



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *GI v Minister of Employment and Social Development*, 2020 SST 912

Tribunal File Number: GP-19-1994

BETWEEN:

G. I.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

DATE OF DECISION: June 30, 2020

REASONS AND DECISION

DECISION

[1] The appeal is dismissed in part.

[2] I have decided that the Appellant was a resident of Canada from September 3, 1979, to December 12, 1979, and from April 2, 1997, to July 1, 1997, in addition to the period already accepted by the Respondent, from December 13, 1979, to April 1, 1997.

[3] I have decided that the Appellant was not a resident of Canada the day before his Old Age Security (OAS) application was approved, on November 17, 2017, or the date he returned to Canada from his last trip, on January 16, 2020.¹

[4] Based on the above, the Appellant had not accumulated the minimum 20 years of residence in Canada after he turned 18 to receive the OAS pension and Guaranteed Income Supplement (GIS).

OVERVIEW

The Appellant was born in Haiti in 1952 and arrived in Canada on September 3, 1979.² He turned 65 on November 18, 2017. The Appellant applied for an Old Age Security pension³ on December 22, 2016, when he was 64, to start as soon as possible, the month after he turned 65.⁴ He also asked to be considered for the GIS.⁵ He then applied for the GIS on November 24, 2017, with his 2016 income.⁶ The Respondent did not approve the OAS application or the GIS starting the month after the Appellant turned 65 because the Respondent found that the Appellant did not reside in Canada when he filed his OAS application and that he had not resided in Canada for at least 20 years after the age of 18. The Appellant stated that he was never outside Canada for

¹ GD8-9 and 10, question 32.

² GD2-11, question ii and GD8-8, question 28.

³ GD2-3 to 6.

⁴ GD2-4, question 10.

⁵ GD2-4, question 11.

⁶ GD2-7.

more than six months without returning, that he is a resident of Canada,⁷ and that the length of his trips comply with the immigration regulations.⁸

PRELIMINARY MATTER

[5] The Appellant asked in his notice of appeal that the type of hearing be in person or written questions and answers.⁹ The appeal proceeded by written questions and answers. On May 15, 2020, the Tribunal sent the parties questions, giving them until June 5, 2020, to respond.¹⁰ The Tribunal received answers from the Appellant¹¹ and the Respondent.¹²

WHAT ARE THE ISSUES OR WHAT I HAVE TO DECIDE

[6] The Appellant stated in his clarification of information questionnaire¹³ included in his OAS pension application¹⁴ that he was a resident of Canada from September 3, 1979, to December 1, 2015, and from November 1, 2016, until the date the questionnaire was signed, on November 20, 2017. The Appellant also submits that he lived in Haiti from December 1, 2015, to November 1, 2016.¹⁵ The Respondent found that the Appellant lived in Canada from December 13, 1979, to April 1, 1997, which gave him 17 years and 110 days of residence in Canada.¹⁶

[7] I must therefore decide whether the Appellant was a resident of Canada the day before his OAS application was approved, on November 17, 2017.

[8] If the Appellant was not a resident of Canada under the *Old Age Security Act* (OAS Act) the day before his OAS application was approved, on November 17, 2017, I must also decide whether the Appellant had accumulated 20 years of residence in Canada after he turned 18.

⁷ GD8-15 and 16, questions 54, 55, 57, and 59.

⁸ GD1-3, question 4.

⁹ GD1-2, question 2.

¹⁰ GD0.

¹¹ GD8.

¹² GD9.

¹³ GD2-11.

¹⁴ GD2-3 to 6.

¹⁵ GD2-11.

¹⁶ GD7-2, paragraph 5.

THE LAW

Test for Determining Eligibility for an OAS Pension

[9] 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.¹⁷ A person can be present in Canada without being a resident of Canada.

[10] Residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. *Ding*¹⁸ sets out a non-exhaustive list of factors to consider to guide the Tribunal when 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 stay in Canada, and the frequency and length of absences from Canada;
- f. The person's mode of living, or whether the person's life in Canada is sufficiently deep rooted and settled.¹⁹

[11] The Appellant has to prove that it is more likely than not that he was living in Canada during the period in question.²⁰

¹⁷ Section 21(1) of the *Old Age Security Regulations*.

¹⁸ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

¹⁹ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

²⁰ *De Carolis v Canada (AG)*, 2013 FC 366.

[12] Section 3(2) of the *Old Age Security Act* (OAS Act) states that a partial pension can be paid to a pensioner who is over the age of 65 if they resided in Canada for at least ten years after the age of 18, and if they resided in Canada the day before the application was approved. If the pensioner was not a resident of Canada the day before the application was approved, they have to have resided in Canada for at least 20 years after the age of 18.

[13] Section 5(1) of the OAS Regulations (Regulations) states the date on which the approval of an OAS pension application takes effect.

[14] I will consider the factors established in *Ding* in my analysis to decide whether the Appellant was living in Canada. To reach my conclusion, I will use the documents on file that the two parties submitted and their answers to my questions.

