



Citation: *PP v Minister of Employment and Social Development and BP*, 2018 SST 1438

Tribunal File Number: GP-15-3756

BETWEEN:

P. P.

Appellant

and

Minister of Employment and Social Development

Respondent

and

B. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Shannon Russell

HEARD ON: February 8, 2018

DATE OF DECISION: March 11, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant is a 70 year old man who resides in England. He applied for an Old Age Security (OAS) pension in July 2012. The Respondent denied the application at both the initial and reconsideration levels of adjudication because the Respondent determined that the Appellant had not resided in Canada for a sufficient number of years to qualify for the pension. The Appellant appealed the Respondent's reconsideration decision to the Social Security Tribunal (Tribunal) and in support of his appeal he submitted that he meets the residency requirements for payment of the OAS pension.

DECISION

[2] The Tribunal has decided, for the reasons set out herein, that the Appellant is not eligible for an OAS pension.

FORM OF HEARING / PERSONS IN ATTENDANCE

[3] The appeal was heard by teleconference, with the following people in attendance:

- Appellant: P. P.
- Added Party: B. P.
- Appellant's representative: Myrtle Cheeks

EVIDENCE

Documentary Evidence

[4] The Appellant was born in July 1947 (GD2-69). He applied for an OAS pension in July 2012, and in the section of the application asking about his residence history after age 18, the Appellant reported as follows (GD2-59):

Dates	Country of Residence
July 9, 1965 to April 1, 1970	Guyana
April 1, 1970 to August 15, 1984	Canada
August 15, 1984 to May 2001	Represented Canada in UK
May 2001 to August 2003	United Kingdom

[5] The evidence includes a letter from the Commonwealth Secretariat (COMSEC). The letter is dated October 1, 2012 and indicates that the Appellant was employed by COMSEC as a representative of the Government of Canada from September 20, 1984 to October 18, 2000 (GD2-66).

[6] On October 15, 2013, the Appellant wrote to the Respondent and explained his employment in the United Kingdom (U.K). He said that in August 1984 he left Canada to work, as a representative of Canada, with COMSEC in London. Before he left Canada, he was briefed by the Ministry of Foreign Affairs and he was informed that the time that he and accompanying members of his immediate family spent in the U.K. representing Canada would count as if they were physically living in Canada and would not affect their residency in Canada. The posting with COMSEC was for an initial period of three years, but on completion he was offered an extension and he accepted that offer. His position with COMSEC was terminated prematurely in May 2001 as he (not the position) was made redundant. He challenged the decision and remained in the U.K. during that time. He lost his case on appeal and he returned to Canada in August 2003. He remained in Canada until November 2006 and then returned to the U.K. (GD2-64).

[7] On May 5, 2014, the Added Party completed a Questionnaire that had been sent to her by the Respondent. In her Questionnaire she reported (among other things) that she did not keep a place to live in Canada while her spouse was working abroad and that she does not own property in Canada (GD1-29 to GD1-31).

[8] In April 2015, the Appellant completed a Questionnaire that had been sent to him by the Respondent. In the Questionnaire, the Appellant was asked to identify all of the places he has lived since 1970. The Appellant reported as follows (GD2-60):

Dates	Country of Residence
January 1, 1970 to April 1, 1970	Guyana
April 3, 1970 to September 15, 1984	Canada
September 16, 1984 to November 3, 2003	United Kingdom
November 3, 2003 to November 12, 2006	Canada
November 13, 2006 to April 20, 2015	United Kingdom

[9] With his Questionnaire, the Appellant enclosed a letter dated April 20, 2015 in which he explained that he had tried to be as accurate as possible with respect to the dates. He had asked the Canada Border Services Agency for information on his arrival and departure dates but the CBSA informed him that their records can only be retrieved as of August 1, 2000. The U.K. Border Agency does not stamp passports of leaving passengers and Canada does not stamp arrivals in Canadian passports. The Appellant said that he did not return to Canada following his termination with COMSEC because he felt that he had been wrongly selected for staff redundancy and he had lodged an appeal, requiring him to be present on short notice for appearances at the Tribunal hearings (GD2-82 to GD2-83).

[10] By letter dated June 17, 2015, the Respondent informed the Appellant that his application could not be approved because the Appellant had not lived in Canada for at least 20 years after his 18th birthday. Instead, he had only lived in Canada for 17 years and 175 days. The Respondent added that, although the Appellant indicated in his application that he also lived in the U.K., his time in the U.K. was not of assistance to the Appellant because there is no international agreement on social security between Canada and the U.K. (GD2-50 to GD2-51).

