Docket: 2020-1619(IT)G

BETWEEN:

JOSEPH TANGA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 24 and 25, 2024, at Montréal, Quebec.

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Olivier Charbonneau-Saulnier

JUDGMENT

The appeals from the notices of redetermination (i) concerning the goods and services tax/harmonized sales tax credit for the appellant's 2015 and 2016 base years dated March 5, 2019, and for the appellant's 2017 base year dated May 3, 2019, and (ii) concerning the Canada Child Benefit for the appellant's 2015, 2016 and 2017 base years dated March 20, 2019, are dismissed.

Without costs.

Signed at Ottawa, Canada, this 31st day of May 2024.

"J. M. Gagnon"

Gagnon J.

Translation certified true
on this 28th day of May 2025.

Margarita Gorbounova, Senior Jurilinguist

Citation: 2024 TCC 80
Date: 20240531
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REASONS FOR JUDGMENT

Gagnon J.

I. Background

[1] The appellant is appealing a series of three notices of redetermination related to the goods and services tax/harmonized sales tax credit ("GSTC") and a series of three notices of redetermination related to the Canada Child Benefit ("CCB"). These were both made under the Act[1] in respect of the appellant's 2015, 2016 and 2017 base years. The Minister of National Revenue ("Minister") reduced the appellant's GSTC to the basic credit amounts of $276 and $280 for the 2015 and 2016 base years, respectively, given the dependent children's ineligibility and determined that the appellant himself was not eligible for the GSTC for the 2017 base year because of his non-resident status in Canada. The Minister also determined that the appellant was not eligible for the CCB for the 2015, 2016 and 2017 base years because his dependent children were ineligible.

[2] The Court finds it appropriate to note the relevant periods for GSTC and CCB payments and eligibility. The GSTC is an annual credit calculated for a base year and paid in four equal instalments every three months. For example, for the 2015

[1] *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended ("Act").

base year, the payment period is from July 2016 to June 2017, and payments are made in July 2016, October 2016, January 2017 and April 2017. The CCB is calculated for a base year and paid on a monthly basis. Similarly to the GSTC, for the 2015 base year, the CCB payment period is from July 2016 to June 2017. Eligibility for the GSTC is determined at the start of the month in which the Canada Revenue Agency ("CRA") makes the payment, that is, July 1, October 1, January 1 and April 1. However, eligibility for the CCB is determined at the start of each month of the year in which a payment is made. In other words, the payment period for the GSTC and the CCB is the same, from July of one year to June of the next, but the payment dates and when eligibility is determined differ.

[3] The Minister's notices of redetermination under appeal for the GSTC for the appellant's 2015, 2016 and 2017 base years cover the periods from October 2016 to April 2017, from July 2017 to April 2018 and from July 2018 to April 2019, respectively. Similarly, the Minister's notices of redetermination under appeal for the CCB for the appellant's 2015, 2016 and 2017 base years cover the period from August 2016 to June 2017, from July 2017 to June 2018 and from July 2018 to February 2019, respectively. As a result, the entire period from August 1, 2016, to April 30, 2019, is the entire period at issue ("Period at Issue").

II. Facts

[4] The appellant is from Cameroon (West Region). In June 2008, when he was 34 years old, he immigrated alone to Canada. He became a Canadian citizen in March 2014. The evidence does not show that the appellant had a spouse at that time. In February 2015, the appellant was in a serious car accident, which resulted in physical injuries and post-traumatic stress. Because of the accident, the appellant went through a long period of rehabilitation during which he received benefits from the *Société d'assurance automobile du Québec*.

[5] On or about June 13, 2016, the appellant went to Cameroon. A number of events took place there, including:

a. On June 30, 2016, the appellant and Tanga Natalie née Ilemes, signed a lease for a house with four bedrooms, a living room, a shower and a kitchen, located near the neighbourhood of Nkoabang, Yaoundé, Cameroon. The evidence presented in support of the existence of that lease does not specify its duration but confirms a monthly rent of 135,000 FCFA at the time.

b. On July 5, 2016, the appellant married Tanga Natalie née Ilemes. At that time, the appellant's spouse was the biological mother of three minor children born in 2000, 2004 and 2012, of whom she had custody. The appellant is not the biological father of his spouse's minor children.

c. A few days after the wedding, the appellant met with the designated social worker responsible for the well-being of the three minor children of one of his brothers. During a subsequent meeting with the social worker and a notary, the possibility of the appellant becoming the guardian of his brother's three minor children, born in 2000, 2007 and 2008, was discussed. The children would then live with the family in the rented house.

d. When he returned to Canada on or about July 7, 2016, the appellant formalized the guardianship of his brother's three children. On July 8, 2016, the guardianship became official in Cameroon, and the appellant then assumed responsibility for the care and upbringing of his brother's three minor children.

[6] At no time during the Period at Issue did the appellant's spouse, her children or his brother's children reside in Canada, spend time in Canada or visit the appellant in Canada.

[7] The appellant and his spouse would eventually become biological parents of other children, but after the Period at Issue.

[8] After his return on July 7, 2016, the appellant continued to live alone in Canada in an apartment on Hector Avenue in Montréal that he had lived in for a few years. In February 2017, the health of his mother in Cameroon deteriorated. He went to Cameroon. The airline ticket filed in evidence indicates that he left on February 8, 2017, and returned on April 1, 2017. He explained that, during that time, he tried to move his mother closer to his spouse and his family by acquiring a 500-m^2 piece of vacant land near the rented house to build a home for his mother, but the project was not completed before his mother's death in 2017. He kept the lot he had acquired. In Canada, during the same time period in 2017, the appellant's employer officially terminated his employment, which could not be maintained as a result of the car accident.

[9] In 2016 and 2017, the appellant's mental health deteriorated. His attending physician encouraged him to consult a psychiatrist. The appellant was concerned

about his mother's situation. In early 2018, the appellant's psychiatrist recommended that he return to Cameroon for a long visit with his family. However, it was the attending physician who confirmed in a doctor's note that the appellant had left for Cameroon for at least 24 months. The doctor's note dated February 12, 2018, and filed in evidence is brief and only mentions that the appellant left for at least 24 months. The note does not indicate the diagnosis, treatment or prognosis for the appellant.

[10] In preparation for his departure for Cameroon in April 2018, the appellant confirmed to his landlord on Hector Avenue that he intended to renew the lease for another year from July 2018 to June 2019. A lease signed by both parties on February 5, 2018, covering that period was filed in evidence. The evidence confirms that the landlord and the appellant agreed at that time that the appellant wanted to sublet the apartment given his imminent departure for Cameroon. Ultimately, the landlord was able to find a subtenant as of June 1, 2018. The last month the appellant paid rent for the apartment on Hector Avenue was May 2018. Prior to his departure for Cameroon, the appellant removed his furniture from the apartment and stored it in his friends' basement. After he had left for Cameroon in April 2018, the appellant never returned to the apartment on Hector Avenue.

