

OFFICE CONSOLIDATION OF THE CONVENTION ON SOCIAL SECURITY BETWEEN CANADA AND LUXEMBOURG

The Convention on Social Security between Canada and Luxembourg was signed on 22 May 1986. It entered into force on 1 April 1990.

The Convention was amended by a protocol which entered into force on 1 January 1994.

The text which follows shows the Convention as amended by the Protocol.

Canada

And

the Grand Duchy of Luxembourg,

Resolved to cooperate in the field of social security,

Have decided to conclude a convention, and

Have designated, to that effect, as their plenipotentiaries:

for Canada,

the Minister of National Health and Welfare,

and

for the Grand Duchy of Luxembourg,

the Minister for Social Security,

Who, after exchanging their full powers, found in good and due form,

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article I

1. For the purposes of this Convention,
 - (a) "legislation" means the laws and regulations specified in Article II;
 - (b) "competent authority" means, as regards Canada, the Minister or Ministers responsible for the administration of the legislation of Canada; and, as regards Luxembourg, the Minister or Ministers who have in their area of responsibility the legislation specified in Article II;
 - (c) "competent institution" means, as regards Canada, the competent authority; and, as regards Luxembourg, the institution to which the person in question is affiliated at the time of applying for a benefit or from which the person in question is entitled to receive a benefit;
 - (d) "period of insurance" means a period of contributions, professional activity or residence defined or considered as such by the legislation under which these periods have been completed for purposes of establishing entitlement to benefits;
 - (e) "benefit" means any cash benefit, pension or allowance for which provision is made in the legislation of either Party and includes any increases, readjustment allowances or supplementary allowances, unless otherwise provided in this Convention.
2. For purposes of the Title, Preamble and Final Clause of this Convention, the term "Canada" means Her Majesty the Queen in right of Canada, represented by the Minister of National Health and Welfare.
3. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

Article II

1. This Convention shall apply.
 - (a) with respect to Canada:
 - (i) to the *Old Age Security Act* and the regulations made thereunder; and
 - (ii) to the *Canada Pension Plan* and the regulations made thereunder;
 - (b) with respect to Luxembourg:

to the legislation concerning pension insurance in the case of old age, disability or survivors.
2. This Convention shall apply to all legislative or regulatory acts which shall amend or complement the legislation specified in paragraph I of this Article.
3. This Convention shall also apply to any legislative or regulatory act which extends the existing schemes to new categories of beneficiaries if no objection on the part of the Party which has amended its legislation has been communicated to the other Party within three months of the publication or the proclamation of such an act.

Article III

Unless otherwise provided in this Convention, it shall apply to persons who are or who have been subject to the legislation of one or both Parties as well as those who derive their rights from these persons.

Article IV

Persons described in Article III who reside in the territory of either Party shall be subject to the obligations of the legislation of a Party and shall be eligible for its benefits under the same conditions as citizens of that Party.

Article V

1. Unless otherwise provided in this Convention, benefits acquired by persons described in Article III under the legislation of one Party 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 the other Party, and they shall be payable in the territory of the other Party.
2. Benefits under the legislation of a Party shall be payable to persons described in Article III who ordinarily reside outside the territories of both Parties on the same conditions as to the citizens of the first Party who ordinarily reside outside the territories of the Parties.

PART II APPLICABLE LEGISLATION

Article VI

1. Subject to the following provisions of this Article, an employed person who works in the territory of a Party shall, in respect of that work, be subject only to the legislation of that Party.
2. A self-employed person who works as such in the territory of Luxembourg but who ordinarily resides in the territory of Canada shall, in respect of that work, be subject only to the legislation of Canada.
3. An employed person who is covered under the legislation of one of the Parties and who performs services in the territory of the other Party for the same employer shall, in respect of those services, be subject only to the legislation of the former Party as though those services were performed in its territory and provided that such assignment does not exceed 24 months. If the assignment exceeds 24 months, the application of the legislation of the first Party may be continued for a future term as determined by common agreement between the competent authorities of the two Parties.
4. A person who, but for this Convention, would be subject to the legislation of both Parties in respect of employment as a member of the crew of a ship shall, in respect of that employment, be subject only to the legislation of Canada if he ordinarily resides in Canada and only to the legislation of Luxembourg in any other case.

