

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

The Convention on Social Security between Canada and Spain was signed on 10 November 1986. It entered into force on 1 January 1988.

The Convention was amended by a protocol which entered into force on 1 May 1997.

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

The Government of Canada and the Government of Spain,

Resolved to co-operate in the field of social security,

Have decided to conclude a convention for this purpose, and

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1

1. For the purposes of this Convention,
 - (a) "Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada, and acting through the Minister of National Health and Welfare;
 - (b) "territory" means, as regards Canada, the territory of Canada; and, as regards Spain, the territory of Spain;
 - (c) "legislation" means the laws, regulations and other provisions specified in Article 2, in force in the territory of either Party;
 - (d) "competent authority" means, for either Party, the Minister, Ministers or Ministry responsible for the administration of the aforementioned legislation;
 - (e) "institution" means, as regards Canada, the competent authority; and, as regards Spain, the institutions charged with the management of the General Scheme and of the Special Schemes specified in Article 2 1(b);
 - (f) "competent institution" means the institution competent under the applicable legislation for the case in question;
 - (g) "insured period" means, as regards Canada, a period of contributions or residence used to acquire the right to a benefit under the legislation of Canada, and includes a period during which a disability pension is payable under the *Canada Pension Plan*; and, as regards Spain, a contribution period defined or recognized as an insured period, in accordance with the legislation by which the individual was covered, and any other period as far as it may be considered under the said legislation as equivalent to an insured period;
 - (h) "benefit" means any cash benefit, pension or allowance for which provision is made in the legislation of either Party and includes any supplements or increases applicable to such a cash benefit, pension or allowance.
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 to the legislation listed hereunder, their present and future complements, consolidations and amendments:
 - (a) with respect to Canada:
 - (i) the *Old Age Security Act* and the regulations made thereunder; and
 - (ii) the *Canada Pension Plan* and the regulations made thereunder;
 - (b) with respect to Spain:
 - (i) the provisions of the General Scheme of Social Security relating to:
 - permanent disability, other than disability resulting from a work accident or a professional disease;
 - old age;
 - death and survivors of the deceased person, other than death resulting from a work accident or a professional disease;
 - for the purpose of Article 14 only, family benefits;
 - (ii) the provisions of the Special Schemes included in the social security system, with respect to the contingencies specified in sub-paragraph (b)(i).
2. This Convention shall apply to laws or regulations which extend the existing schemes to other categories of beneficiaries only if no objection has been communicated by the competent authority of one Party to the competent authority of the other Party within three months of notification of such laws or regulations.

Article 3

This Convention shall apply to persons who are or who have been subject to the legislation specified in Article 2, and to their dependants and survivors within the meaning of the applicable legislation of either Party.

Article 4

Subject to this Convention, a person specified in Article 3, regardless of nationality, shall be subject to the obligations of the legislation of a Party and shall be eligible for the benefits of that legislation under the same conditions as the citizens of that Party.

Article 5

1. Unless otherwise provided in this Convention, benefits acquired by a person described in Article 3, whether through totalizing under the provisions of this Convention or exclusively 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 paid in the territory of the other Party.
2. Benefits payable under this Convention to a person who is or who has been subject to the legislation of both Parties, or to the dependents or survivors of such a person, shall be paid in the territory of a third State.

PART II PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6

1. Subject to the following provisions of this Article,
 - (a) an employed person who works in the territory of one Party shall, in respect of that work, be subject only to the legislation of that Party, and
 - (b) a self-employed person who ordinarily resides in the territory of one Party and who works for his own account in the territory of the other Party or in the territories of both Parties shall, in respect of that work, be subject only to the legislation of the former Party.

2. An employed person who is covered under the legislation of one Party 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. This coverage may not be maintained for more than sixty months without the prior consent of the competent authorities of both Parties.
3. 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. A person who ordinarily resides in the territory of the first Party but who is a citizen of the second Party may, however, elect to be subject to the legislation of the second Party and, in that case, shall not be subject to the legislation of the first Party in respect of such employment. Article 4 shall not apply to extend this right to elect to a person who is not a citizen of the second Party.
4. A person employed as a member of the crew of a ship who, but for this Convention, would be subject to the legislation of Spain as well as to the *Canada Pension Plan* in respect of that work shall, in respect thereof, be subject only to the *Canada Pension Plan* if that person resides and is hired in Canada, and only to the legislation of Spain if that person resides and is hired in Spain. When the circumstances of the previous sentence do not apply, the person shall be subject only to the legislation of Spain if the ship flies the flag of Spain.
5. In exceptional cases, 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.
6. Transitional rules for the application of this Article shall be provided in the Administrative Arrangement referred to in Article 17.

