

SCOTTISH CATHOLIC INTERDIOCESAN TRIBUNAL

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EXPLANATORY NOTES

TO ACCOMPANY THE
MARRIAGE NULLITY PETITION FORM

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Important Notification

It is essential that the person who petitions a marriage nullity studies **all of these notes** before lodging a Petition with the Tribunal. The Tribunal will always assume that this has been done and that a Petitioner knows what is contained in them, **especially as regards any rights and obligations the Petitioner has and which are explicitly mentioned herein**. The Tribunal will not accept any complaint made by a Petitioner after a case has been admitted to the effect that they “did not know” that they had this or that right or obligation. By signing the Petition Form, therefore, the Petitioner is affirming that he/she has properly assimilated these notes.

1. These notes refer exclusively to the Marriage Nullity Petition Form. The form can either be downloaded from the Tribunal website or requested directly from the Tribunal. Please note that any other version of the form, irrespective of who supplies it to you, will not be accepted.
2. You must answer fully all questions on the Petition Form since both the formal admission of your case, a first assessment of its possible grounds of nullity, and the decision as to whether the ordinary, or briefer, process may be followed all depend on the information submitted. You are free to provide additional information on separate sheets of paper
3. If your case is admitted, you will be informed by letter. You will be advised of each subsequent step in the process as it occurs.
4. If the Tribunal is unable to determine a minimally sufficient basis for admitting your case, supplementary questions will be sent to you for a written response.
5. Should any basis for proceeding with your case still seems absent, the Presiding Judge of the Court will invite you to come and discuss matters with him. Only if this final attempt to discover a basis for admitting your case is unsuccessful will the Judge issue a Decree rejecting your Petition. Even then, however, you enjoy the right to present a recourse to the three Judges of the Court, giving your reasons for doing so. They will then pronounce a final decision against which no further recourse is possible by you or by the Presiding Judge.
6. Cases must be handled in the order in which they are received. Most, but not all, cases are decided **about two years** from when the case is accepted for full investigation. If a Petitioner intends to marry again in the Catholic Church, he/she must wait until the case is decided positively by this Tribunal and no-one has appealed to a higher Tribunal against our positive decision. Since the outcome of any case cannot be foreseen, a Petitioner is **advised not to arrange a new wedding until they receive formal notification that they are free to marry in the Church**. Please do not pay attention to anyone, cleric or a lay, who tells you otherwise. The Tribunal takes no responsibility for any financial expenditure disbursed, or for any other inconvenience sustained, in the preparation of a wedding ceremony arranged before the mentioned formal notification has been delivered.
7. If your case is accepted for investigation, you will be able to discuss the content of the following notes with a Tribunal Official at your interview.
8. **It is important to note that the fact that your case has been accepted for investigation does not guarantee that it will reach a favourable decision. The annulment process is not like the Civil Divorce process. Divorce claims to dissolve the bond of marriage for the grounds indicated in Civil Law. It does this whether or not the bond is null. If a case before this Tribunal is delayed in its investigation, or if the final outcome is negative for the Petitioner, it must be clear that no amount of pressure of any kind from any quarter will change that. Delays in investigation can occur for numerous legitimate reasons. To the degree possible, these will be communicated to a party. The only way to challenge a negative outcome is according to the procedures laid down by the Law.**

9. **Everyone at the Tribunal is here to help, and we recognise that emotions can run high in the difficult business of seeking a nullity, but uncivil behaviour is unwelcome. Parties are reminded that the Tribunal is an Ecclesiastical Court of Law and that the “Judge can take to task all those taking part in the trial who are gravely lacking in the respect and obedience due the Tribunal” [Dignitas Connubii, article 87].**

WHAT DO WE MEAN BY A NULL “MARRIAGE”?

