

The Process for Declaration of Nullity of a Marriage

The Tribunal of the Catholic Church
for New Zealand

Archdiocese of Wellington
Diocese of Palmerston North



Divorce is one of those life events for which one can never be fully prepared. Ending the marriage and the union that you had hoped would last the rest of your life is usually a traumatic experience for all concerned. The time of separation and divorce is a time of upheaval, and at all levels, it can result in feelings of alienation and guilt.

The Church cares:

The Church acknowledges the reality of separation and divorce. It is aware of the stresses in our modern world associated with the ending of a marriage. Added to the pain of the legal and relational processes are the questions that divorced Catholics may have about their status within the Church. Whilst upholding the permanence of sacramental marriage, the Church does reach out in support of those whose marriages have broken down. These aspects of the Church are especially evident in the sensitive work of the Tribunals of the Catholic Church.

Any divorced person has the right to ask for an investigation of their previous marriage by the Tribunal of the Church. The Tribunal decides if it were a binding marriage for life according to the criteria of the Catholic Church. The main work of the Tribunal is to assist with the pastoral care of the divorced person who has remarried or is intending another marriage in the Catholic Church. It may also assist a divorced Catholic who is seeking clarification of his or her position for peace of mind or for reassurance the Church will continue to support them in a future relationship. Sometimes a person wishes to be baptised in the Catholic Church or to be received into it, and in order to do that, they need to regularise their present marriage. Whatever the person's life circumstances, the Tribunal process affords the opportunity for increased insight, self-awareness, clarity about relational issues, and closure. Those who embark on it are accompanied by compassionate staff and volunteers who are committed to confidentiality.

The following are some commonly asked questions about the process of seeking a Declaration of Nullity:

What is a Declaration of Nullity (Decree of Nullity)?

A Declaration of Nullity is not a Catholic word for divorce. A Decree of Nullity is a declaration by the Church that a particular marriage is not binding for life according to the criteria of the Catholic Church. It does not deny that there had ever been any kind of bond between the couple or erase the relationship that existed. Nor does it assign blame for the breakup of the marriage. The Church recognises that there was a real civil marriage, a real relationship and any children are, and always will be, legitimate even if a Declaration of Nullity is granted.

Does a Declaration of Nullity make the children illegitimate?

No! Church law states that the children of a marriage that is declared null are considered legitimate. According to the law of the Catholic Church, a Declaration of Nullity affects only the marital status of the parties.

Why do non-Catholics need to go through this process?

If you're not a Catholic but have been previously married and now plan to marry a Catholic, you might be asked to go through this process. This seems odd to most non-Catholics, especially when neither party from the first union are Catholic. Therefore, why should the Tribunal investigate this marriage? The short answer is that any time one man and one woman of legal age exchange consent, the marriage is assumed to be valid until proven otherwise. So from the perspective of the Catholic Church, the non-Catholic is considered to be validly married unless the former spouse has died or the marriage has been declared null by the Catholic Church.

How to begin the process?

The Tribunal will only accept a case if the relationship is proven to be irretrievably broken down, i.e. in the case of New Zealand, cases are processed only after a civil dissolution and settlement are finalised. The process begins when an applicant (known as the Petitioner) completes a 'Preliminary Submission' and a 'Fact Sheet' available from the Tribunal. The Petitioner is required to provide information about the background of each party and details of the courtship and married life. Following receipt of the forms, a preliminary assessment is made, after which the Petitioner is notified whether the case meets the criteria for further investigation. If the case is accepted for hearing, the Tribunal will arrange a formal interview with the Petitioner, who signs a petition making an official application for a declaration of nullity. Please note that continuation of the process does not guarantee a declaration of nullity. The Case Instructor at the Tribunal works with the Petitioner throughout the process.

Is the former spouse contacted?

It is a requirement of canon law that the other spouse (known as the Respondent) be informed of the investigation and given the opportunity to participate in the investigation in the same manner as the Petitioner.

The Tribunal must be provided with the Respondent's current address or contact details if known. It is not necessary for the Petitioner to contact the Respondent; the Tribunal can do this on their behalf. However, it is often better if the Petitioner informs the Respondent that he or she has approached the Tribunal so that they don't feel blindsided when contacted. The testimonies of the Petitioner and the Respondent will be obtained separately. The Tribunal finds that in most cases, the Respondent is willing to testify; however, if a Respondent declines to participate, the case can still proceed.

What about witnesses?

Both the Petitioner and the Respondent may nominate witnesses. Key witnesses are those who knew the couple before the wedding and during the time they were married. The person who names the witnesses is responsible for asking them to give evidence, but the Tribunal will contact the witnesses to arrange a formal interview.

How is a decision reached?

When the Tribunal has sufficient evidence for a decision to be reached, the formal sessions of the Tribunal are held. The Defender of the Bond (a member of the Tribunal staff designated to protect the marriage bond) evaluates the case and presents all significant reasons that would argue in favour of a valid marriage and against a Declaration of Invalidity. Then the Judges carefully study the case by weighing in the evidence and considering the observations of all concerned. Only if the Judges reach moral certitude that invalidity has been established, will a Decree of Nullity be issued. Both parties have a right to appeal the decision rendered by the Tribunal.

Is there a need to produce any documents?

Yes. The Petitioner will be asked to supply the Tribunal with Marriage and Divorce Certificates and also Records of Baptisms (where applicable).

What about confidentiality?

All evidence gathered is confidential. The Tribunal must also observe relevant reporting and privacy laws of New Zealand. Both parties to the marriage have the opportunity to be advised of the decision of the Tribunal and the basis on which it was made.

How long does all this take?

Due to the number of applications and the varying factors involved in different cases, no exact time can be specified, but most cases are completed within a year. If you are considering getting remarried, please avoid setting a date until the Tribunal has reached a decision. Setting a date for a subsequent wedding before the final decision has been reached places unwarranted pressure on all parties.

Is it all worthwhile?

For many, the process of seeking a Decree of Nullity can be distressing at times. However, it can be a pastoral and therapeutic process as well as a legal procedure. Many applicants find that the process itself and the sensitive approach of the Tribunal staff can be an experience of healing, and an opportunity to remedy debilitating memories of the past.

What are the fees for the Declaration of Nullity process?

The applications for the Declaration of Nullity are free of charge. The Tribunal is supported by the New Zealand Catholic Bishops Conference.

Who to contact?

As every situation is unique, the above explanation may still leave you with some unanswered questions. Please contact us at the Tribunal office, and we will guide you through the process:

- Louise Kelleher or Teena George
- Tribunal Office, PO Box 1937, Wellington 6140
- Phone: 04 496 1727
- Email: tribunal.wellington@catholic-tribunal.org.nz

*"Let the Church always be a place of mercy and hope,
where everyone is welcomed, loved and forgiven"*

Pope Francis