5. A person employed in the territory of one of the Parties in a government service of the other Party shall, in respect of that employment, be subject to the legislation of the first Party only if he is a citizen thereof or if he ordinarily resides in its territory. In the latter case, he may, however, elect to be subject only to the legislation of the second Party if he is a citizen thereof. Article IV shall not apply to extend this right to elect to a person who is not a citizen of the second Party.
6. The competent authorities of the two Parties may, by common agreement, modify the application of the preceding provisions of this Article with respect to any persons or categories of persons.

Article VII

For the purpose 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 Luxembourg, 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 Luxembourg by reason of a professional activity during that period;
- (b) if a person is subject to the legislation of Luxembourg by reason of a professional activity 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 by reason of employment during that period.

PART III
PROVISIONS CONCERNING BENEFITS

CHAPTER 1
TOTALIZING OF PERIODS

Article VIII

1. If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of insurance under the legislation of a Party, entitlement to the payment of that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 and 3 of this Article, provided that these periods do not overlap.
2.
 - (a) For purposes of determining entitlement to a benefit under the Old Age Security Act of Canada, a period of insurance under the legislation of Luxembourg or a period of residence in Luxembourg, 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 Canada.
 - (b) For purposes of determining entitlement to a benefit under the Canada Pension Plan, a calendar year including at least 67.5 days or three months of insurance under the legislation of Luxembourg shall be considered as a year for which contributions have been made under the Canada Pension Plan.
3.
 - (a) For purposes of determining entitlement to an old age pension under the legislation of Luxembourg, periods creditable under the Old Age Security Act of Canada, expressed in months, which were completed before January 1, 1966 and periods creditable under the Canada Pension Plan, expressed in years, as well as periods creditable under the Old Age Security Act of Canada, expressed in months, which are not part of periods creditable under the Canada Pension Plan and which have been completed after December 31, 1965 shall be considered as periods validly covered by contributions under the legislation of Luxembourg.
 - (b) For purposes of determining entitlement to an anticipatory old age pension between the age of 57 and 60 years or a disability or survivor's pension under the legislation of Luxembourg, creditable periods under the Old Age Security Act of Canada, expressed in months, which were completed before January 1, 1966, and creditable periods under the Canada Pension Plan, expressed in years and completed after December 31, 1965 shall be

considered as periods validly covered by contributions under the legislation of Luxembourg.

For the computation of periods of insurance under the aforementioned legislation of Canada, one year shall correspond to 12 months under the legislation of Luxembourg.

4. The periods which, under the legislation of Luxembourg, result in the extension of the reference period during which the period required for entitlement to disability and survivor's pensions must be completed, shall also be taken into account if these periods are completed in the territory of Canada.
5. Paragraph 3(b) shall apply by analogy for the purpose of crediting, in accordance with the legislation of Luxembourg, the period of insurance following the birth of a child on behalf of the insured person responsible for the child's education. The application of the preceding provision is conditional upon the insured person having last completed periods of insurance under the legislation of Luxembourg.

Article IX

If, after totalizing insurance periods as provided in Article VIII of this Convention, a person is not entitled to a benefit because he or she has not accumulated sufficient periods of insurance under the legislation of both Parties, entitlement to that benefit shall be determined by totalizing these periods and the periods of insurance under the legislation of a third State with which both Parties are bound by an international social security instrument which provides for totalizing of periods of insurance.

1. If the total length of the periods of insurance completed under the legislation of a Party is less than one year, the competent institution of that Party shall not be obliged to award a benefit in respect of those periods, unless, on the basis solely of these periods, the person is entitled to a benefit under the legislation being applied by that institution.
2. If, under the legislation of Luxembourg, a person is not entitled to a pension, the contributions credited to the insured person shall be reimbursed to him or her at the end of his or her sixty-fifth year in conformity with this legislation.

CHAPTER 2 BENEFITS UNDER THE LEGISLATION OF CANADA

Article X

1. If a person is entitled to the payment of a pension or a spouse's allowance under the Old Age Security Act, solely through the application of the totalizing provisions described in Chapter 1 of this Part, the competent institution of Canada shall determine the amount of the pension or spouse's allowance payable in conformity with the provisions of that Act governing the payment of a partial pension or spouse's allowance, exclusively on the basis of the periods of residence in Canada creditable under that Act.
2. The provisions of the first paragraph 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 of residence required by the Old Age Security Act for payment of a pension outside Canada.
3. Notwithstanding any other provision of this Convention,
 - (a) the competent institution of Canada shall not be liable to pay an Old Age Security pension outside Canada unless the periods of residence, when totalized in conformity with the provisions of Chapter 1 of this Part, 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) the spouse's allowance and the guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

Article XI

If a person is entitled to the payment of a benefit under the Canada Pension Plan, solely through the application of the totalizing provisions of Chapter 1 of this Part, the competent institution of Canada shall determine the amount of the benefit in the following manner:

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

- (b) the amount of the flat-rate portion of the benefit shall be determined by multiplying:
 - (i) the amount of the flat-rate portion of the benefit determined in conformity with 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, but in no case shall that fraction exceed the value of one.

