

No. 24855

**CANADA
and
ITALY**

Agreement of social security. Signed at Toronto on 17 November 1977

*Authentic texts: English, French and Italian.
Registered by Canada on 16 July 1987.*

**CANADA
et
ITALIE**

Accord de sécurité sociale. Signé à Toronto le 17 novembre 1977

*Textes authentiques : anglais, français, et italien.
Enregistré par le Canada le 16 juillet 1987.*

AGREEMENT¹ OF SOCIAL SECURITY BETWEEN CANADA AND ITALY

The Government of Canada and the Government of Italy have agreed as follows:

PART I. DEFINITIONS AND SCOPE

Article I. For the purposes of this Agreement, unless the context otherwise requires:

(a) "Children's benefit" means, in relation to Canada, an orphan's benefit or a disabled contributor's child's benefit payable under the Canada Pension Plan;

(b) "Competent authority" means the Minister or Ministers responsible for the implementation of the social security schemes in all or part of the territory of each Party;

(c) "Credited period" means a period of contributions or residence used to acquire a right to a benefit under the legislation of either Party. It also means, in relation to Italy, a period deemed to be a period of contribution by the legislation of Italy, and in relation to Canada, a period (equivalent period) during which a disability pension is payable under the Canada Pension Plan;

(d) "Death benefit" means, in relation to Canada, a death benefit payable under the Canada Pension Plan;

(e) "Worker" means, in relation to Italy, a person treated as a worker by Italian legislation, and in relation to Canada, a person who is employed in pensionable employment under the Canada Pension Plan;

(f) "Government employment" includes, in relation to Italy, employment of a person by an agency on the basis of a public law relationship and, in relation to Canada, means employment as a member of the Royal Canadian Mounted Police or the Armed Forces of Canada, employment of any person by the Government of Canada or the government or a municipal corporation of any province and includes any employment as may be so designated, from time to time, by the competent authorities of either Party;

(g) "Invalidity benefit" means, in relation to Italy, an invalidity pension or a privileged invalidity pension (*pensione privilegiata*) payable under the Italian legislation and, in relation to Canada, a disability pension payable under the Canada Pension Plan;

(h) "Legislation" means the legislation specified or described in Article II and any amendments thereto, and shall include:

- (i) Legislative enactments or regulations covering new social risks or liabilities but only if the Parties make an arrangement to that effect; and
- (ii) Legislative enactments or regulations extending the existing schemes to new categories of beneficiaries but only if the Government of the Party concerned

¹ Came into force on 19 January 1979 by the exchange of the instruments of ratification, in accordance with article XXV (2), with effect from 1 January 1979.

does not object to the Government of the other Party within three months from the date of the official publication of the said enactments or regulations;

(i) "Month" means a calendar month;

(j) "Old age benefit" means, in relation to Italy, an old age pension, a seniority pension or an anticipated pension payable under the legislation of Italy and, in relation to Canada, an old age pension under the Old Age Security Act (excluding any income tested supplement, spouse's allowance and the retirement pension under the Canada Pension Plan);

(k) "Pension", "allowance" or "benefit" includes any increase in any pension, allowance or benefit;

(l) "Spouse's allowance" means the benefit comprising the pension equivalent and the supplement equivalent payable to the spouse of a pensioner under the Old Age Security Act;

(m) "Survivor's benefit" means, in relation to Italy, a pension payable under Italian legislation to the categories of family members of an insured person or of a deceased pensioner, recognized, according to that legislation, as survivors of the insured person or deceased pensioner and, in relation to Canada, a survivor's pension payable to the surviving spouse under the Canada Pension Plan;

(n) "Territory" means, in relation to Italy, the territory of the Italian Republic and, in relation to Canada, the territory of Canada;

(o) "Tuberculosis benefit" means the benefits in respect of tuberculosis comprising cash payments and benefits in kind payable under the legislation of Italy;

(p) "Year" means a calendar year;

(q) Other words and expressions have the meanings respectively assigned to them in the legislation which is being applied.

Article II. The provisions of this Agreement shall apply:

(a) In relation to Italy:

- (i) To legislation concerning general compulsory insurance for invalidity, old age and survivors for workers, and related special schemes;
- (ii) To legislation relating to special schemes for certain categories of workers to the extent that the legislation relates to the risks covered by the legislation referred to in sub-paragraph (i);
- (iii) To legislation concerning compulsory insurance with respect to tuberculosis; and
- (iv) For the purposes of Article XXIV only, to legislation concerning workmen's compensation;

(b) In relation to Canada:

- (i) To the Old Age Security Act; and
- (ii) To the Canada Pension Plan.