[11] On or about April 19, 2018, the appellant left Canada to join his family in Cameroon. Unlike his airline ticket filed in evidence for his trip in February 2017, the airline ticket to Cameroon dated April 19, 2018, filed in evidence, did not have a return date. The evidence shows that, when he left, the appellant kept his bank account and line of credit in Canada with minimal balances, stored furniture and a financial connection with the *Société d'assurance automobile du Québec* following the car accident in February 2015. There were no other notable financial assets in Canada. He also kept two suitcases containing clothes at a friend's home. His friend also let the appellant use his home address as his mailing address. There was no formal lease or occupancy contract between the appellant and his friend. The appellant had no job in Canada when he left.

[12] While he was in Cameroon as of April 2018, the appellant filed an initial CCB application on or about August 17, 2018, concerning the six dependent children's eligibility for the program.

[13] Between October 5, 2018, and May 3, 2019, the Minister made determinations and redeterminations concerning the appellant's GSTC and CCB. Ultimately, on March 5, 2019, the Minister determined that only the appellant was eligible for the GSTC in the amount of $276 and $280 for October 2016 to

April 2017 (2015 base year) and for July 2017 to April 2018 (2016 base year), respectively, while the children were ineligible. Then, on May 3, 2019, the Minister determined that the appellant was not eligible for the GSTC for July 2018 to April 2019 (2017 base year) given that he did not meet the Canadian residency requirement during that period.

[14] On March 20, 2019, the Minister determined that the appellant was not eligible for the CCB for August 2016 to June 2017 (2015 base year), July 2017 to June 2018 (2016 base year) and July 2018 to February 2019 (2017 base year) given the children's situation.

[15] The appellant returned to Canada following his stay in Cameroon on or about April 17, 2019, with a desire to challenge the Minister's position.

III. Issues

[16] The issues are (i) whether, during the period from August 1, 2016, to February 28, 2019, the appellant was an eligible individual for the purposes of the CCB program under section 122.6 of the Act, and (ii) whether, for the specified months of July and October 2018 and January and April 2019 (the period from July 1, 2018, to April 30, 2019), the appellant is an eligible individual and the appellant's minor dependent children are qualified dependants, for the specified months during the Period at Issue, for which a GSTC was claimed, for the purposes of the GSTC program set out in section 122.5 of the Act.

[17] With respect to these issues, only the specific conditions identified in the respondent's position below can defeat the eligibility of the appellant and the minor children for the CCB and GSTC programs.

IV. Positions of the parties

[18] The respondent essentially submits that, with respect to the specified months of July and October 2018 and January and April 2019 (the period from July 1, 2018, to April 30, 2019) for the appellant, and with respect to all the specified months during the Period at Issue for the dependent children, none of them meets the definition of an eligible individual or qualified dependants for the purposes of the GSTC under paragraph 122.5(2)(c) of the Act. The respondent submits that none of them resided in Canada during the relevant period.

[19] The respondent cites the Federal Court of Appeal decision in *Goldstein*,[2] which states that a taxpayer's residency is a place "where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays". According to the respondent, the appellant did not have sufficient ties with Canada for the period beginning with his arrival in Cameroon in 2018 to maintain Canadian fiscal residence.

[20] The respondent summarily submits that, for the period from August 1, 2016, to February 28, 2019, the appellant did not meet the definition of eligible individual for the purposes of the CCB under paragraphs 122.6(1)(a) and (c) and subparagraph 122.6(1)(b)(i) of the definition of eligible individual as interpreted in paragraphs (f) and (h) of the same definition.

[21] The appellant submits that all these conditions were met and that the programs for which he has applied cover his situation. He became a Canadian citizen; Canada is his home; he always filled out his income tax returns properly, and it is his duty to support his family. He submits that, as he contributes financially to the upbringing and care of his children, he is entitled to the CCB and GSTC for his dependent children. He was forced to leave Canada only because of specific circumstances on two separate occasions and he returned to Canada on each of those occasions. He even wrote to the CRA to obtain some information before travelling to Cameroon. The CRA is wrong to double down on his situation. The CRA had initially accepted his applications to the programs, and disregarding that decision is not justified, and neither is taking recovery measures while his case is before the Tax Court of Canada. The appellant argues that changing the decision was discriminatory and that the CRA infringed on his rights.

[22] I note that the burden of proof in tax matters generally lies with the appellant. The appellant bears the burden of demolishing the assumptions of fact relied on by the Minister in making the assessment and of proving, on a balance of probabilities, the facts that support his position that the determination is unsound.[3] This is the

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[2] *Goldstein v. R.*, 2013 TCC 165 (aff'd by 2014 FCA 27) [*Goldstein*].

[3] The burden of proof in tax appeals has been discussed recently in several decisions of the Federal Court of Appeal and the Tax Court of Canada. In *Sarmadi v. R.*, 2017 FCA 131 [*Sarmadi*], Webb J.A. revisited the burden of proof in tax matters but his colleagues, Stratas J.A. and Woods J.A., disagreed with him and preferred not to make a definitive ruling on the matter. In *Eisbrenner v. R.*, 2020 FCA 93 [*Eisbrenner*], Webb J.A., writing for the Federal Court of Appeal, reiterated the same line of arguments put forward in *Sarmadi* in relation to the burden of proof. The application for leave to appeal from the Federal Court of Appeal decision was dismissed on January 14, 2021. Since *Eisbrenner*, Webb J.A.'s position on the burden of proof in tax matters has been affirmed or reiterated in several Federal Court of Appeal decisions: *Kufsky v. Canada*, 2022 FCA 66, *Chibani v. Canada*, 2021 FCA 196, *European Staffing Inc. v. Canada (National Revenue)*, 2020 FCA 219, and *Van der Steen v. Canada*, 2020 FCA 168. The key decisions of the

burden that the appellant must bear in this appeal, and show, on a balance of probabilities, that the redeterminations are unsound in relation to the conditions raised by the respondent.

V. Testimony

[23] Two witnesses were heard. The appellant testified himself and called Eric Deumeni as a witness. The respondent cross-examined the two witnesses but did not call any witnesses for direct examination.

[24] Mr. Deumeni met the appellant in 2013, shortly after the appellant arrived in Canada. He met the appellant when they were both working at American Iron and Metal (AIM).