[11] On June 23, 2015, the Appellant wrote to the Respondent and asked the Respondent to reconsider his application. He said he agreed that his physical residence in Canada totals 17 years and 175 days, but that his time with COMSEC should count as residence. He explained that he did not return to Canada following his termination with COMSEC because the Canadian Ministry of Foreign Affairs had never informed him of the requirement to return to Canada and because he had lodged an appeal in the U.K. and he needed to be present on short notice for appearances at the Tribunal hearings. He said he was enclosing a copy of the March 2002 decision of the Tribunal and he explained that he was not made aware of the decision until July

2002. In July 2002, another appeal was lodged and that appeal was rejected verbally in July 2003 because it was submitted after the expiry date for appeals (GD2-55 to GD2-56).

[12] The decision enclosed with the Appellant's letter is a decision of March 11, 2002 from the Commonwealth Secretariat Arbitral Tribunal. The decision indicates (among other things) that (GD2-67 to GD2-68):

- The Tribunal received the Appellant's application on August 6, 2001;
- The Appellant asked the Tribunal to rescind the May 2001 decision of the Respondent (i.e. the Commonwealth Secretariat) to make the Appellant redundant, and he asked to be reinstated and to be awarded compensation;
- The Respondent challenged the Tribunal's jurisdiction because the Appellant did not file the application within the requisite three-month period after the internal remedies had been exhausted. The Respondent submitted that the Appellant received his notice of redundancy on April 4, 2000 and he contested that notice. An internal investigation into all of the Appellant's grievances was done and a final decision was communicated to the Appellant on September 11, 2000. The Appellant should have filed his application within three months of the September 11, 2000 decision;
- The Appellant submitted that his application was not late because the event that gave rise to his application was the termination of his employment and that event occurred on May 7, 2001;
- The Tribunal accepted the Appellant's argument and found his application was not late. The Tribunal then ordered the Respondent to provide submissions on the merits of the application.

[13] By letter dated August 14, 2015, the Respondent wrote to the Appellant and informed him that it had reconsidered the decision to deny his application and had decided to maintain the denial because the Appellant had not resided in Canada for at least 20 years after reaching age 18 and because the Appellant was not able to use his time in the U.K. (while employed with COMSEC) as residence in Canada. The Respondent explained that, pursuant to subsections

21(4) and (5) of the OAS Regulations, absences from Canada during periods of employment with COMSEC will be considered as Canadian residence provided the individual has a permanent abode in Canada or maintained a self-contained domestic establishment in Canada for the entire period of employment. The Respondent determined that the Appellant did not meet these requirements because, according to a Questionnaire that the Appellant's spouse completed in the spring of 2014, the Appellant did not keep a place to live in Canada while working abroad and did not own any property in Canada (GD2-52 to GD2-54).

[14] The Appellant appealed the Respondent's reconsideration decision to the Tribunal, and in his Notice of Appeal he submitted (among other things) that he maintained a home in Canada until 2006. He explained that he immigrated to Canada in April 1970. In May 1975 he and his wife were joined by his mother and younger sister, at which point his residence became the family residence. Whenever he returned to Canada (after accepting the post with COMSEC) he returned to the joint residence. The family residence was maintained jointly by him and his mother until her passing in April 2006. The premises were then sold so that her Estate could be settled. He did not return to Canada following his termination with COMSEC because (1) the Canadian Ministry of Foreign Affairs never informed him of this rule; and (2) he lodged an appeal as he felt he had been wrongly selected for staff redundancy and he had to be present on short notice for appearances at the related hearings. It was always his intention to return to Canada when his job in the U.K. was over, and he did this.

[15] With his Notice of Appeal, the Appellant enclosed several documents which he submits is proof of him having maintained a family residence in Montreal. One of the documents included with the Notice of Appeal is a letter dated October 2, 2015 from COMSEC indicating that the Appellant was employed with COMSEC from August 1984 until "June 200" and that the Appellant had requested access to his personnel file, but his file could no longer be retrieved from COMSEC's archives (GD1-14).

[16] In March 2016, the Appellant's representative provided the Tribunal with a copy of a Power of Attorney document showing that the Appellant's mother (E. K.) was granted a general power of attorney over the Appellant's affairs on August 5, 1988. In this document, the

Appellant's address is identified as X, Montreal, QC, which is the same address noted for his mother (GD6).

