

**RC Military Ordinariate
of Canada**

**MARRIAGE INVESTIGATION
PROCESS**

A HEALING EXPERIENCE
FOR THE
DIVORCED AND SEPARATED



2018

MARRIAGE TRIBUNAL
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Present Social Situation

The Fathers of the Second Vatican Council spoke of the portrayal of humanity in their document the "Pastoral Constitution on the Church in the Modern World" (*Gaudium et Spes*). They affirm that men and women are God's special gifts, stewards of creation, and therefore they are entitled to great dignity and respect. They also reiterate the fact that marriage between a man and a woman and family life is to be regarded as the very basis for our life here on earth. It is the foundation of our culture and the fundamental structure of our Church.

Today, these basic values are openly criticized or denied by individuals and groups within our society. Hidden under the guise of freedom and progress, they impose their views regarding what should be considered as sacred or not. There is little question that the single most influential factor in forming our social and moral attitudes regarding marriage is the media. Even a cursory glance at television displays for us an image of marriage and society in which we are somewhat less than moral and intelligent persons. Consequently, people suffering failed relationships and the rising lack of personal responsibility tolerated in all facets of life are becoming more prevalent.

Conversely, in a world looking for answers, the Catholic Church continues to foster the nobility of marriage, life and the family. It recognizes the pain suffered by separated or divorced persons within our communities. It offers guidance and support.

The marriage investigation process or better known as an "annulment" offers the possibility of having a failed marriage examined to determine if, according to the teachings of the Church, it is valid or not. This process is intended to be a healing experience.

Catholic Marriage - Understanding

It is meaningless to describe declarations of nullity of marriage without adequately understanding what marriage is. The Catholic Church teaches that marriage is, by God's plan, a "covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children" (canon 1055 of the Code of Canon Law) and its essential properties "are unity and indissolubility" (canon 1056).

It is a covenant rather than a contract. A brief comparison of the concepts of contracts and covenants may be helpful. **Contracts** deal with things or services; it engages the services of people; it has time limits; it deals with secular affairs; and it can be made by children. **Covenants** on the hand deals with and engages persons; it is forever; it deals with sacred affairs; and it can only be made by persons who are psychologically, emotionally and spiritually mature.

This covenant, between those who have been baptised, is also a Sacrament. The Catholic Church maintains that every valid sacramental marriage that has been consummated is indissoluble and cannot be declared null. This is in accordance with the Gospels, the writings of St. Paul and centuries of Christian tradition.

Some Pharisees approached Jesus and asked, "Is it against the law for a man to divorce his wife?" They were testing him. He answered them, "What did Moses command you?" "Moses allowed us," they said, "to draw up a writ of dismissal and so to divorce." Then Jesus said to them, "It was because you were so unteachable that he wrote this commandment for you. But from the beginning of creation God made them male and female. This is why a man must leave father and mother and the two become one body. They are no longer two, therefore, but one body. So then, what God has united, man must not divide." Mark 10:2-9

Marriage is a sacred and intimate union between a man and a woman who are permanently united as husband and wife. They are called to establish a communion of life in mutual fidelity. This unity provides a stable environment for the procreation and education of children. Marital life challenges people to develop a means for mutual growth to salvation and union with God. In this setting, the couple becomes a domestic church, the nucleus of our community reflecting the greater Church. In order for this vision of marriage to become a reality, there must be an act of faith and a sense of self-sacrifice, love and a precise act of the will.

Marriage Failure

Each one of us is aware of the fact that the ideal we hold and the reality we live may be two completely different realities. We know that we sometimes fall short of the ideal we hold for ourselves. A man and a woman who exchange their matrimonial consent, witnessed by a priest, minister or judge with at least two witnesses, have the expectation of living a happy and fulfilling relationship. Unfortunately, in some cases, a marital relationship can turn into a 'nightmare' for many different reasons and the result is often a separation. This is even more tragic when children are involved.

In times of crisis, such as the failure of a marriage, there is a sense of emotional and even spiritual loss. In general, this carries with it a feeling of anguish, grief, frustration, disappointment and even anger. There is a feeling of helplessness. Far too often, the negative experience continues to plague and cripple people despite their best efforts. There is a need for closure.

The marriage investigation process is meant to be a healing experience in which we find peace of conscience in Divine Mercy. It is to be a liberating occurrence, which, if approached with an open heart, unbinds us from the negative aspects of a failed relationship and permits us to move forward. In other terms, it can bring closure.