Article III. (1) This Agreement applies to persons who are, or who have been, subject to the legislation referred to in Article II, and to their dependants and survivors, as specified by the legislation of either Party.

(2) Subject to this Agreement, a person to whom the legislation of either Party applies by virtue of this Agreement shall have extended to him the rights and obligations of that legislation under the same conditions as if he were subject to that legislation without recourse to this Agreement.

PART II. PROVISIONS DETERMINING THE LEGISLATION APPLICABLE

Article IV. (1) Except in the circumstances described in Articles V, VI, VII and VIII, a worker shall be subject only to the legislation of the Party in the territory of which he is employed.

2. Except in the circumstances described in Articles V, VI, VII and VIII, where a worker is employed in the territories of both Parties at the same time he shall be subject only to the legislation of the Party in whose territory he resides. For the purposes of this paragraph, a worker shall be deemed to reside in the territory in which he has a permanent home available to him, and if he has a permanent home available to him in both territories, he shall be deemed to reside in the territory in which he has his centre of vital interests.

Article V. (1) Where, subsequent to the entry into force of this Agreement, a worker other than a worker referred to in Article VI, who is employed by an employer having his place of business in the territory of one Party, is sent by that employer to work in the territory of the other Party the legislation of the first Party shall continue to apply to him in respect of such employment for a period of up to 24 months.

(2) (a) Where, prior to the entry into force of this Agreement, a worker other than a worker referred to in Article VI, who is subject to the legislation of one Party and who is employed by an employer having his place of business in the territory of that Party has been sent by that employer to work in the territory of the other Party, he shall after the entry into force of this Agreement be entitled to choose within three months of such entry into force that the legislation of one Party or the other shall apply to him in respect of such employment; and if he chooses to be covered under the legislation of the first Party, then the legislation of that Party shall apply to him for a period of up to 24 months; and if he chooses to be covered under the legislation of the second Party, then the legislation of that Party shall apply to him; and in either case his choice shall take effect from the day on which he gives notice to the appropriate competent authority.

(b) If he does not make a choice pursuant to sub-paragraph (a), the legislation applying to him at the date of entry into force of this Agreement shall continue to apply to him. If by virtue of this rule the legislation of the first Party referred to in sub-paragraph (a) applies, it shall apply to him for a period of up to 24 months from the date of entry into force of this Agreement.

Article VI. (1) Where a person employed in Government employment in respect of Italy is sent in the course of this employment to the territory of Canada, the legislation of Canada shall not apply to him.

(2) Where a person who is subject to the legislation of Canada and employed in Government employment in respect of Canada, is sent in the course of his employment to the territory of Italy, the legislation of Italy shall not apply to him and the legislation of Canada shall apply to him as if he were employed in its territory.

(3) The provisions of Article V (2) with respect to the choice of legislation shall apply to a national of either Party who is locally engaged, prior to the entry into force of this Agreement, in Government employment in respect of that Party in the territory of the other Party.

(4) (a) Where, subsequent to the entry into force of this Agreement a citizen of either Party is locally engaged in Government employment in respect of that Party in the territory of the other Party, he shall be entitled to choose within three months of the commencement of that employment that the legislation of one Party or the other shall apply to him in respect of the employment. If he chooses to be covered under the legislation of the Party of which he is a national, that legislation shall apply to him for up to 24 months and if he chooses to be covered under the legislation of the Party in whose territory he is engaged, that legislation shall apply to him, and in either case his choice shall take effect from the day on which he gives notice to the appropriate competent authority.

(b) If a person, entitled to make a choice by virtue of sub-paragraph (a), fails to do so, the legislation of the Party in whose territory he is employed shall apply to him.

Article VII. (1) Subject to the provisions of paragraph (2), where a citizen of one Party is employed on board any ship of the other Party, the legislation of the latter Party shall apply to him as if any condition concerning citizenship, residence or domicile were satisfied in his case.

(2) A member of the crew of a ship of either Party who

- (i) Is paid remuneration by an employer having an effective place of management in the territory of the other Party; and
 - (ii) Resides in the territory of the other Party,
- shall be subject to the legislation of the other Party.

(3) For the purposes of this Article, a ship of one Party means, in relation to Canada, a ship or vessel whose crew is employed by an employer who has an effective place of management in Canada and, in relation to Italy, a ship or vessel flying the Italian flag.

