

**AGREEMENT ON SOCIAL SECURITY  
BETWEEN  
CANADA  
AND  
THE REPUBLIC OF POLAND**

**CANADA**

**AND**

**THE REPUBLIC OF POLAND**

*hereinafter referred to as "the Parties",*

**RESOLVED** to co-operate in the field of social security,

**HAVE DECIDED** to conclude an agreement for this purpose, and

**HAVE AGREED AS FOLLOWS:**

**PART I  
GENERAL PROVISIONS**

**ARTICLE 1  
Definitions**

1. For the purposes of this Agreement:
  - (a) “legislation” means:
    - (i) as regards the Republic of Poland, the laws and other regulations specified in Article 2(1)(a), and
    - (ii) as regards Canada, the laws and regulations specified in Article 2(1)(b);
  - (b) “competent authority” means:
    - (i) as regards the Republic of Poland, the Minister competent for social security issues, and
    - (ii) as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada;
  - (c) “competent institution” means:
    - (i) as regards the Republic of Poland, the institution which is competent for the application of the legislation, and
    - (ii) as regards Canada, the competent authority;
  - (d) “creditable period” means:
    - (i) as regards the Republic of Poland, a period used to acquire the right to a benefit under the legislation of the Republic of Poland which includes periods of contribution, equivalent periods and periods of non-contribution, and
    - (ii) as regards Canada, a period of contribution used to acquire the right to a benefit under the *Canada Pension Plan*, a period during which a disability pension is payable under that Plan or a period of residence used to acquire the right to a benefit under the *Old Age Security Act*;

- (e) "benefit" means any cash benefit for which provision is made in the legislation of each Party and includes any supplements or increases applicable to such a cash benefit;
  - (f) "territory" means:
    - (i) as regards the Republic of Poland, the territory of the Republic of Poland, and
    - (ii) as regards Canada, the territory of Canada.
2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation of either Party.

## **ARTICLE 2**

### **Material Scope**

1. This Agreement shall apply to the legislation concerning:
- (a) with respect to the Republic of Poland, to the following benefits under social insurance and social insurance for farmers:
    - (i) old age, work disability and family pensions,
    - (ii) one-time indemnity payments and pensions awarded as a result of work accidents and occupational diseases, and
    - (iii) funeral grants;
  - (b) 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.
2. Subject to paragraph 3, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.
3. This Agreement shall further apply to laws and regulations which extend the legislation of a Party to new categories of beneficiaries or to new benefits unless an objection on the part of that Party has been communicated to the other Party not later than three months following the entry into force of such laws and regulations.

**ARTICLE 3**  
**Personal Scope**

This Agreement shall apply to any person who is or who has been subject to the legislation of one or both Parties, as well as to other persons who derive rights from such a person.

**ARTICLE 4**  
**Equality of Treatment**

Any person described in Article 3 shall be subject to the obligations of the legislation of the other Party and shall be eligible for the benefits of that legislation and under the same conditions as citizens of the latter Party.

**ARTICLE 5**  
**Export of Benefits**

1. Unless otherwise provided in this Agreement, benefits payable under the legislation of a Party to any person described in Article 3, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension or cancellation by reason only of the fact that the person resides in the territory of the other Party.
2. With respect to the Republic of Poland, paragraph 1 shall not apply to benefits granted under special procedure or under exceptional circumstances.
3. Benefits payable under this Agreement to a person who is or who has been subject to the legislation of both Parties, or to a person who derives rights from such a person, shall be paid when that person, or a person who derives rights from such a person, resides in the territory of a third State, under the same conditions as its own citizens residing in the territory of a third State.

**PART II  
PROVISIONS DETERMINING  
THE LEGISLATION APPLICABLE**

**ARTICLE 6  
General Rules**

Subject to Articles 7 to 9:

- (a) 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;
- (b) A self-employed person who resides in the territory of a Party and who works for his or her 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 first Party.

**ARTICLE 7  
Detachments**

An employed person who is subject to the legislation of a Party and who works in the territory of the other Party for the same or related employer shall, in respect of that work, be subject only to the legislation of the first Party as though that work was performed in its territory. This period of detachment may not be maintained for more than 60 months without the consent of the competent authorities of both Parties.