The Appellant's Residence in Canada that is Accepted by the Respondent

[15] The Respondent accepts that the Appellant was a resident of Canada in accordance with the OAS Act from December 13, 1979, to April 1, 1997, which gives him 17 years and 110 days of residence in Canada.²¹

The Appellant's Ties in Canada

[16] The Appellant said that he arrived in Canada on September 3, 1979, to pursue his studies. He said he obtained Canadian citizenship in 1984. He said he remained a resident of Canada until December 1, 2015, without interruption since the date he arrived in Canada.²²

[17] The Appellant said he had a car in Canada in 1983, 1993, 2012, and 2019. However, he does not remember the details of the sale dates of his first three cars. His current vehicle is insured.²³ With his notice of appeal, he filed a photocopy of his current Quebec driver's licence, valid from November 3, 2016, to November 16, 2024,²⁴ and the registration document for his current vehicle, issued on November 23, 2019.²⁵ He also submitted information on his driving

²¹ GD7-2, paragraph 5.

²² GD2-11.

²³ GD8-6, questions 19 and 20.

²⁴ GD1-74.

²⁵ GD1-79.

record from the Société de l'assurance automobile du Québec [Quebec's automobile insurance corporation] (SAAQ) issued on November 20, 2019, which indicates 460 months of driving experience (38 years and 4 months).²⁶ He is not a member of any association and does not do any volunteer work. He was, however, a member of the OIQ.²⁷

[18] The Appellant admits to travelling a lot, as shown in his Canada Border Services Agency (CBSA) traveller's history—travel history report indicating the dates of his entries since 2003.²⁸ However, he says that he returns to Canada at least twice a year, and he does not spend more than six months outside Canada to respect what he calls the residence directives.²⁹ The Appellant still considers himself a resident of Canada since he entered Canada on September 3, 1979. The reason why he did not declare himself a resident of Canada during the period from December 1, 2015, to November 1, 2016, is because he says he had not been able to respect the directives of being present in Canada every six months.³⁰

[19] Since he returned on November 1, 2016, the Appellant said that he made the following trips:³¹ The Appellant left Canada for Haiti and the United States on December 27, 2016, and returned only on May 14, 2017. He left Canada on May 31, 2017, for Haiti and to visit the Dominican Republic twice and the United States. He returned to Canada on November 15, 2017. He returned to Haiti on December 6, 2017, and came back to Canada on February 21, 2018. He left Canada on July 26, 2018, to go to Mexico, then Haiti, before returning to Canada on November 7, 2018. The Tribunal notes, however, that the Appellant went to the Pointe-Claire Service Canada Centre (SCC) on August 9, 2018.³² He left Canada for Haiti on February 10, 2019, and returned to Canada on June 12, 2019. He left Canada on December 16, 2019, for the United States, then Haiti, and returned to Canada on January 16, 2020.³³

²⁶ GD1-76 to 78.

²⁷ GD8-6, question 21.

²⁸ GD2-139 to 140.

²⁹ GD8-7, questions 25 and 57.

³⁰ GD2-9, question 30.

³¹ GD8-9 and 10, question 32.

³² GD2-228.

³³ GD8-9 and 10, question 32.

[20] He has not had any utility accounts in Canada for more than 10 years,³⁴ and he submitted on February 22, 2018, that he did not have a personal telephone.³⁵ He has a bank account in Canada that he says he opened in 2010. He said he had other accounts that are closed and for which he no longer has the information.³⁶ He provided a bank statement on November 22, 2019, for the period from September 9, 2019, to November 22, 2019, with his sister's address on it.³⁷

[21] The Appellant said he lived with his mother from 1997 to 2003, with his niece from 2010 to 2019, and with his sister from 2019 to 2020.³⁸ He also said he was a tenant on the X from 2003 to 2004, on the X from 2004 to 2008, and on the X from 2008 to 2010.³⁹ In his notice of appeal, the Appellant provided three statements from family members confirming this information, although they were very superficial.⁴⁰ The Tribunal notes that the dates in one of these statements conflict with the statements of residence the Appellant made in his passport applications at the Embassy of Canada in Haiti in 2004⁴¹ and 2009,⁴² and in his Statutory Declaration Concerning a Lost, Stolen, Damaged, Destroyed or Inaccessible Canadian Passport or Travel Document.⁴³ I will discuss this later on in this decision.

The Appellant's Ties in Haiti

[22] The Appellant also has Haitian citizenship by birth. He has a driver's licence and a national identity card that he uses when he is in Haiti.⁴⁴ He also has a bank account for which he no longer remembers the details about when it was opened and the type of account.

[23] When he is in Haiti, he lives in the family home.⁴⁵ He spends time with his brothers and sisters and their children.⁴⁶ The Appellant said that he does not have utility accounts in his name

³⁴ GD8-5 and 6, question 16.

³⁵ GD2-28, question ix.

³⁶ GD8-5, question 13.

³⁷ GD1-61 to 65.

