



Citation: *Estate of YG v Minister of Employment and Social Development*, 2023 SST 1185

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	Estate of Y. G.
Representatives:	Jonathan Éthier Philippe Brunelle
Respondent:	Minister of Employment and Social Development
Representative:	Robert Bissonnette

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated May 12, 2022 (issued by Service Canada)
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Tribunal member:	James Beaton
Type of hearing:	Videoconference
Hearing date:	July 26, 2023
Hearing participants:	Appellant's representatives Appellant's witness Respondent's representative
Decision date:	August 9, 2023
File number:	GP-22-1407

Decision

[1] The appeal is dismissed.

[2] Y. G. wasn't eligible for an Old Age Security (OAS) pension or the Guaranteed Income Supplement (GIS). His estate (the Appellant) must repay the resulting overpayment to the Minister of Employment and Social Development. This decision explains why I am dismissing the appeal.

Overview

– Y. G.'s life

[3] Y. G. was born in Canada on September 8, 1931. In 1958, he left Canada for Israel, where he joined a kibbutz. A kibbutz is a type of community in Israel where resources are shared collectively.

[4] Y. G.'s widow, J. G., was born in the United Kingdom. She moved to Israel when she was 22. There, she met Y. G..¹ They got married and had four children in Israel between 1965 and 1974.²

[5] Between 1975 and 2012, Y.G. and J. G. spent time in Canada and Israel. In 2012, Y. G. left Canada for Israel for the final time. He passed away in Israel on October 12, 2017.³ J. G. stayed behind in 2012. She eventually returned to Israel in 2019.⁴

– Y. G.'s application for an OAS pension and the GIS

[6] On September 24, 1996, Y. G. applied for an OAS pension. The application asked "Have you lived in Canada all your life?" There were two options for him to select: "Yes" or "No—If you have not lived in Canada all your life or if you have been outside of Canada for more than 6 months, list below all the places you have lived from birth to present." He selected "Yes." Based on this information, the Minister approved his

¹ See the hearing recording.

² See GD2-56.

³ See GD2-8.

⁴ See GD1-64.

application for a full OAS pension, with payments beginning October 1996.⁵ Later, Y. G. also applied and was approved for the GIS beginning in May 2008.⁶

[7] When Y. G. died, his estate advised the Minister. The Minister noted that Y. G. had died outside of Canada and began investigating his residence history.

[8] Following this investigation, the Minister determined that Y. G. had resided in Canada for fewer than 10 years when his OAS pension application was approved. Therefore, he was never eligible for an OAS pension. Since he wasn't eligible for an OAS pension, he wasn't eligible for the GIS either. The Minister told the Appellant to repay the resulting overpayment, which was more than \$130,000.⁷

[9] The Appellant asked the Minister to reconsider its decision. On reconsideration, the Minister determined that Y. G. had resided in Canada for 16 years and 64 days, but he wasn't residing in Canada when his application was approved.⁸ For an applicant to get the OAS pension while not residing in Canada, they must have at least 20 years of residence in Canada.⁹ So Y. G. still wasn't eligible for the OAS pension or the GIS.

[10] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

What the Appellant must prove

[11] The Appellant must prove:

- a) that Y. G. resided in Canada for at least 10 years, including when his application was approved; or
- b) that Y. G. resided in Canada for at least 20 years.

⁵ See GD2-3 to 6.

⁶ The application is not in the appeal record because the Minister only keeps GIS applications for seven years (GD6-3).

⁷ See GD2-90 and 91.

⁸ See GD2-133 and 134.

⁹ See section 3(2) of the *Old Age Security Act*.