10. When we say that a marriage is null, we mean that the consent given by one, or both, of the parties to the marriage was invalid at the time it was exchanged. Although there was a ceremony of marriage, no bond of marriage resulted because there was some recognised barrier present [eg a prior marriage bond] or some essential element missing [eg the intention to be faithful].
11. Whenever a marriage ceremony takes place, the Church presumes that it is a true and valid marriage; the parties are presumed to be husband and wife. This presumption holds good for every marriage unless, and until, it is proved to the satisfaction of the Tribunal that a particular marriage was not true and valid.
12. Please note that a Church Decree of Nullity/Dissolution of Marriage does not affect the civil legitimacy of any children of the marriage.

WHAT HAPPENS NEXT?

13. **Firstly, it is extremely important to understand that neither you, nor your former spouse, is on trial in a marriage nullity process.** What is on trial is the bond of marriage itself: was it valid at the time you exchanged your vows or not? The marriage nullity trial is not a second divorce hearing. Rather, it is a sincere, serene, albeit difficult, journey to discover the truth of the validity or invalidity of the marriage bond. Only on the basis of that truth can a just decision be reached.
14. When your Petition has been formally admitted, it will be sent immediately to the other party to your marriage who must, by Law, be given the opportunity to “respond” to your petition [hence the other party is called the “Respondent”]. The Respondent has the right to participate in the entire process on the same footing as yourself, the Petitioner.
15. Your petition will also be sent to the “Defender of the Bond”: this is an Official of the Tribunal whose task it is, at the end of the nullity process, but before the final decision of the Judges is taken, to set forth all reasonable arguments against granting the petitioned nullity. The Defender is part of the process – indeed he is called a “party” like the Petitioner and Respondent – because the *presumption* of the Church is always that a marriage is valid. It is precisely this presumption which the Petitioner is challenging. What the Law is saying is: “You say that your marriage was null. The Church presumes every marriage to be valid. So you must now prove that this presumption is not true in your case”.
16. Both the Respondent and the Defender are invited to submit to the Court their responses to your Petition. The Court will then propose by decree to you, to the Respondent and to the Defender the grounds of nullity upon which the case is to be investigated. After responses to the proposed grounds are received, the Court will either modify the grounds or confirm those originally proposed.
17. Once the grounds of nullity have been set, there may well be a period of several months before you are contacted by letter, inviting you to come to the Tribunal Office for an interview. This is called your “judicial deposition”. There is no need to be anxious about the interview, since all of our Officials are here to help you and are aware that the experience is difficult. The length of interview varies because it depends on each case and each person.
18. On receipt of the letter just mentioned, it is in your interests to make an appointment **as soon as possible**. Failure to act within six months of receiving any notifications from us may result in your case being considered as abated [as having been abandoned]. This does not mean that it cannot be re-opened, but in this event, it will have to take its place once more at the end of the queue.