³⁸ GD8-3 and 4, question 5.

³⁹ GD8-3, question 4.

⁴⁰ GD1-56 to 58.

⁴¹ GD2-185, top of page.

⁴² GD6-194.

⁴³ GD2-190.

⁴⁴ GD8-4, question 7.

⁴⁵ GD8-3, question 1.

⁴⁶ GD2-228.

in Haiti, but that the accounts are in his mother's name, that they have never been updated, and that it does not cause any problems. He said he is the one who pays the bills in his mother's name.⁴⁷

[24] The Appellant said he has not filed his tax returns in Haiti since 1979.⁴⁸ The Appellant said he has not voted in Haiti since 1979.⁴⁹ The Appellant said he has had a car in Haiti since 2015⁵⁰ and that it is insured in Haiti.⁵¹

[25] The Appellant said he no longer has the Haitian passport that he used to enter Canada in 1979 because he lost it.⁵²

The Appellant and the United States

[26] The Appellant confirmed that he is not an American citizen and does not have a United States green card. He has no property or other obligations there.⁵³ He said he has never had utility accounts there.⁵⁴ He does not receive any social benefits there.⁵⁵ He has no bank account there.⁵⁶

His eldest son lives in the United States as well as his sister and several cousins.⁵⁷ The Appellant said he goes to the United States often to see his son, his family, his cousins, and friends. Sometimes for less than four days across the border, and he considers himself a snowbird.⁵⁸

⁴⁷ GD8-6, question 17.

⁴⁸ GD8-4, question 6.

⁴⁹ GD8-4, question 9.

⁵⁰ GD8-6, question 19.

⁵¹ GD8-6, question 20.

⁵² GD8-7, question 23.

⁵³ GD8-5, question 11.

⁵⁴ GD8-6, question 18.

⁵⁵ GD8-3, question 2.

⁵⁶ GD8-5, question 15.

⁵⁷ GD8-5, question 10.

⁵⁸ GD8-7, question 25.

The Appellant's Statements of Residence, his Credibility, and his Reliability

[27] In his OAS application,⁵⁹ the Appellant indicated in his residence history⁶⁰ that he had lived in Canada continuously from September 3, 1979, to December 1, 2015, and from November 1, 2016, to the present day. He also indicated the same thing in his notice of appeal to the Tribunal.⁶¹

[28] The Tribunal gives limited reliability and credibility to the Appellant's statements about the addresses of residence in Canada that he gave in his OAS application and the period of time during which he said he had established his residence in Canada. The passport applications⁶² he submitted and the clarification of information questionnaire included in his OAS application⁶³ contradict each other. The Appellant states in the clarification of information questionnaire included in his OAS pension application that he was a resident of Canada continuously from September 3, 1979, to December 1, 2015, and from November 1, 2016, to the present day. But, he gave a Haitian address in his Canadian passport applications submitted in 2004⁶⁴ and 2009,⁶⁵ and in his Statutory Declaration Concerning a Lost, Stolen, Damaged, Destroyed or Inaccessible Canadian Passport or Travel Document.⁶⁶ In his notice of appeal, the Appellant stated that he took up residence and lived with his children from 2003 to 2010 and with his niece and sister from 2010 until the present day—that is, the date the notice of appeal was signed on November 27, 2019.⁶⁷ This first part from 2003 to 2010 also contradicts the statements he made in his 2004 and 2009 Canadian passport applications. The Appellant said that he thought he was following the residence directives not to be outside Canada for more than six months,⁶⁸ and that, when you apply for a passport abroad, you have to give an address abroad.⁶⁹ However, the Tribunal does not accept these explanations. He gave a residential address on X in his 2013

⁵⁹ GD2-206 to 209.

⁶⁰ GD2-208, paragraph 14.

⁶¹ GD1-3, question 4.

⁶² GD2-171 to 205.

⁶³ GD2-11.

⁶⁴ GD2-185, top of page.

⁶⁵ GD6-194.

⁶⁶ GD2-190.

⁶⁷ GD1-3, question 4.

⁶⁸ GD8-8, question 28.

⁶⁹ GD8-11, question 35.

Canadian passport application.⁷⁰ However, it is the address of his niece, with whom he had a living arrangement while he was in Canada from 2010 until the end of 2018.⁷¹ During that time, he was not registered or responsible for paying for any public services. He has had a similar arrangement with his sister since 2019.⁷²

[29] The Appellant submits that, since April 2, 1997, he has filed his tax returns.⁷³ However, the request for information from the CRA that the Respondent obtained confirmed that he did not file his tax returns in 2007, 2010, and 2011.⁷⁴ Furthermore, his income tax returns for 2002 to 2006 and 2008 to 2009 indicated no income earned in Canada and were in the amount of \$0.00. For 1999, the Appellant gave an address in Haiti,⁷⁵ and the other addresses since 2000 are those of family members (X, X, X, X, X).