[12] Years before Y. G. turned 18 don't count as years of residence.¹⁰

[13] The Appellant must prove this on a balance of probabilities. This means the Appellant must show it is more likely than not that Y. G. resided in Canada during the relevant periods.¹¹

Reasons for my decision

[14] I find that Y. G. wasn't eligible for an OAS pension or the GIS. He resided in Canada for 16 years and 228 days—fewer than 20 years. He didn't reside in Canada after December 15, 1991. In other words, he didn't reside in Canada on the day before his application was first approved, or since then. So it doesn't matter that he has more than 10 years of residence in Canada.

[15] In making my decision, I noted the parties' apparent agreement to the following:

- Y. G. **resided** in Canada from September 8, 1949 (his 18th birthday), up to and including December 15, 1958.
- Y. G. **did not reside** in Canada from December 16, 1958, up to and including July 4, 1975.
- Y. G. **resided** in Canada from July 5, 1975, up to and including December 15, 1979.
- Y. G. **resided** in Canada from July 1, 1989, up to and including December 15, 1991.
- Y. G. **did not reside** in Canada from November 6, 2012, up to and including October 12, 2017 (the date of his death).

[16] The Minister's written submissions confusingly state "The evidence does not support residence in Canada after August 1978"¹² followed by "Y. G. ceased to reside in Canada in 1991."¹³ The latter is consistent with the reconsideration decision and the

¹⁰ See section 3(2) of the *Old Age Security Act*.

¹¹ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

¹² See GD6-13.

¹³ See GD6-20.

underlying calculations used by the Minister.¹⁴ I therefore understand the Minister's position to be the same as on reconsideration.

[17] The Appellant's written submissions don't comment on the period from 1958 to 1975, except to say that Y. G. emigrated in 1958 and moved back to Montreal in 1975.¹⁵ They acknowledge that Y. G.'s departure from Canada "crystallized" in 2012.¹⁶ A passport stamp shows that Y. G. entered Israel on November 5, 2012.¹⁷ There is no evidence that he returned to Canada after that.

[18] In total, the parties agree that Y. G. resided in Canada for at least 16 years and 64 days.

[19] The only periods in dispute, and the only periods I considered, were:

- from December 16, 1979, up to and including June 30, 1989
- from December 16, 1991, up to and including November 5, 2012

[20] On a balance of probabilities, I find that Y. G. didn't reside in Canada during these two periods **except** from January 18, 1989, up to and including June 30, 1989 (an extra 164 days). This brings his total residence in Canada up to 16 years and 228 days.

[21] Here are the reasons for my decision.

The test for residence

[22] The law says that being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I must use these definitions in making my decision.

[23] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.¹⁸

¹⁴ See GD2-132 to 134.

¹⁵ See GD4-5.

¹⁶ See GD4-8.

¹⁷ See GD2-37.

¹⁸ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

[24] A person is **present** in Canada when they are physically present in any part of Canada.¹⁹

[25] When I am deciding whether Y. G. resided in Canada, I must look at the overall picture and factors such as:

- where he had property, like furniture, bank accounts, and business interests
- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there
- what his lifestyle was like in Canada
- what his intentions were²⁰

[26] This isn't a complete list. Other factors may be important to consider. I must look at **all** of Y. G.'s circumstances.²¹

[27] At the hearing, the Appellant's representative observed that the Minister didn't make its decision reversing Y. G.'s eligibility until after Y. G.'s death. As a result, Y. G. wasn't able to give testimony. All of the testimonial evidence came from J. G. The passage of time means it may be more difficult than it otherwise would be to prove Y. G.'s residence in Canada.

¹⁹ See section 21(1)(b) of the OAS Regulations.

²⁰ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

²¹ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

[28] I understand the representative's position. However, the law allows the Minister to revisit its decisions,²² and the burden of proof remains on the Appellant to show that Y. G. resided in Canada.

December 16, 1979, to January 17, 1989

[29] Y. G. **did not reside** in Canada from December 16, 1979, up to and including January 17, 1989.

[30] From roughly 1975 to 1979 and 1989 to 1991, Y. G. was physically present and resident in Canada. He worked for the Jewish National Fund in Montreal. This is supported by a record of employment and by contributions made to the Quebec Pension Plan in those years.²³ The parties don't dispute this.