Article VIII. Subject to Article IX (3), a crew member employed by an international air carrier operating in both countries shall be subject to the legislation of the Party where the air carrier has its place of business, unless the crew member resides in the territory of the other Party, in which case he shall be subject to the legislation of that Party.

Article IX. (1) Subject to paragraph (2), where, under the terms of this Part, a person other than a person referred to in Articles VII and VIII is subject to the legislation of Canada during any period of residence in the territory of Italy, that period of residence shall, in respect of that person, his spouse and dependants who accompany and reside with him, be treated as a period of residence in Canada for the purposes of a claim to old age benefit under the legislation of Canada.

(2) Periods during which a spouse or a dependant person referred to in paragraph (1) is subject, by reason of employment, to the legislation of Italy, shall not be treated as periods of residence in Canada for the purposes of any claim to old age benefit under the legislation of Canada.

(3) Subject to paragraph (4) where, under the terms of this Part, a person other than a person referred to in Articles VII and VIII is subject to the legislation

of Italy during any period of residence in the territory of Canada, that period in respect of that person, his spouse and dependants who accompany and reside with him shall not be treated as [a period of] residence in Canada for the purposes of any claim to the old age benefit under the legislation of Canada.

(4) Periods during which a spouse or a dependant person referred to in paragraph (3) is contributing to the Canada Pension Plan shall be treated as periods of residence in Canada for the purposes of any claim to old age benefit under the legislation of Canada.

Article X. Notwithstanding Articles V, VI, VII and VIII, the competent authorities may make such arrangements as they may deem necessary in the interests of particular persons or categories of persons, according to the spirit and fundamental principles of this Agreement.

PART III. PROVISIONS CONCERNING BENEFITS

Old age benefit

Article XI. (1) If a person is entitled to old age benefit under the legislation of either Party without recourse to the following provisions of this Article, the benefit payable under the legislation of Italy shall be payable in the territory of Canada; and the benefit payable under the legislation of Canada shall be payable in the territory of Italy provided that either the number of years of residence in Canada under legislation of Canada total to at least twenty, or the periods of residence in the territories of both Parties aggregated pursuant to the rules referred to in paragraph (4) of this Article when expressed as years in Canada total to at least twenty.

(2) The legislation of Canada applicable to the remaining provisions of this Article shall, notwithstanding any other provision in this Agreement, be the Old Age Security Act excepting subsection 3 (1) of that Act.

(3) If a person is not entitled to old age benefit on the basis of the periods credited under the legislation of either Party, entitlement to old age benefit shall be determined by totalizing the credited periods in accordance with the provisions of the succeeding paragraphs of this Article.

(4) (a) For purposes of determining the amount of old age benefit payable by Canada under paragraph (5) of this Article, residence in the territory of Italy shall be treated as residence in the territory of Canada.

(b) For purposes of determining the amount of old age benefit payable by Italy under paragraph (5) of this Article,

- (i) A week ending on or before December 31, 1965, which would be recognized as a week of residence under the Old Age Security Act, shall be treated as a week of contributions under the legislation of Italy;
- (ii) A year commencing on or after January 1, 1966, in which a contribution has been made to the Canada Pension Plan, shall be accepted as 52 weeks of contribution under the legislation of Italy and in a year in which an equivalent period is credited under the Canada Pension Plan and no contribution to that program is made, a week in that equivalent period shall be accepted as a week of contributions under the legislation of Italy;
- (iii) A week commencing on or after January 1, 1966, which would be a week of residence for the purposes of the Old Age Security Act and in relation to

which no contribution has been made under the Canada Pension Plan, shall be accepted as a week of contributions under the legislation of Italy.

(5) (a) Each Party shall determine, in accordance with the criteria set forth in the preceding paragraph, the theoretical amount of the old age benefit to which the person concerned would be entitled if all the periods credited on the basis of the legislation of both the Parties had been credited strictly in accordance with the legislation of the said Party. In order to establish said theoretical amount, the Party whose legislation provides for the computation of the old age benefits based on the amount of earnings or contributions, determines the earnings or contributions to be taken into consideration for the periods credited according to the legislation of the other Party, based on the average earnings or contributions ascertained for the periods credited in accordance with the legislation applied.

(b) Each Party shall pay an amount determined by multiplying the theoretical amount referred to in sub-paragraph (a) by the fraction that the periods credited under the legislation of that Party is, either of the total periods credited under the legislation of both Parties, or of such period as may be provided for by administrative arrangements.

