

## **THE LAW AND YOU: ANNULMENT AND REMARRIAGE WITHIN THE ROMAN CATHOLIC CHURCH**

*by James C. Morton\**  
*Steinberg Morton Frymer LLP*

Although all marriages start with the premise that they will continue indefinitely, it is a sad fact of modern life that many marriages do not continue with the couple staying together. The rate of marital break-up is significant and does not vary materially between Roman Catholics and others.

### **AN ANNULMENT WILL ALLOW YOU TO GET RE-MARRIED**

The main difference when a Roman Catholic marriage fails as opposed to that of, say, a Presbyterian, is that without a formal granting of an annulment by the Roman Catholic Church, the Roman Catholics involved cannot remarry within the Church. There are many misconceptions about Roman Catholic annulment and across North America, it appears that less than one in ten of divorced Catholics actually seek an annulment. The main reason why people fail to seek a Church annulment seems to be a lack of information. People assume that in their case an annulment is impossible, would be ruinously expensive or might have an effect on the status of any children of the marriage. When these misconceptions are cleared up, many Catholics will seek an annulment so as to put their failed relationship behind them and move on with their lives within the Church.

### **EVEN IF YOU HAVE CHILDREN, YOU MAY STILL BE ENTITLED TO AN ANNULMENT**

At the outset, it should be noted that the Church presumes that all marriages are valid and are to exist for the lifetime of the spouses. That said, certain conditions must be present at the time the marriage is entered into for the marriage to be considered canonically and ecclesiastically valid. If any of these conditions fail to exist a competent ecclesiastical tribunal can declare that the marriage was canonically invalid from its inception and ought to be annulled. Such a declaration has no civil effect (and generally speaking, legal divorce or annulment must be obtained before the Church will consider a petition for an annulment) and does not render any children of putative marriage illegitimate. This last point is very clear -- under Canon law, children of a marriage that is believed by at least one of the partners at the time to be a real marriage are legitimate.

### **YOUR CHILDREN WILL STILL BE CONSIDERED LEGITIMATE IN THE EYES OF THE CHURCH**

Another common misconception is that second marriages performed outside the Church can never be made proper. Annulments may be granted in spite of remarriage and subsequent marriages then properly solemnized within the Church.

### **THE GROUNDS FOR AN ANNULMENT**

The grounds for an annulment are varied and quite extensive. The physical consummation of a marriage has very little to do with a Church annulment and the vast majority of cases in which annulments are granted have nothing to do with physical failure to consummate and, indeed, often involve marriages of long duration with one or more children. Put most simply, the Church recognizes that only true marriage exists only where the parties to the marriage were in a position fully to have lived up to requirements of a sacramental marriage and where such high standard is not

met, a sacramental marriage, no matter what preparations for the wedding were undertaken, no matter all good intentions, no matter having a beautiful ceremony, never existed.

## **LIVING UP TO THE STANDARD OF A SACRAMENTAL MARRIAGE**

Although there are many bases upon which an annulment may be granted, some of the most frequently encountered arise from a lack of due discretion or lack of due competence at the time of the marriage itself. These basically mean that at the time of the marriage, one or the other party did not have sufficient judgment truly to understand what the nature of marriage was or was simply incapable, at least at the time of the marriage, to take on the responsibilities and obligations of marriage. The facts tending to demonstrate this are varied and include situations where, for example, there was a pattern of infidelity which would indicate that at least one party to the marriage was unable to maintain an exclusive marital commitment or, for example, there is a pattern of physical or emotional abuse also suggesting that at least one party was unable to live up to the standard of a sacramental marriage. The grounds for an annulment are many and varied, however, many if not most marriages which have failed may lack some element necessary for them to be valid sacramental marriages. Put otherwise, if all the elements necessary for a valid marriage are in place at the time of the marriage, it seems unlikely that the marriage itself would fail. It is only when some element is missing that this becomes apparent later when the relationship fails.

## **THE ANNULMENT PROCESS**

The process of an annulment is fairly lengthy and involved but is probably simpler than the vast majority of procedures involved in a civil or legal divorce. Although it varies from diocese to diocese most annulment procedures take place on a documentary basis and are considered without in person testimony by the parties. The proceedings themselves are confidential and the hearing itself, even if live testimony is required, is not public. There is no confrontation of parties or witnesses. Generally speaking the person seeking an annulment contacts their local marriage tribunal (in Toronto the marriage tribunal is located at 1155 Yonge Street, Toronto) and completes a petition for an annulment together with giving the names of persons who can give written or verbal statements to the marriage tribunal about the facts of the marriage. At roughly the same time, relevant documentation has to be provided to the marriage tribunal. This includes baptismal certificates for both the husband and the wife, the marriage certificate from the Church where the marriage took place and a copy of the final divorce decree from the civil court. (Except in truly extraordinary cases, a petition for an annulment will not be considered until a civil divorce is obtained.)

## **IN THE EYES OF THE CHURCH, IT WILL BE AS IF YOU WERE NEVER MARRIED**

Once the necessary material is before the marriage tribunal together with all the statements of the witnesses the tribunal will consider whether there are grounds for an annulment. If such grounds are found, the petitioner will be notified and a second appellant marriage tribunal will consider the decision of the first marriage tribunal to ensure that it is consistent with Church law. If the appellant tribunal agrees (and they almost always do) the petitioner will be notified that an annulment has been granted. At that time, in the eyes of the Church, there was no initial marriage and the petitioner will be free to remarry within the Church (where the tribunal concludes that there is some bar to remarriage for one of the parties, the tribunal may put conditions on remarriage; this is, however, extremely rare). The entire process can take between six months and two years although you can ensure the process will proceed as quickly as possible by keeping on top of all of the requests made

by the marriage tribunal and ensuring that documents are promptly filed and witnesses respond to questions from the marriage tribunal when requested.

#### WHAT IS THE COST?

The cost of an annulment is generally nominal and is intended simply to defray some (not all) of the costs of the marriage tribunal's operation. That said, the inability of a petitioner to pay even the modest fees required by the marriage tribunal acts as no bar to the granting of an annulment and annulments are considered quite independently of whether any filing fee is paid or otherwise.

#### IS A LAWYER NECESSARY?

You do not need a lawyer to assist you in getting an annulment. The Church will appoint an advocate to consider and assist in the petition. That said, almost anyone obtaining an annulment will be requiring a lawyer for their civil divorce and it makes sense to have a lawyer familiar with the annulment process acting as your civil divorce lawyer. Someone with some experience in these matters can assist in the preparation of the petition to the marriage tribunal, ensure that all documents are obtained in a prompt and proper fashion and generally assist in any concerns which may arise during the process.

Finally, it should be noted that many people feel awkward about seeking an annulment. They should not; if someone is entitled to an annulment they have a right, as a Roman Catholic, to seek such from the Church and to go on with their lives as a fully participating member of the Church and to establish, if that is what they wish, proper relationships with another partner and to go on and have a full and fulfilling life within the Church itself.

*\*This article is intended to provide general information and is not specific legal advice. If you have a legal problem, you should not rely on this article alone but should speak to a lawyer. James Morton is certified as a specialist in civil litigation by the Law Society of Upper Canada and is a partner with Steinberg Morton Frymer LLP, a full service law firm in Toronto. You can reach James by telephone at 416-225-2777.*