

July 15, 1997
L-97-26

TO : Bill Poulos
Director of Public Affairs

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : Common-Law Marriage, Ontario, Canada

This is in response to your request for an opinion as to whether the applicant may be recognized as the widow of the deceased railroad employee for the purpose of receiving a widow's insurance annuity under the Railroad Retirement Act.

In this case, the railroad employee was a resident of Ontario, Canada. He applied for a disability annuity under the Railroad Retirement Act on October 26, 1976, and was awarded an annuity beginning January 1, 1976. At the time of his application, the railroad employee stated that he was divorced. The railroad employee's annuity ended with his death in April 1979.

On May 8, 1979, the railroad employee's spouse ("the claimant") filed an application for a lump-sum death payment and annuities unpaid at death alleging that she was the widow of the deceased employee. In support of her application, she submitted a certificate establishing that she and the railroad employee had married September 1, 1978, in London, Ontario. In addition, she provided a statement that prior to the 1978 ceremony, she had lived with the railroad employee as husband and wife continuously from August 12, 1955, "since it was taking a long time to get a divorce." On September 19, 1979, the Board's Director of Retirement Claims sent a Notice of Lump-Sum Award to advise the claimant that she was awarded an insurance lump-sum in the amount of \$603.50.

Information in the claim file indicates that beginning June 1979, an investigation was undertaken into the question of whether the claimant and the railroad employee had a valid common law marriage. This investigation was apparently conducted in anticipation of the possibility that the claimant might file an application for a widow's annuity in the future. The claimant was not eligible for a widow's annuity based upon her ceremonial marriage in September 1978 because the marriage ceremony took place less than nine months prior to the employee's death in April 1979.¹ A letter dated October 23, 1979 informed her that no common law marriage could be established because the Province of Ontario does not recognize the validity of common law marriages.

On May 1, 1997, the claimant's attorney wrote the Board, arguing that the Director's interpretation of law was incorrect. He stated, "The law of the Province of Ontario recognizes the validity of common-law marriages in most situations and in particular I believe they are recognized for purposes of survivor benefits." By letter of May 27, 1997, the attorney submitted a copy of the Ontario Pension Benefits Act.

An applicant's relationship to the employee for purposes of entitlement to an annuity under the Railroad Retirement Act is determined in accordance with section 2(d)(4) of the Act, which provides, in part, as follows:

In determining for purposes of this subsection * * * whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, * * * individuals entitled to an annuity under

¹ Section 2(d)(1)(i) of the Act (45 U.S.C. 231a(d)(1)(i)) provides that a widow's annuity is payable at age 60 to the widow as determined under section 216(c) of the Social Security Act (42 U.S.C. 416(c)). Section 216(c)(5) requires that a widow applicant be married to the deceased employee not less than nine months immediately prior to the date the employee dies.

paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act.

Section 216(h)(1)(A) of the Social Security Act provides as follows:

- (i) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.
- (ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

The deceased employee was not domiciled in any State, but rather was domiciled in the province of Ontario, Canada at the time of his death, so the law of the District of Columbia governs in this case. In the District of Columbia, a marriage not valid in the place where it is contracted is not valid anywhere. See Rhodes v. Rhodes, 96 F. 2d 715 (1938); cert. den. 305 U.S. 632 (1938). Beale, The Conflict of Laws, vol. 2, p. 670; 55 C.J.S. 811, 812, and cases cited therein.

The claimant in the case at hand has provided the following definition of "spouse" from the Ontario Pension Benefits Act:

"Spouse" means either of a man and woman who,

(a) are married to each other, or

(B) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Family Law Act; ("conjoint").

Initially, I note that the Ontario Pension Benefits Act is a regulatory statute which governs pensions in the Province of Ontario. See sections 3 and 6 of that Act. The Pension Benefits Act is therefore not a law which governs the devolution of intestate personal property within the meaning of section 216(h) of the Social Security Act, quoted above. Moreover, the foregoing provision clearly draws a distinction between persons who are married, and those who are in a "conjugal relationship" but not married. The Pension Benefits Act cannot be used to support a conclusion that a marriage may be formed under Ontario law by mutual agreement without solemnization by ceremony.

It is therefore my opinion that common-law marriages are not recognized in Ontario and the claimant may not be considered as the common-law widow of the employee under the laws of Ontario. Since the relationship between the claimant and the deceased employee could not be recognized as creating a valid marriage under the laws of Ontario, Canada, the relationship does not create a valid marriage under the laws of the District of Columbia, and the claimant cannot be recognized as the widow for the purpose of awarding her a widow's insurance annuity under the Railroad Retirement Act.