CHAPTER 3

BENEFITS UNDER THE LEGISLATION OF LUXEMBOURG

Article XII

1. If a person is entitled to a pension under the legislation of Luxembourg without recourse to Article VIII, the institution of Luxembourg shall calculate, in accordance with the provisions of that legislation, the pension corresponding to the total length of the periods of insurance to be taken into account under that legislation.

The institution shall also calculate the pension which would be payable by applying the provisions of paragraph 2 below. Only the highest amount shall be taken into consideration.
2. If a person is entitled to a pension under the legislation of Luxembourg, but solely through totalizing the periods as provided in Article VIII, the following rules shall apply:
 - (a) the institution of Luxembourg shall calculate the theoretical amount of the pension to which the applicant would be entitled if all the periods completed in accordance with the legislation of both Parties, when totalized in conformity with paragraph 3 of Article VIII, had been completed exclusively under its own legislation;

- (b) on the basis of this theoretical amount, the institution of Luxembourg shall then determine the actual amount of the pension prorated according to the length of the periods of insurance completed under the legislation being applied in relation to the length of the periods completed under the legislation of both Parties, when totalized in conformity with paragraph 3 of Article VIII;
 - (c) to determine the theoretical amount referred to in paragraph (a) above, the institution of Luxembourg shall credit for the periods completed under the legislation of the other Party:
 - (i) with respect to calculating proportional increases and special proportional increases, the average of the contributory salaries, wages and earnings recorded for the periods of insurance completed under the legislation being applied and,
 - (ii) with respect to calculating fixed increases and special fixed increases, a fixed amount equal to that which would be payable if these periods had been completed under the legislation being applied by the institution.
3. If a person is entitled to a pension under the legislation of Luxembourg solely through the provisions of Article IX, the periods of insurance completed under the legislation of a third State shall be taken into account when applying paragraph 2 above.

PART IV ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article XIII

1. The competent authorities shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention and about changes in their respective legislation insofar as these changes affect the application of this Convention.
2. The institutions responsible for the application of this Convention:
 - (a) shall, to the extent permitted by the legislation which they administer communicate to each other any information necessary for the application of this Convention;

- (b) shall lend their good offices and furnish assistance to one another with regard to the determination of entitlement to any benefit under this Convention or the legislation to which this Convention applies as if the matter involved the application of their own legislation.
3. The assistance referred to in paragraph 2(b) of this Article shall be provided free of charge, subject to any agreement reached between the competent authorities of the two Parties for the reimbursement of certain types of expenses.
 4. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Convention to one Party by the other Party 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 XIV

1. An administrative arrangement, agreed to by the competent authorities of the two Parties, shall set out, as required, the conditions under which this Convention shall be implemented.
2. The liaison agencies of the Parties shall be designated in that arrangement.

Article XV

1. Any exemption from or reduction of taxes, legal dues, registration charges or administrative fees for which provision is made in the legislation of one Party in connection with the issuing of any certificate or document required to be produced for the application of that legislation shall be extended to certificates or documents required to be produced for the application of that legislation shall be extended to certificates or documents required to be produced for the application of the legislation of the other Party.
2. Any acts or documents of an official nature required to be produced for the application of this Convention shall be exempt from any authentication by diplomatic or consular authorities and similar formality.

Article XVI

For the application of this Convention, the competent authorities and institutions of the two Parties may communicate directly with one another in any of the official languages of either Party.

Article XVII

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority or institution or to a tribunal of that Party, but which is presented within the same period to a competent authority or institution or to a tribunal of the other Party, shall be deemed to have been presented to the authority, institution or tribunal of the first Party.
2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
 - (a) requests that it be considered as an application under the legislation of the other Party, or
 - (b) provides information at the time of application indicating that periods of insurance have been completed under the legislation of the other Party.

