that you never lived in Haiti during that period. However, there is very limited evidence of your residence during that period. You were not paying any rent, utilities, or tax bills that could be documented.

[53] When you testified, you stated that you did not start to [translation] "really leave" Canada until 2002. However, in the questionnaire the Respondent sent you, you indicated that you left Canada permanently around 2000.⁴³ I note that this date is consistent with the information in the police report you submitted that you left for Haiti around July 2000.

⁴³ GD2-110.

[54] After July 2000, the approximate month of your departure for Haiti as reported in your statement to X police,⁴⁴ you spent most of your time in Haiti and came to Canada only occasionally before returning to live in Haiti in November 2003.

IN SUMMARY

[55] The onus is on you to prove that you made your home and ordinarily lived in Canada. There is very little documentary evidence to establish that you made your home and ordinarily lived in Canada during the relevant period, from July 1987 to June 2008.

[56] According to the evidence on file and your own testimony, you were not a resident of Canada on the day before the deemed date of approval of your application, that is, June 11, 2008. So, I conclude that you needed to have resided in Canada for at least 20 years to be eligible for OAS.

[57] I find that you do not meet the requirements of the *Ding* factors for the relevant period, from July 1, 1987, to June 12, 2008. You made your transactions in cash until you got your credit card around 2018, you did not have any leases, and all you did was live temporarily with friends and with your sister, who were all responsible for paying rent and utilities.

[58] You have two daughters who are now adults (born in Canada respectively on X and X) and who are still in Quebec. You also have a sister and friends.

[59] You did have a Quebec driver's licence until 2018, but its validity period overlaps with periods of non-residence in Canada. You were also covered by RAMQ until November 19, 2003; RAMQ considered that you no longer lived in Quebec after that date. While covered by RAMQ during the relevant period, you made only one medical visit, in September 1990.⁴⁵

[60] The invoices provided from your business are only for a single date. During the relevant period, from July 1987 to June 2008, you filed a tax return only in 1987 and you never provided the CRA with the financial statements of your business which was registered in Quebec's

⁴⁴ GD2-175.

⁴⁵ GD2-107.

Registre des entreprises from 1994 to 2001, when it was cancelled by default. So, I find the information about your business and its financial statements to be unreliable.

[61] You have received public assistance from the MESSQ, and you received last-resort financial assistance benefits during the period from January 28, 2003, to June 30, 2003. However, the address was your sister's. You have also received an RRQ pension since 2005 for your years of contributions to the plan. The annual statements are also issued to your sister's address.

[62] In addition, you reported that, from 2004 to 2006, from September 2007 to November 2007, and from October 2008 to 2014, you lived in X and in X, and, at the same time, you were in Haiti and working at the Université Caraïbe.⁴⁶ So, I find the addresses you gave in your forms and questionnaires to the Respondent to be unreliable.

[63] On November 19, 2003, you left Canada to settle in Haiti. Your job was in Haiti, as shown in your confirmation of employment.⁴⁷ There, you lived in the family home, as you testified, and you had a common-law partner with whom, at the time, you wanted, and still want, to start and raise a family. There, you had two other children, one of whom is still living. You returned to Canada only once, in September 2004, and you stayed in Canada for only about a month.⁴⁸

[64] Even though you have had addresses in Canada since November 19, 2003, they do not show that you were deep-rooted in Canada, that you made your home at those addresses, or that you ordinarily lived there. Your 2011 and 2012 tax returns and your Statutory Declaration of Common-law Union, which is undated but was received by the Respondent on April 3, 2014, clearly show that you were not a resident of Canada from November 20, 2003, to March 20, 2014. This means that you were not a resident of Canada on the day before the deemed date of approval of your OAS application, that is, June 11, 2008.

⁴⁶ GD1-12.

⁴⁷ GD1-12.

⁴⁸ GD2-182.

[65] So, I find that you have not submitted enough evidence to show that you were deep-rooted in Canada or that you made your home and ordinarily lived in any part of Canada after July 1, 1987.

CONCLUSION

[66] I am sensitive to your arguments that you love and now feel at home in Canada. However, I have to consider all the factors to reach a conclusion that would allow me to establish that you were deep-rooted in Canada and that you made your home and ordinarily lived in any part of Canada.

[67] The evidence on file shows that you were not a resident of Canada on the day before the deemed date of approval of your application, that is, June 11, 2008. So, I find that you were not a resident of Canada on that date, and you have to prove that you have resided in Canada for at least 20 years to be eligible for OAS.

[68] I find the documents you submitted to be unreliable. The affidavit submitted by your daughters, who were very young during the relevant period, merely reports facts that their mother—who herself refused to submit a declaration—had allegedly told them and of which very young girls can recall only bits and pieces. The photo you submitted could have been taken anywhere. You did report addresses in Canada during the relevant period, but I find them unreliable. I also find unreliable the documents relating to your business and its financial statements which were never submitted to the CRA. To be eligible for OAS, you had to show that you had been a resident of Canada for at least 20 years—in other words, that you made your home and ordinarily lived in any part of Canada. I do not find that you have met this onus.

[69] Consequently, I find that you were not a resident of Canada under the OAS Act after July 1, 1987. This means that you were not entitled to an OAS pension or the GIS on June 12, 2008, the deemed date of approval of your application.

[70] The appeal is dismissed.

François Guérin
Member, General Division – Income Security