Misconceptions - Effects of Divorce and the Church

The first misconception we often hear is that if someone is divorced, they are automatically cut off from the Church. This is simply not true. The Catholic Church does not accept the notion that a divorce has an effect on the sacramental bond of marriage. However, in many cases, for serious reasons, such as division of property, security, financial concerns, etc..., the Church permits Catholics to seek a divorce to regulate their civil situation. This is also true when one intends to enter a second marriage following a declaration of nullity of marriage.

The second misconception is that a second marriage after divorce alone, without a declaration of nullity, is OK. This is false. By this action, the Catholic person has freely chosen a path that prevents him/her from being in full communion with the faithful who share the beliefs and teachings of the Church. One consequence of this personal decision is the possible refusal to receive Holy Communion.

Understanding the Declaration of Nullity

The Church states that every marriage, or at least every initial union, including a marriage between two non-Catholics, is presumed to be valid. This being said, in every presumption, the opposite may be true. If the evidence shows that a particular marriage is invalid, i.e. that from the beginning it suffered from a radical defect, the original presumption no longer holds. No defect that might arise during the marriage - such as a single event of infidelity or physical incapacities due to an automobile accident during the common life - would have the power of turning a valid marriage into an invalid one. However, when it can be proved that a particular marriage was, in fact, never valid in the first place, then the Church may declare it null.

It is important to understand the meaning of a declaration of nullity. It **does not** deny that a real relationship existed, nor does it imply that the relationship was entered into with ill will or moral fault. Rather, it is a statement by the Church that, from the very outset, the relationship lacked one of the elements which the Church considers essential to a Christian marriage.

The Diocesan Tribunal, a staff of specially trained and experienced priests, deacons, religious and lay persons, offers assistance to persons who request that the Church study their failed marriage in order to determine whether or not there is any possibility of a declaration of nullity. The Judges of the Tribunal investigate the facts regarding the relationship and marriage and on completion of their deliberation, they pronounce a decision whether or not the nullity has been proven.

Nullity Investigation - Who? What? How?

Many feel lost or baffled when trying to find a way to begin the process for the investigation of the validity of their marriage. The Church wants to respond and to accompany these persons in their quest. We sincerely hope that this journey will help each person to heal, to find closure and to grow in their faith.

The first step in this process is to get in touch with the Pastor/Priest/Deacon/Pastoral associate of your Parish or the Marriage Office. He/she will guide you. He/she may refer you to a person mandated to fulfill this ministry in your region.

The Tribunal has prepared a kit which explains the preliminary materials needed before it can determine whether or not there is an adequate reason to investigate the validity or invalidity of a marriage and whether or not it can proceed with the brief or ordinary process.

The person who asks the Tribunal to investigate the validity of his/her marriage is called the Petitioner. His or her spouse is called the Respondent.

The Petitioner is required to provide a written text detailing his/her family background and relationship with the Respondent. A guide is provided in the kit. Please note that simple responses to the questions are often inadequate. The Judges of the Tribunal have an obligation to search for the truth regarding a specific relationship to ascertain if there was a radical defect at the time of consent. Examples and complete answers are very helpful.

The Petitioner is required to provide an accurate address for the Respondent, unless the whereabouts of the Respondent and members of his family are unknown or the Respondent has presented him/herself before the Tribunal. Should the Petitioner have reservations regarding contact with the Respondent, he/she is to contact the Marriage Office at (613) 998-8747.

In certain cases, the Respondent is called upon to present an account of the relationship and at times he/she can co-sign the petition. This is necessary in the briefer process, which requires that both parties agree with the facts.

The Petitioner should also provide the Tribunal with the following documents, when applicable:

1. a recent baptismal certificate of the Petitioner;
2. a recent baptismal certificate of the Respondent;
3. a marriage certificate (civil and/or religious);
4. a copy of the Divorce (if obtained); and
5. any professional reports such as, counselling reports, police reports, court documents, medical reports, etc....

In order to assist the Tribunal, the Petitioner is also asked to provide the names and addresses of persons who could be witnesses, either as credibility witnesses or to be interviewed. The "ideal witness" is a person who knew both parties prior to the wedding and during the common life. We understand that circumstances may exist which would not allow "ideal witnesses" to be found. Other witnesses, such as persons who have had dealings with the petitioner or respondent, can testify. They are often used as credibility witnesses. The petitioner must assure him/herself that the witnesses have consented to co-operate with the Tribunal. This is usually done using a written consent form provided by the Tribunal.