19. At the interview you will be asked to give an account of the circumstances of the marriage. This interview is exclusively between you and the Tribunal Official. Anyone you bring with you will have to wait in our waiting room. The exclusive nature of the interview is to allow you complete freedom to respond to the questions put to you; it also allows the interviewer greater freedom in questioning you.
20. When your evidence has been taken, arrangements will be made for the Respondent to give evidence. If the Respondent is not willing to participate in the process, the case can still continue to a decision.
21. The next step is that arrangements will be made for your witnesses and any witnesses cited by the Respondent to give their evidence. In most cases witnesses are interviewed locally, eg in their homes, or in some suitable place, at a time convenient to both the witness and the “Auditor”, ie the person designated by the Tribunal to act on its behalf. Witnesses are asked to maintain confidentiality. All proceedings are held in strict privacy, although all evidence gathered will be made available for inspection by you and the Respondent at the appropriate time should either party wish to read it. Appropriate measures to protect testimony under the Data Protection Act are also put in place.
22. Your Judicial Deposition and/or that of the Respondent, both given under Oath, may be accepted by a Church Tribunal, as providing full proof of what you assert, unless there are clear indications to the contrary. It is always better, however, that both parties provide witnesses and any documentary, professional, or other evidence available [eg medical or legal reports; financial records, photographs etc].
23. The duty of providing this supporting proof rests entirely with you. ***You should ensure that any witnesses that you wish to cite are willing to take part in the proceedings. To this end, you must obtain the signature of each and every prospective witness upon the “Witness Declaration Sheet” provided with the marriage nullity form.***
24. When certain grounds of nullity are set, the Law requires that a Psychological Expert be asked to provide a written opinion on the written evidence. It is not, however, the Expert who decides the outcome of the case, but the Judges alone.
25. When all the evidence has been gathered, and any other formalities of Law have been duly observed, the case is typed and bound in book form. At this point, you will be contacted by the Tribunal and invited, although not obliged, to inspect all of the evidence.
26. Between that inspection and the submission of the case to the Judges for their decision, an opportunity will be afforded to both parties to present their final “Pleadings” or concluding remarks. Depending on the unfolding of a case, this concluding phase will take different forms. Each side in the case will be given the right to read and, if desired, respond to the Final Pleadings of the other side.
27. Finally, the full case is sent to three Judges designated by the Tribunal to decide the case. In exceptional circumstances a Sole Judge may be appointed. After studying the evidence independently, the Judges then meet to give their verdict and to issue the Decision. The Decision is distinct from the “Sentence”. The former states summarily that a ground of nullity has been proven or not proven. The latter explains more fully the reasons in Law and in fact [ie on the basis of the evidence] for the decision taken. The parties will be sent a copy of the Sentence when the responsible Judge has completed it.
28. Whether the decision is negative or positive, a party who feels aggrieved by a Sentence has the right to appeal to the higher Court within a mandatory period of fifteen usable days [ie days on which someone is not impeded from acting for reasons of ill health, holidays, etc]. This Appeal may be lodged with the Roman Rota, or with the Birmingham Tribunal mentioned. Further appeals are permitted, but these can be explained if and as they arise.
29. If no Appeal is lodged, or if an Appeal is dismissed as being without foundation in Law, the parties will be informed by the Tribunal when they are free to marry in the Catholic Church.
30. If you intend to marry again and your intended spouse has been married before it is likely that he/she will require his/her marriage to be investigated also.

FORMS, CERTIFICATES AND CORRESPONDENCE

31. All applications must be accompanied by a marriage and divorce certificate. [What if I do not possess the marriage and/or divorce certificate? A copy of your marriage certificate can be obtained from the Registration Office responsible for the district in which the marriage took place. An extract of the divorce certificate can be obtained from The Extractor, Court of Session, Parliament Square, Edinburgh or the appropriate Sheriff or County Court.]
32. If you are not already divorced, then you should consider contacting a Solicitor to start proceedings. In normal circumstances a case will not be initiated at this Tribunal before a Civil Divorce has been granted. [In certain circumstances the Tribunal might accept a case for investigation when a divorce has not yet been sought but only on the strict understanding that a divorce will be sought by the Petitioner or Respondent.]
33. Information about the status or progress of marriage nullity cases will only be given to the Petitioner or Respondent. Such information will not be given to partners, parents, other relatives etc.
34. Experience indicates that it is in the best interest of the Petitioner if he/she takes sole responsibility for the posting/delivery of the marriage nullity petition to the Tribunal.
35. All correspondence will be acknowledged by the Tribunal. If any correspondence is not acknowledged within two weeks you should contact the Tribunal as it may be that the correspondence has not been received. Once initial contact has been made with the Tribunal a reference name and number will be assigned. This should be quoted on all future correspondence.

OTHER POINTS

36. Upon the submission of your Marriage Nullity Petition to the Tribunal, it may happen that an alternative legal procedure of the Church can or must be followed. In that event, you will be informed immediately and you will be informed as to what you have to do.

CHANGE OF NAME, ADDRESS OR TELEPHONE NUMBER

37. If **you change your name, address or telephone number** while your case is pending before the Tribunal, or if the **Respondent or any of the witnesses changes name, address or telephone number**, you should forward to the Tribunal the new details *as soon as you know them*, as failure to do so may delay your case considerably. Please remember to quote the name and reference number of your case on all correspondence with the Tribunal.