[25] Mr. Deumeni testified that, before the appellant left for Cameroon in April 2018, he transferred his address to Mr. Deumeni's home and left suitcases there containing personal items. However, he did not clearly confirm that they had entered into a formal rental agreement:

> [TRANSLATION]
>
> MR. TANGA: Were you… did you… in 2018, before the appeal… before Mr. Tanga left for Cameroon, did you have a cohabitation agreement?
>
> MR. DEUMENI: In fact, we did not have a cohabitation agreement but, because you were not supposed to be in Cameroon, you, I believe, you transferred your address to my home because I was receiving your official documents, all official documents, which I digitally scanned for you. And then, most documents that I had… I gave them to you in person, because I travelled to Cameroon in 2018. In August 2018, it was when I got married. I went to Yaoundé to officially give you all the documents that I had digitally scanned to you in your family, because you were there with your wife and children. That's what I did.

[26] However, the witness acknowledged that he had received money from the appellant while he was in Cameroon from April 2018 to April 2019:

Tax Court of Canada dealing with this recent issue are Owen J.'s decisions in *Morrison v. R.*, 2018 TCC 220 and *Damis Properties Inc. v. R.*, 2021 TCC 24.

> [TRANSLATION]
>
> MR. TANGA: During that period in 2018, when Mr. Tanga left for Cameroon, when you received those documents, that mail, etc., did Mr. Tanga contribute financially?
>
> MR. DEUMENI: Yes. Small [inaudible] were sometimes made to also allow me to pay the fees for which I was responsible.

[27] While the appellant was away from Canada for a year, the witness received $1,290 from him, namely, two payments totalling $275 in June 2018, two payments totalling $615 in July 2018 and $400 in January 2019 (Exhibit A-1).

[28] When the appellant returned to Canada in April 2019, he and Mr. Deumeni briefly lived together until he found a new apartment. Mr. Deumeni testified that he had written a letter to confirm that they had a roommate agreement (Exhibit A-2). The witness confirmed that he had written that letter at the appellant's request. The short one-page letter is not dated, and the witness did not formally confirm it. However, the Court notes that the verbs are in the past tense. In cross-examination, the witness stated:

> [TRANSLATION]
>
> MR. CHARBONNEAU-SAULNIER: And Mr. Tanga explained to you that this evidence was required for his Canada Child Benefit application with the Canada Revenue Agency?
>
> MR. DEUMENI: No. He just asked me if I could write him a letter confirming that he was a roommate during that period. That's all. For the rest, I… that's it.

[29] Mr. Deumeni's testimony does not confirm that any amount of money was paid to him by the appellant (whether as rent or otherwise and under an agreement or not) since he returned to Canada in April 2019 and until June 2019, when the appellant moved into a new apartment.

[30] During the period beginning in April 2018, when the appellant was in Cameroon, Mr. Deumeni received the appellant's mail and, depending on the nature of the documents, he either scanned them to send them to the appellant electronically or gave them to him in person during his visit to Cameroon in 2018.

[31] The appellant's testimony confirms the facts described above and adds some elements:

a. When he arrived in Quebec in 2008, he worked as a soccer player recruiter for soccer leagues for a time. In 2010, he also created the *Association Humanitaire Jeunesse et Avenir* (the Association), which operated in Quebec to combat poverty in Cameroon. The appellant was the principal director of the Association. Through the Association, donors sent books to Cameroon to supply municipal libraries.

b. He submitted that he is no longer a citizen of Cameroon, has a Canadian passport and holds a Quebec health insurance card.

c. The appellant explained that he was in a terrible car accident in February 2015 and the consequences that followed. He received benefits from the *Société d'assurance automobile du Québec* following the accident.

d. He also testified about the death of his mother in 2017 and the subsequent worsening of his mental health in connection with her death and being off work. Since he was unable to return to work given his physical disability, AIM terminated his employment contract in February 2018. When he returned to Canada in April 2019, he found another job at a seniors' home, which he still holds.

e. The appellant then testified that, when he returned to Quebec in April 2019, he had an agreement with Mr. Deumeni that he would live with him at 8575.

f. He testified at length about his discussions with the CRA and the feeling it gave him that he was being persecuted. The appellant stated that he had given the CRA a lot of documents and information.

g. The appellant explained that his six dependent children did not come to Canada during the Period at Issue because it was easier and more affordable to educate them in Cameroon.

h. Finally, the appellant elaborated on the care he provides to his dependent children. He took out health insurance for some of the children and sends money for their care and upbringing. He told the Court about the financial sacrifices that he made for his children, being the sole breadwinner for his

family, as his wife is unemployed. All the bills in Cameroon were in his name. He testified in detail about the well-being of the children and his relationship with them.

VI. Analysis

A. Relevant provisions of the Act

[32] To determine the appellant's eligibility for the GSTC, the key statutory provision in this case is subsection 122.5(2) of the Act. It is the only provision cited by the respondent to claim that, during the periods described at paragraph 18, the appellant was not an eligible individual and his minor dependent children were not qualified dependants as those expressions are defined for GSTC purposes. The relevant excerpts from subsections 122.5(2) and (4) of the Act read as follows:

> (2) Notwithstanding subsection (1), a person is not an eligible individual, is not a qualified relation and is not a qualified dependant, in relation to a month specified for a taxation year, if the person
>
> …
>
> (c) is at the beginning of the specified month a non-resident person, other than a non-resident person who
>
> (i) is at that time the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes the first day of the specified month, and
>
> (ii) was resident in Canada at any time before the specified month;
>
> …
>
> (4) For the purposes of this section, the months specified for a taxation year are July and October of the immediately following taxation year and January and April of the second immediately following taxation year.
>
> [Emphasis added.]

[33] To determine the appellant's eligibility for the CCB, the statutory provision relevant to this case is section 122.6 of the Act. It is the only provision cited by the respondent to support his claim that the appellant was not an eligible individual as defined for purposes of the CCB during the period described at paragraph 20. The relevant excerpts from the definition of eligible individual in section 122.6 read as follows:

> eligible individual in respect of a qualified dependant at any time means a person who at that time
>
> (a) resides with the qualified dependant,
>
> (b) is a parent of the qualified dependant who
>
> (i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant,
>
> …
>
> (c) is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,
>
> …
>
> and for the purpose of this definition,
>
> (f) where the qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,
>
> …
>
> (h) prescribed factors shall be considered in determining what constitutes care and upbringing,
>
> …
>
> [Emphasis added.]