[17] In a letter dated October 21, 2017, the Appellant explained that:

- His work with COMSEC was made up of six, three-year contracts and each contract was distinct as the nature of the work within his Division changed. He requested copies of his six contracts with COMSEC but he has been told that his personnel file with COMSEC has been lost.
- Initially, he thought that he would be overseas for a period of 3-4 years. He never thought that he would end up spending 18 years overseas.
- He reported for duty at COMSEC on September 20, 1984. His personal belongings were shipped to the U.K. by COMSEC in March 1985. His spouse and three children arrived in the U.K. in July 1985.
- Since he expected to return to Canada within four years, he decided that his mother would remain in the home and maintain it until his anticipated return to Canada in 1988.

[18] With his letter of October 21, 2017, the Appellant enclosed a number of documents, including a letter of October 10, 2017 from The Commonwealth indicating that the Appellant was recruited in September 1984 from the Canadian Government to take up the post of Project Officer in the Industrial Development Unit. As an overseas recruited officer, the Appellant was entitled to return airfares for himself and his dependents. In March 1985, the Secretariat arranged and paid for the Appellant's household contents to be shipped to the U.K. In July 1985, the Commonwealth paid the airfares for the Appellant's spouse and their three sons so that they could join the Appellant in the U.K. During his employment, the Appellant was entitled to return air tickets on home leave, every two years for himself and his dependents. The Appellant's employment with the Secretariat ended in October 2000, upon completion of his secondment with the Canadian Government. In October 2003, the Secretariat arranged for the Appellant and his spouse's household contents to be shipped back to Canada and the Secretariat provided air

tickets for the Appellant and his spouse and their dependent son, as per contractual obligations (GD14-27).

Oral Evidence

(i) The Appellant's Testimony

[19] The Appellant testified that he agrees with the Respondent's findings insofar as his actual residency in Canada is concerned. In other words, he agrees that he resided in Canada from April 3, 1970 to August 15, 1984 and from November 3, 2003 to November 12, 2006.

[20] There are a few inaccuracies within the Respondent's submissions (at GD15) that he feels should be addressed. For example:

- At page GD15-5, the Respondent says that the Power of Attorney document grants authority to the Appellant and his spouse to manage and administer the property of the Appellant's parents. This is not accurate. The Power of Attorney actually grants authority to his mother to manage his (and his spouse's) affairs regarding the home they had in Canada.
- At page GD15-8, the Respondent mentions the varying frequency and amounts of the payments he made to Canada. The reason why the payments varied is because the mortgage payments were not always the same and because they had problems with some of the appliances in the home that he was maintaining in that some appliances needed to be repaired and some needed to be replaced.
- At page GD15-9, the Respondent states that the Appellant's payment vouchers only cover a two-year period. He has all of the payment vouchers but he only sent the ones that were legible. He consistently sent money back to Canada to maintain the home.
- At page GD15-9, the Respondent states that the money he sent to Canada was for family support rather than for rent, mortgage or utilities. This is not true. His mother worked as a real estate agent and was financially independent. She did not need his help. His

mother also lived by herself and she did not need a large three-bedroom condo. The reason they kept the condo is because he was always anticipating a return to Canada.

- At page GD15-9, the Respondent states that he severed his social ties to Canada. This is not true. His mother was in Montreal and between him and his spouse they had over 200 family members across Canada. He and his family were also given paid “home leave” every two years and they always went back to the same house.
- With respect to the Respondent’s argument that he developed deep-rooted ties in the U.K., it is important to understand the context of his return to the U.K. His children had their formative years in the U.K. When they returned to Canada in 2003 his youngest son came with them and his two older sons stayed in the U.K. His youngest son wanted to go to McGill University but he was told that because he did not have any Canadian high school education he would be treated as a foreign student. His son did not want that and went back to the U.K. to pursue his studies. After the Appellant’s mother passed away, the Appellant and his spouse were alone and their children were in the U.K. They missed their children and that is why they moved to the U.K.
- The Respondent states that he did not return to Canada within six months of the end of his employment. While his paid employment had stopped, there was still a contractual obligation regarding the contract of employment. After his paid employment stopped, COMSEC realized he had an appeal and so COMSEC granted him some leeway but once his appeal matter was settled they told him he had to make up his mind. He then returned to Canada within a month. The Regulations do not stipulate what is meant by cessation of employment. When he signed the contract in Canada he was not being paid but it was still an employment contract. The same rules should apply at the end of the contract. His paid employment had stopped but his contract of employment did not end until COMSEC paid for his return to Canada.