[31] The Appellant's representative argues that "[d]uring the 1979-1988 period, the family did not permanently sever their residential ties with Canada," even though they returned to Israel.²⁴ I agree that Y. G. retained ties to Canada during this period. But his ties to Israel were stronger.

[32] There is very limited evidence of any kind (documentary or testimonial) about this period. Again, I am mindful that it is the Appellant, not the Minister, who bears the burden of proving Y. G.'s residence in Canada.

[33] During this period, I understand that Y. G. and J. G. would visit Montreal. According to the Appellant's representative's written submissions, they "went numerous times per year for periods of two months per journey" and never intended to leave Canada permanently. When they visited Montreal, they visited their mothers (who both lived there) and participated in "various missions and initiatives" for Montreal's Jewish community.²⁵

²² See *Canada (Attorney General) v Burke*, 2022 FCA 44.

²³ See GD2-62 and GD6-31.

²⁴ See GD4-5.

²⁵ See GD4-5 and 6.

[34] The written submissions say Y. G. and J. G. would rent an apartment or stay with Y. G.'s brother M. G. during their visits to Montreal. I find it unlikely that they would rent an apartment for stays that were less than two months in duration. It is more likely that they stayed with M. G. whenever they visited. In either case, they weren't in Montreal long enough to make it worthwhile to establish a more permanent residence of their own. Their home was on the kibbutz in Israel.

[35] Although the G. maintained some involvement in Montreal, they weren't deep-rooted and settled in Canada. Their mode of living resembled that of visitors to Canada, not residents of Canada.²⁶

January 18, 1989, to June 30, 1989

[36] Y. G. **resided** in Canada from January 18, 1989, up to and including June 30, 1989.

[37] The Minister accepts that Y. G. resided in Canada from July 1, 1989, up to and including December 15, 1991, while he was working in Montreal. The Minister bases this finding in part on a record of employment that gives July 1, 1989, as Y. G.'s first day of work.²⁷

[38] In fact, there is evidence that Y. G. was resident in Canada a few months before that. Specifically, there is evidence that Y. G. had medical appointments in Canada on January 19 and April 19, 1989. He had no other medical appointments in Canada between January 1, 1981, and June 30, 1989.²⁸

[39] In my opinion, there is sufficient evidence that Y. G. was physically present in Canada beginning on January 18, 1989 (the day before his first medical appointment). This marked the beginning of an extended period of presence in Montreal. I accept that he began residing in Canada on this date, as there is no evidence of an interruption to

²⁶ One factor to consider in assessing residence is whether a person is "sufficiently deep rooted and settled" in Canada. See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraph 31.

²⁷ See GD2-62.

²⁸ See GD2-77.

his presence after these medical appointments and before he began his second position with the Jewish National Fund.

[40] I acknowledge an article in *Israel/21c* about the G. It says they left Israel and lived in Montreal from 1988 to 1991.²⁹ This article simply doesn't give me enough information to conclude **when** in 1988 they might have returned to Canada. Y. G.'s employment didn't begin until July 1989, and there is no evidence that he had to return to Canada more than six months before that to prepare for his job. The earliest I can justifiably find that Y. G. resumed residing in Canada is January 18, 1989.

[41] At the same time, the article reinforces that the G. were **not** resident in Canada between their two periods of work with the Jewish National Fund.

December 16, 1991, to November 5, 2012

[42] The evidence is consistent that Y. G. left Canada for the last time on November 5, 2012. He remained in Israel until his death. The evidence about what happened before November 5, 2012, is not consistent.

