

**CONVENTION ON SOCIAL SECURITY  
BETWEEN  
CANADA AND  
THE SWISS CONFEDERATION**

*The Government of Canada  
and  
the Swiss Federal Council*

*Being desirous of regulating the relationship between their two States in the field of Social Security, have decided to conclude a Convention for that purpose, and have agreed to the following provisions:*

**PART I**  
**DEFINITIONS AND LEGISLATIONS**

**Article 1**

1. For the purposes of applying this Convention:
  - (a) "Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of Employment and Immigration;
  - (b) "national" means, as regards Switzerland, a person of Swiss nationality, and as regards Canada, a Canadian citizen;
  - (c) "legislation" means the laws and regulations specified in Article 2;
  - (d) "competent authority" means, as regards Switzerland, the Federal Social Insurance Office, and, as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada;
  - (e) "institution" means the agency or authority responsible for the application of the legislations specified in Article 2;
  - (f) "reside" means, as regards Switzerland, to usually sojourn;
  - (g) "domicile" means, within the meaning of the Swiss Civil Code, the place where a person lives and intends to establish his or her residence;
  - (h) "period of insurance" means, as regards Switzerland, a period during which contributions were made to the Swiss Old Age, Survivors and Disability Insurance or a period which is equivalent to a similar period in the same insurance.
2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

## Article 2

1. This Convention shall apply:
  - (a) with respect to Switzerland:
    - (i) to the *Federal law on Old Age and Survivors Insurance* of December 20, 1946;
    - (ii) to the *Federal Law on Disability Insurance* of June 19, 1959;
  - (b) with respect to Canada:
    - (i) to the *Old Age Security Act*;
    - (ii) to the *Canada Pension Plan*.
2. This Convention shall also apply to any laws or regulations which consolidate, amend or supplement the legislations specified in paragraph 1.
3. This Convention shall apply to laws or regulations which extend the existing schemes to new categories of beneficiaries only if no objection on the part of the State which amended its legislation has been communicated to the other State within six months of official publication or proclamation of such laws.

## PART II GENERAL PROVISIONS

### Article 3

Unless otherwise provided, this Convention shall apply to:

- (a) nationals of either State, as well as to their family members and survivors to the extent that their rights are derived from these nationals;
- (b) refugees, within the meaning of the Convention on the Status of Refugees of July 28, 1951 and of the Protocol on the Status of Refugees of January 31, 1967, as well as to their family members and survivors to the extent that their rights are derived from these refugees, provided that, as regards the application of Swiss legislation, these persons reside in the territory of one of the States;

- (c) with respect to Switzerland, stateless persons, within the meaning of the Convention on Status of Stateless Persons of September 28, 1954, as well as to their family members and survivors to the extent that their rights are derived from these stateless persons, provided that these persons reside in the territory of one of the States;
- (d) nationals of third States;

who are or who have been subject to the legislation of one of the States or who have acquired rights under that legislation.

#### **Article 4**

1. Unless otherwise provided in this Convention, Canadian nationals, their family members and survivors to the extent that their rights are derived from those nationals as well as persons described in Article 3, subparagraphs (b) and (c), shall be subject to the obligations and shall be eligible for the benefits of the legislation of Switzerland under the same conditions as Swiss nationals.
2. Unless otherwise provided in this Convention, Swiss nationals as well as persons described in Article 3, subparagraph (b) and (d), shall be subject to the obligations and shall be eligible for the benefits under the legislation of Canada under the same conditions as Canadian nationals.

#### **Article 5**

1. Unless otherwise provided in this Convention, Swiss cash benefits acquired under the legislation of Switzerland or by virtue of this Convention shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the beneficiary resides
  - (a) in the territory of Canada, in the case of persons described in Article 3, subparagraphs (a) to (c);
  - (b) in the territory of a third State, in the case of persons described in Article 3, subparagraph (a).

2. Unless otherwise provided in this Convention, Canadian benefits acquired under the legislation of Canada or by virtue of this Convention shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the beneficiary resides in the territory of Switzerland or in the territory of a third State.

### **PART III APPLICABLE LEGISLATION**

#### **Article 6**

1. Unless otherwise provided in this Convention, a person who is employed in the territory of one or both States shall, in respect of that work, be subject only to the legislation on compulsory coverage of the State where the person is employed.
2. A person who is self-employed in the territory of one or both States and who resides in the territory of one of the States shall be subject only to the legislation on compulsory coverage of the State in whose territory he or she resides.

