Annulments TODAY

MERCIFUL AND JUST

This pamphlet on the annulment process was gifted to The Catholic Women's League of Canada by Theresa St. Arnaud, Advocate, Vancouver Marriage Tribunal

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Foreword

A Christian marriage is a sacramental relationship in which a couple establishes a partnership for their entire life.

It is a holy covenant of life and love, demanding a mature commitment and conscious decision to love from the partners—one that should not be entered into lightly.

Sadly, the reality is that not all marriages succeed. The church provides help to those suffering from a broken marriage through the annulment process.

It is hoped that this pamphlet will help you to understand annulments, and on behalf of the League, I offer my thanks to Theresa for the gift of this valuable information.

Members of the Catholic Women's League are encouraged to read and understand the process, and be prepared to share it with compassion and love with those who may need it.

Annulments Today – Merciful and Just

Introduction

In any discussion about marriage annulments, it is necessary to first understand how the church defines marriage. In the *Code of Canon Law* there are no less than 111 canons on marriage, more than on any other single subject.

The first canon on marriage establishes that the marriage covenant between a man and a woman is a partnership of the whole of life, ordered toward the good of the spouses and open to the possibility of children. Next, the law defines "unity" or fidelity to one spouse alone and "indissolubility" or permanence as essential elements of marriage.

At the beginning of his papacy, Pope Francis instituted changes with respect to the process of annulments and affirms that it is the responsibility of the church to promote the essential elements of marriage as they are defined in the law. He calls on marriage tribunals to safeguard "the sacred bond" and to share in the mission of the whole church to "proclaim the irrevocable truth of marriage according to God's plan."

Although the annulment procedure is governed by church law, the Holy Father recognizes the reality of people who suffer broken marriages and their feelings of disconnect from the church, and he impresses upon marriage tribunals a pastoral mission of mercy and healing.

Standing within the Church

It should be emphasized that separated or divorced Catholics who are living as singles and are not intimately involved in any new relationship continue to remain in good standing.

It is heartbreaking to meet people who avoid participating in the life of their parish, who believe they are ex-communicated and cannot go to mass, or if they do go, they avoid receiving the sacraments, simply because they have been civilly divorced. If no new intimate relationship exists, there is no change in one's status in the church.

As sisters in faith, members need to extend their continued welcome, love, compassion, prayers and companionship to walk with those who are separated and divorced as they journey toward healing.

Many members may know divorced persons who have married outside the church or may not even be civilly married but cohabit with a new partner, perhaps even within their own families. With love and prayers, compassion and supportive companionship, members can encourage them to return to the graces of the church by petitioning for a declaration of nullity of their former marriage [annulment].

Myths about Annulment

So, what is an annulment? Let's first have a quick look at what is it not. First of all, an annulment from the Catholic church has no effect whatsoever in civil law.

An annulment does not make children "illegitimate." This is probably the most common myth about annulments. In fact, and in canon law, children of a marriage that receives a declaration of nullity are legitimate children of the marriage since the children's parents were presumed to be validly married and were most certainly legally married at the time the child was conceived, born or adopted. The term "legitimate" describes the child's legal standing, but has no moral or spiritual implications.

An annulment from the Catholic church does not affect the status—within their own faith community—of a member of another religious denomination. Nevertheless, regardless of where or how the former marriage was celebrated, a divorced person of any religion—or of no religion—who now wants to enter into a subsequent marriage in the Catholic church must first be declared free to marry by a Catholic marriage tribunal.

A very common question is, "I am not a Catholic, I was not married to a Catholic, and I was never married in the Catholic church, or in any church. Why must I have a Catholic annulment?" Canon law provides the answer. The Catholic church teaches that the bond of marriage comes into being through the consent of the bride and groom. Whenever two people marry lawfully, their marriage is presumed to be valid until proven otherwise. It is not required that a person be Catholic, or even Christian, in order to have a valid and binding marriage.

The Catholic church retains authority over the celebration of Catholic marriages, even if only one party to the marriage is Catholic, which means canon law will apply to anyone wishing to enter into marriage in the Catholic church. Therefore, divorced non-Catholics are not free to marry in the Catholic church any more so than a divorced Catholic is, unless the Catholic church has declared the previous marriage invalid.

Members will hear people try to dismiss annulments as just "Catholic divorce." In fact, an annulment is not anything like a divorce. A divorce severs the civil marital contract effective the date of the decree; there was a legal bond and now there is not. A declaration of nullity, on the other hand, declares that the bond or covenant the parties attempted to create between themselves never validly came into existence in the sacramental sense, because the consent of the bride and/or groom fell short of at least one of the essential elements or properties required for the covenant.

Grounds for Annulment

Marriage is intended for the good of the spouses and their children; the essential elements and properties are fidelity and permanence. These are the obligations to be mutually exchanged and fulfilled by the spouses, the terms and conditions of Christian marriage, so to speak. Based on these terms and conditions, there are some fairly common and recurring reasons why marriages are declared invalid.

1. At least one partner did not freely consent; but was coerced or pressured into marriage by other persons or by circumstances.

2. There was a serious lack of understanding or appreciation of the magnitude of the mutual obligations of marriage. Some people enter marriage while still grossly immature or naïve; some are so focussed on their extravagant wedding day, they fail to reflect upon the reality of living out their entire lives with someone they already cannot get along with, believing that a wedding will solve the problems; many will ignore, even resent, the wise and objective advice of parents or close friends.

3. There may be some psychological impairment stemming from mental illness or a personality disorder, or from serious emotional trauma in one's past that prevents a person from being able to give him or herself fully in marriage.