[34] The status of the children as qualified dependants for purposes of the CCB is not in dispute. However, the appellant's failure to meet any of paragraphs (a), (b) and (c) of the definition of eligible individual will be sufficient to disqualify the appellant as an eligible individual for purposes of the CCB. Indeed, to be recognized as an eligible individual, the appellant must meet all of the conditions in the definition.

B. Status for GSTC purposes

[35] For GSTC purposes, the appellant's children cannot be qualified dependants given paragraph 122.5(1)(c) of the Act. The Act contains no provisions that would

make it possible to presume that they are residents of Canada for the purposes of the Act or even of a specific provision or series of provisions. The tests used by the courts for establishing resident status in Canada for the purposes of the Act are also not helpful in the circumstances. Indeed, the children never visited or stayed in Canada during or before the Period at Issue. That alone eliminates any possibility of the children being qualified dependants for GSTC purposes at any time during the Period at Issue.

[36] Since the children's status has been determined, the sole outstanding issue for the purposes of the GSTC is whether the appellant was a resident of Canada during the specified months in his 2017 base year, given the Minister's redetermination dated May 3, 2019 (Exhibit I-31). In accordance with subsection 122.5(4) of the Act, the relevant months specified are July and October 2018 and January and April 2019, and the relevant period under review for CCB purposes is therefore July 1, 2018, to April 30, 2019.

(a) Tests for Canadian residency

[37] *Thomson*[4] is a leading case when it comes to determining the place of residence of a person who has left Canada.[5]

[38] *Thomson* tells us that the issue is to determine where the taxpayer regularly, ordinarily or customarily lives in the settled routine of his or her life. It is necessary to examine the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question. Rand J drew the following conclusions:

> The gradation of degrees of time, object, intention, continuity and other relevant circumstances, shows, I think, that in common parlance "residing" is not a term of invariable elements, all of which must be satisfied in each instance. It is quite impossible to give it a precise and inclusive definition. It is highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new.

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[4] *Thomson v. Minister of National Revenue*, [1946] S.C.R. 209 [*Thomson*].

[5] Paul Lefebvre, "Canada's Jurisdiction to Tax: Residency and the Thomson Decision 60 Years Later" (2006) 54:3 *Can. Tax J.* 762.

> The expression "ordinarily resident" carries a restricted signification, and although the first impression seems to be that of preponderance in time, the decisions on the English Act reject that view. It is held to mean residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to a question of its application.
>
> For the purposes of income tax legislation, it must be assumed that every person has at all times a residence. It is not necessary to this that he should have a home or a particular place of abode or even a shelter. He may sleep in the open. It is important only to ascertain the spatial bounds within which he spends his life or to which his ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return.
>
> But in the different situations of so-called "permanent residence", "temporary residence", "ordinary residence", "principal residence" and the like, the adjectives do not affect the fact that there is in all cases residence; and that quality is chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question. It may be limited in time from the outset, or it may be indefinite, or so far as it is thought of, unlimited. On the lower level, the expressions involving residence should be distinguished, as I think they are in ordinary speech, from the field of "stay" or "visit".

[39] In two of its decisions,[6] the Federal Court of Appeal endorses the position that the legal test for residence is that a person is a resident in the country where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays.

[40] The person's ties with Canada when he or she leaves help determine whether or not the person has maintained residency for the purposes of the Act. In one of its folios,[7] which is helpful but not binding, the CRA categorizes these ties as primary and secondary, the primary ties being the most significant. The significant ties are a dwelling place, a partner or a dependant. The secondary ties are more varied and include economic ties such as employment, personal property, a Canadian passport, medical insurance coverage from a province, etc.

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[6] *Canada v. Laurin*, 2008 FCA 58 and *Goldstein*.

[7] Income Tax Folio S5-F1-C1, "Determining an Individual's Residence Status".

[41] The CRA considers that, where an individual who leaves Canada keeps a dwelling place in Canada (whether owned or leased), available for his or her occupation, that dwelling place will be considered to be a significant residential tie with Canada during the individual's stay abroad. The CRA adds the following:

> However, if an individual leases a dwelling place located in Canada to a third party on arm's-length terms and conditions, the CRA will take into account all of the circumstances of the situation (including the relationship between the individual and the third party, the real estate market at the time of the individual's departure from Canada, and the purpose of the stay abroad), and may consider the dwelling place not to be a significant residential tie with Canada except when taken together with other residential ties.

[42] In terms of the secondary ties noted above, the CRA adds that, generally, secondary residential ties must be looked at collectively in order to evaluate the significance of any one such tie. It would be unusual for a single secondary residential tie with Canada to be considered sufficient on its own to lead to a determination that an individual is factually resident in Canada while abroad.

[43] Finally, the CRA notes that the courts have considered other tests for determining the residence status of an individual while outside Canada, which may be taken into account by the CRA, including the retention of a Canadian mailing address, post office box or safety deposit box, telephone listings in Canada and local (Canadian) newspaper and magazine subscriptions.

[44] In *Reeder*[8] the Court developed a list of factual criteria for determining residence:

> 13 … the factors which have been found in those cases to be material in determining the pure question of fact of fiscal residence are as valid in his case as in theirs. While the list does not purport to be exhaustive, material factors include:
>
> (a) past and present habits of life;
>
> (b) regularity and length of visits in the jurisdiction asserting residence;
>
> (c) ties with that jurisdiction;
>
> (d) ties elsewhere;
>
> (e) permanence or otherwise of purposes of stay abroad.

[8] *R. v. Reeder*, 75 D.T.C. 5160 (F.C.T.D.) [*Reeder*]; *Bower v. R.*, 2013 TCC 183, see also *Perlman v. R.*, 2010 TCC 658.

> The matter of ties within the jurisdiction asserting residence and elsewhere runs the gamut of an individual's connections and commitments: property and investment, employment, family, business, cultural and social are examples, again not purporting to be exhaustive. Not all factors will necessarily be material to every case. They must be considered in the light of the basic premises that everyone must have a fiscal residence somewhere and that it is quite possible for an individual to be simultaneously resident in more than one place for tax purposes.

[45] It is well settled in the case law that the issue of residence must be determined based on the facts of each case. That said, there is ample case law that considers primary and secondary ties such as the length of the stays and social, family and economic ties.[9]

[46] Finally, in a situation involving treaty countries, as in this case, if each country considers the taxpayer to be a resident under their domestic law, the taxpayer's residence will be determined by the tax treaty.[10]

[47] The matrix provided by Boyle J. in *Dysert*[11] for determining a taxpayer's fiscal residence can be summarized as follows for the purposes of this case:

> A. The first issue is whether the appellant was resident in Canada for the purposes of the Act. Two components must be considered to that end:
>
> (i) Was he factually resident in Canada as that term has been interpreted for purposes of the Act?
>
> (ii) Alternatively, is the appellant deemed to have been resident in Canada under paragraph 250(1)(a) of the Act, applicable to those who sojourn in Canada for 183 days or more in a given year?
>
> B. If the appellant is found to have been resident in Canada for the purposes of the Act and also resident in Cameroon, the analysis must then turn to the Convention, and in particular Article 4(2).