[43] **When Y. G. applied** for an OAS pension in 1996, he said he had always lived in Canada.³⁰

[44] **During interviews** with Service Canada (which is represented by the Minister), J. G. said she and Y. G. and their children left Canada in 1991 when Y. G.'s employment with the Jewish National Fund ended. They ended their lease. They sold some of their belongings and brought the rest with them to Israel. From then on, their principal residence was on the kibbutz. Their children attended school in Israel. Y. G. didn't work after 1991. When they visited Canada, they stayed with M. G. in Montreal.³¹

[45] **According to the Appellant's representative's written submissions**, their children stayed in Montreal until 2000, not 1991. J. G. taught at X in Montreal from 1991 to 1994, and organized trips for students at X to visit Israel. Y. G. did freelance work for

²⁹ See GD2-63 to 66.

³⁰ See GD2-5.

³¹ See GD2-53 to 61.

a tourist company from 1991 to 2000 and worked for X in Montreal. He attended Baron Byng High School reunions in Montreal. The G. organized the “March of the Living,” which brought Jewish youth from Canada to Poland to see the concentration camps. They maintained driver’s licences, Medicare cards, and Canadian passports. They filed Canadian income taxes.³²

[46] **At the hearing**, J. G. first said they returned to Israel in 1991. Later, she said they returned in 1998. At first, she said they always had a home to go back to on the kibbutz, even during their extended stays in Canada (in 1975 to 1979 and 1989 to 1991), and that it would be held for them until they gave it up. Later, she said the kibbutz could have given away their home at any time.

[47] She testified that she and Y. G. attended family reunions in Montreal every three years and visited their mothers there. She thought she taught at X for two years around the late 1990s or early 2000s, but Y. G. was in Israel at the time. His employment with X was “whatever he wanted to make of it.” It amounted to casual employment, and he sent all of his earnings to the kibbutz.

[48] Again, there is little **documentary evidence** about this period.

[49] Articles in Israeli publications describe the G.’s involvement in Israel.³³ Their son G. G. died tragically in a car accident in Israel in 1996. This led J. G. to establish an Israeli charity called “Women in Red.” The G. also created the G. G. Centre in Israel. One article refers to Y. G. as “The King of Montreal” for his efforts to bring youth from Montreal to visit Israel. It also says he ran tours for North Americans visiting Israel.

[50] A 2004 obituary for a relative describes the G. as being residents of Israel.³⁴

[51] Canadian medical billing records for Y. G. show that he accessed healthcare in Canada in each year from 1991 to 2012.³⁵

³² See GD4.

³³ See GD2-67 to 71.

³⁴ See GD2-72.

³⁵ See GD2-75 to 85.

[52] Canada Border Services Agency (CBSA) records show entries to Canada beginning in 2001, when the CBSA started collecting this information.³⁶ Unfortunately, exit information isn't available. But the length of many of Y. G.'s stays in Canada between 2006 and 2012 may be determined by referring to Y. G.'s passports, as the table below shows.³⁷

[53] The Appellant's representative's written submissions say that Y. G.'s trips to Canada after 2005 were shorter than before 2005. But no reason is given for why this would be. The submissions also say that Y. G. wasn't able to travel after his health deteriorated after 2010, but that clearly wasn't the case.³⁸

entry to Canada	medical visits	entry to Israel	days in Canada
June 26, 2006	June 27, 2006	September 13, 2006	79
February 4, 2007	February 6, 2007 February 7, 2007	February 12, 2007	8
September 15, 2007		September 17, 2007	2
October 22, 2007		October 30, 2007	8
February 16, 2008	February 20, 2008	February 24, 2008	8
May 27, 2008	May 29, 2008 June 4, 2008	June 9, 2008	13

³⁶ See GD2-86 to 88.

³⁷ See GD2-31 to 45.

³⁸ See GD4-8.

December 7, 2008		December 11, 2008	4
May 21, 2009		June 3, 2009	13
August 19, 2009	September 7, 2009 September 9, 2009	September 12, 2009	24
February 1, 2010	February 4, 2010	February 15, 2010	14
April 6, 2011	April 14, 2011	April 18, 2011	12
February 3, 2012	February 7, 2012	February 23, 2012	20
October 18, 2012	October 24, 2012 October 31, 2012 November 1, 2012	November 5, 2012	18

– **Weighing the evidence**

[54] When I consider all of the evidence together, I make the following findings.

