

## THE STATUS OF THE COMMON LAW WIFE IN RELATION TO THE FATAL ACCIDENTS ACT

### INTRODUCTION

For years there has been at work a clear legislative intent to ameliorate the position of the common-law illegitimate child. In the interest of brevity, rather than attempt a complete survey of the illegitimate child's position, sufficient illustration is provided by reference to the express provisions of the two Acts with which this paper is concerned: The Workers' Compensation Act of Alberta, S.A. 1973, c. 87, and the Fatal Accidents Act, R.S.A. 1970, c. 138.

The definitional sections of both of these Acts confirms that "child" is inclusive of "illegitimate child", effectively raising the legal status of the illegitimate child to a level approaching that of a legitimate. There are probably a number of reasons for so favouring the illegitimate. Perhaps the thought of bettering the station of society's "have-nots" placates our social conscience.

The regulation and protection of the family unit has always been a venerable concern, however, moral arguments can be set off one against the other. For example, one may suggest that public policy should not encourage immorality by sanctioning the payment of compensation arising out of illicit, immoral relations. This may be countered by asserting first, that it is ludicrous to suggest that persons will shun illicit sexual relations because the offspring may not one day reap the benefits of, for example, workman's compensation, and second that it is unconscionable that the illegitimate should be prejudiced by the indiscretion/immorality of his parents over which he had no control.

The question to which this paper addresses itself is whether similar arguments would not suggest a like treatment of the common law wife in compensatory statutes. Indeed, as will be discussed later, many such Acts have provided for the common law wife. The Fatal Accidents Act remains an exception: there is no express provision for the common law wife claiming under this Act.

#### What are the Common Law Wife's Alternatives?--The Liberal Interpretation Approach

At present such a claimant launching an action in an attempt to realize compensation would need begin by showing that for legal purposes, she is a "wife" within the meaning of the Fatal Accidents Act.

Is there any authority for "wife" being inclusive of someone other than a lawfully married spouse? Specifically, could "wife" be construed as encompassing any female person standing in the position of wife to the deceased, whether legally married or not?

For the purposes of affirming such a position reference is often made to Blanchett v. Hausell, [1944] 1 D.L.R. 21, (1943) 10 I.L.R. 327, [1943] 3 W.W.R. 275; Marks v. Marks (1908), 40 S.C.R. 210; and the "native marriage" cases of Conally v. Woolrich and Johnson et al (1867), 1 L.C.J. 197 and Re Noah Estate (1961), 36 W.W.R. 577, 32 D.L.R. (2d) 185 (N.W.T. Terr. Ct.)

In the Blanchett case, a "common law wife" was entitled as beneficiary under an insurance policy, the designated beneficiary whereof was the "wife" of the insured. Dysart, J., commenting on the common law union said:

A common law wife is a woman who is united to a man by marriage which, though informal, is such as was recognized as valid by the common law.

There is some confusion as to what formalities could be dispensed with without validating the marriage. The English view as laid down in R. v. Millis (1843), Ch. & F. 34, 8 E.R. 844 is more rigid than the view held in most of the United States and in Canada. But whatever else the requirement of a "common law marriage" anywhere were, two essentials had to be present-- 1) legal capacity to marry, and 2) an agreement to marry.

(1944) 1 D.L.R. 21 at pp. 25-26)

It must be noted, however, that in that case the claimant was not technically a common law wife inasmuch as a fundamental essential of such a marriage was lacking, namely the legal capacity (Reg. v. Millis, supra). Since the claimant was living with a married man, she could not be his common law wife, but legally remained only his concubine. However the court, in finding for the "wife", appears to have given consideration to the fact that the claimant had lived with, and had been dependent upon the insured for twenty years, and the character of the position in which she stood towards him was that of a de facto "wife"

This seemed to be something of a relaxation of the rigid English common law position, as expressed by the House of Lords in Reg. v. Millis, supra, that required the presence and intervention of an episcopally ordained priest as a condition for a valid marriage.

Even before Blanchett, in Marks v. Marks, supra, a concubine was allowed to take under a bequest to "wife", presumably in effecting the testator's "true intent" (as per Idlington, J.).

Also of interest are the so-called "native marriage" cases especially Conally v. Woolrich and Johnson et al, supra, and Re Noah Estate, supra, insofar as they too appear to expand the meaning of "wife" by recognizing a marriage other than that effected by law through an episcopally ordained priest. However these cases may be distinguishable: perhaps they do not so much expand the generic term "wife" as much as they merely suggest that the Millis position may be relaxed according to tribal or native custom.