#### **Article 7**

1. A person who is employed by an employer having a place of business in the territory of a State and who is detached by that employer to work in the territory of the other State for a period not expected to exceed 60 months shall be subject to the legislation on compulsory coverage of the first State as though those services were performed in its territory.
2. If the employer who requested the detachment status for that person wishes to obtain an extension of such status, such extension shall be granted on an exception basis if the competent authority of the State from whose territory that person is detached considers the request of extension to be justified and if, on that basis, it has presented the extension request to the competent authority of the other State and has received the consent of that State. The extension request must be presented to the competent authority of the State in whose territory that person is detached before the end of the existing detachment.

## Article 8

1. Notwithstanding the provisions of paragraph 2, the Vienna Convention on Diplomatic Relations of April 18, 1961 and of the Vienna Convention on Consular Relations of April 24, 1963 relating to social security shall be applicable even if these Conventions contradict this Convention.
2. Members of the administrative and technical staff of a diplomatic mission or consular post shall be insured in accordance with the legislation of the receiving State provided they are nationals of that State or have their permanent residence in that State. A person who permanently resides in the receiving State may elect to be insured under the legislation of the sending State provided he or she is a national of that State.

## Article 9

The competent authority of one of the States may, by agreement with the competent authority of the other State, make exceptions to the provisions of this Part.

## Article 10

For the purpose of determining eligibility for benefits and of calculating benefits under the *Old Age Security Act* of Canada,

- (a) if a person is subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during any period of residence in the territory of Switzerland, that period of residence shall be considered as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with him or her and who are not subject to the legislation of Switzerland;
- (b) if a person is subject to the legislation of Switzerland by reason of employment during any period of residence in the territory of Canada, that period of residence shall not be considered as a period of residence in Canada for that person and for that person's spouse and dependants who reside with him or her and who are not subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada.

**PART IV  
PROVISIONS CONCERNING BENEFITS**

**CHAPTER I  
APPLICATION OF THE LEGISLATION OF CANADA**

**Article 11**

1. If a person is not entitled to a benefit solely on the basis of the periods creditable under the legislation of Canada, eligibility for that benefit shall be determined by totalizing these periods and those specified in paragraph 2, provided that these periods do not overlap.
2. (a) For purposes of determining eligibility for a benefit under the *Old Age Security Act*, a period of insurance under the legislation of Switzerland or a period of residence in the territory of Switzerland, after the age at which periods of residence in Canada are creditable for purposes of that *Act*, shall be considered as a period of residence in the territory of Canada.  
  
(b) For purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year including at least three months of insurance under the legislation of Switzerland shall be considered as a year for which contributions have been made under the *Canada Pension Plan*.
3. Notwithstanding the provisions of paragraphs 1 and 2, if a person is not entitled to a benefit under the legislation of Canada, eligibility for that benefit shall be determined by taking into account creditable periods under the legislation of a third State with which both States are bound by an international social security instrument which provides for totalizing of periods.
4. If the total duration of the creditable periods completed under the legislation of Canada is less than one year, the competent institution of Canada shall not be required by virtue of this Convention to award benefits in respect of those periods.

## Article 12

1. If a person is entitled to a pension or a spouse's allowance under the *Old Age Security Act* solely through the application of the totalizing provisions specified in Article 11, the competent institution of Canada shall calculate the amount of the pension or the spouse's allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that *Act*.
2. Paragraph 1 shall also apply to a person who is entitled to the payment of a pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to a pension outside Canada.
3. Notwithstanding any other provision of this Convention,
  - (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, when totalized as provided in Article 11, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada; and
  - (b) a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

## Article 13

If a person is entitled to a benefit under the *Canada Pension Plan* solely through the application of the totalizing provisions specified in Article 11, the competent institution of Canada shall calculate the amount of benefit in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the *Canada Pension Plan*, exclusively on the basis of the pensionable earnings under that *Plan*; and



- (b) the flat-rate portion of the benefit shall be determined by multiplying:
- (i) the amount of the flat-rate portion of the benefit determined under the provisions of the *Canada Pension Plan*

by

  - (ii) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under that *Plan* to establish entitlement to that benefit. In no case shall that fraction exceed the value of one.

## **CHAPTER II APPLICATION OF THE LEGISLATION OF SWITZERLAND**

### **Article 14**

1. Canadian nationals may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their residence in Switzerland and provided that, immediately prior to disablement, they have paid contributions to Swiss Old Age, Survivors and Disability Insurance.
2. Canadian nationals who are not pursuing gainful employment may claim rehabilitation measures as long as they maintain their domicile in Switzerland and provided that, immediately prior to disablement, they have resided in Switzerland without interruption for at least one year. Minor children domiciled in Switzerland may, moreover, claim such measures if they have been born disabled in Switzerland or have resided in Switzerland without interruption since birth. A sojourn of a maximum of three months by a child in Canada immediately after birth shall be considered equivalent to a period of residence in Switzerland.
3. A child domiciled in Switzerland and born disabled in Canada, whose mother has not sojourned in Canada in excess of two months in total prior to the birth of that child, shall be considered as if he or she was a child born disabled in Switzerland. The Disability Insurance shall assume responsibility for the payment of benefits for a child with congenital defects for a period of three months following the birth of that child to the extent that such benefits would have been payable in Switzerland.
4. Paragraphs 2 and 3 shall apply by analogy to children born disabled outside Switzerland or Canada; in such a case, the Disability Insurance shall assume responsibility for benefits only if such benefits would be awarded abroad on an emergency basis due to the state of health of the child.