[30] The Tribunal asked the Appellant⁷⁶ why he had solemnly declared that he was living in Haiti in his passport applications signed March 6, 2004,⁷⁷ and January 25, 2009,⁷⁸ and why these dates were different than those declared with the CRA. The Appellant responded⁷⁹ that his children wanted to apply for loans and grants and that they had to provide information on the father. The Appellant admitted that he had invented information that he did not have—that those addresses were those of friends and that they could change each time because he could not give his real address in Saint-Marc (Haiti).

[31] The Tribunal therefore finds that several of the Appellant's statements of residence in Canada are contradictory and unreliable. The Appellant even said that he invented information when he did not have it. The burden of proof, on a balance of probabilities, lies with the Appellant. The Tribunal finds that the Appellant did not meet this burden of proof.

⁷⁰ GD2-206.

⁷¹ GD8-9, question 31 and GD1-56.

⁷² GD1-57.

⁷³ GD1-6.

⁷⁴ GD2-81.

⁷⁵ GD2-90.

⁷⁶ GD8-14, question 51.

⁷⁷ GD2-184.

⁷⁸ GD2-194.

⁷⁹ GD8-14, question 51.

[32] The Tribunal prefers to retain the Appellant's statements of residence provided in his Canadian passport applications rather than those indicated in the clarification of information questionnaire in his OAS pension application and in his notice of appeal.

The Appellant's Insured Health Services

[33] To prove that he was a resident of Canada, the Appellant indicated in the cover letter of his notice of appeal that he had spent more than a year in treatment without ever leaving the country in 2012 and 2013.⁸⁰

[34] In a letter dated July 3, 2014, Dr. Willems from CHUM confirmed that the Appellant had undergone a 48-week treatment in hepatology services in 2013.⁸¹ No treatment date was given. However, the RAMQ insured medical services history⁸² considered together with the CBSA traveller's history⁸³ indicates several trips outside Canada in 2013 and during the Respondent's [*sic*] treatment. This tells the Tribunal that the Appellant was in Canada for his treatment and went abroad between his treatments. During this treatment, the Appellant had a living arrangement with his niece. However, staying with someone while you are in Canada is different from living at that location. Once again, the burden of proof, on a balance of probabilities, lies with the Appellant. The Tribunal finds that the Appellant has not met this burden of proof.

[35] The Appellant submitted to the Respondent a letter of confirmation of his eligibility for the régime d'assurance maladie du Québec [Quebec's health insurance plan] (RAMQ),⁸⁴ and the Respondent received from the RAMQ information about insured services the Appellant received from November 1, 1981, to February 22, 2018.⁸⁵ The letter from the RAMQ was sent to the Appellant's niece's address, where he said he had been living since 2010. The letter is dated March 13, 2018, and confirms the Appellant's eligibility for Quebec's health insurance plan

⁸⁰ GD1-6.

⁸¹ GD1-35.

⁸² GD2-43 to 78.

⁸³ GD2-139 and 140.

⁸⁴ GD2-42.

⁸⁵ GD2-43 to 78.

since August 1, 2009. That letter also includes a warning that it is the reflection of information provided by the insured person.

[36] When the Tribunal asked the Appellant why he had not had medical visits from November 2003 to June 2009,⁸⁶ he responded that it was complicated because he moved often, that he was in violation of the RAMQ, and that he had to pay out of pocket for any medical intervention.⁸⁷ This indicates that the Appellant had problems justifying his Quebec residence to the RAMQ before 2009 to establish his eligibility for health insurance, particularly his Quebec residence.

[37] In his clarification of answers questionnaire included in his OAS application regarding his periods of residence since the age of 18,⁸⁸ the Appellant confirmed to the Respondent that he had lived in Haiti from December 1, 2015, to November 1, 2016. When the Tribunal asked him whether he had informed the RAMQ of his absences from Canada with respect to his health insurance coverage,⁸⁹ the Appellant said that he had had problems with the RAMQ, which had penalized him for his travels,⁹⁰ without providing further explanation except that he did not want to debate this issue which, he believed, was outside the scope of this appeal. The Tribunal also asked the same question about the health insurance coverage, particularly for the period from 2014 to 2017,⁹¹ to which the Appellant responded again that he did not want to debate that issue and that his visits outside Canada are almost all under six months. However, the Tribunal finds that it is a matter of the credibility of the Appellant's statements to government authorities.

[38] The Tribunal also noted that several medical visits included in the RAMQ insured medical services history⁹² often occurred shortly after the Appellant's entries into Canada, particularly after 2009.

⁸⁶ GD4-32 and 33.

⁸⁷ GD8-12 and 13, question 44.

⁸⁸ GD2-11, question ii.

⁸⁹ GD8-12, question 43.

⁹⁰ GD8-12, questions 42 and 43.

⁹¹ GD8-16, question 60.

⁹² GD2-43 to 78.

[39] The Appellant submitted in his clarification questionnaire⁹³ that he lived in Haiti for nearly 11 months without returning to Canada during that period. However, the March 13, 2018, letter from the RAMQ does not mention this. This leaves the Tribunal with doubts about all the Appellant's statements to the RAMQ in particular, and to government authorities in general, especially regarding the Appellant's dates and places of residence in Canada.