(b) The appellant's residence

[48] In this case, the period under review is from July 1, 2018, to April 30, 2019 (10 months). As stated above, the appellant left for Cameroon as a result of health

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[9] See, for example: *Yoon v. R.*, 2005 TCC 366 [*Yoon*]; *Mahmood v. R.*, 2009 TCC 89.
[10] Among others, subsection 250(5) of the Act is relevant.
[11] *Dysert v. R.*, 2013 TCC 57 [*Dysert*].

problems. The appellant joined his family in Cameroon on or about April 19, 2018, and returned to Canada on or about April 17, 2019.

[49] The appellant's fiscal residence situation in Canada changed in the summer of 2016 when he got married in Cameroon and became the guardian of six minor dependent children. The appellant returned to Canada even though he now had significant ties with Cameroon, since his spouse and the children remained there and never visited him.

[50] In the spring of 2018, when the appellant decided on the advice of his doctor to join his family in Cameroon to recover his health, his ties with Canada were somewhat reorganized in preparation for his departure. He maintained some economic ties even though they were not significant. However, these ties did not necessarily seem to be that different from when he was in Canada. He sublet his apartment and stored his movable property. The fact that he renewed his lease for the first year of his absence has little impact, as he agreed to sublet his apartment for the entire duration of the lease. However, he took steps with his friend Mr. Deumeni to maintain a presence, leaving his personal effects and changing his address to that one. He sent Mr. Deumeni a few bank transfers in the first five to six months he was away to cover expenses, although the evidence does not support any written lease contract between the parties. However, the situation was confirmed by Mr. Deumeni in his testimony. However, nothing was filed in evidence since his return to Canada in April 2019.

[51] The evidence at the hearing supported the fact that the appellant lives a fairly simple life in Canada, accepting and appreciating what life gives him, although, like everyone, he seeks to improve his lot. He stays busy; he works, and he visits with friends. The evidence did not support a multifaceted high standard of living. Thus, his residence ties with Canada were never very extensive, even during the period accepted by the Minister.

[52] The notice of redetermination dated May 3, 2019, in respect of the 2017 base year was the only notice stating that the residence requirement was not met. The period of ten months covered by the notice of redetermination is relatively short for determining whether the appellant's Canadian fiscal residence accepted until that time by the Minister should be modified.

[53] After weighing the ties maintained in Canada, how those ties were maintained (address, economic ties, requests to authorities, health insurance) and the ties acquired by the appellant since his marriage in Cameroon, the Court finds that it

cannot definitively conclude that the appellant ceased to reside in Canada during the ten months under review. The appellant's situation in Canada was certainly more precarious during that period, but the main reasons for his absence, the ties he maintained with Canada and the circumstances explained at the hearing support, on a balance of probabilities, the existence of residential ties in Canada for the purposes of the Act during that period.[12] Every case is different.

[54] In addition, we must not forget to take into consideration paragraph 250(1)(a) of the Act:

> **Person deemed resident**
>
> 250(1) For the purposes of this Act, a person shall, subject to subsection 250(2), be deemed to have been resident in Canada throughout a taxation year if the person
>
> (a) sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more;
>
> …

[55] This presumption has no impact on the appellant's 2018 taxation year given the number of days spent in Cameroon in that year. However, the situation is different for the 2019 taxation year, as the appellant returned to Canada in April 2019 and sojourned there for more than 183 days.[13] For the purposes of all the provisions of the Act, this presumption means that he is deemed to have been resident in Canada throughout the 2019 taxation year.

[56] That said, another question arises and the answer to it could overturn the appellant's residence in Canada, since under subsection 250(5) of the Act, where there is a tax treaty, an individual who is deemed to be a resident of a foreign country for the purposes of that treaty cannot also be a resident of Canada for the purposes of the Act.

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[12] *Shih v. R.*, 2000 D.T.C. 2072, involves a situation in which the taxpayer was separated from his family, which was not, however, a determinative factor in the decision rendered.

[13] It is clear from the Supreme Court of Canada's comments in *Thomson* that the verb to "sojourn" generally means "to make a temporary stay in a place; to remain or reside for a time". A stay involves something unusual and intermittent and has a transitory element because the person making the stay intends to return to his or her usual place of residence.

[57] The Court notes that the content of Cameroonian law was not established at the hearing. Under section 40 of the *Canada Evidence Act*,[14] article 2809 of the *Civil Code of Québec*,[15] in Book Seven: Evidence, applies in this case:

> Judicial notice may be taken of the law of other provinces or territories of Canada and of that of a foreign state, provided it has been pleaded. The court may also require that proof be made of such law; this may be done, among other means, by expert testimony or by the production of a certificate drawn up by a jurisconsult.
>
> Where such law has not been pleaded or its content has not been established, the court applies the law in force in Québec.
>
> [Emphasis added.]

[58] In that context, the same tests and statutory provisions for determining the fiscal residence of an individual in Canada can therefore be considered in the circumstances to determine whether the appellant can also be a fiscal resident of Cameroon for the purposes of the Convention.[16] If the appellant also holds fiscal residence in Cameroon, the Court must also determine whether the decisive rule for determining fiscal residence status in Article 4(2) of the Convention recognizes him as a fiscal resident of Cameroon for the purposes of the Convention such that, under subsection 250(5) of the Act, the appellant will ultimately be considered a non-resident of Canada for the purposes of the Act.

[59] After reviewing the appellant's situation during the period under appeal, the provisions of paragraph 250(1)(a) of the Act and the criteria for determining factual fiscal residence weigh in favour of the appellant's fiscal residence in Cameroon, particularly, for the purposes of the period from July 1, 2018, to April 30, 2019. Undoubtedly, the length of the appellant's stay in Cameroon of over 183 days in 2018 makes it possible to conclude, under paragraph 250(1)(a), that the appellant was a fiscal resident in Cameroon in 2018, but the same conclusion can be drawn for the entire stay in Cameroon in 2018 and 2019 as a result of the factual residence rules for Canadian tax purposes. The factors considered by the Court this time for determining the appellant's factual residence during the period are the ties created when the appellant got married in Cameroon in July 2016, the ongoing presence of

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[14] *Canada Evidence Act*, R.S.C. 1985, c. C-5.