## **Article 15**

Where the right to an ordinary pension under the legislation of Switzerland is subject to a current affiliation under that legislation, a Canadian national shall be considered insured under that legislation provided that, on the date the insured event occurs according to the legislation of Switzerland, he or she is insured under the *Canada Pension Plan* or resides in Canada within the meaning of the *Old Age Security Act*

## **Article 16**

Canadian nationals shall be entitled to extraordinary pensions under the legislation of Switzerland

1. only for as long as they maintain their domicile in Switzerland, and
2. if, immediately prior to the month in which they apply for a pension, they have resided in Switzerland without interruption for
  - (a) at least ten full years if applying for an old age pension;
  - (b) at least five full years if applying for a disability or survivors pension or for an old age pension which would replace a disability or survivors pension.

## **Article 17**

Ordinary pensions for insured persons with a disability inferior to 50 percent, extraordinary pensions, helplessness allowances and auxiliary measures under the legislation of Switzerland shall be granted only as long as the beneficiary maintains his or her domicile in Switzerland.

**PART V**  
**ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

**Article 18**

The competent authorities or, with their consent if required, the institution of the two States shall:

- (a) make all necessary administrative arrangements for the application of this Convention and designate their liaison agencies;
- (b) define the procedures for reciprocal administrative assistance, such as the allocation of expenses associated with obtaining medical, administrative and other evidence required for the application of this Convention;
- (c) communicate to each other all information concerning the measures taken by them for the application of this Convention;
- (d) communicate to each other, as soon as possible, all changes in their respective laws.

**Article 19**

- 1. For the application of this Convention, the competent authorities and the institutions of both States shall assist each other, within the scope of their respective authority, and shall communicate to each other, to the extent permitted by their legislation, all information necessary for the application of this Convention. This assistance shall be free of charge subject to exceptions provided in an administrative arrangement.
- 2. Unless disclosure is required under the laws of a State, any information about a person which is transmitted in accordance with this Convention to that State by the other State is confidential and shall be used only for purposes of implementing this Convention and the legislation to which this Convention applies and for no other purpose.

## **Article 20**

Where the legislation of a State provide that any document which is submitted to the competent authority or an agency of that State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, that exemption shall also apply to documents which are submitted to the competent authority or an agency of the other State for the application of its legislation.

## **Article 21**

1. For the application of this Convention, the competent authorities and institutions of the two States may correspond directly with each other in one of their official languages and with any person regardless of their place of residence.
2. An application or document may not be rejected because it is written in an official language of the other State.
3. The decisions of an agency or a tribunal which, under the legislation of a State, require personal delivery to an applicant may be transmitted directly by registered letter to an applicant who resides in the territory of the other State.

## **Article 22**

A claim for a benefit under the legislation of one State presented after the entry into force of this Convention, shall be deemed to be a claim for the corresponding benefit under the legislation of the other State, provided that the applicant:

- (a) requests that it be considered an application under the legislation of the other State,  
or
- (b) provides information at the time of application indicating that creditable periods or periods of insurance have been completed under the legislation of the other State.

The date of receipt of such an application shall be presumed to be the date on which this application has been received under the legislation of the first State. However, the applicant may request that the payment of benefits under the legislation of the other State be deferred.

## **Article 23**

Any claim, notice or appeal which under the legislation of a State should have been presented within a prescribed period to an authority, tribunal or institution of that State, but which is presented within the same period to an authority, tribunal or institution of the other State, shall be treated as if it had been presented to the authority, tribunal or institution of the first State.

## **Article 24**

The institutions responsible for the payment of benefits in accordance with the provisions of this Convention shall discharge their obligations in the currency of their country.

## **Article 25**

1. The competent authorities of the two States shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Convention according to its spirit and fundamental principles.
2. Any disagreement between the two States concerning the interpretation or application of this Convention which has not been settled in accordance to paragraph 1 shall be submitted, at the request of one of the States, to an arbitral tribunal of three members. Each State shall appoint one member. These two members shall select the president. Should the two members disagree on the nomination of the president, the president shall be appointed by the President of the International Court of Justice. The arbitral tribunal shall establish its own procedures. Its decision shall be binding on the two States.

