



Ottawa, September 23, 2020

FILE 2020-UO/TI-13

UNLOCATABLE COPYRIGHT OWNER

Application by Ruth A. Thideman, Quesnel, British Columbia for the reproduction of photographs featured on postcards

The Copyright Board finds that the application does not meet the requirements of section 77 of the *Copyright Act* (the “Act”).

In this regard, subsection 77(1) of the Act states that

[w]here, on application to the Board by a person who wishes to obtain a licence to use

- (a) a published work,
- (b) a fixation of a performer’s performance,
- (c) a published sound recording, or
- (d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be. [our emphasis]

The Board has determined that copyright for the works subject to the application no longer subsists because of the following reasons:

1. The photographs featured on the postcards were taken between 1914 and 1918;
2. Between 1914 and 1918, the term of protection afforded to photographs by the UK’s *Copyright Act of 1911* was 50 years from the making of the original negative from which the photograph was directly or indirectly derived¹;
3. In 1921, Canada enacted its own copyright legislation, the *Copyright Act of 1921*². Section 47 of the *Copyright Act of 1921* provided for the continuation of rights that accrued through operation of the *Copyright Act of 1911*.

¹ *An Act to amend and consolidate the Law relating to Copyright*, 1911 (UK) 1 & 2 Geo V, c. 46, s 21 see <https://www.legislation.gov.uk/ukpga/Geo5/1-2/46/enacted>

² *The Copyright Act, 1921* SC 1921, c 24, s 4(1) see: <http://www.digital-copyright.ca/dcc-static/Copyright1921.pdf>

4. Section 4(1) of the 1921 Act provides that:

Subject to the provisions of this Act, copyright shall subsist in Canada for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, a citizen or subject of a foreign country which has adhered to the Convention and the Additional Protocol thereto set out in the Second Schedule to this Act [the Berne Convention], or resident within His Majesty's Dominions; and if, in the case of a published work, the work was first published within His Majesty's Dominions or in such foreign country; but in no other works, except as far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend. [our emphasis]

5. The information on points of attachment to Canada supports the view that copyright subsisted in these photographs in 1921. Considering the historical context, it is reasonable to conclude that the authors of the photographs would have been either British subjects, citizens or subjects of a country signatory to the *Berne Convention* or residents of a British dominion. Furthermore, without information that the postcards were first published elsewhere than in Canada and France, Germany, and Belgium, we believe that these were the countries of first publication;
6. The term of protection afforded to photographs in 1921 remained 50 years from the making of the original negative³ until the provision was substantially amended in 1997⁴;
7. The term of protection in the photographs expired between 1964 and 1968. As a result, the photographs are in the public domain.

In this case, the Copyright Board cannot issue a licence. Given that the works are now part of the public domain, no licence is required for their use.



Lara Taylor
Secretary General

³ *Ibid.*, s 7

⁴ *An Act to Amend the Copyright Act*, SC 1997, c 24, s 7.