4. Some people may have no intent to be faithful or to have children. Or they may have a strong divorce mentality, as in, "I'll only stay in the marriage for as long as I feel happy or until someone else comes along."

5. One party may have deceived the other concerning some quality of himself or herself, something so serious that it was completely impossible to form a partnership of life, such as hidden homosexual preferences or undisclosed infertility.

Many times there is a combination of reasons which are called "grounds" and which are defined in detail in canon law. These grounds are not moral judgements on any person, and the Catholic church certainly does not lay blame; rather, a declaration of nullity is a statement concerning the bond of marriage.

The Process for Obtaining an Annulment

To petition for an annulment, the first step is to contact the local marriage tribunal directly to set up a preliminary consultation, during which the specific situation and marriage history is discussed. This is done in order to be advised on how best to proceed, as there is more than one way to be declared free of the bond of a former marriage. For the purposes of this brochure, the focus is on the formal process of a declaration of nullity.

At the preliminary consultation, an application package is provided for the petitioner to complete. The information required by the tribunal will include relevant details about the two parties to the marriage, facts of the wedding and divorce, number of children, etc.

A vital part of the application package is the summary or history of courtship and marriage. Based on this, the presiding judge will set the grounds, the proposed reason why the marriage could be declared null and void.

The petitioner will be asked to present witnesses, people who are willing to share their thoughts and observations about the marital relationship prior to and during the marriage. Relatives are acceptable witnesses; children of the marriage are not. If experts were consulted during the marriage—medical doctors, psychiatrists, psychologists, counsellors—an expert's report could be requested if it is deemed relevant to the grounds, and as long as consent is given by both parties to waive the expert's obligation of professional secrecy.

A second consultation is then scheduled when the completed application package is returned and reviewed to ensure that all is in order and there is sufficient and appropriate information in the summary. This consultation presents a good time to get answers to the questions that have likely come to mind since the first appointment.

Once the application goes through some internal procedures, the case is formally accepted into the court and the presiding judge sets the grounds.

The petitioner will be called back to give personal testimony under oath, during which she will be asked about her own family history and that of her former spouse, the courtship and engagement period together, and the early months of the marriage. There will be questions about her understanding of marriage, of her intentions at the time she was getting married, if she harboured any doubts, or if there was anything that might have caused her to feel under pressure to enter into marriage against her will or better judgement.

Her former spouse will be invited to give a similar kind of testimony, and her witnesses will be questioned on the same topics, from their perspective and observations. Each person will be interviewed individually, privately and in confidence. The testimonies are recorded during the interview to be transcribed later for the case book.

It is a fact that divorced people do not always maintain a friendly relationship. Sometimes, the former spouse will refuse to participate or will simply ignore the tribunal's citations to appear.

While the cooperation of the former spouse is always helpful to the process, the tribunal will not delay justice. If a reasonable amount of time and effort does not convince the former spouse to participate, the tribunal will appoint an in-house advocate to act on his behalf so that the case may proceed to its conclusion in a timely manner.

Once all testimonies have been collected, both spouses are invited to read the evidence and to make any relevant amendments or rebuttals.

Then the case is concluded, and the testimonial evidence is studied by the advocate for the petitioner who will prepare a written argument in favour of the annulment, based on the law.

The defender of the bond takes the opposing position—to defend and uphold the bond of marriage—and prepares an argument as to why the marriage should be judged valid.

Finally, the presiding judge, along with two collegial judges, study the case, consider the two opposing arguments and reach a decision. The marriage is judged to be invalid or it is upheld as valid and binding. If either spouse disagrees with the decision, an appeal process can be initiated.

Has the Church's Position Evolved?

Members might wonder, "Whatever happened to all those changes Pope Francis made to make the annulment process simpler, easier, faster and less burdensome?" In fact, relative to much of the world, North Americans already experience a simpler, easier and faster process, compared to many countries which have few or no tribunals and limited trained staff or resources. In North America there is a tribunal in every archdiocese and many dioceses, and ample staff to conduct the cases efficiently and in a timely manner.

Some of Pope Francis's changes have had a positive effect. For instance,

- The scarcity of priests has moved the pope to allow lay persons to serve as judges, provided the presiding judge is a member of the clergy.
- The process now gives a greater presumption of truthfulness to the parties so the number of witnesses needed to corroborate their statements has been reduced. In some very specific situations, one character witness alone could be sufficient.
- It was previously required that every affirmative decision from the tribunal must be ratified by the Canadian Appeal Tribunal. That automatic appeal process has now been eliminated, which reduces the waiting time for a final decision, and lowers the costs.
- Jurisdiction has been given to the tribunal where their application is made, instead of where the marriage was performed. This is especially relevant for newcomers to Canada who may have been married in other countries where access to the annulment process may be virtually non-existent.

Conclusion

This world presents many challenges to marriage and family life. The local church must be committed to improving pastoral accompaniment of the divorced and remarried and of those living together without the graces of the sacrament of marriage. Divorced and remarried "need to be more fully integrated" into the life of the church in a variety of ways.

For divorced Catholics, and in particular those involved in new relationships, having a former marriage annulled is the best way to be fully reconciled with the church.

Members may consider themselves to be the conduits of that integration. They should gently and lovingly encourage those in irregular situations to put their petitions forward.

While not without its burdens, the annulment process offers a unique opportunity to reflect on and confront important traits, behaviour patterns and personal choices that, once recognized, often prove valuable in navigating future relationships. Many Catholics experience profound feelings of closure and healing and, ultimately, God's loving mercy and grace.

All in all, the annulment process offers a good balance between the church's mission to uphold the truth about marriage, while extending mercy and compassion for the imperfect way that people sometimes enter into commitments.

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