

Recognition of a Foreign Divorce in Canada

I was recently asked to give an opinion as to whether or not a foreign divorce will be recognized in Canada. This is a necessary step for people who want to marry in Canada but were divorced in another jurisdiction. Proof of the validity of the divorce is a prerequisite to marriage in Canada because of our polygamy rules- you can only be married to one person at a time in this country. Section 22 of the *Divorce Act*, a federal statute, sets out the circumstances in which Canada will recognize a foreign divorce.

Marriage, on the other hand is governed by the provinces. In Ontario, the *Marriage Act*, sets out in section 8, the necessity of providing proof of divorce, specifically the final decree or judgment dissolving or annulling the previous marriage. In other words it requires the original or certified copy of the court order in the jurisdiction where the divorce was rendered.

In Ontario, if one or both of the individuals planning to marry were divorced in a foreign country, they will be required to supply the following before a marriage license will be issued:

- Marriage license application: completed and signed
- Statement of Sole Responsibility: for each divorce (signed by both people who are planning to get married and a witness)
- Legal opinion letter: from an Ontario lawyer, addressed to both people who plan to get married, giving reasons why the divorce or annulment should be recognized in Ontario
- **Divorce decree or annulment: an original or court-certified copy in English or French** [emphasis added]
- If the decree is in another language, you will need to include a translated copy and an affidavit sworn by a certified translator



Every time I am asked to provide this service, it seems the client has come from a country from which I have not dealt with before. In order to render the opinion, and to satisfy the ministry that issues marriage licenses, that the foreign divorce would be recognized in Canada, I need to see the divorce order, and a certified translation of it, if it is not in English. With this recent client, she did not bring a copy of the divorce order, but a certified copy of the page of the citizen registry indicating her marriage status in that country. She paid to obtain this document from the embassy in Toronto and paid someone to translate the document. Regrettably, the ministry would not accept this as it was not a copy of the court order or decree. While I could render an opinion that based on her connection with that foreign country and her residence there during the period of time that she obtained her divorce, for her divorce would likely be recognized in Canada, without a copy of the court order itself, I could not render the opinion. Even if I did render the opinion, I made a direct inquiry with the ministry regarding whether or not they would except the documents as proof of the divorce and was advised that the client would still be required to provide the court order. The client was very frustrated, and disappointed as she and her fiancé were looking forward to getting married as soon as possible.

The take-home message for anyone seeking recognition of a foreign divorce in Canada is to make sure that you obtain your original judgment or obtain a certified copy from the court where it was issued. In this case, the client still had relatives in the city where the divorce was issued and it was possible for them to attend the court to get a certified divorce order and send it to her. The frustrating part was that she relied on information she obtained at the embassy and the document they provided as evidence of her divorce. Please be advised that citizen registries of marital status will not likely be sufficient evidence of divorce for the purpose of obtaining a marriage license in Canada.