[21] The property at Paul Comtois in Montreal was purchased around 1989 (shortly after the Power of Attorney document was signed). Title to the Paul Comtois property was in his mother’s name, as he could not get a mortgage because he did not have a job in Canada. He contributed, however, towards the down payment.

[22] The Appellant was asked about the discrepancy in the letters from COMSEC as to when his employment ended, and the Appellant said he did not seek clarification from his former employer in this regard. He suspects the discrepancy is due to the fact that the persons who wrote the letters were going from memory as they did not have his file to refer to.

[23] When the Appellant was asked whether he returned to Canada between October 2000 (when COMSEC says his employment ended) and November 2003, he said he does not recall. He added that he did not have any money coming in and he was trying to conserve what he had.

(ii) Added Party's Testimony

[24] The Added Party provided little in the way of testimony. When asked if there was anything she wanted to say she said that COMSEC covered the expense of their return to Canada in 2003 and so it was part of the employment contract. She also said that the Appellant made up the shortfall of 3 years of residency after fulfilling his first 3-year contract with COMSEC and the reason they did not return to Canada at that time is because his contract was renewed.

SUBMISSIONS

[25] Most of the Appellant's submissions were provided by the Appellant (as opposed to his representative). The Appellant submitted that:

- a) The Respondent has determined that he did not maintain a residence in Canada during his period of employment with COMSEC. They based this decision on a Questionnaire that his spouse completed in 2014. He was not aware of the contents of the Questionnaire and had no input into it. Furthermore, his spouse was a housewife in the U.K. and had no source of income and so she could not possibly have maintained anything in Canada during that time.
- b) He did maintain a residence in Canada throughout his employment with COMSEC. The residence was his family home, where his mother, his spouse and their three sons resided prior to September 1984 (when he left Canada) and where they returned to in November 2003. Evidence of him having maintained a residence in Canada during his tenure with COMSEC can be found in Appendices A through G (GD14).

- c) The Respondent submits that he has a shortfall of Canadian residence of three years. If his employment with COMSEC is considered by contract, then he met the two requirements (maintaining a home in Canada and returning to Canada) in respect of his first contract.
- d) The contractual agreement between him and COMSEC began when COMSEC provided air fares for him and his family to fly to the U.K. and when COMSEC shipped his household contents from Canada and the contractual obligation concluded when COMSEC provided air fares for him and his dependents and shipped his household contents back to Canada in October 2003. He therefore returned to Canada within 6 months of the termination of his contract with COMSEC.
- e) He was not outside of Canada pursuing his own business. Instead, he spent 18 years as a representative of the Canadian Government at COMSEC.
- f) Before accepting the post with COMSEC he was briefed by the Ministry of Foreign Affairs and he was told that his time with COMSEC would count as if he was residing in Canada. He was never informed of any obligations that had to be fulfilled in order to meet the implied residency described by the Respondent.
- g) While the decision to deny his application for an OAS pension may appear justified from a judicial perspective, there is a family involved and there are extenuating circumstances. At the time of his proposed return to Canada, his youngest son (born in December 1984) was in his final year of Sixth Form College and it would have been most disrupting to his education to move at that time. With this in mind, the Appellant thought it prudent to wait until his son's final exams were over.

[26] The Appellant's representative submitted that there is a humanitarian aspect to the entire situation that needs to be considered. The Appellant's children were going to school in the U.K. and that influenced the decision to remain in the U.K. Consideration should also be given the difficulties the Appellant and his spouse are experiencing now because of the lack of OAS benefits.

[27] The Added Party submitted that the employment contract ended in 2003 when COMSEC paid for their return to Canada.

[28] The Respondent submitted that:

- a) The Appellant has not resided in Canada for at least 20 years. His residence in Canada is from April 3, 1970 to August 15, 1984 and from November 3, 2003 to November 12, 2006, which totals 17 years and 146 days.
- b) The years the Appellant spent in the employ of COMSEC cannot be counted as residence in Canada because the Appellant did not meet the requirements of subsection 21(5) of the OAS Regulations. More specifically, he did not maintain a permanent place of abode or self-contained domestic establishment in Canada during his absence from August 16, 1984 to November 3, 2003 and because he did not return to Canada within six months of the end of his employment with COMSEC. Although the Appellant submits that his contractual agreement with COMSEC concluded in October 2003, the OAS Regulations refers to the cessation of employment and not to the fulfillment of contractual obligations. The letter from COMSEC that is dated October 10, 2017 indicates that the Appellant's employment ended in October 2000.