(c) The administrative arrangements referred to in Article XIX (3) shall include appropriate detailed formulae for the administration of sub-paragraphs (a) and (b).

(d) Notwithstanding sub-paragraph (b), where the total of credited periods under sub-paragraph (a) is not equal to at least ten years, Canada will not be liable to pay any old age benefit under this Article, and where the total is not equal to at least twenty years, Canada will not be liable to pay any old age benefit under this Article in the territory of Italy.

(6) If the number of credited periods of a person under the legislation of one Party amounts in aggregate to less than 53 weeks, no benefit shall be paid by that Party by virtue of paragraphs (4) and (5), but those credited periods shall be accepted by the other Party for the purpose of applying the legislation of that Party.

Spouse's allowance

Article XII. (1) The legislation of Canada applicable in respect of the spouse's allowance under this Article shall, notwithstanding any other provision in this Agreement, be the Old Age Security Act excepting subsection 17.1(1) of that Act.

(2) If a person is not entitled to the spouse's allowance because he has not satisfied the residence requirements under the legislation of Canada, then, provided that he has resided in the territories of the Parties in aggregate for at least ten years, Canada will pay an amount of spouse's allowance calculated in accordance with the legislation of Canada, and based on the relationship between the number of years of residence in Canada and the total of credited periods of residence in the territories of both Parties.

Survivor's benefit, disability benefit, children's benefit and death benefit

Article XIII. (1) The provisions of this Article shall apply to survivor's benefit, disability benefit, children's benefit and death benefit to the extent that the nature of the benefit may require.

(2) If a person is entitled to a benefit on the basis of the periods credited under the legislation of either Party without recourse to the provisions of the succeeding paragraphs of this Article, the benefit shall be payable in the territory of either Party.

(3) If a person is not entitled to a benefit on the basis of the periods credited under the legislation of either Party, entitlement to the benefit shall be determined by totalizing the credited periods in accordance with the provisions of the succeeding paragraphs of this Article. For the purposes of the survivor's benefit, children's benefit and the death benefit only, any reference in this Article to a credited period shall be construed as applying to the person by virtue of whose contributions a benefit is being claimed.

(4) (a) For the purposes of determining the amount of a benefit payable by Canada under paragraph (5) of this Article, a year for which contributions were made under the legislation of Italy in at least 13 weeks shall be accepted as a year for which contributions have been made under the Canada Pension Plan, subject to provisions regarding minimum contributory periods under the Canada Pension Plan as may be contained in administrative arrangements.

(b) The provisions of Article XI (4) (b) (i), (ii) and (iii) shall apply for the purpose of determining the amount of benefit payable by Italy under paragraph (5).

(5) The provisions of Article XI (5) (a), (b) and (c) shall apply to this Article.

(6) Benefits payable by either Party by virtue of this Article shall be paid notwithstanding that the person entitled resides in the territory of the other Party.

(7) (a) If a person has made contributions in respect of a period less than 53 weeks under the legislation of Italy and the person has made contributions under the legislation of Canada in respect of at least 2 years, the period shall be accepted by Canada for the purposes of this Article, and paragraph (3) shall not apply to the legislation of Italy.

(b) If a person has made contributions in respect of only one year under the legislation of Canada and the person has been credited with at least 52 weeks under the legislation of Italy, the year shall be accepted by Italy for the purposes of this Article, and paragraph (3) shall not apply to the legislation of Canada.

Voluntary contributions

Article XIV. For the purposes of determining eligibility to make voluntary contributions to the general compulsory insurance for disability, old age and survivor's benefits referred to in Article II (a), Italy, where necessary, shall take into account periods credited under the Canada Pension Plan in the manner set out in Article XI (4) (b) (ii).

Tuberculosis benefit

Article XV. When a person has not, on the sole basis of periods of contributions credited under the legislation of Italy, met the requirements stipulated in that legislation for the granting of tuberculosis benefits, periods of contributions credited under the Canada Pension Plan shall also be taken into consideration, up to the amount needed to establish the entitlement. Tuberculosis benefits shall be granted only during the person's residence in the territory of Italy.

*Increases or family allowances with respect
to dependants of pensioners*

Article XVI. Where, pursuant to the legislation of Italy, a person is entitled to receive an old age, disability or survivor's benefit while in the territory of either Party, he will be entitled to receive an increase of the benefit or a family allowance with respect to a dependant if the dependant is resident in the territory of either Party and as specified in administrative arrangements.