Article 7

For the application of the *Old Age Security Act* of Canada and, in particular, for the purpose of calculating benefits under that Act:

- (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 Spain, that period 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 Spain by reason of employment;

- (b) if a person is subject to the legislation of Spain by reason of employment during any period of residence in the territory of Canada, that period 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.

Article 8

Insured periods completed under the *Canada Pension Plan* shall be taken into account, if necessary, for the application of the provisions of the legislation of Spain regarding voluntary insurance.

PART III PROVISIONS CONCERNING BENEFITS

CHAPTER 1 TOTALIZING OF PERIODS

Article 9

1. If a person is not entitled to a benefit on the basis of the insured periods completed under the legislation of one Party, eligibility for that benefit shall be determined by totalizing these periods and those stipulated in paragraphs 2 and 3 of this Article, provided that the periods do not overlap.
2.
 - (a) For purposes of determining eligibility for a benefit under the *Old Age Security Act* of Canada, a period of residence in the territory of Spain, 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 ninety days which are insured under the legislation of Spain shall be considered as a year for which contributions have been made under the *Canada Pension Plan*.

3. For purposes of determining eligibility for a benefit under the legislation of Spain,
 - (a) a period ending on or before December 31, 1965 which is an insured period under the *Old Age Security Act* of Canada shall be considered as a period of contributions under the legislation of Spain;
 - (b) a calendar year commencing on or after January 1, 1966 which is an insured period under the *Canada Pension Plan* shall be considered as one year of contributions under the legislation of Spain;
 - (c) a period commencing on or after January 1, 1966 which is an insured period under the *Old Age Security Act* of Canada and which is not part of an insured period under the *Canada Pension Plan* shall be considered as a period of contributions under the legislation of Spain.

Article 10

1. If the total duration of the insured periods completed under the legislation of one Party is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the competent institution of that Party shall not be required to award benefits in respect of those periods by virtue of this Convention.
2. These periods shall, however, be taken into consideration by the competent institution of the other Party to determine eligibility for the benefits of that Party through the application of Article 9.

CHAPTER 2 APPLICATION OF THE LEGISLATION OF CANADA

Article 11

1. (a) If a person is entitled to payment of a pension in Canada under the *Old Age Security Act* without recourse to the provisions of this Convention, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside the territory of Canada if the periods of residence in the territories of the two Parties, when totalized as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension abroad.

- (b) The amount of the pension payable shall, in this case, be calculated in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.
- 2.
 - (a) If a person is not entitled to an Old Age Security pension or a spouse's allowance solely on the basis of periods of residence in Canada, a partial pension or a spouse's allowance shall be paid to that person if the periods of residence in the territories of the two Parties, when totalized as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension or a spouse's allowance.
 - (b) The amount of the pension or the spouse's allowance payable shall, in this case, be calculated 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 creditable under that Act.
- 3.
 - (a) Notwithstanding any other provision of this Convention, the competent institution of Canada shall not be liable to pay an Old Age Security pension outside the territory of Canada unless the periods of residence in the territories of the two Parties, when totalized as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension abroad.
 - (b) The spouse's allowance and the guaranteed income supplement shall be paid outside the territory of Canada only to the extent permitted by the *Old Age Security Act*.

Article 12

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 calculate the amount of benefit payable to that person 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 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

APPLICATION OF THE LEGISLATION OF SPAIN

Article 13

1. If a person does not satisfy the conditions for entitlement to a benefit under the legislation of Spain without recourse to the principle of totalization of periods, as provided for in Article 9, the competent institution of Spain shall proceed as follows:
 - (a) it shall calculate the theoretical amount of the benefit to which the beneficiary would be entitled if all the insured periods completed under the legislation of the two Parties had been completed under the legislation applied by the aforesaid competent institution; in no case may the sum of the insured periods under the legislation of Canada, when added to those under the legislation of Spain, exceed the maximum period established by the legislation of Spain with respect to the benefit in question;
 - (b) the amount of the benefit due to the person in question by the Spanish institution shall be determined by reducing the amount obtained, using the method outlined in the preceding sub-paragraph, in proportion to the length of the periods actually completed under the legislation of Spain over the total of the periods completed under the legislation of the two Parties, within the limits of the maximum period referred to in sub-paragraph (a);