To further illustrate that Canadian courts have acknowledged the validity of common law marriages and/or to find a restatement of necessary elements of the same, one may refer to R. v. Coffin (1955), 21 C.R. 333 (Que. Q.B.) - aff'd (1956), S.C.R. 191, (1956), 114 C.C.C. 1. In that case, involving the admissibility of evidence of a common law wife in the murder trial of the accused husband, Rinfret, J. at p. 369 ((1955), L C. R. 333) quoted approvingly from 28 Corpus Juris, p. 1316:

To constitute a marriage valid at common law, that is, in the absence of a statute otherwise specifically providing, it is not necessary that it should be solemnized in any particular rite or ceremony. All that is required is that there should be an actual and mutual agreement to enter into a matrimonial relation, permanent and exclusive of all others, between parties capable in law of making such a contract, consummated by their cohabitation as man and wife or other mutual assumption openly of marital duties and obligations.

In accordance with the rule obtaining in respect of marriages generally, the consent of the parties is essential to the constitution of the common law marriage. The absence of such consent renders the relations of the parties meretricious.

Mutuality. The consent of the parties to the common law marriage must be mutual.

Although it was held that there was no evidence of agreement to enter a permanent arrangement and hence she was not a "wife", this finding leaves open to conjecture, the possibility that had there been such evidence, the court may have found the existence of a valid common law marriage.

In the recent case of Ex parte Cote (1971), 5 C.C.C. (2d) 49 (Sask. C.A.) where the marriage situation was similar to Conally and marked by approximately four years of cohabitation, the court held that inasmuch as the English common law requirements for a valid marriage were not met, nor were the provisions of the Marriage Act, R.S.S. 1965, c. 338, complied with, the woman did not have the status of a wife, and could not be compelled to testify against the man in a prosecution against him. However, an important distinction must be noted in considering these latter cases: Their ratios were related to the evidential matter of compellability--not compensation. In other words one might expect a more liberal interpretation of "wife" where the support of a "widowed" woman is at issue, rather than where the abridgement of certain rights and freedoms weigh in the balance.

Reference should be made to the Marriage Act, R.S.A. 1970, c. 226, since this is the logical place one might expect to find a definitive validation or condemnation of the common law marriage. However, no such statement is made. The Act principally regulates the ministerial or procedural aspects of the issuance of marriage licences and the solemnizing of marriages. Any condemnation of the common law marriage must therefore be inferential. It is worthy of note that s. 23 of our Act provides that a marriage is not invalidated by reason only of a

contravention or non-compliance with the Act by the person(s) solemnizing the marriage or issuing the licence. The Supreme Court may, if satisfied that it is proper to do so, declare that the marriage was "lawfully solemnized" notwithstanding any such contravention or non-compliance.

Having examined the relevant case law, we have seen that there may be some latitude for a common law wife to maintain an action under the Fatal Accidents Act, alleging that she is a "wife" within the meaning of the Act, notwithstanding that no provision, indeed no reference, is made to the common law wife.

It is unfortunate that the waters have been allowed to remain muddy in this area. Some compensatory statutes have confronted this matter head on, while others have avoided any decisive treatment, resulting in extensive litigation characterized by intellectual and semantical gymnastics. Surely justice, especially its objectives of certainty and predictability, would best be served by attempting a clear and uniform treatment of the common law marriage situation.

What are those presently-existing provisions for the benefit of the common law wife to which we have been referring, and how closely aligned are they in purpose or effect, to the Fatal Accidents Act?

"Legislative Intent/True Spirit of the Act"

While, as alluded to earlier, the illegitimate child has long been favoured with the legislatures' sympathies, the inclusion of the common law wife in the Worker's

Compensation Act, S.A. 1973, c. 87, would seem to betray a general intent to also entitle the common law wife to share in certain rights to remuneration, compensation and support.

The relevant sections are s. 1(6) and s. 30.

1.(a) "common law spouse" includes any man or woman who although not legally married to a person lives and cohabits with that person as the spouse of that person and is known as such in the community in which they have lived;

30.(1) Where a worker dies as the result of an accident occurring on or after January 1, 1974 leaving no dependent spouse and

(a) for the five years immediately preceding his death cohabited with a dependent common law spouse, or

(b) for the two years immediately preceding his death cohabited with a dependent common law spouse by whom he had one or more children,

the compensation to which a dependent spouse would have been entitled under this Act may, in the discretion of the Board, be paid to such common law spouse until such time as he or she marries.