The Appellant's Work in Canada

[40] The Appellant told the Tribunal that he has not worked, in Canada or abroad, since 2009, which explains how he can come and go as he pleases.⁹⁴ He said he had finished his contract with the Airport Authority of Haiti in 2009.

[41] The Appellant explained that he stopped working in 1994 and sold his house in 1997 because he could no longer pay the mortgage.⁹⁵ He said he worked in Canada between 1998 and 2001 doing general work for employment agencies, which was not in his field of work. He does not remember the companies very well.

[42] Based on his participation in the Québec Pension Plan (QPP), the Appellant had \$16,952 in eligible income for 1999,⁹⁶ which is consistent with the Appellant's 1999 tax return, which indicates \$17,030 in employment income.⁹⁷ However, the CRA's individual identification report for mailing addresses indicates an address reported in Haiti in 1999.⁹⁸

[43] Based on his participation in the Québec Pension Plan (QPP), the Appellant had \$5,272 in eligible income for 2001,⁹⁹ which is consistent with the Appellant's 2001 tax return, which indicates \$5,272 in employment income.¹⁰⁰

⁹³ GD2-11, question ii.

⁹⁴ GD8-7, question 22.

⁹⁵ GD8-13, question 45.

⁹⁶ GD2-38.

⁹⁷ GD2-117 to 118.

⁹⁸ GD2-90.

⁹⁹ GD2-38.

¹⁰⁰ GD2-121.

[44] Furthermore, the Appellant stated that he had a Haitian address in his 2004 Canadian passport application¹⁰¹ at the Embassy of Canada in Haiti and that he had lived there since 1997. The Appellant is a frequent traveller who travels regularly between Canada, the United States, and Haiti. The Tribunal prefers to accept the Appellant's statutory declaration of residence in his 2004 passport application given that the Appellant could have earned his income in 1999 and 2011 over short-term contracts while he was in Canada, or even remotely from the residence he declared in his passport applications in Haiti.

[45] Again, the Tribunal has serious doubts about the Appellant's statements to government authorities, particularly with regard to information about his residence in Canada and the fact that he even admits to inventing information when he does not have it.¹⁰²

Was the Appellant a resident of Canada under the OAS Act from September 3, 1979, to December 12, 1979, and was he eligible for a pension under the OAS Act and the GIS?

[46] After he confirmed that he had received the Notice of Readiness,¹⁰³ the Appellant took advantage of the opportunity he was given to submit new documents before March 13, 2020. The Appellant submitted an email and additional documents.¹⁰⁴ Some of them address the period that was originally in dispute—that is, September 3, 1979, to October 23, 1980.¹⁰⁵

[47] After receiving those documents, the Respondent changed its initial position to now accept the Appellant's period of residence from December 13, 1979. That date coincides with the date of issue of the co-op card for the University of Montreal's École Polytechnique.¹⁰⁶

[48] The Tribunal asked the Appellant to clarify what he did in Canada between the date of his entry into Canada, which he believes, to the best of his memory, is September 3, 1979, and the date now accepted by the Respondent—that is, December 13, 1979. The Tribunal asked the Appellant to be as clear as possible.¹⁰⁷ The Appellant confirmed that, after piecing together the

¹⁰¹ GD2-185, top of page.

¹⁰² GD8-14, question 51.

¹⁰³ GD3.

¹⁰⁴ GD6.

¹⁰⁵ GD4-17.

¹⁰⁶ GD6-12.

¹⁰⁷ GD0-4, question 26 and 27.

sequence of events, to the best of his knowledge, the most likely date of his arrival in Canada is September 3, 1979, even though he does not have documentary evidence.¹⁰⁸ The Appellant explained that he was not accepted to the master's program for the fall 1979 session despite the more than two-year agreement with Polytechnique. To be accepted to the program, he had to write an exam before all the professors in the geotechnical section, and he did not pass it. After that exam, he was however accepted to take courses at the undergraduate level for two semesters on the condition that he had to maintain a three out of four average, which he did do. He was therefore accepted to Poly, which then allowed him to register with the student association on December 12, 1979, which he could not have done if he had not been accepted to Poly.

[49] In its response to the Tribunal, the Respondent said that, to claim a period of residence before obtaining residence status, the Appellant must provide formal evidence supporting that he was in Canada. In this case, the formal evidence that was now accepted by the Respondent was the student co-op card from École Polytechnique.¹⁰⁹

[50] Furthermore, the Respondent maintains that the intention to live in Canada changed when an opportunity for permanent residence was offered to the Appellant in 1981.¹¹⁰ The Respondent mentioned that section 21(4)(b) of the OAS Regulations, which states that the period of time during which a resident of Canada is absent from Canada for the purpose of attending a school or university is credited as a period of residence in Canada. However, that is not the case here even though it is tempting to reverse the situation.

