LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 32—Report on Proof of Marriage in Civil Proceedings

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The existence of a valid marriage is often an issue that arises in civil proceedings. For example, a petition for divorce obviously implies that the parties are married. Likewise, if a person claims an inheritance as the widow or widower of the deceased, there will need to be proof that the claimant was married to the deceased.

Where the question of the validity of a marriage arises there are two main elements that have to be proved. The first element is that a marriage ceremony took place. This is usually done by production of the marriage certificate and evidence identifying the persons mentioned in the certificate with those whose marriage is to be proved. In some jurisdictions it is also possible for the celebration of a marriage to be presumed from proof of the fact of cohabitation, and repute within the community, even though no marriage ceremony has been proved to have taken place. This presumption did not apply, however, in British Columbia when a person sought to prove the existence of a marriage in connection with divorce proceedings. Instead, "strict proof" was required, which resulted in the practice being adopted of requiring, not only the evidence of the parties but, in addition, that the marriage certificate or a certified copy be produced, unless good cause be shown for its non-production.

For marriages celebrated in British Columbia the position was relatively straightforward, as the marriage certificate was admissible as *prima facie* evidence of the facts certified to be recorded. Similarly, where the marriage was celebrated in another Canadian province or territory, or some Commonwealth country, and legislation in the province, territory, or country in question provided that the marriage certificate was admissible in its courts as evidence of a marriage ceremony, then the certificate was also admissible in the British Columbia courts as evidence of the ceremony. However, if the marriage was celebrated in a Commonwealth country where legislation did not afford the marriage certificate any evidentiary value, or in a country that was not part of the Commonwealth, direct expert evidence would have to be adduced, by oral testimony or affidavit, to show that according to the law of the country in which the marriage was celebrated, the certificate would be received as positive evidence of the ceremony. Similarly, in those jurisdictions where it is not customary to issue a certificate, or where the certificate has been lost and it is impossible to

obtain another, evidence of one or both of the parties would need to be provided that a valid marriage ceremony had taken place.

The second element that needs to be proved is that the ceremony constituted a *formally* valid marriage or, in other words, that the parties went through a ceremony recognized by the law of the place of celebration as sufficient to create a valid marriage. If the ceremony had taken place in British Columbia, or in a jurisdiction whose marriage certificates are admissible in the British Columbia courts as evidence of the ceremony without expert evidence, a party could establish the formal validity of the marriage by virtue of a rebuttable presumption of law, which in essence provides that where there is proof of a marriage ceremony followed by cohabitation it will be presumed that all of the prerequisites to a valid marriage have been satisfied. If, however, the marriage took place in a Commonwealth country where legislation does not afford the marriage certificate any evidentiary value, or in a country not forming part of the Commonwealth, direct expert evidence would have to be adduced by oral testimony or affidavit that the ceremony would constitute a formally valid marriage.

The requirement in British Columbia that there must be "strict proof" of a marriage that is the subject of divorce proceedings, and the need to adduce expert evidence in respect of foreign marriages, often caused considerable inconvenience, expense, and delay. This report looked at these issues in more detail and made a number of recommendations aimed at simplifying the process.

Chapter one provides a summary of the law, as outlined above. The second chapter looks at the origins of the "strict proof" rule in British Columbia. In chapter three, there is an assessment of the "strict proof" rule and the practical consequences of the rule, while in chapter four there is a brief summary of how the issue is dealt with in England, New Zealand, and Nova Scotia.

In the final chapter, the commission set out their conclusions and recommendations. In broad terms, the conclusion reached by the commission is that compliance with the requirement that a marriage be strictly proved in divorce proceedings caused a petitioner financial and personal hardship, especially where expert evidence was required to prove a "foreign marriage." The commission could not find any convincing rationale for the "strict proof" rule and therefore advocated simplifying the law. One of the main recommendations made in the report is that it should be possible to prove the fact of a marriage ceremony without production of a marriage certificate simply by the oral testimony of one of the parties, or some other person present at the ceremony, regardless of where the ceremony took place.

Further Developments

See *Attorney-General Statutes Amendment Act, 1979,* S.B.C. 1979, c. 2, s. 18 (now *Evidence Act*, R.S.B.C. 1996, c. 124, s. 52).