(2) Upon the marriage of a common law spouse receiving compensation under subsection (1), the provisions of this Act apply with all necessary modifications as if that person were the widow or widower of the worker.

(3) A dependent common law spouse receiving or entitled to receive compensation under the provisions of this Act may not be paid compensation for acting or claiming to act as a foster-parent to the children of the deceased worker.

(Statutes of Alberta, 1973, c. 87)

Notice how the latter section resolves an obvious problem: the apparent need to qualify what "common law wife" entitled under the Act involves. Simply stated, the purpose of the Act is not to benefit any girl(s) who cohabits with a given man, regardless of the brevity or frequency of the arrangement. Rather, although we are dealing with a common law relationship which is usually identified as being transient and informal (casual?), to qualify under the Act the relationship must reflect some element of permanence.

In comparing the provisions relating to the common law wife under the Workmen's Compensation Act of each province, we find that the provisions are rather uniform in substance insofar as they deal with death benefits. In most cases, of course, wide discretion is reserved by the Board in the determination of dependency, need, amount of payments, revocation of benefits, etc.

Where there seems to be a great variance among the Acts is in relation to requisites for entitlement. The range varies from seven years cohabitation preceding death (British Columbia, R.S.B.C. 1960, c. 413, s. 17(2)(h)), to two years cohabitation with a woman by whom the man had had one or more children (Alberta, see p. 7 (earlier reference)), to a mere three years cohabitation preceding death (Manitoba, R.S.M. 1970, c. 927, s. 25(7)).

This finding is useful inasmuch as the same type of template should be incorporated into the Fatal Accidents Act if and when one contemplates the inclusion of a provision for the benefit of the common law wife. Perhaps a workable "middle of the road" standard might be three years cohabitation or two years cohabitation and one or more children.



For clarification, these secondary limitations appear to supplement those fundamental criteria of "common law wife" which appear in the Acts' definitional sections, namely those requiring cohabitation as man and wife, and a reputation/acknowledgement as such in the community in which they have lived (see R.S.A. 1970, c. 397, s. 2(6)).

In summary then, for the purposes of the Workers' Compensation Act, a common law spouse (defined by s. 1(6)) will be deemed the widow or widow of the worker, if the relationship is found to have been characterized by a sufficient element of permanence (s. 30(1)). While embracing the common law wife, it is interesting that these provisions also include the common law husband.

There is no express acknowledgement of common wife in the Workmen's Compensation Acts of Prince Edward Island, Nova Scotia, and New Brunswick. To the extent that the Alberta Act is prototypical of the Acts of the remaining common law provinces, it would seem helpful to look at the experience of the United States.

It is rather difficult to properly represent the United States' position in regard to the common law wife under Workmen's Compensation, since the legislation and case law varies between jurisdictions. However 99 Corpus Juris Secundum §§140(2) aids in a concise summary.

Under provisions granting death benefits to the deceased employee's "widow" or surviving "wife" a legal status as such widow or wife is required in order to entitle the claimant to recovery; but under other provisions a woman not legally the wife of the employee but who lives with him as

an actual dependent may qualify as a dependent entitled to death benefits. In some cases a putative wife could collect benefits where she brings herself within the terms of provisions protecting the rights of a putative widow who has entered into a ceremonial marriage with the decedent, and stood in the relationship of wife at the decedent's death (Miss. - Jackson v. Bailey 107 So. 2d 593; N.J. - Dawson v. Hatfield Wire & Cable Co. 280 A. 2d 173).

According to other decisions, after the employee and claimant have lived together many years as husband and wife under circumstances justifying the presumption that they are lawfully husband and wife, the claimant is entitled as widow (Idaho - Morrison v. Sunshine Mining Co. 127 P. 2d 766; Ky - Andrews v. Kopper Coal Co. 161 S.W. 2d 52; Tenn. - Moody v. T. H. Hays & Sons 227 S.W. 2d 20).

It has been held that where there are two putative wives, and the lawful wife makes no claim, the putative wife living with the employee at the time of his death is entitled in preference to the putative wife who had separated from him before that time (U.S. - Gibson v. Hughes D.C.N.Y. 192 F. Supp. 564).

