



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2013/28/10

Number: PD - 43

Title:

Practice Direction

Civil Marriage Act- Procedures for Divorce

Summary:

This Practice Direction sets out the procedural requirements for a non-resident same sex couple who married in British Columbia, to obtain a divorce under the *Civil Marriage Act*, S.C. 2005, c. 33, and should be read in conjunction with Part 2 of that *Act*. This Practice Direction does not apply to divorces granted under the *Divorce Act*.

Direction:

Form of Proceeding

1. An application for divorce under the *Civil Marriage Act* shall be commenced by Requisition in accordance with Rule 2-1(2) and Rule 17-1 of the *Supreme Court Civil Rules*.

Who may bring application

2. In keeping with s. 7(2) of the *Civil Marriage Act*, an application for divorce may be made by
 - a. both spouses jointly, or
 - b. one spouse with the other spouse's consent, or
 - c. in the absence of that consent, the spouse making the application must present an order from a court located in the jurisdiction where one of the spouses resides declaring that the other spouse
 - i. is incapable of making decisions about his or her civil status because of a mental disability, or
 - ii. is unreasonably withholding consent, or
 - iii. cannot be found.

Filings required on joint application of both spouses

3. If the application for divorce is made by both spouses jointly, the following documents must be filed in the civil registry of the Supreme Court:
 - a. a requisition in Form 31 signed by both spouses
 - b. a Marriage Certificate
 - c. a draft order in Form 35 approved as to form by both spouses (see sample order in Schedule A)
 - d. a joint affidavit sworn by both spouses or affidavits sworn by each, setting out facts tending to prove the matters required by s. 7(1) of the *Civil Marriage Act* (see sample affidavit in Schedule B).

Filings required on application of one spouse with the other's consent

4. If the application for divorce is made by one spouse with the consent of the other, the following documents must be filed in the civil registry of the Supreme Court:
 - a. a requisition in Form 31 signed by the applicant spouse
 - b. a Marriage Certificate
 - c. a draft order in Form 35 approved as to form by the applicant spouse (see sample order in Schedule A)
 - d. an affidavit sworn by the applicant spouse setting out facts tending to prove the matters required by s. 7(1) of the *Civil Marriage Act* (see sample affidavit in Schedule C)
 - e. an affidavit of the non- applicant spouse stating his or her consent to the proceeding.

Filings required on application of one spouse in the absence of the other's consent

5. If the application for divorce is made by one spouse in the absence of consent of the other spouse, the following documents must be filed in the civil registry of the Supreme Court:
 - a. a requisition in Form 31 signed by the applicant spouse
 - b. a Marriage Certificate
 - c. a draft order in Form 35 approved as to form by the applicant spouse (see sample order in Schedule A)
 - d. an affidavit sworn by the applicant spouse setting out facts tending to prove the matters required by s. 7(1) of the *Civil Marriage Act* (see sample affidavit in Schedule D)
 - e. a certified copy of an order from a court located in the jurisdiction where one of the spouses resides declaring that the other spouse:

- i. is incapable of making decisions about his or her civil status because of a mental disability; or
- ii. is unreasonably withholding consent; or
- iii. cannot be found.

No Corollary relief

- 6. The *Divorce Act* does not apply to a divorce under the *Civil Marriage Act* and no claim for corollary relief may be brought on an application for divorce under the *Civil Marriage Act*. Further, no application for relief under the *Family Law Act* may be brought on an application for divorce under the *Civil Marriage Act*.

Effective date of Divorce

- 7. A divorce granted under the *Civil Marriage Act* dissolves the marriage of the spouses and takes effect on the date of the order granting the divorce.

Certificate of Divorce

- 8. After a divorce granted under the *Civil Marriage Act* takes effect, the civil registry will issue a Certificate of Divorce to a person who so requests and files a Certificate of Divorce in the form of Schedule E to this Practice Direction. The Certificate of Divorce may be filed concurrently with the applicable required filings as referred to in paragraphs 3, 4 and 5 of this Practice Direction.

Filing Fees

- 9. The fees that apply to filing the Requisition for an application for divorce under the *Civil Marriage Act*, (desk order divorce) and to issuance of a Certificate of Divorce by the registry are as set out in Schedule 1 of Appendix C of the Supreme Court Civil Rules.

Austin F. Cullen
Associate Chief Justice

Schedule A

No.
..... Registry

In the Supreme Court of British Columbia

In the Matter of the *Civil Marriage Act*

Between

Applicant(s)

and

Respondent (if applicable)

ORDER MADE AFTER APPLICATION

BEFORE))day, the
) A JUDGE OF THE COURT) day of
)) 20.....

ON THE APPLICATION OF [party(ies)]..... without a hearing and on reading the materials filed by[name of party(ies)/lawyer];

THIS COURT ORDERS that:

- 1. pursuant to section 7 of the *Civil Marriage Act (Canada)*,[name]..... and[name]....., who were married at[place]..... on[dd/mmm/yyyy].., are divorced from each other, the divorce to take effect on the date of this order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

.....
Signature of
 party lawyer for[name of party(ies)].....
.....[type or print name].....