Notwithstanding the preceding provisions, the applicant may request that the claim for the benefit under the legislation of the other Party be deferred.

3. In any case to which the provisions of the preceding paragraphs of this Article apply, the authority, institution tribunal which receives the claim, notice or appeal shall transmit it without delay to the authority, institution or tribunal of the other Party.

Article XVIII

1. The benefit paying institutions or authorities shall discharge their obligations under this Convention in their national currency.

2. Benefits shall be paid to beneficiaries free from any deduction for administrative expenses.

Article XIX

The competent authorities of the two Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Convention according to its spirit and fundamental principles.

Article XX

The Government of the Grand Duchy of Luxembourg and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada insofar as those understandings are not inconsistent with the provisions of this Convention.

PART V TRANSITIONAL AND FINAL PROVISIONS

Article XXI

1. Any period of insurance completed before the date of entry into force of this Convention shall be taken into account for the purpose of determining entitlement to a benefit under this Convention.
2. No provision of this Convention shall confer any right to receive payment of a benefit for a period before the date of entry into force of the Convention.
3. Subject to the other provisions of this Article, a benefit, other than a lump sum payment, shall be paid under this Convention in respect of events which happened before the date of entry into force of the Convention.
4. The periods of insurance completed under the legislation of Luxembourg before January 1, 1988 by persons who did not during those same periods reside in Luxembourg, shall be considered as periods of residence for entitlement to transitional fixed increases.

Article XXII

1. Subject to the provisions of Articles X and XXI of this Convention, any benefit that was not paid or that was suspended by reason of the nationality of a person or by reason of a person's residence in the territory of a Party other than that in which the institution responsible for payment is located shall on application by that person, be paid or reinstated with effect from the entry into force of this Convention. For purposes of paragraph 2 of Article V, this provision shall apply by analogy.
2. In an instance where a person became entitled to payment of a pension or annuity prior to the entry into force of this Convention, the amount of his or her entitlement shall be recalculated, on application by that person, in accordance with the provisions of this Convention. In no case shall such a recalculation result in a reduction of the prior entitlement.
3. If the application referred to in paragraph 1 or paragraph 2 of this Article is made within two years of the date of the entry into force of this Convention, any entitlement arising from this Convention shall be effective from that date, and the provisions of the legislation of either Party concerning the forfeiture or the prescription of rights shall not be applicable to the person concerned.
4. If the application referred to in paragraph 1 or paragraph 2 of this Article is made after the expiration of the two-year period following the entry into force of this Convention, the rights which are not subject to forfeiture or which are not prescribed shall be acquired from the date of application, unless more favourable provisions are applicable under the legislation of the Party in question.

Article XXIII

1. This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.
2. This Convention shall remain in force without any limitation on its duration. It may be denounced at any time by either Party giving twelve months' notice in writing to the other Party.
3. In the event of the termination of this Convention, any right acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

PROTOCOL TO THE CONVENTION ON SOCIAL SECURITY BETWEEN CANADA AND LUXEMBOURG

At the time of signing the Convention on Social Security between Canada and Luxembourg, the plenipotentiaries of both Parties agreed upon the following points which form an integral part of the Convention:

Paragraph I

Unless specifically provided in an understanding between the Government of the Grand Duchy of Luxembourg and a province of Canada entered into pursuant to Article XX of the Convention, an employed person described in paragraph 3 of Article VI of the Convention who is detached from Luxembourg with respect to sickness and maternity insurance, industrial injuries, and occupational diseases insurance, family allowances and unemployment benefits.

Paragraph II

1. The provisions of the legislation of Luxembourg which provide for the reduction, suspension or cancellation of a pension when it coincides with other social security benefits or with professional income or the exercise of a professional activity shall be applied to a beneficiary even if the benefit is acquired under the legislation of Canada or the professional income is earned or the professional activity is performed in the territory of Canada.
2. For the purposes of applying the preceding paragraph, benefits provided for under the legislation of Canada that are subject to an income test shall not be taken into account.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

DONE in duplicate at Ottawa, this 22nd day of May 1986, in the English and French languages, each version being equally authentic.

For The Government Of Canada

JAKE EPP

For The Government Of The Grand Duchy Of Luxembourg

BENNY BERG

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Ottawa, this 6th day of February 1992, in the English and French languages, each version being equally authentic

For The Government Of Canada

BENOÎT BOUCHARD

For The Government Of The Grand Duchy Of Luxembourg

ALFONSE BERNS