[51] The Tribunal finds that the explanations the Appellant provided are reasonable and that, on a balance of probabilities, and given the short period of time between the date of entry into Canada to study submitted by the Appellant and the date he became a member of the student co-op at École Polytechnique allowing him to arrive in Canada and start to establish himself in the country for his courses at École Polytechnique, the Appellant was a resident of Canada from September 3, 1979, to December 12, 1979.

¹⁰⁸ GD8-7 and 8, question 26.

¹⁰⁹ GD6-12.

¹¹⁰ GD2-27.

Was the Appellant a resident of Canada under the OAS Act as of April 2, 1997, and was he eligible for a pension under the OAS Act and for the GIS?

[52] The Appellant has considered himself a resident of Canada since he entered Canada on September 3, 1979. The reason he did not declare himself a resident of Canada from December 1, 2015, to November 1, 2016, is because he said he was unable to respect what he believed were the directives to be in Canada every six months to confirm residency,¹¹¹ and what he calls elsewhere the immigration regulations.¹¹² Although the Appellant submits that he lived in Haiti from December 1, 2015, to November 1, 2016,¹¹³ and that he resumed residence in Canada on November 1, 2016, the Tribunal understands that, by his answers and deep down, the Appellant considered himself a resident of Canada during that period for which he had declared himself a resident of Haiti.

[53] The Respondent considers that the Appellant was not a resident of Canada after April 2, 1997, because he was only present in Canada.¹¹⁴ The Respondent considers that the Appellant has not been a resident of Canada since he sold his house as confirmed by the land register of St-Antoine de Longueuil, on April 1, 1997.¹¹⁵

Period from April 2, 1997, to July 1, 1997

[54] The Appellant confirmed that he sold his house on April 2, 1997, but that he lived in it until the end of June 1997 in one document,¹¹⁶ and until July 1, 1997, in another document.¹¹⁷ Towards that date, he remembers going to his mother's and then immediately to Haiti.¹¹⁸ He does not remember the exact date, but he says that it was in July 1997.¹¹⁹

[55] On February 6, 2004, the Appellant applied for a Canadian passport while he was in Haiti.¹²⁰ In that application, he was asked to identify his permanent address. The Appellant

¹¹¹ GD2-9, question 30.

¹¹² GD1-3, question 4.

¹¹³ GD2-11.

¹¹⁴ GD9-2 and 3.

¹¹⁵ GD2-225.

¹¹⁶ GD5-4, point b).

¹¹⁷ GD6-5, question 3.1.

¹¹⁸ GD8-10, question 34.

¹¹⁹ GD8-10, question 36.

¹²⁰ GD2-171 and GD2-184 to 186 and GD2-188.

answered by giving a Haitian address, while stating that he had been at that address from 1997 to the present day—that is, the date he signed the application, on February 6, 2004.¹²¹ The Appellant told the Tribunal that, after leaving the house that he sold on April 1, 1997, he remembers going to his mother's and then immediately to Haiti.¹²²

[56] The Tribunal is satisfied with the Appellant's answer for the period from April 2, 1997, to July 1, 1997, given that it is supported by the statement that he made on his 2004 passport application and clarified in his answers to the Tribunal's questions.

Period after July 2, 1997

[57] On February 6, 2004, the Appellant applied for a Canadian passport while he was in Haiti.¹²³ In that application, he was asked to identify his permanent address and his addresses in the last two years. The Appellant answered by giving a Haitian address, while stating that he had been there from 1997 until the present day—that is, the date the application was signed, on February 6, 2004.¹²⁴ When questioned about this detail, the Appellant answered that, when you apply for a Canadian passport abroad, you have to give an address abroad, that it was a friend's address, and that he never thought he would have to connect that address to the one on his OAS application. He said that addresses in Haiti do not exist like those in Canada and that he had tested the postal system in Haiti.¹²⁵

[58] On September 19, 2003, a Canadian passport valid for three days was also issued to the Appellant while he was in Haiti.¹²⁶ That application showed a permanent address in Haiti. The Appellant stated that he had had to return to Canada urgently because his children were having problems, and he no longer had a passport. During his stay in Canada, he also allegedly rented an apartment on X.¹²⁷ In his answers to the Tribunal, the Appellant said that he was a tenant from 2003 to 2004 on X.¹²⁸ However, further on in the same questionnaire, he said that from 2003 to

¹²¹ GD2-185, top of page.

¹²² GD8-10, question 34.

¹²³ GD2-171 and GD2-184 to 186 and GD2-188.

¹²⁴ GD2-185, top of page.

¹²⁵ GD8-11, question 35.

¹²⁶ GD2-172 to 176.

¹²⁷ GD8-11, question 37.

¹²⁸ GD8-3, question 4.