[15] *Civil Code of Québec*, CQLR, c. CCQ-1991 (*Civil Code of Québec*).

[16] A similar common-law rule has also been accepted by the Court. See, for example, *Yoon* and *Dysert*. *Convention Between Canada and the United Republic of Cameroon for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, E102241 – CTS 1988 No. 5 (the Convention).

his spouse and dependent children at all relevant times in Cameroon, the economic ties he created in Cameroon (lease, purchase of land, responsibility for maintenance and use costs for the family home in Cameroon, the ongoing presence of a home and family in Cameroon) and, at the same time, his reduced factual ties with Canada.

[60] Determining the appellant's fiscal status in Canada and Cameroon for the purposes of this appeal has resulted in a finding that he has fiscal residence in both countries. The situation should not occur and must therefore be decided under the applicable provisions of the Convention.

[61] Article 4 of the Convention contains a decisive rule for determining an individual's fiscal residence status:

> Article 4
>
> Resident
>
> 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
>
> 2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
>
> a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
>
> b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State he shall be deemed to be a resident of the State in which he has an habitual abode;
>
> …

[62] Paragraph 4(2) of the Convention applies when an individual is a resident of both contracting states for the purposes of the applicable treaty.

[63] The Commentary on Article 4 of the OECD Model Tax Convention on Income and on Capital (2017 version), on which article 4 of the Convention is based, includes the following points:

> 4. Conventions for the avoidance of double taxation do not normally concern themselves with the domestic law of the Contracting States laying down the conditions under which a person is to be treated fiscally as "resident" and,

consequently, is fully liable to tax in that State. They do not lay down standards which the provisions of the domestic laws on "residence" have to fulfill in order that claims for full tax liability can be accepted between the Contracting States. In this respect the States take their stand entirely on the domestic laws.

5. This manifests itself quite clearly in the cases where there is no conflict at all between two residences, but where the conflict exists only between residence and source or situs. But the same view applies in conflicts between two residences. The special point in these cases is only that no solution of the conflict can be arrived at by reference to the concept of residence adopted in the domestic laws of the States concerned. In these cases special provisions must be established in the Convention to determine which of the two concepts of residence is to be given preference.

6. An example will elucidate the case. An individual has his permanent home in State A, where his wife and children live. He has had a stay of more than six months in State B and according to the legislation of the latter State he is, in consequence of the length of the stay, taxed as being a resident of that State. Thus, both States claim that he is fully liable to tax. This conflict has to be solved by the Convention.

7. In this particular case the Article (under paragraph 2) gives preference to the claim of State A. This does not, however, imply that the Article lays down special rules on "residence" and that the domestic laws of State B are ignored because they are incompatible with such rules. The fact is quite simply that in the case of such a conflict a choice must necessarily be made between the two claims, and it is on this point that the Article proposes special rules.

…

9. This paragraph [4(2)] relates to the case where, under the provisions of paragraph 1, an individual is a resident of both Contracting States.

10. To solve this conflict special rules must be established which give the attachment to one State a preference over the attachment to the other State. As far as possible, the preference criterion must be of such a nature that there can be no question but that the person concerned will satisfy it in one State only, and at the same time it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon that particular State. The facts to which the special rules will apply are those existing during the period when the residence of the taxpayer affects tax liability, which may be less than an entire taxable period. For example, in one calendar year an individual is a resident of State A under that State's tax laws from 1 January to 31 March, then moves to State B. Because the individual resides in State B for more than 183 days, the individual is treated by the tax laws of State B as a State B resident for the entire year. Applying the special rules to the period 1 January to 31 March, the individual was a resident of State A. Therefore, both State A and State B should treat the individual as a State A resident for that period, and as a State B resident from 1 April to 31 December.

> 11. The Article gives preference to the Contracting State in which the individual has a permanent home available to him. This criterion will frequently be sufficient to solve the conflict, e.g. where the individual has a permanent home in one Contracting State and has only made a stay of some length in the other Contracting State.
>
> 12. Subparagraph a) means, therefore, that in the application of the Convention (that is, where there is a conflict between the laws of the two States) it is considered that the residence is that place where the individual owns or possesses a home; this home must be permanent, that is to say, the individual must have arranged and retained it for his permanent use as opposed to staying at a particular place under such conditions that it is evident that the stay is intended to be of short duration.
>
> 13. As regards the concept of home, it should be observed that any form of home may be taken into account (house or apartment belonging to or rented by the individual, rented furnished room). But the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, attending a course at a school, etc.).
>
> 14. If the individual has a permanent home in both Contracting States, paragraph 2 gives preference to the State with which the personal and economic relations of the individual are closer, this being understood as the centre of vital interests. In the cases where the residence cannot be determined by reference to this rule, paragraph 2 provides as subsidiary criteria, first, habitual abode, and then nationality. If the individual is a national of both States or of neither of them, the question shall be solved by mutual agreement between the States concerned according to the procedure laid down in Article 25.
>
> 15. If the individual has a permeant home in both Contracting States, it is necessary to look at the facts in order to ascertain with which of the two States his personal and economic relations are closer. Thus, regard will be had to his family and social relations, his occupations, his political, cultural and other activities, his place of business, the place from which he administers his property, etc. The circumstances must be examined as a whole, but it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention. If a person who has a home in one State sets up a second in the other State while retaining the first, the fact that he retains the first in the environment where he has always lived, where he has worked, and where he has his family and possessions, can, together with other elements, go to demonstrate that he has retained his centre of vital interests in the first State.

[64] The first test is therefore to determine whether the appellant has a permanent home. To apply the Convention test, paragraph 13 of the OECD commentary above

sets out the required characteristics of the home: the permanence of the home is essential, meaning that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay. This characteristic is critical.

[65] In this case, although the appellant was able to have an address in Canada while he was in Cameroon, the Court is not satisfied that the way the arrangement with Mr. Deumeni was described at the hearing showed that the appellant had a permanent home in Canada as defined for the purposes of the Convention, namely, that he was able to have the dwelling available to him at all times continuously, and not occasionally during the period under review. The appellant did not have a formal lease contract with Mr. Deumeni; it was not arranged that the appellant would live with Mr. Deumeni permanently or regularly for a set period or have the use of the dwelling rented from Mr. Deumeni at his convenience. Indeed, the appellant made a total of six irregular bank transfers and only began living with Mr. Deumeni when he returned in April 2019 and only until he left in June of that year. In the Court's view, it was not at all certain that, despite Mr. Deumeni's good intentions, the arrangement offered the appellant some guarantee of living at the home at all times continuously and not occasionally during the period under review. Finally, for the purposes of the convention test, the Court is not satisfied with the aspect of permanency that the appellant may have had in Canada.