**ARTICLE 8  
Government Employment**

1. Notwithstanding any provision of this Agreement, the provisions regarding social security of the *Vienna Convention on Diplomatic Relations* of 18 April 1961 and the *Vienna Convention on Consular Relations* of 24 April 1963 shall continue to apply.
2. A person engaged in government employment for a Party who is posted to work in the territory of the other Party shall, in respect of that employment, be subject only to the legislation of the first Party.
3. Except as provided in paragraphs 1 and 2, a person who resides in the territory of a Party and who is engaged therein in government employment for the other Party shall, in respect of that employment, be subject only to the legislation of the first Party.

## **ARTICLE 9**

### **Exceptions**

The competent authorities of the Parties or institutions designated by these authorities may, by common agreement, modify the application of the provisions of Articles 6 to 8 with respect to any person or categories of persons.

## **ARTICLE 10**

### **Definition of Certain Periods of Residence with Respect to the Legislation of Canada**

1. For the purpose of calculating the amount of benefits under the *Old Age Security 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 presence or residence in the territory of the Republic of Poland, that period shall be considered as a period of residence in Canada for that person; it shall also be considered to be a period of residence in Canada for that person's spouse or common-law partner and dependants who reside with him or her and who are not subject to the legislation of the Republic of Poland by reason of employment or self-employment;
  - (b) if a person is subject to the legislation of the Republic of Poland during any period of presence or residence in the territory of Canada, that period shall not be considered as a period of residence in Canada for that person; it shall also not be considered as a period of residence in Canada for that person's spouse or common-law partner 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 or self-employment.
2. In the application of paragraph 1:
  - (a) a person shall be considered to be subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in the territory of the Republic of Poland only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment;

- (b) a person shall be considered to be subject to the legislation of the Republic of Poland during a period of presence or residence in the territory of Canada only if that person makes compulsory contributions pursuant to that legislation during that period by reason of employment or self-employment.

**PART III  
PROVISIONS CONCERNING BENEFITS**

**CHAPTER 1  
TOTALIZING**

**ARTICLE 11**

**Periods Under the Legislation of Canada and the Republic of Poland**

1. If a person is not eligible for a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Party, the eligibility of that person for that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap.
2. For the purpose of determining eligibility:
  - (a) for a benefit under the *Old Age Security Act* of Canada, a creditable period under the legislation of the Republic of Poland shall be considered as a period of residence in Canada;
  - (b) for a benefit under the *Canada Pension Plan*, a calendar year including at least 3 months which are creditable periods under the legislation of the Republic of Poland shall be considered as a year which is creditable under the *Canada Pension Plan*.
3. For the purpose of determining eligibility for an old age pension under the legislation of the Republic of Poland:
  - (a) a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 12 months which are creditable under the legislation of the Republic of Poland;
  - (b) a month which is a creditable period under the *Old Age Security Act* of Canada and which is not part of a creditable period under the *Canada Pension Plan* shall be considered as a month which is creditable under the legislation of the Republic of Poland.

4. For the purpose of determining eligibility for a benefit other than an old age pension under the legislation of the Republic of Poland, a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 12 months which are creditable under the legislation of the Republic of Poland.

**ARTICLE 12**  
**Periods Under the Legislation of a Third State**

If a person is not eligible for a benefit on the basis of the creditable periods under the legislation of the Parties, totalized as provided in Article 11, the eligibility of that person for that benefit shall be determined by totalizing these periods and creditable periods completed under the legislation of a third State with which both Parties are bound by social security instruments which provide for the totalizing of periods.

**ARTICLE 13**  
**Minimum Period to be Totalized**

1. Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Party is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of that Party, the competent institution of that Party shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.
2. Notwithstanding paragraph 1, these creditable periods shall, however, be taken into consideration by the competent institution of the other Party to determine eligibility for a benefit of that Party through the application of Chapter 1.

**CHAPTER 2**  
**BENEFITS PAYABLE UNDER THE LEGISLATION OF CANADA**

**ARTICLE 14**  
**Benefits Under the Old Age Security Act**

1. If a person is eligible for a pension or allowance under the *Old Age Security Act* solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of that Act governing the payment of a partial pension or 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 outside the territory of Canada who would be eligible for a full pension in the territory of Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for the payment of a pension outside the territory of Canada.
3. Notwithstanding any other provision of this Agreement:
  - (a) an Old Age Security pension shall be paid to a person who is outside the territory of Canada only if that person's periods of residence, when totalized as provided in Chapter 1, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for the payment of a pension outside the territory of Canada;
  - (b) an allowance and a guaranteed income supplement shall be paid to a person who is outside the territory of Canada only to the extent permitted by the *Old Age Security Act*.

