

Same-Sex Marriages - Frequently Asked Questions



Introduction

On June 10, 2003 the Ontario Court of Appeal decision regarding same sex marriages:

- (1) Declared the existing common law definition of marriage to be invalid to the extent that it refers to "one man and one woman";
- (2) reformulated the common law definition of marriage as "the voluntary union for life of two persons to the exclusion of all others";
- (3) ordered the declaration of invalidity in (1) and the reformulated definition in (2) to have immediate effect

Can same-sex couples now get legally married in Ontario?

Yes. As a result of the June 10, 2003 Ontario Court of Appeal decision, same-sex couples may now be issued with Marriage Licences and have their marriages registered by the Office of the Registrar General. Although the Federal Government could have sought a "stay" of the ruling to effectively put this ruling "on hold", they have chosen not to do so.

Can the Federal Government appeal this decision?

Yes. The Federal Government could have sought an appeal with the Supreme Court of Canada, however they have announced that they will not do so, and that they will prepare

legislation which will specifically allow for same sex marriages. It will be referred to the Supreme Court to ensure its compatibility with the Charter of Rights before being presented in Parliament – likely in the late fall of 2003.

Should we get married right away before the legislation is passed?

Marriage is a serious institution, and to us, a sacred institution. Getting married can be an expression of your commitment to equality, but it is a relationship with legal consequences that are significant. It is not like signing a petition. No one should enter into marriage lightly or frivolously. However, you may have wanted to marry for a long time and you may know that marriage is right for you as a couple

Is it true that the two marriages at MCCT were the first legal same sex marriages in the world? Wasn't the Netherlands first?

The marriages of Elaine and Anne Vautour and of Kevin Bourassa and Joe Varnell are the first legal same sex marriages in the world. They took place on January 14, 2001. We knew that they were legal then, and the Court has now confirmed that we were right. The Netherlands can boast **the first Government** to legally recognize same sex marriage. However, their first weddings did not take place until April, 2001.

If we get married now and there is a successful appeal, what will happen to our marriage?

It is theoretically possible that same sex marriages could be retroactively invalidated if the Ontario Court of Appeal and B.C. Court of Appeal are reversed by the Supreme Court of Canada. That is unlikely, however.

Is this decision binding? Just in Ontario, or everywhere in Canada?

The decision is clearly binding in Ontario and all municipalities are now required to issue marriage licenses to same sex couples who meet the other criteria. Since it is a federal law that has been changed by this ruling, as with earlier cases like *Rosenberg* and *Haig*, if the government does not appeal the ruling it will clearly have nation wide effect. We believe it to be binding nationally now. Unfortunately, people who are discriminated against in other provinces may have to take legal action to enforce their rights if they are rejected.

On July 8, 2003, the high court of British Columbia lifted its moratorium on same-sex marriage, making a two-month-old ruling in favour of legal marriage effective immediately and so marriages are now being registered in BC.

How can I actually get married?

If you are getting married in Ontario, you can have a civil marriage or a religious marriage:

- A **civil marriage** can be performed by a judge or a justice of the peace under the authority of a marriage licence.
- A **religious marriage** can be performed by a person who is recognized by a religious body to perform marriages and is licensed in Ontario to perform marriages under the *Marriage Act*. The marriage can be solemnized under the authority of a marriage licence or the publication of banns, depending on the denomination.

What is the first step?

Unless you choose to be married under the publication of banns (see below) you must apply for a marriage licence.

- A marriage licence can be obtained from the clerk of most cities, townships, towns or villages - check your municipal blue pages.
- The marriage licence is valid anywhere in Ontario for 3 months from the date of purchase.
- Either or both of the persons being married must apply in person to the Marriage Licence Issuer to obtain a licence. They will need to bring identification, such as a birth certificate (along with any change of name certificates), current passport, Record of Immigrant Landing or Canadian citizenship card, along with photo identification, for both the persons.
- There is a set fee for purchasing a marriage license. Contact your municipal office for the current fee. The fee in the City of Toronto is \$110. (There is also an additional charge for a civil marriage.)

The **Marriage Licence Application** can be downloaded from the Ontario Government Website at: http://www.ccr.gov.on.ca/pdf/org/11018_e.pdf Please note that the application has not yet been revised to reflect the court's decision.

We do not live in Toronto. Do we need to come to Toronto to get a license?

It is our understanding that all municipalities in Ontario will now issue licences to same sex couples. If your municipality refuses, Toronto will issue a licence to you regardless of the fact that you do not live here. However, you must apply in person.

If we get our licence from another Ontario municipality outside of Toronto, can MCCT still marry us?

Yes.

I live in another province. Will Toronto issue me a licence? Do I have to be an Ontario resident to get married in Ontario?