[66] Should the Court have erred with respect to this test, the Convention requires us to determine where the appellant's centre of vital interests was during the relevant period. The country with which the individual's personal and economic relations are closer is defined as his or her centre of vital interests. To this end, the Court agrees with the conclusion of Boyle J. in *Dysert* that the individual cannot have more than one centre of vital interests given the term "closer", even if that centre may not be verifiable in one case or another. Boyle J. adds the following:

> [72] It is clear that closer does not mean more numerous. It is a relative not a mechanical or arithmetic concept. Closeness requires that serious attention be focused upon the depth and nature of the personal and economic relations/ties. This finds express support in paragraph 15 of the OECD Commentary, especially with the example in the final sentence.
>
> [73] In *Hertel v. Minister of National Revenue*, 93 DTC 721, Sobier, J. wrote:
>
> > 14 In determining his centre of vital interests, it is not enough to simply weigh or count the number of factors or connections on each side. The depth

> of the roots of one's centre of vital interests is more important than their number.
>
> This passage was cited with approval by O'Connor, J. of this Court in *Yoon v. The Queen*, 2005 TCC 366.

[67] For the purposes of this determination, the Court accepts in this case that the appellant has close personal ties with Cameroon because his family, of which he is very proud, lives permanently in that country. Among other things, he has a lease in Cameroon (no evidence challenging the duration of the lease was established; *a fortiori* his family is still there) and owns land. While the Court is not denying that the appellant had personal and economic ties with Canada during that period, Cameroon is where those ties are closer. The evidence supports this conclusion on a balance of probabilities. Only one country can pass the test, and it is a relative, not a mechanical or arithmetic concept.

[68] The Court notes that the convention test or procedure applied above is not intended to determine the issue of residence on the basis of the same rules and tests that helped establish fiscal residence for domestic purposes. The test found in the Convention was developed to definitively determine on new bases the residence of an individual between two countries. Finally, the tests applied leave no uncertainty as to the determination that must be made. Determining a single place of residence between the two countries is clearly the goal, and, once it is determined, there will be domestic tax consequences in that respect.

[69] In light of above the analysis, the Court is of the view that subsection 250(5) of the Act applies and deems the appellant not to be resident in Canada during the relevant period, more specifically, from July 1, 2018 to April 30, 2019, referred to in the notice of redetermination dated May 3, 2019.

C. Status for CCB purposes

[70] For the purposes of the CCB, the issue is to determine whether the appellant met paragraphs 122.6(1)(a), (b) and (c) of the Act, which are part of the definition of eligible individual, during the Period at Issue. On March 20, 2019, the Minister determined that the appellant was not eligible for the CCB for the months of August 2016 to June 2017 (2015 base year), July 2017 to June 2018 (2016 base year) and July 2018 to February 2019 (2017 base year). Given that the Minister determined that the appellant was already a resident of Canada for the purposes of the 2015 and 2016 base years because his basic GSTC was confirmed in the notices

of redetermination dated March 5, 2019, it seems more appropriate to consider paragraphs 122.6(1)(a) and (b) of the definition of eligible individual first, as those conditions apply to the entire period from August 2016 to February 2019, and failure to meet either of them is sufficient to decide the issue.

[71] Paragraph 122.6(1)(a) of the definition of eligible individual, which requires that the appellant reside with the dependent children, is closely linked to paragraph 122.6(1)(c) of the same definition, which requires that the appellant be resident in Canada. Indeed, although paragraph (a) does not include the words "resident in Canada" like paragraph (c) does, it seems clear that the action of "residing" should be given the same meaning for purposes of paragraphs (a) and (c) of the definition. In this respect, paragraph (c) merely adds the place where the action of residing must be established. And I note once again that all paragraphs of the definition must be met at the same time.

[72] Accordingly, given that paragraph (c) of the definition of eligible individual clearly requires that the appellant be resident in Canada, he therefore can only meet the condition in paragraph (a) by residing in Canada with the children. When it was introduced on February 24, 1998, paragraph (c) only had the words "is resident in Canada". Subsequent amendments to paragraph (c) have not changed that requirement. Technical notes tabled in March 1999 by the Department of Finance Canada concerning section 122.6 of the Act stated the following about the meaning to be given to eligible individual:

> An "eligible individual" in respect of a qualified dependant is generally the person who resides with the dependant in Canada and is the dependant's principal care provider. It is presumed that the female parent of a qualified dependant is the eligible individual if she resides with the dependant.
>
> [Emphasis added.]

[73] As well, with respect to the scope of paragraph (c) of the definition of eligible individual, it must be noted that subsection 250(5) of the Act provides that a resident of Canada cannot be resident in Canada for the purposes of the Act and be resident in a treaty country at the same time when, under the provisions of the tax treaty between Canada and that country, the decisive rules contained therein establish that the individual is a resident of that country for the purposes of the treaty. In other words, subsection 250(5) prohibits an individual from declare that he or she is resident in Canada for Canadian tax purposes when a tax treaty between Canada and a third country has definitively determined that the individual is a fiscal resident of the other country.

[74] In this case, reviewing the paragraph 122.6(1)(c) condition of the definition of eligible individual therefore presents a dichotomy with paragraph (a) because, if the condition in paragraph 122.6(1)(a) discussed above is met, that means that the appellant was a resident of Cameroon for the purposes of the Convention since the children were always resident in Cameroon. In such a case, the appellant is precluded from claiming resident status in Canada pursuant to subsection 250(5) of the Act in order to meet the condition set out in paragraph 122.6(1)(c) of the definition of eligible individual. This means that there is no favourable outcome for the appellant in definitively determining his residence for the purposes of paragraph (c) and his CCB eligibility.

[75] The action of residing together or with the other individual infers that those involved in the action generally meet the condition at the same *situs*. In this case, that *situs* can be only in Canada or in Cameroon. And there is little room for ambiguity since the children were at all times physically under the same roof in Cameroon and at no time in Canada. In this respect, the evidence shows that the appellant can claim that he resided with the children only when he was in Cameroon with them, as the children never left Cameroon for Canada for any length of time before or during the Period at Issue. Residence requires a certain constancy, a certain regularity or else a habitual manner.[17] There is no ambiguity here; the children reside in Cameroon.