**ARTICLE 15**  
**Benefits under the Canada Pension Plan**

If a person is eligible for a benefit solely through the application of the totalizing provisions of Chapter 1, 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;
- (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 eligibility for that benefit, but in no case shall that fraction exceed the value of one.

**CHAPTER 3**  
**BENEFITS PAYABLE UNDER THE LEGISLATION**  
**OF THE REPUBLIC OF POLAND**

**ARTICLE 16**  
**Old Age, Disability and Survivor's Pensions**

1. If entitlement to an old age, disability or survivor's pension exists under the legislation of the Republic of Poland, the old age, disability or survivor's pension shall be calculated exclusively in accordance with the provisions of the legislation of the Republic of Poland, unless the amount of the old age, disability or survivor's pension calculated in the manner described in paragraph 2 is more favourable.
2. If entitlement to an old age, disability or survivor's pension is established solely through the application of the totalizing provisions of Chapter 1, the competent institution of the Republic of Poland:
  - (a) shall calculate the theoretical amount of the benefit which would be paid if the totalized creditable periods accumulated under the legislation of the Republic of Poland and under the legislation of Canada are accumulated under the legislation of the Republic of Poland alone;
  - (b) on the basis of the theoretical amount calculated in accordance with subparagraph (a), shall determine the actual amount of the benefit by applying the ratio of the length of the creditable periods accumulated under the legislation of the Republic of Poland to the total creditable periods accumulated under the legislation of the Republic of Poland and under the legislation of Canada.
3. For purposes of calculating the base amount of the benefit, only earnings under the legislation of the Republic of Poland and contributions paid under that legislation shall be taken into account.
4. Where the legislation of the Republic of Poland requires for entitlement to an old age, disability or survivor's pension that a person be insured at the time of the contingency, this requirement shall be deemed to be fulfilled for the purpose of establishing entitlement if the person:
  - a) has at least one year of contributions under the *Canada Pension Plan* during a period of two calendar years ending with the calendar year in which the contingency occurs; or
  - b) is in receipt of a disability or a retirement pension under the *Canada Pension Plan* in the calendar month in which the contingency occurs.

## **ARTICLE 17**

### **Entitlement to Benefits for Work Accidents and Occupational Diseases**

1. Entitlement to benefits for work accidents and occupational diseases shall be determined in accordance with the legislation applicable at the time of the work accident or at the time of the emergence of the occupational disease.
2. Where the legislation of the Republic of Poland requires that the occupational disease be first diagnosed in the territory of the Republic of Poland, this requirement shall also be fulfilled if the disease is first diagnosed in the territory of Canada.
3. If a person's occupational disease reoccurs or worsens while that person is residing in the territory of Canada and subject to the legislation of Canada, the competent institution of the Republic of Poland will readjust the amount of the benefit in accordance with the legislation of the Republic of Poland, provided the type of work performed in the territory of Canada did not contribute to the worsening or reoccurrence of the disease.

## **CHAPTER 4**

### **FUNERAL GRANT AND DEATH BENEFIT**

## **ARTICLE 18**

### **Determining Eligibility for a Funeral Grant or a Death Benefit**

Eligibility for a funeral grant or a death benefit shall be determined by the competent institution of a Party under the applicable legislation of that Party.

## **PART IV**

### **ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

## **ARTICLE 19**

### **Administrative Arrangement**

1. The competent authorities shall conclude an administrative arrangement which establishes the measures necessary for the application of this Agreement.
2. The liaison agencies of each Party shall be designated in that arrangement.

**ARTICLE 20**  
**Exchange of Information and Mutual Assistance**

1. The competent authorities, liaison agencies and competent institutions responsible for the application of this Agreement:
  - (a) shall, to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of that legislation;
  - (b) shall lend their good offices and furnish assistance to one another for the purpose of determining eligibility for, or the amount of, any benefit under this Agreement, or under the legislation to which this Agreement applies, as if the matter involved 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 Agreement or about changes in their legislation in so far as these changes affect the application of this Agreement.
2. The assistance referred to in sub-paragraph 1(b), shall be provided free of charge, subject to any provision for the reimbursement of certain types of expenses contained in an administrative arrangement concluded pursuant to Article 19.

