

but "natural bonds" because they are contracted according to the natural law, rather than by the sacramental bond that comes through Baptism. Therefore, if a Catholic wishes to marry a divorced, baptized non-catholic, or a divorced, non-baptized person, a declaration of nullity would have to be issued by a Catholic Tribunal before any new union can take place in the Church.

**6. Is a declaration of nullity automatically given in every case ?**

No. Just as every relationship is unique, so each application is judged individually on its own merits but using the same canonical procedure. Sometimes the evidence presented makes clear that the marital relationship eventually broke down due to a variety of factors but there is no reason to question the validity of the original consent or the capabilities of the spouses.

**7. What if the Tribunal gives a decision in the negative ?**

When a Church Tribunal finds, after a thorough investigation, that the challenge to the validity of a marriage is not supported by factual evidence, the bond of marriage is considered to be upheld and the parties are not free to remarry.

**8. How does Canon Law view the children born of a marriage which is later declared to be null ?**

A declaration of nullity does not effect in any manner the legitimacy of children, names, property, maintenance payments, inheritance rights or other matters dealt with in the civil courts. As a matter of fact, the law of the Church expressly states that "children conceived or born of a valid or putative (i.e. at first considered valid and later annulled) marriage are legitimate". (Canon 1137).

**9. How do I begin my case ?**

Your local parish staff will assist you with the preliminary paperwork required in starting a case. You will have to prepare a typewritten marital history of no more than four pages. This

history should trace what both parties brought to the union in terms of their family background and personal development, how the relationship proceeded into marriage and how and when the marriage broke down. The Tribunal will be in contact with you as soon as possible and will examine the whole matter with you in a formal interview. This will be your opportunity to speak to a qualified member of staff who will go over the application with you.

**10. What is the financial cost for the canonical process ?**

Funding for our Tribunal comes from the general diocesan coffers. However, it is deemed to be fair and right that those persons benefitting directly from this service should be asked to make a contribution, always in keeping with their financial ability, toward the defrayment of the necessary expenditures. One's ability or inability to make a contribution has absolutely no bearing upon the person's right to receive a just adjudication of their case.

**11. How long does the whole process take ?**

While there may be individual exceptions, the general expectation of the Code of Canon Law is that cases be decided in First Instance within a calendar year of being opened and cases in Second Instance (Ottawa) be concluded within six months.

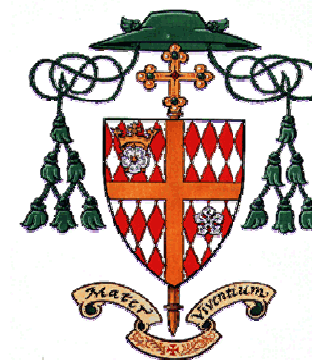
**CONCLUSION**

These legal procedures of the Church, and their application, are based on Christ's teaching that "what God has united, Man must not divide". They allow separated spouses to have their grievances heard and to determine their marital status in good conscience before God and the Church.

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# DECLARATIONS OF NULLITY (Annulments)

## A COLLATION OF QUESTIONS AND ANSWERS



DIOCESE OF HAMILTON

### The Marriage Tribunal

700 King Street West  
Hamilton, Ontario  
L8P 1C7

(905) 528-7988

[www.hamiltondiocese.com](http://www.hamiltondiocese.com)

## THE HISTORICAL ORIGINS OF MARRIAGE TRIBUNALS

Since the first century Christians have submitted their disputes to the adjudication of the local Bishop as leader of the believing community. A system of ecclesiastical courts or Church tribunals gradually evolved and was established to deal with cases touching on the rights, obligations and concerns of members of the Church. The substantive law and procedure to be used in ecclesiastical cases in our modern era is set out comprehensively in the CODE OF CANON LAW, promulgated by Papal authority in 1983. A copy of the CODE is available in your local public library.