A common law wife in jurisdictions where she is held to be a lawful wife, is entitled as a widow under the Compensation Act (Kan. - Gillespie v. E. W. Blair Construction Corp. 388 P. 2d 647; N.Y. - Biggie v. Northern Distributing Co. 200 N.Y.S. 2d 765; Or. - Thomas v. Starr Accident Insurance Fund App. 495 P. 2d 46; Pa. - Donaldson v. P.J. Osterling & Sons Inc. 28 D. & C. 2d 583 aff'd 186 A 2d 653, 199 Pa. Super. 637; D.C. - Hoage v. Murch Bros. Const. Co. 127 P. 2d 766; Ind. - Inland Steel Co. v. Barcena 39 N.E. 2d 800; Ky. - Gilbert v. Gilbert 122 S.W. 2d 137; Mass. - Craddocks Case

37 N.E. 2d 508; Mich. - Watts v. General Motors Corp. 14 W.W. 2d 68; Miss. - Anderson-Tully Co. v. Wilson 74 So. 2d 735; Ohio - White v. Industrial Commission 142 N.E. 2d 549; Tex. - Consolidated Underwriters v. Taylor, Am. App., 197 S.W. 2d 216; Utah - Schurler v. Industrial Commission 43 P. 2d 696.

In jurisdictions where she is not a lawful wife, she is excluded as widow (U.S. - Bolin v. Marshall, CCA Or., 76 F 2d 668; La. - Humphreys v. Marquette Gas Co., App., 95 So. 2d 872; Cal. - MacArthur v. Industrial Accident Commission of California 29 P. 2d 846; Neb. - Collins v. Hoag and Rollins 241 N.W. 766.

The federal law, in not defining the words "widow" and "surviving wife" is held to follow the state law in this respect (U.S. - Ky. - Kenway Stevedoring Co. v. Clark D.C. Md., 43 F 2d 983).

A woman not legally the wife of the employee but who lives with him as an actual dependent may under some provisions qualify as a dependent entitled to death benefits. A unique example is the Indiana case of Russel v. Johnson 46 N.E. 2d 219 wherein the fact that the claimant shared an adulterous relationship with the deceased employee did not preclude her from receiving compensation benefits as his "dependent" under the Workmen's Compensation Act.

It has been held however, that although dependency rather than legality of the marriage is the proper basis on which to determine the alleged widow's right to compensation, the relationship between her and the employee must not be knowingly adulterous; that is, the woman must not only be dependent in fact on the employee's support, but

must also be in good faith believing that she is his wife (Russel v. Johnson, supra). Of course, under statutes defining "dependents" as relating to lawful relationships or where it construed to have that effect, a woman living with the employee but not lawfully married to him may not recover as a dependent in fact or as "a member of the family" (N.C. - Fields v. Hollowell & Hollowell 78 S.E. 2d 740; Ohio - Evans v. Industrial Commission 143 N.E. 2d 705; S.C. - Day v. Day 58 S.E. 2d 83; Wash. - Lewis v. Department of Labour and Industries 70 P 2d 298; Wyo. - In Re Trent's Claim 231 P 2d 180; Conn. - Wheat v. Red Star Express Lines 240 A 2d 859; Ga. - Insurance Co. of North America v. Jewel 164 S.E. 2d 846; Ky. - Jones v. Campbell Co. 353 S.W. 2d 208; La. - Humphreys v. Marquette Gas Co., App. 95 So. 2d 872).

One could conclude, then, that the purpose of death benefit provisions in Workmen's Compensation Acts, would appear to be to provide the workman's/employee's dependent(s) in the future with something in consideration for what has been lost by the workman's death. One factor with which the courts seem to concern themselves in the determination of dependency is whether the claimant could show that he or she had reasonable grounds to anticipate future support from the decedent.

A further indication that the legislatures are becoming increasingly cognizant of, and sympathetic towards the heretofore insecure position of the common law wife, may be found in the Canadian Criminal Code

(4) For the purpose of proceedings under this section,

(a) evidence that a man has cohabited with a woman or has in any way recognized her as being his wife is, in the absence of

- any evidence to the contrary, proof that they are lawfully married;
- (b) evidence that a person has in any way recognized a child as being his child is prima facie proof that the child is his child;
  - (c) evidence that a man has left his wife and has failed, for a period of any one month subsequent to the time of his so leaving, to make provision for her maintenance or for the maintenance of any child of his under the age of sixteen years, is prima facie proof that he has failed without lawful excuse to provide accessaries of life for them; and
  - (d) the fact that a wife or child is receiving or has received necessities of life from another person who is not under a legal duty to provide them is not a defence. 1953-54, c. 51, s. 186; 1968-69, c. 38, s. 92.

(Martin's Annual Criminal Code (1973) Part VI - Section 197(4).)