2004, he was a tenant on X after having been on X,¹²⁹ which was confirmed in his son's statement.¹³⁰

[59] On October 15, 2003, the Consulate General of the Republic of Haiti issued the Appellant a certificate of identify and a one-way trip to Haiti¹³¹ so the Appellant could return to Haiti. In that document, the Appellant's address is shown as being on X. The Appellant added that he had signed a lease with the owner at the time, that it was more than 17 years ago, and that the documents no longer exist.¹³²

[60] On February 10, 2004, the Appellant submitted a handwritten note on Immigration, Refugees and Citizenship Canada letterhead.¹³³ In that note, he wrote that he did not want to lose his work and that he had construction contracts in Haiti. He added that it was for that reason that he had to use a roadmap from the Haitian Consulate to return to Haiti on October 20, 2003, to work on his contracts. This information indicates that the Appellant did not return to Canada until September 20, 2003, to October 20, 2003.

[61] On August 10, 2004, the Appellant made a declaration concerning a lost, stolen, damaged, destroyed or inaccessible Canadian passport. That declaration was submitted to the Embassy of Canada in Haiti. In that declaration, the Appellant stated again that his permanent address was in Haiti.¹³⁴

[62] In his February 6, 2004, passport application, the Appellant listed two employers in Haiti between February 17, 2002, and the date the application was signed.¹³⁵ In his January 25, 2009, passport application to the Canadian Embassy in Port-au-Prince, Haiti, the Appellant stated that he was employed by the National Airport Authority of Haiti from May 2004 until the date the

¹²⁹ GD8-18, question 70.

¹³⁰ GD1-58.

¹³¹ GD2-189.

¹³² GD8-11, question 39.

¹³³ GD2-188.

¹³⁴ GD2-190.

¹³⁵ GD2-185.

application was signed.¹³⁶ That information indicates that the Appellant had professional ties in Haiti during all those years.

[63] The Appellant told the Tribunal that he could not give more information about his trips since 2003 than what is reported in his traveller's history—travel history report¹³⁷ because he lost his old passports in 2014.¹³⁸ He said, however, that he is very often in the United States to see his family and friends there.¹³⁹

[64] Once again, the Tribunal has serious doubts about the Appellant's statements to government authorities, particularly with regard to the information about his residence in Canada. Without having documentary evidence of the Appellant's travels during those years, the Tribunal prefers the statutory declarations that the Appellant made in his passport applications submitted to the Embassy of Canada in Haiti.

Was the Appellant a resident of Canada under the OAS Act the day before the approval of his OAS application, on November 17, 2017?

[65] The Respondent considers that the Appellant was not a resident of Canada from November 1, 2016, until today because he was only present in Canada.

[66] The Appellant still considers himself a permanent resident of Canada even though he travels abroad. He said he spends only six months outside the country, that his ties are in Canada, and that his children are here. He said that he has met his obligations and filed his tax returns and that he has always had housing where he can be reached. He said he was also treated by several doctors.¹⁴⁰ He also said he is a kind of snowbird.¹⁴¹ He has a bank account in Canada that he opened in Canada in 2010, and he apparently had others before for which he no longer has the details.¹⁴² He said he does not have any utility accounts in Canada in his name.¹⁴³

¹³⁶ GD2-196.

¹³⁷ GD2-139 to 140.

¹³⁸ GD8-7, questions 23 and 24.

¹³⁹ GD8-7, question 25.

¹⁴⁰ GD8-9, question 30.

¹⁴¹ GD8-9, question 29.

¹⁴² GD8-5, question 14.

¹⁴³ GD8-5 and 6, question 16.

[67] The Appellant said he had a living arrangement with his niece from 2010 to 2018. Then, he officially moved in with his sister in 2019. He said he looked after his family before he came to Canada in 1979. He has a friend in Laval and is there often.¹⁴⁴ He said he has verbal arrangements with his family for a room even though it is not necessarily a financial arrangement.¹⁴⁵

[68] Since returning on November 1, 2016, the Appellant said that he made the following trips:¹⁴⁶ The Appellant left Canada for Haiti and the United States on December 27, 2016, and returned on May 14, 2017. He left Canada on May 31, 2017, for Haiti, and to visit the Dominican Republic twice and the United States. He returned to Canada on November 15, 2017. He returned to Haiti on December 6, 2017, and came back to Canada on February 21, 2018. He left Canada on July 26, 2018, to go to Mexico, then to Haiti, before returning to Canada on November 7, 2018. The Tribunal notes, however, that the Appellant visited the Pointe-Claire SCC during that period, on August 9, 2018.¹⁴⁷ He left Canada for Haiti on February 10, 2019, and returned to Canada on June 12, 2019. He left Canada on December 16, 2019, to go to the United States, then Haiti, and returned to Canada on January 16, 2020.¹⁴⁸

[69] The Tribunal considers that, since November 1, 2016, although the Appellant comes to Canada to visit his family, occasionally sees doctors in Canada, and has a living arrangement with either his niece or sister while he is in Canada, the Appellant does not ordinarily live in Canada. The Appellant's true home base is his family home in Haiti, for which he is also responsible for the utility accounts. The Tribunal gives a lot of weight in this file to the regularity and length of his stays in Canada compared to the frequency and length of his absences from Canada.