.....
Signature of
 party lawyer for[name of party(ies)].....
.....[type or print name].....

SCHEDULE B- Sample Affidavit of Applicants - Joint Application

Note: Where the application for divorce is made jointly by both spouses, this affidavit may be modified to be a joint affidavit of both applicants with the references changed from “I” to “we”. Both applicants must swear/affirm the joint affidavit. Alternatively, each applicant may file a separate affidavit.

This is the[1st/2nd/3rd, etc.]... affidavit
of[name]..... in this case
and was made on[dd/mmm/yyyy]....

No.
..... Registry

In the Supreme Court of British Columbia

In the Matter of the *Civil Marriage Act*

Between

Applicant(s)

AFFIDAVIT

I,[name]....., of[address].....,[occupation]....., SWEAR (OR AFFIRM) THAT:

1. I am one of the applicants.
2. There is no possibility of reconciliation between my spouse and me.
3. The certificate of marriage or certified copy of the registration of marriage attached to my affidavit and correctly describes the true particulars of the marriage.
4. I was living separate and apart from my spouse at the start of this proceeding and I have lived separate and apart from my spouse since[dd/mmm/yyyy].... .
5. Neither I nor my spouse resides in Canada at the time of making this application.
6. I reside in..... [city/state/country] and have been resident there since [dd/mmm/yyyy]....
7. A divorce cannot be granted in [state] because it does not recognize the validity of my marriage.

SWORN (OR AFFIRMED BEFORE)
ME at)
on)
)
)
.....)
A commissioner for taking)
affidavits for.....)

.....
Signature of deponent

SCHEDULE C- Sample affidavit of Applicant - other spouse consents to the application

This is the[1st/2nd/3rd, etc.]... affidavit
of[name]..... in this case
and was made on[dd/mmm/yyyy]....

No.
..... Registry

In the Supreme Court of British Columbia

In the Matter of the *Civil Marriage Act*

Between

Applicant

and

Respondent

AFFIDAVIT

I,[name]....., of[address].....,[occupation]....., SWEAR (OR AFFIRM) THAT:

1. I am the applicant.
2. There is no possibility of reconciliation between my spouse and me.
3. The certificate of marriage or certified copy of the registration of marriage attached to my affidavit fully and correctly describes the true particulars of the marriage.
4. I was living separate and apart from my spouse at the start of this proceeding and I have lived separate and apart from my spouse since[dd/mmm/yyyy].... .
5. Neither I nor my spouse resides in Canada at the time of making this application.
6. I reside in..... [city/state/country] and have been resident there since [dd/mmm/yyyy]....
7. A divorce cannot be granted in [state] because it does not recognize the validity of my marriage.
8. Filed with my application is the affidavit of my spouse indicating [his/her] consent to this proceeding.

SWORN (OR AFFIRMED BEFORE)
 ME at)
 on)
)
)
)
 A commissioner for taking)
 affidavits for.....)

.....
Signature of deponent

SCHEDULE D - Same Affidavit of Applicant- no consent of other spouse to the application

This is the[1st/2nd/3rd, etc.]... affidavit
of[name]..... in this case
and was made on[dd/mmm/yyyy]...

No.
..... Registry

In the Supreme Court of British Columbia

In the Matter of the Civil Marriage Act

Between

Applicant

and

Respondent

AFFIDAVIT

I,[name]....., of[address].....,[occupation]....., SWEAR (OR AFFIRM) THAT:

1. I am the applicant.
2. There is no possibility of reconciliation between my spouse and me.
3. The certificate of marriage or certified copy of the registration of marriage attached to my affidavit fully and correctly describes the true particulars of the marriage.
4. I was living separate and apart from my spouse at the start of this proceeding and I have lived separate and apart from my spouse since[dd/mmm/yyyy].... .
5. Neither I nor my spouse resides in Canada at the time of making this application.
6. I am resident in[city/state/country] and have been resident there since[dd/mmm/yyyy]... .
7. A divorce cannot be granted in [state] because it does not recognize the validity of my marriage.
8. Attached to this affidavit as Exhibit A is a certified true copy of the order made by, on, declaring that my spouse: (*Choose which applies*)
 - a) is incapable of making decisions about his or her civil status because of a mental disability; or
 - b) is unreasonably withholding consent; or
 - c) cannot be found.

SWORN (OR AFFIRMED BEFORE)
 ME at)
 on)
)
)
)
)
 A commissioner for taking)
 affidavits for)

.....
 Signature of deponent

SCHEDULE E

No.
..... Registry

In the Supreme Court of British Columbia

In the Matter of the *Civil Marriage Act*

Between

Applicant(s)

and

Respondent (if applicable)

CERTIFICATE OF DIVORCE

This is to certify that[*name*]..... and[*name*]....., who were married at[*place*]..... on[*dd/mmm/yyyy*]....., were divorced under the *Civil Marriage Act (Canada)* by an order of this court which took effect and dissolved the marriage on ..[*dd/mmm/yyyy*].. .

Given under my hand and the seal of the court

Date:[*dd/mmm/yyyy*].....

.....
Registrar