**ARTICLE 21**  
**Protection of Personal Information**

1. Unless disclosure is required under the laws of a Party, any information about a person which is transmitted in accordance with this Agreement to that Party by the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.
2. The transmission of personal information under paragraph 1 shall be in accordance with the laws of the sending Party regulating the protection of personal information. Any subsequent use of such information by the receiving Party, including its transmission, storage or destruction, shall be governed by the laws of that Party for the protection of personal information.

**ARTICLE 22**  
**Exemption or Reduction of Fees**

1. Exemptions from or reduction of legal, consular and administrative fees, for which provision is made in the legislation of a 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 document of an official nature required to be produced for the application of this Agreement shall be exempt from any authentication by diplomatic or consular authorities.

**ARTICLE 23**  
**Language of Communication**

1. For the application of this Agreement, the competent authorities, liaison agencies and competent institutions of the Parties may communicate directly with one another in any official language of either Party.
2. Any claim which is made to a competent authority, liaison agency or competent institution of a Party with respect to the application of this Agreement shall be dealt with even if written in an official language of the other Party.

**ARTICLE 24**  
**Submitting Claims, Notices and Appeals**

1. Claims, notices and appeals concerning eligibility for, or the amount of, a benefit under the legislation of a Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority, liaison agency or competent institution of that Party, but which are presented within the same period to a competent authority, liaison agency or competent institution of the other Party, shall be treated as if they had been presented to the competent authority, liaison agency or competent institution of the first Party. The date of presentation of claims, notices and appeals to the competent authority, liaison agency or competent institution of the other Party shall be deemed to be the date of their presentation to the competent authority, liaison agency or competent institution of the first Party.

2. Subject to the second sentence of this paragraph, a claim for benefit under the legislation of a Party made after the date of entry into force of this Agreement shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant at the time of application:
  - (a) requests that it be considered an application for a benefit under the legislation of the other Party, or
  - (b) provides information indicating that creditable periods have been completed under the legislation of the other Party.

The preceding sentence shall not apply if the applicant requests that his or her claim to the benefit under the legislation of the other Party be delayed.

3. In any case to which paragraph 1 or 2 applies, the competent authority, liaison agency or competent institution to which the claim, notice or appeal has been submitted shall transmit it without delay to the competent authority, liaison agency or competent institution of the other Party.

#### **ARTICLE 25 Payment of Benefits**

1. Subject to paragraph 3 of Article 5, the competent institutions of the Republic of Poland shall pay benefits under this Agreement to a beneficiary resident in Canada or a third State in the currency of Canada or in any other freely convertible currency.
2. The competent institution of Canada shall pay benefits under this Agreement in the currency of Canada or in any other freely convertible currency.
3. The competent institutions of the Parties shall pay benefits under this Agreement directly to beneficiaries without any deduction for their administrative expenses.

#### **ARTICLE 26 Resolution of Disputes**

The competent authorities shall resolve any disputes which arise regarding the interpretation or application of this Agreement.

**ARTICLE 27**  
**Understandings with a Province of Canada**

The relevant authority of the Republic of Poland 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 Agreement.

**PART V**  
**TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 28**  
**Transitional Provisions**

1. Any creditable period completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under this Agreement and its amount.
2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.
3. Subject to paragraph 2, a benefit, other than a lump sum payment, shall be payable under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

**ARTICLE 29**  
**Duration and Termination**

1. This Agreement shall remain in force for an unlimited period of time. It may be terminated at any time by either Party giving 12 months' notice in writing to the other Party.
2. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained and the competent authorities shall agree on the regulation of any rights then in course of acquisition by virtue of those provisions.

**ARTICLE 30**  
**Entry into Force**

This Agreement shall enter into force on the first day of the fourth month following the month in which the Parties have exchanged written notifications that they have complied with all requirements for the entry into force of this Agreement. The date of the exchange of the written notifications shall be the date of the last notice.

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

***DONE** in duplicate at Warsaw, this 2<sup>nd</sup> day April 2008, in the English, French and Polish languages, each text being equally authentic.*

**FOR CANADA**

David Preston

**FOR THE REPUBLIC OF POLAND**

Jolante Fedak