¹⁴⁴ GD8-9, question 31.

¹⁴⁵ GD8-4, question 5.

¹⁴⁶ GD8-9 and 10, question 32.

¹⁴⁷ GD2-228.

¹⁴⁸ GD8-9 and 10, question 32.

The Appellant's Ties in Canada and Haiti

[70] The Appellant has social and families ties in both countries. He has children, other family members, and friends in Canada. He also has family and friends in Haiti. Most of his activity, whether in Canada or in Haiti, is to visit these two countries. When he is in Canada, he lives with family with whom he had and still has compensation agreements for the period in which he lives with these people. However, in Haiti, he has the family home where he lives while he is there. He is also responsible for paying the utility accounts even though they are in his mother's name. When he is in Canada, he has an arrangement for a certain amount of time with one person, then he changes addresses and has an arrangement with another person. The Tribunal considers the Appellant's social and family ties to be relatively similar in the two countries. However, the Tribunal finds that his residential ties are stronger in Haiti than in Canada given the fact that, in Haiti, he lives in the family home and pays the utility accounts that are still in his mother's name, whereas in Canada, he just has arrangements with family member and is not responsible for paying for any utilities.

[71] The Appellant has ties in Canada. He has a driver's licence and files his tax returns. He also has a driver's licence in Haiti. The Appellant has also had a Quebec health insurance card since 2009. However, the Tribunal has doubts about the Appellant's statements of residence to authorities at the RAMQ and the SAAQ given that even he admitted to inventing information when he did not have it.¹⁴⁹

[72] In the Appellant's case, the Tribunal gives more weight to the regularity and length of stays in Canada than to the frequency and length of absences from Canada. The Appellant admits to travelling a lot and spending a lot of time abroad, even though he returns to Canada for a certain number of weeks every six months. The Tribunal finds that the Appellant has to give more irrefutable and non-contradictory documentary evidence to show his roots in Canada and that he makes his home and ordinarily lives in Canada. You have to be significantly deep-rooted in Canada, which is much more than having an address in the country and a place to stay when you are visiting Canada.¹⁵⁰ This is also true on the date the OAS application was filed by the

¹⁴⁹ GD8-14, question 51.

¹⁵⁰ *Canada (MHRD) v Ding*, 2005 FC (Federal Court) 76.

Appellant, on December 22, 2016; on the day before the day the OAS application was approved, on November 17, 2017; and which is also the case on the date the Appellant returned to Canada after his last trip, on January 16, 2020.¹⁵¹

[73] Once again, the Tribunal has difficulty accepting the Appellant's statements of residence because they are contradictory and unreliable, and even he admitted to inventing information when he did not have it.¹⁵² The burden of proof, on a balance of probabilities, lies with the Appellant.

[74] I can only find, on a balance of probabilities, that during the period from July 2, 1997, until the date the Appellant returned to Canada after his last trip, on January 16, 2020,¹⁵³ the Appellant did not make his home and ordinarily live in Canada.

CONCLUSION

[75] The onus is on the Appellant to prove that he made his home and ordinarily lives in Canada, and the Tribunal has difficulty accepting the Appellant's statements of residence because they are contradictory and unreliable. Especially since the Appellant admitted that he filled out his OAS application from memory and that it may contain errors¹⁵⁴ and that he invented information when he did not have it.¹⁵⁵ There is only very little documentary evidence to establish that the Appellant had made his home and ordinarily lived in Canada during the period that remains at issue—that is, from July 2, 1997, to today. Furthermore, several contradictions between his OAS application, his answers to my questions, and his passport applications were demonstrated as to the Appellant's addresses of residence during the period at issue.

¹⁵¹ GD8-9 and 10, question 32.

¹⁵² GD8-14, question 51.

¹⁵³ GD8-9 and 10, question 32.

¹⁵⁴ GD8-12, question 41.

¹⁵⁵ GD8-14.

[76] Based on the evidence on file and the answers the parties submitted, the day before his OAS application was approved, on November 17, 2017, the Tribunal finds that the Appellant was not a resident of Canada.

[77] Therefore, I find that the Appellant had to have lived in Canada for at least 20 years to be eligible for the OAS, which he did not, even adding the additional periods that I accepted in my decision—that is, from September 3, 1979, to December 12, 1979, and from April 2, 1997, to July 1, 1997—to those the Respondent already accepted—that is, from December 13, 1979, to April 1, 1997.

[78] As a result, I find that the Appellant was not a resident of Canada under the OAS Act from July 2, 1997, until the day before his Old Age Security (OAS) application was approved, on November 17, 2017, and until the date he returned to Canada from his last trip, on January 16, 2020.¹⁵⁶ Therefore, the Appellant was not entitled to an OAS pension or the GIS on November 18, 2017, or on the date he returned to Canada from his last trip, on January 16, 2020.

[79] The appeal is dismissed in part.

François Guérin
Member, General Division – Income Security

¹⁵⁶ GD8-9 and 10, question 32.