The basic rationale of this section of the Code, and the Fatal Accidents Act are quite similar: the concern of the former is the recognition of a responsibility to maintain certain dependents by providing necessities; the latter bestows upon certain dependents the right to sue the person who occasioned the death of the decedent, enabling said parties to be maintained, and compensated for the loss by the payment of damages. Recognizing the similarity, it would not seem unreasonable to assume that those individuals deemed "dependent" under one Act should be likewise for the purpose of the other: a "wife" or "spouse" under the Code should qualify as a "wife" or "spouse" under the Fatal Accidents Act. What

the Code seems to suggest is material for the determination of "wife" is that the person be in the position of a lawful wife.

However, this process of logical extension loses some of its force on a literal interpretation of the Code provision. The limitation "for the purpose of proceedings under this section" would seem to suggest that it was not Parliament's intention to enlarge the ordinary meaning of the word "wife" for any purpose other than the very specialized purpose of that section--duties tending to the preservation of life.

The Criminal Injuries Compensation Act, R.S.A. 1970, c. 75, is another relevant piece of legislation in its recognition of the common law wife.

A "spouse" is cited as being included among "dependents" entitled to compensation (s. 2(1)(c)). A spouse is defined by section 2(2):

- (2) A person shall be deemed to be a spouse for the purposes of this Act if, although not married to the other person, he cohabits with another person as man and wife and they are known as such in the community where they live and if
  - (a) the relationship is of some permanence, and
  - (b) a legal impediment exists to their marriage.

Clearly four conditions are suggested. The first two are little more than the definitive fundamental elements of a common law marriage. The third, some degree of permanence,

acts as a limitation of the class as was discussed earlier. It is the fourth condition which seems, to the writer at least, to create an anomaly, if not an inequity, in the law. On the one hand the legislative and judiciary have often expressed an aversion to implementing or ratifying anything that smacks of immorality, in the name of protecting society and the family unit. Yet the simple interpretation of this section would suggest that a common law wife's entitlement to compensation is conditional on there being in existence a legal impediment to the marriage -- i.e., if the relationship be adulterous. Notice the incongruity between the line of authority cited earlier that required legal capacity to marry as a fundamental essential for a common law marriage to exist (Blanchett, supra), and this provision which requires the absence of said capacity before the relationship will be recognized and a spouse entitled to benefit.

The only conceivable explanation of this situation is that this enactment was effected at a time when divorces were markedly more difficult to procure, and in response, the legislature decided to facilitate claims by the increasing numbers of common law wives bound by a former marriage. However, this does not make any the less reprehensible the resultant prejudicial position of the non-adulterous common law spouse under the Act.

The final reference, in this survey of related legislative enactments and their provision for the common law wife, is to a recent amendment to British Columbia's Administration Act (R.S.B.C. 1960, c. 3 amended by S.B.C. 1972, c. 3). This provision is unique in that there appears to be no other comparable provision in any of the relevant Acts of other provincial jurisdictions.

91. In this Part and Part XI

- (a) "common law spouse" means either a person who is united to another person by a marriage that, although not a legal marriage, is valid by common law, or a person who has lived and cohabited with another person as a spouse and has been maintained by that other person for a period of not less than two years immediately preceding his death; and . . .

92. Where an intestate leaves him surviving in this Province a common law spouse or an illegitimate child, the Court may order that there be retained, allotted, and applied for the support, maintenance, and benefit of the common law spouse or of the illegitimate child, or both, so much of the net real or personal estate, or both, of the intestate as the Court sees fit, to be payable in such manner as the Court directs.

(Statutes of B.C., 1972, c. 3, s. 2)

It would appear that this enactment could be accurately described as a mini Family Relief Act.

Of yet greater consequence is the reference made to the common law wife in the British Columbia Family Relations Act, Statutes of B.C. 1972, c. 20, in the context of support and family maintenance. Section 15(c) defines "spouse" as including a person who has cohabited with another for two years:

- (e) "spouse" means a husband or a wife, but includes
  - (i) a person who was, before his marriage was dissolved, a husband or a wife named in an order under this part or under the Wives' and Children's Maintenance Act repealed by this Act;



- (ii) a person whose marriage was dissolved not more than two years before an application is made under this part;
- (iii) a man or woman who, not being married to each other, lived together as husband and wife for a period of not less than two years, where an application under this part is made by one of them against the other not more than one year after the date they ceased living together as husband and wife.