ANALYSIS

Eligibility Requirements for a Partial OAS Pension

[29] Subsection 3(2) of the OAS Act sets out the eligibility requirements for payment of a partial OAS pension. To qualify for a partial OAS pension, an applicant must:

- a. Be at least 65 years of age; and
- b. Have resided in Canada after attaining 18 years of age and prior to the day on which that person's application is approved for an aggregate period of at least 10 years but less than 40 years and, where that aggregate period is less than 20 years, was resident in Canada on the day preceding the day on which that person's application is approved.

[30] Subsection 21(1) of the OAS Regulations distinguishes between the concepts of residency in Canada and presence in Canada. Paragraph 21(1)(a) states that a person resides in Canada if he makes his home and ordinarily lives in any part of Canada. Paragraph 21(1)(b) states that a person is present in Canada when he is physically present in any part of Canada.

[31] Subsection 21(4) of the OAS Regulations states that:

Any interval of absence from Canada of a person resident in Canada that is

- (a) of a temporary nature and does not exceed one year,
- (b) for the purpose of attending a school or university, or
- (c) specified in subsection (5)

shall be deemed not to have interrupted that person's residence or presence in Canada.

[32] Paragraph 21(5)(a) of the OAS Regulations states that absences from Canada referred to in paragraph 4(c) of a person residing in Canada are absences under the following circumstances:

- (a) while that person was employed out of Canada
 - (i) by the United Nations or one of its specialized agencies;
 - (ii) by the North Atlantic Treaty Organization,
 - (iii) by the Commonwealth Secretariat,
 - (iv) by the Organization of Economic Cooperation and Development,
 - (v) by l'Agence de coopération culturelle et technique, or
 - (vi) by a Canadian firm or corporation as a representative or member thereof,

if during his employment out of Canada he

- (vii) had in Canada a permanent place of abode to which he intended to return, or
 - (viii) maintained in Canada a self-contained domestic establishment,
- and he returned to Canada within six months after the end of his employment out of Canada or he attained, while employed out of Canada, an age at which he was eligible to be paid a pension under the Act.

Application of the Law to the Facts of this Case

[33] During the hearing, the Appellant was asked if he agreed with the Respondent's finding that his actual residence in Canada totals 17 years and 146 days. He said he does not disagree with that calculation. As there is no dispute between the parties as to the Appellant's actual residence in Canada, the Tribunal finds that the actual residence in Canada totals 17 years and 146 days.

[34] It is clear from subsections 21(4) and (5) of the OAS Regulations that a person's residency in Canada will not be interrupted for the period of time that the person was employed outside of Canada by COMSEC provided that (1) the person had in Canada a permanent place of abode to which he intended to return or he maintained in Canada a self-contained domestic establishment; and (2) the person returned to Canada within six months after the end of his employment out of Canada or he attained, while employed out of Canada, an age at which he was eligible to be paid a pension under the Act.

[35] For reasons that will become apparent, the Tribunal has chosen to first consider the requirement of returning to Canada within 6 months after the end of employment out of Canada. Subsection 21(5) of the OAS Regulations makes it clear that this requirement only applies in those situations where the applicant did not attain, while employed out of Canada, an age at which he was eligible to be paid a pension under the Act. The OAS Act requires a person to have reached age 65 before payment of a pension can be made. The Appellant was born in 1947 and thus reached age 65 in 2012. He, therefore, did not (while employed out of Canada) reach an age at which he was eligible to be paid a pension under the Act. As a result, in order to avail himself of the protection offered by subsections 21(4) and (5) the Appellant must show that he returned to Canada within six months after the end of his employment out of Canada.

[36] The Appellant submits that his employment ended when COMSEC fulfilled its contractual obligation to pay for his return to Canada in 2003 and he in fact returned to Canada within six months after the fulfillment of that contractual obligation. The Appellant's former employer acknowledged that, as per contractual obligations, it arranged, in October 2003, for the Appellant's household contents to be shipped back to Canada and provided air tickets for the Appellant and his spouse and their dependent son. However, the Appellant's former employer appears not to have acknowledged that the Appellant continued to be employed as of 2003 because it wrote in letters of 2012 and 2017 that the Appellant's employment ended in October 2000.