Toronto will not refuse to issue you a licence because you live in another province. Be aware that if one member of the couple is divorced, documentation relating to that divorce will be required. MCCT can perform a valid marriage of non-residents who have a valid Ontario marriage licence.

We do not live in Canada and we are not Canadian citizens. Are the rules any different for us?

No. You can get married in Canada even if you are non-residents and are not citizens. However, your legal Canadian marriage may or may not be valid where you live. **MCCT cannot guarantee that your marriage will be legal anywhere outside of Canada.** Consult a local lawyer who has expertise in the area, especially if you plan to start a test case. Americans are urged to contact one of the legal organizations working in the area. Check this web page for further info: http://www.samesexmarriage.ca/legal/ontario_case/appeal/pride_week_marriage.htm

People from other countries considering this option should bear in mind that you may not be able to dissolve your Canadian marriage in your home country. You cannot file for divorce in Canada unless you reside in a Canadian province for at least one year.

What if I have previously been divorced?

If you live and were divorced in Canada, you must bring the original or court-certified copy of the final decree, final judgment or certificate of divorce to your local municipal office when you are purchasing the marriage licence. **If you live or were divorced outside of Canada, you may be required to submit documents to the Provincial Government several weeks prior to applying for a licence.** Contact your local municipal office for further information or check the Ontario Government Website for additional requirements: <http://www.cbs.gov.on.ca/mcbs/english/52KSPH.htm>

Now that I have a Marriage Licence, how do I arrange for a Civil Marriage?

Check with the clerk that issues your Marriage Licence for information on arranging a civil marriage in your community. The Minister at MCC Toronto will also conduct a *civil marriage* at the church, if you wish.

How do I arrange for a Religious Marriage?

The court ruling does not require any church or religious institution or a person who is recognized by a religious body to perform marriages, to conduct same-sex marriages so you must find a church willing to conduct your ceremony. Metropolitan Community Churches, Unitarian Churches, and some United Churches are already performing marriages for same-sex couples.

The Minister at MCC Toronto will also conduct a *civil marriage* (i.e. no religious ceremony involved) at the church, if you wish. The contact info for MCC Toronto can be found at the end of this FAQ and you must meet with the MCCT Wedding Coordinator to arrange any ceremony.

What is *Marriage by Publication of Banns*?

Publication of Banns refers to the tradition of publicly announcing the couple's intent to marry within the context of Sunday Worship, for 3 weeks prior to the date of the Wedding. This is done *in place of* applying for a Marriage Licence but the following conditions must be met:

- Both parties must be at least 18 years of age;
- Couples must have lived together for at least 1 year prior to the date of the ceremony
- Couples must share no blood relation
- Neither party can have been previously married (either married and divorced/dissolved, or widowed)
- The couple must regularly attend the church; "regular attendance" is defined by an attendance of at least once a month over six months (at the discretion of the Senior Pastor with appropriate documentation provided)
- The couple must attend one Wedding/Holy Union Information Session
- Non-residents must attend MCC Toronto a minimum of 1 service per month for 6 consecutive months.

We were married by Banns after January 14, 2001. Will our marriage now be registered?

Yes. We understand that all marriage registrations that were submitted by MCC Toronto to the Registrar General will be registered in due course. You may want to wait until October to apply for a *Certificate of Marriage* (see below).

We have used the banns and our wedding is coming up. Should we get a licence now too? Does this mean there will be no more banns since we can now get a license?

Banns are always available if couples choose that method. They now have the additional option of a licence, which is the only option for couples if one of the members of the couple is divorced because of the requirements of the *Marriage Act*. Banns take the place of a licence. There is no need to do both. Banns are not a "loophole." In fact, historically, licences are the "loophole", as they were introduced as an alternative to banns.

How do I obtain a Certificate of Marriage?

After the marriage the bride and groom may receive a "Record of Solemnization of Marriage" giving their names, the date of the marriage, the names of the witnesses and whether the marriage was performed under the authority of a license or the publication of banns. This is a souvenir document and not a legal record. The person who performed the marriage must forward documentation to the Office of the Registrar General for registration.

Allow approximately 12 weeks from the date of marriage before applying for your marriage certificate:

<http://www.cbs.gov.on.ca/mcbs/english/pdf/53KT69.pdf>

We had a *Holy Union Ceremony*. Are we now considered married?

No. Holy Unions are similar to Weddings, in that the ceremony is very similar (with a few necessary changes) and while it is every bit as symbolic and meaningful as a Wedding, it has no legal significance. Having had a Holy Union will not prevent you from getting married as long as you meet all the normal marriage requirements.

Holy Unions are still an option for those who may not wish to get married but would like to have some form of commitment service.

Enquiries and Information

For further info, please contact MCC Toronto's Wedding and Holy Unions Coordinator at the telephone or email address below, or download the *Weddings and Holy Union Info Package* from our website.

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