- (c) for purposes of determining the computation base of the benefit (la base reguladora para el cálculo de la prestación) under the provisions of this Article, when all or part of the contribution period which must be taken into account by the Spanish competent institution corresponds to insured periods completed under the legislation of Canada, that competent institution shall take into account the person's actual contribution bases paid by that person in Spain during the years immediately preceding the date on which the last contribution was due under the Spanish social security system, and the amount of the benefit thus obtained shall be adjusted to take account of the increases and reassessments prescribed for the same category of benefits for each subsequent year until the occurrence of the contingency which gives rise to the benefit.
2. If the legislation of Spain makes award of a benefit conditional on the fact that the person concerned must be subject to that legislation at the time of the occurrence of the contingency which gives rise to the benefit, this condition shall be deemed to be met if, at that time, that person is insured under the legislation of Canada or, if that is not the case, is in receipt of a benefit of the same kind under the legislation of Canada or a benefit of a different kind but one paid on account of the beneficiary him/herself. This same principle shall apply for the awarding of survivors' pensions where, if required, account is taken of the fact that the person in respect of whom a benefit is being claimed was validly insured (situación de alta) or in receipt of a benefit under the legislation of Canada.

Article 14

Where the family members of an employed person who is subject to the legislation of Spain are residing in the territory of Canada, they shall be deemed, for the payment of family benefits, to be residing in Spain.

Article 15

1. Where, under the legislation of Spain, the granting of certain benefits on special conditions is made contingent on the insured periods having been completed in a profession covered by a special scheme, or, where applicable, in a specified profession or occupation, the periods completed under the legislation of Canada shall be taken into account for the granting of these benefits only if they were completed in the same profession or, where applicable, in the same occupation.

2. If, considering the periods thus completed, the person in question does not fulfill the requirements for entitlement to these benefits on special conditions, these periods shall be taken into account for the granting of ordinary benefits, regardless of the specific nature of such periods.

PART IV MISCELLANEOUS PROVISIONS

Article 16

1. The competent authorities and institutions responsible for the application of this Convention:
 - (a) shall 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 any matter relating to the application of this Convention as if the matter were affecting the application of their own legislation;
 - (c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention or about changes in their respective legislation insofar as these changes affect the application of this Convention.
2. The assistance referred to in sub-paragraph 1(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.
3. 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 17

1. A general 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 agencies responsible for liaison between the Parties shall be designated in that arrangement.

Article 18

1. Any exemption from or reduction of charges 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 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 or similar formality.

Article 19

For the application of this Convention, the competent authorities and institutions of the two Parties may communicate directly with one another in Spanish, English or French.

Article 20

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 of that Party, but which is presented within the same period to a competent authority or institution of the other Party, shall be treated as if it had been presented to the authority or institution 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 an application under the legislation of the other Party, or
 - (b) provides information at the time of application indicating that insured periods have been completed under the legislation of the other Party.

3. In any case to which the preceding paragraphs of this Article apply, the authority or institution to which the claim, notice or appeal has been submitted shall transmit it as soon as possible to the authority or institution of the other Party.

Article 21

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 deductions for administrative or any other expenses that may be incurred in paying the benefits.

Article 22

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 23

The competent authority of Spain 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 24

1. Except where otherwise provided in this Convention, any insured period completed before the date of entry into force of this Convention shall be taken into account for the purpose of determining the right 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 this Convention.
3. However, subject to the provisions of paragraph 2 of this Article, a benefit, other than a lump sum payment, shall be payable under this Convention in respect of events which happened before the date of entry into force of the Convention.

Article 25

1. This Convention shall enter into force, after the conclusion of the general administrative arrangement referred to in Article 17, on the first day of the second month following the month in which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Convention.
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.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed This Convention.

DONE in two copies at Madrid, this 10th day of November, 1986, in the English, French and Spanish languages, each text being equally authentic.

For the Government of Canada

Jake Epp

For the Government of Spain

Manuel Chaves

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

DONE in two copies at Ottawa, this 19th day of October, 1995, in the English, French and Spanish languages, each text being equally authentic.

For Canada

Lloyd Axworthy

For Spain

José Luis Pardos