Under this Act, the court is empowered to make orders governing a variety of matters falling under "maintenance of spouse" (amount and frequency of payments, custody of and access to children, etc.). Hence, in effect the common law wife (as a "spouse") is not only given legal recognition but, if the court be favourably disposed, can be granted considerable maintenance and security, flowing from the husband, but imposed and enforced by the court.

Hopefully, this statutory review has been helpful, both in affording examples of statutory enactments that indicate the apparent concern of both the legislature and judiciary for the recognition and assistance of the common law wife, and in providing some future direction as the trend of "inclusion rather than exclusion" continues to ensue.

With specific reference to the Fatal Accidents Act in its present form, one appreciates the need for review and revision in order to bring the said Act in line with the trend towards recognizing the common law wife, and to make it consistent with those related statutes that have effected such changes.

Looking at the Fatal Accidents Acts (also called Families' Compensation Act, R.S.B.C. 1960, c. 138, Fatal Injuries Act, R.S.N.S. 1967, c. 100) throughout the provinces one realizes that the purpose of these Acts is to allow a definite class of dependents of a deceased to assume the deceased's rights in maintaining an action for damages against the person liable for the wrongful act, neglect, or default which resulted in the death of the decedent.

The Acts provide that every such action shall be for the benefit of the wife, husband, parent, child, brother, or sister of the person whose death was so caused, and, in some Acts, includes a person who stood in loco parentis to the deceased.

It should come as no surprise that in all of the common law provinces save Newfoundland, the "child" for whose benefit an action is brought under the Act expressly includes an illegitimate child. In this regard these Acts parallel the Workmen's Compensation Acts. However, there the similarity ends, there being no such express inclusion of the common law wife as being among those benefitted (its only exception, Nova Scotia, will be discussed in a moment).

The only recourse such a woman would have under the Fatal Accidents Act at present, is to found an action on a broad interpretation of parent, wife, etc. as discussed earlier, which is at best a dismal prospect. Again, to continue to deprive the common law wife of a remedy under this Act seems not only objectly unconscionable, but also incongruous with the growing acceptance and recognition of her station and her need.

Here the Nova Scotia Fatal Injuries Act (R.S.N.S. 1967, c. 100) is of considerable significance. Although it by no means presents a wholly satisfactory nor complete solution, it is indeed a beginning and may be viewed as a precursor of future development and revision of this Act.

10. The mother of an illegitimate child has the same rights under this Act in respect of the death of that child as she would have if the child had been legitimate, and an illegitimate child has the same rights under this Act in respect of the death of his mother as he would have if he had been a legitimate child. 1956, c. 26, s. 2.

(1926, c. 100, s. 10)

The effect of this measure would seem to be to provide the common law wife with a remedy, but only as regards the death of her illegitimate child. By logical extension, if the death of her child is deemed worthy of remedy, why is not the death of her "husband" deemed to be of similar if not greater significance, where, of course, the common law marriage relationship meets the usual qualifications and limitations (cohabitation, reputation, permanence, etc.)?

### Summary and Conclusion

We have seen that in the absence of an express provision under the Fatal Accidents Act, the legal position to which the common law wife finds herself relegated in attempting to qualify under the Act is doubtful and inferior.

The examination of a number of diverse statutory enactments has evidenced the evolution of a general concern first for the illegitimate child and, more recently, for the common law wife. However in the latter instance in particular, this process has been painfully slow and only

partially effective: the protection afforded the common law wife by existing legislation seems not only incomplete, but lacks consistency and uniformity.

These existing provisions are helpful, however, in suggesting practical illustrations of problems, solutions, and possibilities. Specifically, we have seen how the Workmen's Compensation Act protection to the common law wife, may be used as a guide in the revision of the Fatal Accidents Act.

Inasmuch as the treatment of the common law wife at law involves obvious social policy considerations, social trends may be relevant. With regard to the marriage relationship, as mentioned earlier there seems to be a growing attention given to the consensual rather than the formal aspects of marriage. Recognizing the resultant increase of common law marriages of mutual consent and their growing acceptance, it would seem of great social utility to strive for some regularity and uniformity in the statutory treatment of such unions.

Accordingly, it seems desirable that a common law spouse be entitled to qualify under the Fatal Accidents Act where it can be proven that the common law marriage relationship met certain minimum criteria. The fundamental definitive elements of cohabitation as man and wife, and a reputation as such in the community in which they live would comprise the first qualifications. Second, recognizing the need to further delimit those entitled to benefit, a certain element of permanence need be manifest by, for example, three years cohabitation immediately preceding the decedent's death or two years cohabitation previous to death where the wife has had one or more children by the decedent.