## **Article 26**

The Swiss Federal Council and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada in so far as those understandings are not inconsistent with the provisions of this Convention.

**PART VI  
TRANSITIONAL AND FINAL PROVISIONS**

**Article 27**

1. This Convention shall also apply to events which occurred prior to its entry into force.
2. This Convention shall not confer any right to payment of a benefit for any period before its entry into force or to payment of a lump-sum death benefit if the person died before its entry into force.
3. Any period of insurance and any period of residence completed under the legislation of either State before the entry into force of this Convention shall be taken into consideration in the determination of the right to a benefit under the provisions of this Convention.
4. This Convention shall not apply to rights settled by a lump-sum payment or a refund of contributions.
5. Decisions made before the entry into force of this Convention shall not affect any rights arising from the application of this Convention.
6. The entry into force of this Convention shall not result in the reduction of the amount of the benefits in kind being received by beneficiaries.

**Article 28**

The attached Final Protocol shall form an integral part of this Convention.

**Article 29**

The Government of each State shall notify in writing the other State that it has completed its required statutory and constitutional procedures required for the entry into force of this Convention; this Convention shall take effect the first day of the fourth month following the date of receipt of the last of these notifications.

## **Article 30**

1. This Convention shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the States.
2. If this Convention is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the two States shall make arrangements dealing with rights in the process of being acquired.

***IN WITNESS WHEREOF***, the plenipotentiaries of the States being duly authorized thereto, have signed this Convention.

***DONE*** in duplicate at Ottawa, this 24<sup>th</sup> day of February, 1994, in the English and French languages, each text being equally authentic.

***FOR THE GOVERNMENT OF CANADA***

Lloyd Axworthy

***FOR THE SWISS FEDERAL COUNCIL***

Ernst Andres

# **FINAL PROTOCOL TO THE CONVENTION ON SOCIAL SECURITY BETWEEN CANADA AND THE SWISS CONFEDERATION**

At the time of signing the Convention on Social Security between Canada and the Swiss Confederation, the undersigned plenipotentiaries stated that they are in agreement on the following points:

1. Paragraph 1 of Article 4 shall not apply to the Swiss legal provisions on
  - (a) voluntary Old Age, Survivors and Disability Insurance of Swiss nationals residing abroad;
  - (b) Old Age, Survivors and Disability Insurance of Swiss nationals working abroad for an employer in Switzerland and being paid by that employer;
  - (c) welfare allowances granted to Swiss nationals residing abroad.
2. The provisions of the Convention shall not prevent the application of a provision of the legislation of Switzerland which would be more advantageous to persons with respect to benefits.
3. With respect to paragraph 1 of Article 6, the income a person receives from gainful employment in the territory of Canada shall not be taken into account in the calculation of contributions required under the legislation of Switzerland.
4. The spouse and children accompanying a detached person in Switzerland within the meaning of Article 7 shall be exempted from coverage under the legislation of Switzerland in so far as they are not pursuing gainful employment in Switzerland.
5. The spouse and children accompanying a detached person in Canada within the meaning of Article 7 shall remain insured under the legislation of Switzerland in so far as they are not pursuing gainful employment in Canada.
6. Canadian nationals residing in Switzerland who leave Switzerland for a period not exceeding two months shall not interrupt their residence in Switzerland within the meaning of Article 14, paragraph 2.



7. Canadian nationals not domiciled in Switzerland who have had to forsake gainful employment in that country because of an accident or illness and who benefit from Swiss Disability Insurance rehabilitation measures or who have lived in Switzerland until the occurrence of the insured contingency shall be considered insured under the legislation of Switzerland for entitlement to benefits under Disability Insurance. Such persons shall be required to pay contributions to Old Age, Survivors and Disability Insurance as if they were domiciled in Switzerland.
8. With respect to Article 16, the duration of residence in Switzerland of a Canadian national shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding three months within a calendar year. However, a period of residence in Switzerland during which a Canadian national has been exempt from coverage to Swiss Old Age, Survivors and Disability Insurance shall not be considered a period of residence for purposes of Article 16.
9. The refund of contributions paid under the legislation of Switzerland, carried out in accordance with the provisions of Swiss laws on the refund of contributions to foreigners and stateless persons, shall not bar the payment of extraordinary pensions in accordance with Article 16. In such cases, however, the amount of contributions refunded shall be charged against benefits to be paid.

***DONE**, in duplicate, at Ottawa, this 24<sup>th</sup> day of February, 1994, in the English and French languages, each text being equally authentic.*

**FOR THE GOVERNMENT OF CANADA**

Lloyd Axworthy

**FOR THE SWISS FEDERAL COUNCIL**

Ernst Andres