[55] First, I find that the G. (including their children) left Canada in 1991. This is what J. G. said in the interviews. Her memory of this time period was likely better than it was at the hearing or when her representative provided written submissions. Relying on the interviews, I also find that they ended their lease in Montreal and left no personal belongings behind. After that, they stayed with M. G. whenever they visited Canada. Their principal residence was on the kibbutz.

[56] During this period, Y. G. and J. G. were more active in the community in Israel than they were in Canada.

[57] In Montreal, Y. G. organized and attended high school reunions. He organized tours (such as the “March of the Living”), but even those involved travelling to Poland and Israel. His “work” with X was casual and so minimal that J. G. didn’t even mention it during the interviews with Service Canada. Y. G. didn’t make any contributions to the

Quebec Pension Plan from this work.³⁹ He gave all of his income to the kibbutz, reinforcing his ties there.

[58] The evidence about J. G.'s work with X is too inconsistent for me to draw any conclusions about it. The written submissions say she worked for X from 1991 to 1994. But she testified that she worked for X for only a couple years in the late 1990s or early 2000s. Regardless, she testified that Y. G. was in Israel at the time.

[59] By contrast, Y. G. and J. G. established Women in Red and the G. G. Centre in Israel. A relative's obituary also describes the G. as being residents of Israel.

[60] Y. G. and J. G. visited their mothers in Montreal and attended family reunions there every three years. But their children and grandchildren lived in Israel.

[61] Y. G.'s visits to Canada after 2005 were demonstrably brief. I believe his visits from 1991 to 2005 were similarly brief. Although the representative's written submissions say his trips to Canada before 2005 were longer, no reason was given for why this would be. J. G. testified that Y. G. never spent more than half of his time in Canada during this period. In other words, he spent at least half of his time in Israel.

[62] Y. G. may have kept a Canadian driver's licence.⁴⁰ He didn't have a vehicle in Montreal, though, once his employment with the Jewish National Fund ended.⁴¹ He kept a Canadian passport, but he also kept an Israeli passport.⁴² I doubt that Y. G. filed income taxes in Canada during this period because there is no documentary evidence of this. He didn't contribute to the Quebec Pension Plan during this period.

[63] I acknowledge that Y. G. regularly accessed healthcare in Canada.⁴³ I must weigh this against his more considerable ties to Israel.

³⁹ See GD6-31.

⁴⁰ GD1-57 might be a copy of a driver's licence that was issued in 2007, but it is illegible.

⁴¹ See the hearing recording.

⁴² See GD2-31 to 45.

⁴³ See GD2-75 to 85.

[64] In summary, Y. G.'s physical presence, where he had personal property, where he had most of his social and professional ties, and his pattern of travel all support that he resided in Israel during this period, not in Canada. His intentions are unknown, except as communicated by J. G. His actions support that his intentions were to live in Israel while retaining some ties to Canada, especially in the Montreal Jewish community. Overall, his ties were stronger to Israel.

Other comments

[65] I want to emphasize that my decision doesn't represent a value judgment of how Y. G. and J. G. chose to live their lives. They both demonstrated a sincere commitment to the Jewish community in Canada and Israel, and I am sure that their contributions have been valuable to those communities. My decision is based only on the legal requirements for an OAS pension and the GIS.

Conclusion

[66] Y. G. didn't reside in Canada on the day before his application was first approved, or since then. So he needed at least 20 years of residence in Canada to qualify for an OAS pension and the GIS. He only had 16 years and 228 days. Therefore, Y. G. wasn't eligible for an OAS pension or the GIS. The Appellant must repay the resulting overpayment to the Minister.

[67] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section