[37] Neither the OAS Act nor its Regulations define what is meant by "end of his employment". The Cambridge Dictionary defines employment as "the fact of someone being

paid to work for a company or organization”.¹ The Merriam-Webster Dictionary states the legal definition of employment as²:

1 : an activity or service performed for another especially for compensation or as an occupation.

2 : the act of employing: the state of being employed.

[38] When these definitions are read together, it is reasonable to conclude that employment ends when the employee stops being paid for the services he has provided to his employer. Had Parliament intended to extend the protection offered by subsection 21(5) to those situations where an employer covers relocation expenses a year or more after the applicant stopped work it would have so specified. It did not.

[39] The evidence is not clear as to when the Appellant stopped providing services in return for financial compensation. In its letters of October 2012 and October 21, 2017, COMSEC reported that the Appellant’s employment ended in October 2000. In its letter of October 2015, COMSEC reported that the Appellant was employed until “June 200” which, absent clarification from COMSEC, the Tribunal finds is likely June 2000. Without more, the Tribunal would have been prepared to accept that the employment ended in October 2000. However, the March 2002 decision of the Arbitral Tribunal refers to a termination date of May 7, 2001.

[40] Whether the employment ended in October 2000 or May 2001 makes little difference to the outcome of the appeal because in either case the evidence does not show that the Appellant returned to Canada within six months after October 2000 or May 2001. The Appellant acknowledged in his letters of October 2013, April 2015, and June 2015 that he did not return to Canada following his termination from COMSEC and he explained that this was because he had never been informed by the Ministry of Foreign Affairs that he was required to return to Canada and because he had lodged an appeal in the U.K. and he needed to be present on short notice for appearances at the hearings. During the hearing, the Tribunal asked the Appellant whether he travelled to Canada between October 2000 and November 2003 and he did not testify that he

¹ www.dictionary.cambridge.org/dictionary/english/employment

² www.merriam-webster.com/dictionary/employment

had. Instead he said he could not recall and he added that he was conserving money at the time because he did not have an income. The Tribunal finds that the Appellant did not return to Canada within six months after the end of his employment.

[41] In reviewing the evidence, the Tribunal has been mindful that there can be a number of contributing events that might delay one's return to Canada after employment has ended, such as for example the enrollment of children in school, being unaware of the statutory requirement to return to Canada so as to preserve one's residency, and being involved in a Tribunal and/or court proceeding. However, there are no exceptions in the OAS legislation for extenuating circumstances (regardless of how compelling those circumstances might be).

[42] The Tribunal also considered the Appellant's argument that his work with COMSEC was comprised of six, three-year contracts and that he made up his short-fall of 3 years of a residency in Canada following the completion of his first three-year contract with COMSEC. The evidence indicates that the Appellant began working for COMSEC in either August or September 1984 (the evidence is inconsistent) and so his first three-year contract would have ended in either August or September 1987. The Tribunal does not have evidence that the Appellant returned to Canada within six months after August or September 1987 and the Added Party appeared to acknowledge that they did not return to Canada around that time because she explained that they did not return because the Appellant's contract was renewed.

[43] Even if the Appellant did visit Canada within six months after the end of his first three-year contract with COMSEC, the Tribunal would have difficulty finding that the Appellant fulfilled the obligations of subsection 21(5) of the OAS Regulations because the words "returned to Canada", in the context of a provision that requires the applicant to have maintained a home in Canada throughout his employment out of Canada, suggest that the provision contemplates more than a visit and envisions a resumption of residency upon the return to Canada.

[44] The Appellant's representative has urged the Tribunal to assess the appeal on humanitarian grounds. The Tribunal is unable to do so. The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal must interpret and apply the provisions as they are set out in the OAS legislation. The Tribunal does

not have the jurisdiction to render decisions on grounds of compassion, fairness or extenuating circumstances, including financial hardship.

[45] As the Tribunal has found that the Appellant did not return to Canada within six months after the end of his employment, it is not necessary for the Tribunal to assess whether he had in Canada (during his employment with COMSEC) a permanent place of abode to which he intended to return or maintained in Canada a self-contained domestic establishment.

CONCLUSION

[46] The appeal is dismissed. The Appellant has not resided in Canada for at least 20 years and is unable to benefit from the provisions protecting his residency in Canada while employed out of Canada because he has not satisfied the requirements of subsection 21(5) of the OAS Regulations.

Shannon Russell
Member, General Division - Income Security