[76] If the appellant was in fact, as he claims, a resident of Canada for the purposes of the Act and the Convention throughout the Period at Issue, including while he was in Cameroon from April 2018 to April 2019, his presence in Cameroon would not make him a resident of Cameroon for the purposes of the Canada–Cameroon tax treaty. In such a case, he would definitely sojourn in Cameroon without changing his fiscal residence status. Consequently, if the appellant was resident in Canada for the purposes of paragraph (c) of the definition of eligible individual, he is unable to meet paragraph (a) on the same basis and reside with the children, as they never entered Canada. The reverse is also true. If the appellant turned out to be a resident of Cameroon for the purposes of the Canada–Cameroon tax treaty, subsection 250(5) of the Act would deem the appellant to be a non-resident of Canada and therefore, in that case, paragraph (c) would not be met.

[17] *Connolly v. R.*, 2010 TCC 231.

[77] In other words, the appellant is in a situation where he is unable to meet both paragraphs (a) and (c) of the definition of eligible individual regardless of his status as resident or non-resident for the purposes of the Act.

[78] Thus, paragraph 122.6(1)(a) of the definition of eligible individual poses a problem for the appellant's status as such for the purposes of the CCB because, ultimately, the only place where that condition can be met is in Cameroon.

[79] Moreover, paragraph (b) of the definition of eligible individual also poses a problem. The Court is not satisfied that the appellant was able, on a balance of probabilities, to rebut the presumption in paragraph (f) of the same definition that, where the dependant resides with the female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the dependant is presumed to be the female parent. The parties limited the dispute regarding paragraph (b) of the definition to determining whether it was the appellant or his spouse who primarily fulfilled the responsibility for the care and upbringing of the six children living with the appellant's spouse in Cameroon. It was not established that an individual other than the appellant had filed a CCB application. Moreover, the Court gathered from the appellant's position that his contribution to the care and upbringing of the children was essentially monetary: he made bank transfers to his spouse in Cameroon to provide for and take care of the family.

[80] For the purposes of meeting the condition set out in paragraph (b) of the definition of eligible individual, the Court does not believe that the evidence contradicted the appellant's financial contribution. A letter from his spouse confirming the appellant's financial support was filed in evidence. That undisputed letter also confirms that his spouse is a homemaker caring for the children. The financial contribution is real and ongoing. However, is it sufficient in the circumstances, when the children are constantly with the appellant's spouse and she cares for the children, carries out daily tasks, ensures safety and companionship for the children on a daily basis? The appellant cannot do any of this given the circumstances.

[81] The appellant's financial support is certainly significant and qualifies as a contribution to the upbringing and care of the children. However, paragraph 122.6(1)(h) of the definition of eligible individual provides that, for the purposes of determining what constitutes care and upbringing, section 6302 of the *Income Tax Regulations*, C.R.C., c. 945 ("Regulations"), sets out the factors to be considered:

> 6302 For the purposes of paragraph (h) of the definition eligible individual in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:
>
> (a) the supervision of the daily activities and needs of the qualified dependant;
>
> b) the maintenance of a secure environment in which the qualified dependant resides;
>
> (c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;
>
> (d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;
>
> (e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;
>
> (f) the attendance to the hygienic needs of the qualified dependant on a regular basis;
>
> (g) the provision, generally, of guidance and companionship to the qualified dependant; and
>
> (h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.
>
> [Emphasis added.]

[82] In light of the circumstances and the evidence as established at the hearing, the Court is of the view that paragraphs (a), (b), (c), (d), (e), (f) and (g) of section 6302 of the Regulations favour the appellant's spouse, while the applicant receives partial credit under paragraphs (b) and (c).[18] In this overall context, combined with the scope of the presumption set out in paragraph 122.6(1)(f), the appellant's spouse remains in this case the person who primarily fulfills the responsibility for the care and upbringing of the dependent children.

[83] The appellant did not submit any decisions that could show that a reasonable interpretation of these factors essentially referred to the financial aspect of supporting the actions described in section 6302 of the Regulations. On its face, the wording of the factors set out in section 6302 of the Regulations rather suggests an emphasis on the person who provides the care, who takes the actions for the children. The person's physical presence seems to be key to determining the individual who

[18] Under subsections 252(1) and (2) of the Act, the appellant and his spouse have the status of the dependent children's parents.

fulfills the responsibility for the care and upbringing. These factors are not exhaustive, and the financial aspect merits consideration. However, after considering the factors and the evidence in the record, it appears very difficult for the Court not to assign, on a balance of probabilities, that responsibility to the appellant's spouse. Although the presumption set out in paragraph 122.6(1)(f) of the Act is rebuttable,[19] the appellant was unable to satisfy the Court on a balance of probabilities that he had met paragraph 122.6(1)(b) of the definition of eligible individual.

[84] In *Pantelidis*,[20] Pizzitelli J. stated that the parents' relative economic situation is not a direct factor to be considered in determining which parent is primarily responsible for the care and upbringing of the children. There also seems to be no decision in which a mere financial contribution by a parent was sufficient to tip the scale in that parent's favour.

[85] In *Picard*,[21] the mother lived 180 km from her child, who lived with the father, but she paid the expenses related to the child and remained a primary source of moral and spiritual support. It was determined that that contribution was not sufficient for her to be the parent primarily responsible for the care and upbringing of the child as she did not live with her.

[86] In *Simard*,[22] although the father had higher means and contributed more financially to the care and upbringing of the children, the mother was the eligible individual because the children spent most of their leisure time at her home and her home was their home.

[87] In conclusion, the appellant is indeed unable to meet the conditions for being an eligible individual for CCB purposes during the Period at Issue. The appellant's situation with respect to conditions (a), (b) and (c) of the definition of eligible individual for CCB purposes is such that there is no need to otherwise determine the appellant's fiscal residence status in Canada during the relevant period.

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[19] *Cabot v. R.*, 1998 CanLII 477 (TCC).

[20] *Pantelidis v. R.*, 2010 TCC 639 [*Pantelidis*].

[21] *Picard v. R.*, 2005 TCC 509 [*Picard*].

[22] *Simard v. R.*, 2005 TCC 427 [*Simard*].

VII. Conclusion

[88] In light of the foregoing, the appeals from the notices of redetermination for the appellant's 2015, 2016 and 2017 base years (i) concerning the goods and services tax/harmonized sales tax credit and (ii) concerning the Canada Child Benefit are dismissed. Without costs.

Signed at Ottawa, Canada, this 31st day of May 2024.

"J. M. Gagnon"

Gagnon J.

Translation certified true
on this 28th day of May 2025.

Margarita Gorbounova, Senior Jurilinguist

CITATION:	2024 TCC 80
COURT FILE NO.:	2020-1619(IT)G
STYLE OF CAUSE:	JOSEPH TANGA AND HIS MAJESTY THE KING
PLACE OF HEARING:	Montréal, Quebec
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