The most common kind of formal controversy in modern Church life is that which arises when one party to a Christian marriage challenges the validity of that union and files a plaint of nullity before an ecclesiastical tribunal. The intention behind the Plaintiff's suit is that the same Church authority which pronounced the couple man and wife on the day of their exchange of wedding vows will now permit the plaintiff to present evidence questioning the validity of the union.

Church Law obliges the Tribunal to determine as soon as possible whether there are indeed solid grounds for the formal acceptance of the plaint of nullity. Secondly, the other party to the marriage, the Respondent, must be informed when the Tribunal intends to accept a case and must be invited to give whatever evidence he or she may wish to present. Unlike a civil tribunal, a Church court has no power of "sub poena" to coerce persons to appear. Moreover, because of the delicacy of the subject matter under review, people are interviewed individually and under oath in a confidential setting. Each party or witness is asked to describe the relationship as he or she experienced it.

Marriage enjoys the favour of Church Law and it is presumed that any marriage solemnized according to the outward and visible form required

by the Church is, in fact, valid. Before a marriage takes place the parties are questioned as to whether or not they accept the Church's teaching on marriage, whether they intend to enter marriage freely and without reservation, and whether they are aware of any impediment to the marriage taking place. It is the teaching of the Catholic Church that a marriage which is entered into validly is indissoluble and cannot be dismantled either by the parties themselves or any external authority. Accordingly, the person challenging the validity of a marriage bears the onus of demonstrating his or her conviction beyond reasonable doubt.

## SOME PRACTICAL QUESTIONS AND ANSWERS

### *1. How does the Catholic Church define Marriage ?*

The Church regards Marriage as one of the seven Sacraments. It is an intimate covenant of life and love brought into being by the freely exchanged consent of a man and woman by means of their marriage vows. Marriage is intended by God to be a permanent and faithful union of the spouses which is open to the possibility of new life. When a marriage is celebrated according to the form of law by competent persons and where there is no legal impediment, it is said to be VALID.

### *2. How and when can a marriage be declared invalid or null ?*

Either spouse in the marriage may at a given point challenge its validity before an ecclesiastical tribunal. The role of the tribunal is to take evidence from both parties to the marriage and such witnesses as they may choose to put forward. Each is asked to trace the history of the relationship from its outset and to give an opinion on the readiness and capabilities of the parties to assume and fulfil the responsibilities of married life. The evidence collected under oath is then examined by a panel of Judges and a decision is made either for or against the validity of the marriage. A

declaration of nullity is a formal recognition that one or more element essential to marriage was missing at the time of consent. Both parties are informed of the decision of the court and may appeal it to the National Tribunal in Ottawa if they feel aggrieved in any way.

### *3. Is there a difference between a civil divorce and an ecclesiastical declaration of nullity ?*

Most certainly. A civil divorce is a legal action whereby the division of property and custody of children having been settled, a civil dissolution is granted, and husband and wife are declared free by the same civil authority to enter a new marriage with a different partner. Such a civil procedure does not question the validity of the initial consent in that marriage. By contrast, in the canonical process, if the gathered factual evidence, examined in the light of Canon Law, shows that a particular marriage was not canonically valid, the Church's Tribunal declares it null and void. This is the ecclesiastical declaration of nullity (colloquially called an "annulment").

### *4. How does the Church view civil divorce ?*

If civil divorce is the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offence. (from Catechism # 2383). From the Church's perspective, civil divorce does not provide freedom to remarry.

### *5. Are Catholic marriages the only ones which need to be examined before a new union can take place in the Catholic Church ?*

An erroneous impression, very common among Catholics, is that the Church recognizes as valid only the marriages of Catholics. The reality is that the Catholic Church recognizes as valid not only the marriages celebrated in the Catholic Church between Catholics, but also those of baptized non-catholics, as well as those of the non-baptized. Valid marriages between baptized people (Catholics or non-catholics) are Sacraments; those between non-baptized are not Sacraments