PART IV. MISCELLANEOUS PROVISIONS

Article XVII. Any old age, survivor's or disability benefit, including any benefit payable to a dependant, payable by one Party in the territory of the other by virtue of this Agreement shall be payable outside the territory of either Party.

Article XVIII. Unless this Agreement otherwise provides, an invalidity benefit, an old age benefit, a survivor's benefit, a children's benefit or a death benefit acquired by virtue of the legislation of either Party shall not be subject to any reduction, modification, suspension, abolition or confiscation by reason only of the fact that the beneficiary resides in the territory of the other Party, and shall be payable in the territory of the other Party.

Article XIX. (1) The competent authorities and the institutions responsible for the application of this Agreement:

- (a) Shall communicate to each other any information necessary in respect of the application of this Agreement;
- (b) Shall furnish assistance free of charge to one another with regard to any matter relating to the application of this Agreement;
- (c) Shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of the provisions of this Agreement.

(2) Any information furnished by virtue of paragraph (1) shall be used for the purposes of applying the provisions in this Agreement to the administration or operation of the legislation and for no other purpose.

(3) The Governments of Canada and Italy shall make such administrative arrangements as may be required for the application of this Agreement, which arrangements may be amended or otherwise altered from time to time and which shall provide, *inter alia*, for the prevention of duplication by the Parties of periods credited to a person under this Agreement in calculating eligibility.

Article XX. Any exemption from, or reduction of, charges provided for in the legislation of one Party in connection with the issue of any certificate or document required to be produced for the purposes of that legislation, shall be extended to certificates and documents required to be produced for the purposes of the legislation of the other Party.

Article XXI. Any claim, notice or appeal which should, for the purposes of the legislation of one Party, have been presented within a prescribed period to a competent authority of that Party or an institution (of that Party) responsible for the application of this Agreement, but which is in fact presented within the same period to the corresponding authority or institution of the other Party, shall be treated as if it had been presented to the authority or institution of the former

Party. In such cases, the authority or institution of the latter Party shall, as soon as possible, arrange for the claim, notice or appeal to be sent to the authority or institution of the former Party.

Article XXII. The competent authorities of both Parties shall resolve, to the extent possible, any difficulties which arise in applying this Agreement, according to the spirit and fundamental principles of the Agreement.

Article XXIII. (1) In the event of a termination of this Agreement, 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.

(2) No provision of this Agreement shall confer any right to receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement.

(3) Except where otherwise provided in this Agreement, any credited period established before the date of entry into force of the Agreement shall be taken into account for the purpose of determining the right to benefit under this Agreement.

(4) Subject to provisions of paragraphs (1), (2) and (3) of this Article, a pension, allowance or benefit shall be payable under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

Article XXIV. (1) Unless otherwise provided in this Agreement any appropriate agency of a province of Canada and any appropriate competent authority of Italy may enter into arrangements or understandings of an administrative nature with a view to establishing measures of reciprocity relative to the implementation of this Agreement insofar as it affects the legislation defined in this Agreement or social security legislation within the jurisdiction of the province, including workmen's compensation legislation. Each arrangement or understanding shall:

- (i) Refer, in its preamble, to this Agreement;
- (ii) Set out procedures to be followed with respect to the sharing of costs arising out of the administration of the arrangement or understanding;
- (iii) Set out an appropriate procedure for its amendment; and
- (iv) Provide that it shall remain in force so long as this Agreement remains in force.

(2) An arrangement or understanding made pursuant to this Article shall not in any way alter, or be construed as altering, any provision of the Agreement.

Article XXV. (1) This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) This Agreement shall come into force, after ratification, on the conclusion of the administrative arrangements referred to in Article XIX (3). Where administrative arrangements relate to part only of this Agreement, that part only shall come into effect.

(3) This Agreement shall remain in force until terminated and may be terminated by either Party giving 12 months' notice in writing to the other.

[For the testimonium and signatures, see p. 305 of this volume.]

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

DONE in duplicate in English, French and Italian, the three texts being equally authoritative.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT en double exemplaire en langues française, anglaise et italienne, les trois textes faisant également foi.

DONE at Toronto this 17th day of November 1977.

FAIT à Toronto ce 17^e jour de novembre 1977.

PIERRE E. TRUDEAU

For the Government of Canada:
Pour le Gouvernement du Canada :

MONIQUE BÉGIN

GIULIO ANDREOTTI

For the Government of Italy:
Pour le Gouvernement d'Italie :

GIORGIO SMOQUINO