When the preliminary information has been gathered, it is presented in person, by e-mail or by mail to Marriage Tribunal of the Diocese. The address is found at the beginning of this booklet.

The Judicial Vicar will examine the petition, the personal history and the documents and he will issue a decree to either admit or reject the petition. If rejected, more information will be requested.

The Petitioner and the Respondent, if he/she has cooperated, and the Defender of the Bond will be kept informed of every step of the process including the determination of the formulation of the doubt, that is, the question to be answered by the Judges. At this stage, the Tribunal cannot give assurances of a declaration of nullity of a marriage.

During the instruction phase of the process, the parties and the witnesses are interviewed individually by an Ecclesiastical Judge or an approved Auditor. The interviews are usually recorded electronically, then sent to the Marriage Office where they are transcribed.

After the necessary material has been gathered, the complete case – called the acts of the case – are published to the parties; that is, to the petitioner and the respondent unless he/she has not cooperated with the Tribunal. It is important to understand that some section or sections of the depositions, testimonies and/or professional report may be deemed confidential by the Judge. In such cases, it is explained to the parties.

As soon as the acts of the case has been published, in accordance with the norms of Canon Law, and the period for viewing the acts has passed, the Tribunal will issue a decree of Conclusion of the Case. No new evidence is to be collected once this decree has been issued.

A copy of the acts of the case is then given to the Ecclesiastical Advocate of the party or parties, if applicable. He/she present an argument in favour of their client's position either for or against the nullity of the marriage. Once their pleading or pleadings are received, the acts are presented to the Defender of the matrimonial Bond whose task is to propose those things he/she deems reasonable in favour of the validity of the marriage.

The argument phase of the process concluded, the Judges determine a date and time to deliberate and render a decision regarding the nullity or validity of the marriage. They must respond to the question found in the decree of formulation of the doubt.

The Parties are notified of this decision, whether affirmative or negative, and they are given a period of time to appeal the decision if they feel that it is unjust.

Once this time limit has passed and in the absence of an appeal, the Tribunal issues a decree of execution of the sentence. The parties are free from that particular marriage and annotations are, for Catholics, made in the place of baptism and/or marriage.

Effects of a Declaration of Nullity

There are absolutely no civil implications in Canada to a declaration of nullity by the Church. It does not affect in any manner the legitimacy of children who are, after all, a gift from God born into a union that was presumed valid (cf. Canon 1060). Canon Law explicitly states that children born of a marriage that is later declared null are legitimate (cf. Canon 1137).

A declaration of nullity is a decision rendered by an ecclesiastical (Church) Tribunal that a particular union, presumably begun in good faith and thought by all to be a marriage was, in fact, an invalid union because an essential element was lacking at the time of consent. There is no attempt in the investigation to impute guilt or to punish persons. On the contrary, the purpose of the procedure is to help people live out their lives in peace with God and their own consciences

An Affirmative Decision, or declaration of nullity, declares that both Parties are free from the bond of the first marriage. They could be free to enter into a new union.

Costs

A Declaration of Nullity of Marriage cannot be bought nor can the Decision of the Judges be swayed by monetary or other considerations. **There is NO COST for processing a marriage nullity case.** The Diocese covers the expenses for those who minister in the Tribunal. Once a decision has been rendered and published, a letter is sent to the parties with their declaration of freedom and there is mention of a donation to the Diocese for those who wish to help. It must be repeated that whether or not any donation is given to defray some of the cost to the Diocese, the quality of the investigation or the outcome does not depend whatsoever on monetary reimbursement.

Conclusion

The process of investigating a marriage through the Marriage Tribunal allows a person time for healing, growth, and hopefully a new sense of strength in the faith we share.

This outline is extremely brief and is not intended to be comprehensive. The members of the Tribunal devote their time and effort to assist our brothers and sisters who suffer the pain of a broken marriage.



And so I say to you, you are Peter, and upon this rock I will build my Church, and the gates of the netherworld shall not prevail against it. I will give you the keys to the kingdom of heaven. "Whatever you bind on earth shall be bound in heaven; and whatever you loose on earth shall be loosed in heaven." Matthew 16: 18-19

Contact

For more information please contact

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